CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

(Common order in O.A.Nos.809/02, 17/03, 29/03, 56/03, 70/03, 165/03, 185/03, 186/03, 217/03, 231/03, 269/03, 270/03, 393/03, 395/03, 410/03, 425/03, 524/03, 525/03, 526/03, 527/03, 528/03, 722/03, 723/03, 81/04)

Friday, this the 29th day of July, 2005.

CORAM :

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

O.A.809/02

1. A.M.Pushpalatha,
Widow of late T Govinda Varier,
Residing at Jithas Apartment,
Near Kottakkal Arts College, Kottakkal,
Malappuram – 676 503.

2. Madhusoodanan T.M.,
S/o. Late T Govinda Varier,
Residing at Jithas Apartment,
Near Kottakkal Arts College, Kottakkal,
Malappuram – 676 503.

3. Sudha T.M.,
D/o. Late Govinda Varier,
Residing at 21 Kaveri,
Department of Atomic Energy Township,
Anupuram, Mullikulathore PO, Kancheepuram Dist.,
Tamil Nadu – 603 109.

4. Sunitha T.M.,
D/o. Late Govinda Varier,
Residing at 6E, JM Cresent,
PJ Antony Road, Mamangalam,
Edappally PO, Kochi – 682 024.

...Applicants

(By Advocate Mr.O.V.Radhakrishnan, Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

OA No.17/03

VP Damodaran Nambiar,
S/o.late C M Kunna Poduval,
Presently working as SPM (HSG I), West Hill, Calicut – 5.
Residing at SPM's Quarters, West Hill, Calicut – 5. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

OA No.29/03

K Divakaran Nair,
S/o.late K Appu Nair,
Presently working as Manager,
Postal Stores Depot, Calicut at Feroke.
Residing at Leyam, PO Marikkunnu,
Calicut – 673 631. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

OA 56/03

N Balan Nair,
S/o.late TN Raman Nair,
Postmaster (HSG II) (Retired), Vadakara.
Residing at Leeba, PO Nut Street, Vadakara – 670 104. ..Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

OA 70/03

T.M.Sankaran
S/o late Vellan
Deputy Postmaster (Retd)
Calicut H.O.
Residing at Kottappurath, Naduvannur-673 614 ..Applicant

(By Advocate O.V.Radhakrishnan, Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

OA 165/03

K. Damodaran Adiyodi
S/o late K.T.Kunhikrishnan Nambiar
Deputy Postmaster-II, Calicut H.O,Calicut
Residing at "Lakshmi Nivas", Eachikovval – 670141 ...Applicant

(By Advocate Mr.O.V.Radhakrishnan, Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

OA 186/03

M.Koyamu
S/o late M.Saidalikutty
Postmaster (HSG-I), Tirur HO
Residing at Machingal House
Mundekkad, Ponmundam, Tirur
Malappuram – 675 106 ... Applicant

(By Advocate Mr.O.V.Radhakrishnan, Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

OA 186/03

T.Mohammed Bava,
S/o.late K Mohammed,
Deputy Postmaster (HSG I), Tirur,
Residing at Thachapparambil House,
Near PH Centre, Vettom, Tirur,
Malappuram – 676 102.

...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.217/03

KR Narayanan,
S/o.late KI Raman,
Deputy Postmaster, Thodupuzha HPO.
Residing at Karakkunnath House,
Thodupuzha PO, Idukki District.

...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.231/03

N Sundareswaran Nair,
S/o.late Narayana Pillai,
Sub Postmaster (BCR), Pettah Sub Office,
Thiruvananthapuram – 24.
Residing at Anjali, T.C.3/2394,
Pattam Palace, Thiruvananthapuram – 4.

...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.269/03

Devarajan Pillai G,
S/o.late N Gopala Pillai,
Sub Postmaster, Ayur SO, Punalur HO.
Residing at Thushara, Kottukkal PO,
Anchal, Kollam.

...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.270/03

C Dayanandan,
S/o.late Chandrasekhara Panicker,
Superintendent of Post Offices,
Idukki Division, Thodupuzha.
Residing at Moolakkal House,
Electric Substation Jn., Thodupuzha. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.393/03

N Sarojini Amma,
D/o.late P Narayana Pillai,
Sub Postmaster (BCR) (Voluntarily retired),
Mayithara Market PO.
Residing at Raj Vihar,
CMC 14, Maruthorvattom PO,
Sherthallai – 658 545. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.396/03

P.V.Sugunan,
S/o.late PV Kunhappa Nair,
Senior Superintendent of Post Offices,
Vellore Division, Vellore – 632 001.
Residing at SSP's Quarters, Vellore. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.410/03

P.K.Aboobacker,
S/o.late PK Kunju Mohammed,
Postmaster (HSG I), Wadakkancherry.
Residing at PM's Quarters, Wadakkancherry. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.425/03

K.K.Kochunni,
S/o.late Kochu Muhammed,
Deputy Postmaster – II, (HSG I),
Head Post Office, Ernakulam.
Residing at Shana Manzil,
Nettoor PO, Maradu Via., Ernakulam.

...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.524/03

K.B.Padmavathy Amma,
D/o.late Bhaskara Panicker,
Supervisor (HSG I), Kochi Foreign Post, Kochi – 682 035.
Residing at Sreepadmam, Menon Parambu Road,
Edappally, Kochi – 682 024.

...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.525/03

T.X.Zacharia,

S/o.late T.K.Xavier,
Deputy Postmaster (HSG I),
Head Post Office, Ernakulam.
Residing at Kuruppasseril, Kumblangi PO, Ernakulam. ..Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.526/03

P Leelavathi Ammal,
D/o.late N Vasudevan Potty,
Postmaster (HSG I) (Retired),
Ponnani, Northern Region, Calicut.
Residing at Anantharamapuram,
Sanathanam Ward, Alleppey – 1. ..Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.George Joseph,ACGSC)

O.A.527/03

P.G.Viswanathan,
S/o.P.K.Govindan,

Sub Postmaster (HSG I),
Head Post Office, Kochi – 682 001.
Residing at Flat No.C, Block V,
Galaxy Edifice, Vazhakkala,
Thrikkakara PO, Kochi – 682 021. ..Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.528/03

V.K.Subhashchandran,
S/o.late V.A.Kandankoran,
Postmaster (HSG I),
Kochi Head Post Office, Kochi – 682 001.
Residing at Valiyathara House,
Edavanakkad, Kochi – 682 502. ..Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.722/03

D.Sasidharan,

S/o.late P.S.Damodaran,
Postmaster (HSG I),
Head Post Office, Cherthala.
Residing at Sasivihar, Cheruvaranam,
Varanam PO, Alappuzha District. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.723/03

K.V.Joseph,
S/o.late K.J.Varkey,
Deputy Postmaster (HSG I),
Alappuzha Head Post Office, Alappuzha.
Residing at Kochupurackal, Mambuzhackary,
Ramankary PO, Alappuzha District. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.81/04

V.M.Annakutty,

W/o.P.V.Joseph,
Deputy Postmaster, Muvattupuzha.
Residing at Pappalil House,
Sivankunnu Road, Muvattupuzha – 686 661. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Director General of Posts,
Department of Post, New Delhi.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Director of Postal Service (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

ORDER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The issues involved in all these cases are one and the same and the relief claimed is also identical, therefore, these original applications are disposed of by this common order. For convenience we are taking 809/02 as the lead case. In OA 809/02 the original applicant Govinda Varier died on 23.6.2004 and therefore the legal heirs are substituted in his place. Pleading of the applicants in the respective OAs are common in nature. They have entered into service in 1960s, that one PV Sreedharan Nambeesan who was promoted to Lower Selection Grade (LSG for short) with effect from 2.12.1981 was confirmed in the LSG with effect from 2.12.1981 itself. The applicants were promoted to LSG (General Line) prior to the said date and the memos were produced in the respective O.As. Sreedharan Nambeesan was promoted to the Higher Selection

Grade II (HSG II for short) and placed on probation for a period of 2 years from the date of joining in HSG II cadre as per order dated 10.5.1988. The applicants were given retrospective promotion to LSG (General Line) with effect from 25.9.1979 against 1/3rd vacancies of the year 1979 in the LSG cadre. The applicants were placed in the next higher grade scale of Rs.1600-2660 with effect from 1.10.1991 as per orders of the Director of Postal Services in 1992. In the meantime one Govindan Adiyodi, claiming promotion to HSG II from the date of promotion of the said Sreedharan Nambeesan, filed O.A.1092/92 which was disposed of by order dated 9.7.1993 (Annexure A-6). Govindan Adiyodi was promoted to HSG I as per memo dated 9.10.1995 cancelling the office memo dated 19.9.1995 promoting PV Sreedharan Nambeesan to HSG I. Shri.K Sreenivasan Nair and AJ Chandy who came to be promoted against 1/3rd quota of vacancies of the years 1979 and 1980 with effect from 25.9.1979 and 6.9.1980 respectively in the LSG cadre filed O.A.1292/96 before this Tribunal seeking to direct the respondents to extend the benefit of the judgment in O.A.1092/92 to them. The applicant filed detailed representation dated 15.5.1996 pointing out the illegality in granting promotion to his junior Govindan Adiyodi to the cadre of HSG II with effect from 3.6.1988 and to HSG I from 16.11.1995 and requesting to promote him also to HSG II and HSG I from the respective dates of promotion granted to the above said Govindan Adiyodi. The applicant was served with a letter dated 21.8.1996 issued by the PMG, Northern Region, Calicut to the effect that the 2nd respondent had intimated that K Govindan Adiyodi was given retrospective promotion as per directions of the CAT Ernakulam in O.A.1092/92 and that as per Directorate's instructions, the benefit of CAT judgment is applicable only to the parties concerned and not applicable to

others even if the cases are identical in nature. Further representation was submitted on 3.9.1996 (Annexure A-17) to which applicant received letter dated 1.1.1997 (Annexure A-18) informing that his request will be considered based on the decision taken by the Directorate. Further representation Annexure A-19 dated 4.10.1997 was responded by the respondents vide letter dated 11.12.1997 (Annexure A-20) informing him that the matter is under the examination of Circle Office. In the meantime Sreedharan Nambeesan was given notice dated 14.3.1997 directing him to show cause why his date of confirmation should not be altered to 26.11.1983 since he was erroneously confirmed with effect from 2.12.1981. The notice dated 14.3.1997 was challenged by PV Sreedharan Nambeesan in OA 868/97 and vide order dated 22.12.1999 the Tribunal held that there is absolutely no justification for the action on the part of the respondents to alter the date of confirmation of the applicant from 2.12.1981 to 26.11.1983 as made in Annexure A-1 impugned order after lapse of more than ten years. OA 1292/96 was allowed by this Tribunal vide order dated 22.6.1998 which was taken in appeal and the implementation of the said order was stayed by the Hon'ble High Court. In the meantime the official respondents filed OP No.16613/00 before the Hon'ble High Court of Kerala against the order in OA 868/97 and finally the Hon'ble High Court dismissed the said OP. The 2nd respondent issued memo ordering that the date of promotion of the applicant to LSG cadre be amended as 25.5.1979 instead of 24.11.1981. The Hon'ble High Court vacated the stay of order in OA 1292/96 holding prima facie that the Tribunal was justified in extending the same benefits, which were extended to K Govindan Adiyodi, to the applicant in OA 1292/96. The applicants in OA 1292/96 filed Contempt Petition (Civil) No.57/02 before

this Tribunal and orders of this Tribunal were implemented in their case. The applicants have filed these O.As for getting the same treatment as has been received by their juniors by virtue of the Court orders. They sought the following main reliefs :

> 1. To issue appropriate direction or order directing the respondents to extend the benefits of Annexure A-6 and Annexure A-9 orders of this Hon'ble Tribunal to the applicants also who were seniors to the applicant in the OA No.1092/92 and the 2nd applicant in OA No.1292/96.
>
> 2. To issue appropriate direction or order directing the respondents to promote the applicants to the cadre of HSG II with effect from 3.6.1988 and to the cadre of HSG I with effect from 25.10.1995 with all consequential and attendant benefits as ordered in Annexure A-13 memo dated 16.9.2002.

2. Respondents have filed a detailed reply statement contending that the applicant was placed in the next higher grade under Biennial Cadre Review scheme with effect from 1.10.1991. PV Sreedharan Nambeesan who was an Accounts line official, was promoted to LSG with effect from 26.11.1981 and was confirmed with effect from 2.12.1981 against a substantive vacancy. Subsequently, Sreedharan Nambeesan was promoted to the cadre of HSG II vide Annexure A-5. Promotion to HSG II is governed by Rule 272-B(2) of Post & Telegraphs Manual Vol.IV according to which promotion to HSG II is to be made from officials in LSG in the order of seniority subject to fitness. Respondents averred that one of the basic principles enunciated is that seniority follows confirmation and consequently permanent officials in each grade shall rank senior to those who are officiating in that grade. The general principle of seniority as mentioned above has been examined in the light of judicial pronouncements and it has been decided that seniority be delinked from

confirmation as per the directive of the Hon'ble Supreme Court in para 47 (A) of its judgment dated 2.5.1990 in the case of **Class II Direct Recruits Engineering Officers Association Vs. State of Maharashtra (JT – 1990 (2)SC-264).** Accordingly, in modification of the general principle, it has been decided that the seniority of a person regularly appointed to a post according to rule would be determined by the order of merit at the time of initial appointment and not according to the date of confirmation. The seniority list was not challenged by any officials including the applicant. It is stated that OA 1092/92 filed by Shri.K Govindan Adiyodi was disposed of by the Tribunal with a direction to the respondents to review the promotion of the applicant (Govindan Adiyodi) to the cadre of HSG II on the basis of revised seniority to be fixed taking into consideration the seniority of the applicant from the date of retrospective promotion to LSG from 6.9.1980. There was a delay in getting the certified copy of the order. While so, CP (C) 128/94 in OA 1092/92 was filed by Govindan Adiyodi alleging willful disobedience of the orders of the Hon'ble Tribunal and therefore it was decided to promote Govindan Adiyodi to the cadre of HSG II as per his claim with effect from 3.6.1988, the date from which Sreedharan Nambeesan was promoted. This Tribunal directed the respondents only to review the promotion of the applicant (Govindan Adiyodi) to the cadre of HSG II. The proper course of action in that case was to revise the seniority list of LSG officials according to the date of promotion to that cadre and order promotion accordingly. Had this exercise been carried out as ordered by this Tribunal, Govindan Adiyodi who was promoted to LSG with effect from 6.9.1980 would not have been promoted to HSG II with effect from 3.6.1988 inasmuch as more than 100 officials who were promoted to LSG right from 1974 were awaiting promotion to HSG II. The

applicant has not filed the OA within one year, therefore, the OA is hopelessly barred by limitation and is only to be rejected under Section 19 (3) of the Tribunals Act 1985. It is admitted that the applicants are senior to Shri.Govindan Adiyodi, AJ Chandy and K Sreenivasan Nair. The contention that the above three persons were given retrospective promotion to HSG II and HSG I overlooking their seniority is contrary to truth and hence denied. Govindan Adiyodi was not entitled to get promotions to HSG II from the date of promotion of Nambeesan in accordance with rules and AJ Chandy was promoted in implementation of orders of this Tribunal in OA 1292/96 which was allowed by the Tribunal relying on the order in OA 1092/92. The Hon'ble High Court has declared in unambiguous terms that the settled seniority of Nambeesan cannot be altered after a period of 16 years only for the reason that Govindan Adiyodi claimed promotion to higher grades from the dates from which Nambeesan was promoted. The benefit of OA 1092/92 cannot be extended to others as a decision erroneously taken by the Government does not give a right to enforce further and cannot claim parity and equality since two wrongs can never make a right. Therefore the respondents are not compellable to extend the benefits of Annexure A-6 and Annexure A-9 to the applicants in these O.As.

3. The applicants have filed rejoinder reiterating their contentions in O.As.

4. Respondents have filed an additional reply statement reiterating their contentions and further submitting that various wrong decisions taken by the respondents in implementation of the orders of the Tribunal cannot be

put to the advantage of the applicants.

5. We have heard Shri.O.V.Radhakrishnan,Sr. Advocate Shri.Antony Mukkath, Mrs.Radhamani Amma for the applicants and Shri.T.P.M.Ibrahim Khan,SCGSC, Shri.George Joseph,ACGSC, Mrs.Aysha Youseff,ACGSC for the respondents. Learned counsel for the applicants submitted that the action of the respondents in promoting the juniors to the applicants to the cadre of HSG II with effect from 3.6.1988 and HSG I with effect from 26.10.1995 without considering the seniority and claim of the applicants and resulting into supersession by the juniors in the purported implementation of the Annexure A-6 and Annexure A-9 orders of this Tribunal is manifestly illegal, discriminatory, arbitrary attracting the frown of Articles 14 and 16(1) of the Constitution of India. Learned counsel for the respondents, on the other hand, persuasively argued that there is no ingredients of estoppel involved in this case. It is admitted that Shri.Govindan Adiyodi was promoted to HSG II with effect from 3.6.1988 and to HSG I with effect from 26.10.1995. However, this promotion was ordered under compelling circumstances. Annexure R-1 decision has only prospective effect and Annexure R-2 memo is similarly prospective in nature and the position as far as Govindan Adiyodi is concerned is the one obtaining prior to Annexure R-1 and Annexure R-2 decisions which are to remain undisturbed. The applicants cannot take advantage of such a situation and claim parity with that of their alleged juniors. Therefore the O.As are to be dismissed.

6. We have given due consideration to the arguments advanced by the learned counsel appearing for the parties and to the material and evidence

placed on record. Admittedly all the applicants herein are seniors to Govindan Adiyodi, K Sreenivasan Nair, and AJ Chandy, the beneficiaries of O.As 1092/92 & 1292/98. There is no dispute with regard to the said proposition. We also asked specific query to the respondents' counsel as to this aspect, but they have neither disputed this fact in the pleadings nor there is any evidence to show otherwise. The entire episode started when PV Sreedharan Nambeesan was promoted to LSG with effect from 2.12.1981 and was confirmed in the LSG with effect from 2.12.1981 itself and further promoted to HSG II as per Annexure A-5 order dated 10.5.1988. On coming to know that one Govindan Adiyodi who was promoted to LSG cadre with effect from 6.9.1980 filed representations before the respondents for promoting him to HSG II with effect from 10.5.1988, the date on which his junior Sreedharan Nambeesan was promoted to HSG II as per Annexure A-5. As the representations did not yield any result he approached this Tribunal by filing OA 1092/92. The said OA was disposed of by order dated 9.7.1993 in which the Tribunal has held that :-

> In the light of the settled legal position we hold that impugned order Annexure A-8 is unsustainable and it is only to be quashed. Accordingly we quash the same and direct respondents 1-4 to review the promotion of the applicant to the cadre HSG on the basis of revised seniority to be fixed taking into consideration the seniority of the applicant from the date of retrospective promotion as LSG as shown in Annexure A-2 viz. 6.9.1988. It goes without saying that applicant is eligible to all consequential benefits in accordance with law.

7. Vide Annexure A-7 dated 11.7.1994 Govindan Adiyodi was promoted to HSG II cadre with retrospective effect from 3.6.1985 the date on which his junior P Sreedharan Nambeesan was promoted to HSG II

cadre. Vide Annexure A-8 order Govindan Adiyodi was promoted to HSG I cancelling the promotion of PV Sreedharan Nambeesan to HSG I. Aggrieved, PV Sreedharan Nambeesan filed OA 868/97 before this Tribunal and vide order dated 22.12.1999 (Annexure A-21) the Tribunal has passed the following orders :-

> In the light of what is stated above we are of the considered view that there is absolutely no justification for the action on the part of the respondents to alter the date of confirmation of the applicant from 2.12.1981 to 26.11.1983 as made in Annexure A-1 impugned order after the lapse of more than ten years.
>
> In the result the application is allowed and the impugned order is set aside. There is no order as to costs.

8. In the meantime, K Sreenivasan Nair and AJ Chandy, the said juniors filed OA 1292/96 and vide Annexure A-9 the Tribunal has passed the following orders :-

> In light of the discussion above, the prayer of the applicants is well founded. The impugned orders at Annexure A-11 are quashed. Respondents 2&3 are directed to consider the case of the applicants for promotion to the HSG I and HSG II with effect from the date on which Sreedharan Nambeesan was promoted and pass appropriate orders in the light of the decision of the Tribunal in OA 1092/92 within three months of today. Applicants would also be entitled to consequential benefits on such promotion.
>
> Application is allowed as aforesaid. No costs.

9. Though an interim stay was granted to the said order by Hon'ble High Court in CMP No.44507/98 in OP No.25315/98-S subsequently, the stay was vacated by order dated 5.6.2002. The observation of the Hon'ble High Court is as follows :-

Therefore, prima facie, the Tribunal was justified in extending the same benefits which were extended to K Govindan Adiyodi, to the first respondent also. Hence, we do not find any ground for staying the operation of Ext.P3 order pending disposal of the Original Petition. The CMP is dismissed. However, the implementation of Ext.P3 order will be subject to the final result of the Original Petition.

10. Thereafter, the benefit as directed was granted to Sreenivasan Nair and AJ Chandy vide Annexure A-13 memo implementing the orders granting all attendant benefits to the said officials. Representations were made by the applicants to the respondents but their requests were not acceded to stating that the benefit of CAT judgment is applicable only to the parties concerned and not applicable to others even if the cases are identical in nature. On a further representation the applicants were informed that their requests would be considered based on the decision taken by the Directorate. And again on a further representation, the applicants were intimated that the matter is under the examination of Circle Office. Therefore, it is very clear from Annexure A-16, Annexure A-18 and Annexure A-20 that the claims of the applicants were under active consideration of the officials. In none of the replies the respondents have taken the contention that the applicants are not entitled to the benefits. It is pertinent to note that Sreedharan Nambeesan was given notice directing him to show cause why his date of confirmation should not be altered to 26.11.1983 on the basis that he was confirmed with effect from 2.12.1981 erroneously. The notice was challenged by him in OA 868/97 and this Tribunal allowed the application setting aside the impugned notice by order dated 22.12.1999 (Annexure A-21). Aggrieved by Annexure A-21 order the official respondents filed OP 16613/00 before the Hon'ble High Court. The said OP was finally heard and dismissed by order dated 13.6.2000 the operative portion of which is as follows :-

At this distance of time the settled seniority of the 2nd respondent cannot be unsettled by issuing Annexure A-1 notice in O.A. For this reason we find that the conclusion arrived at by the Tribunal cannot be assailed. In the light of the above view which we are inclined to take in this case it is not necessary for us to express any view on the question whether there are statutory rules or administrative instructions which provides that a confirmation issued subsequently should not take effect on a date which falls before the expiry of the period of probation.

With the above observations, the petition stands dismissed.

11. In short, the fact remains that PV Sreedharan Nambeesan and Govindan Adiyodi are admittedly juniors to these applicants and all the benefits granted to these officials have been confirmed by the orders of the Tribunal which was approved by the Hon'ble High Court. Further, two other juniors, namely, K Sreenivasan Nair and AJ Chandy, applicants in OA 1292/96 were also granted the benefits. The question is now can these applicants who are identically placed be denied the benefits? Non consideration of the applicants for promotion to HSG II and HSG I while promoting his juniors is clear violation of fundamental right guaranteed under Article 16(1) of the Constitution of India. Learned counsel for the applicants has brought to our attention the judgment of the Hon'ble Supreme Court in **Amritlal Vs. Collector of Central Excise, Revenue reported in AIR 1975 SC 638.** The Hon'ble Supreme Court has observed as follows :-

We may, however, observed that when a citizen aggrieved by the action of the Government Department has approached the Court and obtained declaration of law in his favour, others, in the circumstances should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court.

12. And in a later decision in **Inder Pal Yadav Vs. Union of India reported in 1984 (2) SLR 248** the Hon'ble Supreme Court has held that :-

> Therefore, those who could not come to the Court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not, by any one else at the hands of the Court.

13. Learned counsel for the applicants also brought to our notice a decision in **Gopal Krishna Sharma Vs. State of Rajasthan reported in 1993 Suppl. (2) SCC 375** wherein the Hon'ble Supreme Court has clarified that the benefit of the judgment will be available to all similarly situated even if not joined as parties to the case in which the judgment was given. Learned counsel for the respondents, on the other hand, relying on a decision of Hon'ble Supreme Court in the case of **Class II Direct Recruit Engineering Officers Association Vs. State of Maharashtra reported in JT 1990(2) SC 264** canvassed for a position that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. On going through the said judgment, we find that the said judgment is not applicable in these cases since it was relating to seniority to be conferred on the direct recruits vis-a-vis promotees. Here the question of seniority is neither challenged nor disputed since the seniority of the applicants are confirmed and approved in terms of Court orders. The respondents are not justified in contending that this Court has to look into the question of seniority afresh which is neither challenged nor

disputed by any parties. Having found that the orders of the Tribunal have already been complied with and the dictum laid down has also been accepted by the Hon'ble High Court by the decisions quoted supra, learned counsel for the applicants urged that the contention of the respondents is hit by res judicata. He also invited our attention to a decision in **State of UP Vs.Nawab Hussain reported in AIR 1997 SC 1677** and in 2001 (2) SCC 285 and submitted that as far as the claims of the applicants are concerned it has already been settled by judicial orders and that has become final and conclusive and any denial of benefits to the applicants will amount to multiplicity of litigations. Considering the above pleadings and the fact that the promotions of juniors to the applicants by virtue of the judicial pronouncements in OA 1092/92 & 1292/96 had become final it cannot now be reopened by a new set of averments by the respondents. The applicants in the circumstances are entitled to get the benefits.

14. It has been noticed that in an identical matter one PT Bhaskaran has filed OA 1034/98 before this Tribunal and this Tribunal has allowed the OA directing the respondents to issue orders of promotion to the applicant to HSG II with effect from 3.6.1988 and HSG I from the date on which one Sreedharan Nambeesan and Govindan Adiyodi were promoted with all consequential benefits including arrears of pay and allowances. This OA was taken in appeal in OP No.15522/01 and vide order dated 23.3.2005 the Hon'ble High Court has passed the following orders :-

> It has come out now at least that OA 868/97 had been allowed and the proposal to review the orders passed in favour of Mr.Nambeesan has been set aside. The Writ Petition filed from the

order as OP 16613 of 2002 also has been dismissed confirming the judgment of the CAT. Hence the position is that the grant of benefits to Mr.Nambeesan as well as Mr.Adiyodi were found to be in order. Therefore the benefit could not have been denied to the second respondent herein Mr.Bhaskaran who was their senior. The Tribunal has in effect found the above position acceptable and admissible and reliefs had been granted, taking notice of the scenario as above. At our instance, therefore the issue cannot be subjected to a fresh examination, as a finality to the issue as far as the department is concerned has already come. In view of the above facts, we do not think that we will be justified in interfering with the order to any extent.

The Original Petition is dismissed.

15. In the conspectus of facts and circumstances, we direct the respondents to extend the benefits of Annexure A-6 and Annexure A-9 orders of the Tribunal to the present applicants also who are admittedly seniors to the applicants in OA 1092/92 & OA 1292/96. We further direct the respondents to grant all benefits including promotion to the cadre of HSG II with effect from 3.6.1988 and to the cadre of HSG I with effect from 25.10.1995 with all consequential benefits as has been done in the case of their juniors, Sreenivasan Nair and AJ Chandy. The above orders shall be complied with within a period of three months from the date of receipt of a copy of this order. O.As are allowed as above. No Cost

Dated the 29th July, 2005.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
SATHI NAIR
VICE CHAIRMAN

asp

CERTIFIED TRUE COPY
Date 4.8.2005

Section Officer (Judl)