

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.243/09

Monday this the 15th day of March 2010

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P.P.Bhaskaran,
S/o.Kunhan,
Assistant Sub Post Master,
Trivandrum Medical College Post Office.
Residing at Liji Nivas, Kannom,
Ezhome Post Office, Kannur.

...Applicant

(By Advocate Mrs.R.Jagada Bai)

V e r s u s

1. Union of India represented by the Secretary to Department of Posts, New Delhi.
2. Chief Postmaster General, Kerala Circle, Thiruvananthapuram.
3. Director of Postal Services (Headquarters), Kerala Circle, Office of the Chief Postmaster General, Kerala Circle, Trivandrum.
4. Superintendent of Post Offices, Kannur Division, Kannur – 670 001.
5. Smt.C.K.Devoo, Post Master, Lower Selection Grade, Payangadi Post Office, Kannur Postal Division. ...Respondents

(By Advocate Mrs.Aysha Youseff,ACGSC)

This application having been heard on 8th February 2010 the Tribunal on 15th March 2010 delivered the following :-



.2.

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant was initially appointed as Postal Assistant in Kannur Postal Division with effect from 23.9.1975 and the 5th respondent, Smt.C.K.Devoo was appointed to the said post in the Irinjalakuda Division with effect from 10.3.1976. Both of their names appear at Sl.Nos.31 and 80 in the Annexure A-1 Divisional Seniority List. They were also granted higher grades under the Time Bound One Promotion Scheme (TBOP for short) and under the Biennial Cadre Review Scheme (BCR for short) in the order of their seniority. However, when Smt.C.K.Devoo along with other 237 Postal Assistants was promoted to the next promotional post of Lower Selection Grade in the scale of pay Rs.4500-125-7000 vide Annexure A-5 impugned order No.ST/5-2/Dlgs./07 dated 3.5.2007 but the applicant was left out. Aggrieved by the aforesaid action of the respondents, the applicant made the Annexure A-6 representation dated 29.5.2007 requesting them to promote him also at par with his junior Smt.C.K.Devoo. The respondents rejected his aforesaid representation vide Annexure A-7 letter dated 24.7.2007, stating that as per the Circle Gradation List of Postal Assistants issued in 1982, Smt.C.K.Devoo was senior to him because her date of confirmation was earlier than that of him and the date of confirmation was the criterion for fixing the seniority as per the then existing rules. The applicant was promoted as Lower Selection Grade later in his turn as per the Circle Gradation List, vide Annexure A-8 Memo No.ST/5-2/Dlgs/2008 dated 3.10.2008.



.3.

2. The applicant has challenged both the Annexure A-5, Annexure A-7 and Annexure A-8 relying upon the judgment of the Apex Court in Direct Recruit Class II Engg. Officer's Assn. Vs. State of Maharashtra [AIR 1990 SC 1607 : (1990) 2 SCR 900] and the orders of this Tribunal in O.A.777/07 – K.M.Mukthamani Vs. Union of India & others and O.A.1024/00 – S.Janardhanan & others Vs. Assistant Director (Staff) & others.

3. The law laid down by the Apex Court in Direct Recruit Class II Engg. Officer's Assn. case (supra) is 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.'

4. The applicant in O.A.777/07 (supra), Smt.K.M.Mukthamani, entered services as a Postal Assistant on 23.1.1971 in the Calicut Postal Division. She was promoted to the cadre of the Lower Selection Grade on 3.5.2007. Her grievance was that the officials junior to her in the basic cadre of Postal Assistants and belonging to other Postal Divisions like Tirur, Manjeri were already promoted to LSG cadre on a divisional basis when the LSG cadre was a divisional cadre and were placed in the Circle Gradation List of LSG officials as on 1.7.2005. The contention of the respondents was that seniority in the LSG cadre was the criterion for promotion to HSG-II and promotion to the said cadre was ordered on the basis of Circle seniority-cum-eligibility of Postal Assistants of all Postal Divisions under its control. However, with effect from 30.11.1983 LSG cadre was divisionalised as per



.4.

DG Posts letter dated 13.12.1985. This Tribunal observed that LSG was a Circle cadre up to 30.11.1983 and thereafter the same was made a divisional cadre. As a result, in some small divisions, officials much junior to the applicant were granted promotions to LSG. With effect from 30.5.2006 the LSG cadre was again made a Circle cadre. In the said background this Tribunal considered the question whether the seniority of the officials promoted to LSG cadre is to be reckoned with effect from the date of entry in the basic cadre. This Tribunal has observed that the introduction of divisionalised seniority of Postal Assistants with effect from 30.11.1983 has adversely affected the promotion of the applicant but the re-introduction of Circle-wise seniority in the cadre of LSG with effect from 18.5.2006 rectified this anomaly to certain extent. Relying on the earlier decisions of this Tribunal in O.A.314/07 and O.A.408/07 it was declared that promotion to the LSG cadre is to be made on the basis of merit position in the initial grade of appointment. Accordingly, the respondents were directed to conduct review of promotion of the applicant to the post of LSG on the above lines and to pass suitable orders of promotion. It was further declared that the applicant was entitled to be considered for consequential promotions to the cadre of HSG-II and HSG-I according to her seniority and turn. The operative part of the said order was as under :-

“5. The learned counsel for the applicant argued that as per instructions in A-6, A-7, A-8 and A-11 the seniority of LSG cadre is to be reckoned from the date of appointment in the basic cadre post. LSG was a Circle cadre upto 30.11.1983 thereafter, the same was made a divisional cadre. While so in some small divisions officials much junior to the applicant was granted promotions to

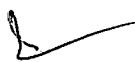


.5.

LSG. With effect from 30.5.2006 the LSG cadre was again made a Circle cadre. The 2nd respondent has not followed the instructions and has drawn up a seniority list based on which the juniors have been granted further promotion to HSG-II. This is incorrect and illegal. The learned counsel brought to our notice decisions of this Tribunal in O.A 314/07 & 408/07 and O.A. 629/07 in support of his argument.

6. The learned counsel for the respondents on the other hand argued that *prima facie* this is not a fit case to grant reliefs as prayed for in the O.A. The applicant belonged to Calicut Division and as per the then existing rules, promotion to LSG cadre was based on the divisional seniority. The applicant could not be promoted to the LSG cadre as sufficient vacancies were not available in the Calicut Postal Division and she could have been promoted to LSG only according to her turn in the seniority list of Postal Assistants in the Division. The new Recruitment Rules came in to force w.e.f. 18.5.2006 and the applicant was promoted to LSG according to the vacancy position and in her turn. The applicant could be included in the Circle Gradation list of LSG when she was appointed to that cadre only in accordance with the date of entry in the cadre of LSG. Thus according to the learned counsel the respondents acted in accordance with the rules and instructions prevalent at the relevant time.

7. The issue for consideration in this O.A. is whether the seniority of the officials promoted to LSG cadre is to be reckoned w.e.f. the date of entry in the basic cadre as per instructions contained in A-6, A-7, A-8 and A11. It is true that prior to 30.11.1983 promotion to LSG cadre was based on the Circle seniority cum eligibility. With effect from 30.11.1983 to 18.5.2006 LSG was a divisional cadre and promotion to the cadre was made from among officials of the respective Postal division on the basis of seniority in those Divisions. As per the amended Recruitment Rules notification on 18.5.2006 (A-12) the promotion to the cadre of LSG is again done at Circle level according to seniority in the Circle. Promotion of Postal Assistants including the applicant to the LSG cadre in 2006 was based on the Circle Gradation List of Postal Assistants published in 1982. Then only the applicant came to know that a few Postal Assistants in other Divisions who joined service later than her were already granted promotion to LSG cadre and further promotions to HSG also. Therefore the introduction of divisionalised seniority of Postal Assistants w.e.f. 30.11.1983 has adversely affected the promotion of the applicant. Reintroduction of Circle-wise seniority in the cadre of LSG w.e.f. 18.5.2006 rectified this anomaly to certain extent. Similar issue was considered by the Tribunal in OA Nos. 314/07 and 408/2007 relied on by the learned counsel of the applicant. The Tribunal in those OAs held as follows:



.6.

"The O.A. Nos. 314/07 and 408/07 are thus allowed. Respondents are directed to conduct a review of promotion to the post of LSG on the basis of Circle seniority prepared on the basis of the merit position in the initial grade of appointment and pass suitable order of promotion. It is left to the respondents that those who are at present holding the post but who on review may not figure in the list of promotees may be retained on supernumerary post. If the department would like to revert them the same too shall not be made immediately but after putting such affected persons to due notice, giving sufficient time to respond to the notice. Till then they shall not be reverted."

8. In this view of the matter, we follow the judgment of this Tribunal cited above and declare that the promotion to the LSG cadre is to be made on the basis of merit position in the initial grade of appointment. The respondents are therefore directed to conduct review promotion of the applicant to the post of LSG on the above lines and pass suitable orders of promotion. We further declare that the applicant is entitled to be considered for consequential promotions to the cadre of HSG-II and HSG-I according to her seniority and turn. This exercise shall be done within a period of three months from the date of receipt of this order. The O.A. is allowed as above. No costs."

5. The applicants in O.A.1024/00 (supra) were seniors to the private respondents in the grade of Postal Assistants who were the beneficiaries of One Time Bound Promotion Scheme. According to the respondents, the main criterion for OTBP benefit was 16 years of service and as such, unless it was fulfilled, notwithstanding the fact that the applicants were senior, they were not entitled to the benefit of the scheme. However, this Tribunal allowed that OA and declared that the applicants were entitled to be considered for notional promotion to the next higher grade of LSG (OTBP) from the dates their juniors were promoted. The relevant part of the said order is as under :-



7. Arguments were heard and documents perused. A few points relating to the legal aspects of the case would be relevant here. Originally, the recruitment rules provided for promotion on the basis of seniority. It appears that since there were stagnations, the Department had chosen to introduce a scheme called Time Bound One Promotion w.e.f. 26.06.1993, as per which, those who have not been promoted for over 16 years, would be considered for One Time Bound Promotion, the period of service for this purpose, being reckoned in the basic cadre. This order was through an administrative instruction only.

8. In respect of the Scheme, a clarification dated 24-09-1996 was issued by the Ministry of Communications, vide Annexure R1 (B) which states that P.As, the erstwhile LDCs in Circle Offices who became senior by virtue of passing type test earlier than those who could not pass will be eligible for promotion under TBOP/BCR as and when his junior PA gets promotion on completion of 16/26 years of service. Annexure R1(B) refers.

9. Vide Department of Post letter dated 08-02-1996 at Annexure A-11 as amended vide Annexure A-12 dated 05-08-1997 and A-14 dated 01-01-1998, it was decided that all the officials, such as UDCs in the Circle Office and SBCO, LSG(Both 1/3rd and 2/3rd) PO and RMS, Accountants will now be considered for the next higher scale of pay from the date their immediate juniors became eligible for the next higher scale. This will, however, not entitle an official to claim promotion under TBOP/BCR Schemes with reference to his immediate junior who was brought under Rule 38 of P&T Manual, Volume IV to the unit concerned in the same scale of pay. Accordingly, the senior official(s) would however, be entitled to claim promotion with reference to their junior if the junior was brought to that unit under Rule 38 P&T Manual, Volume IV in a lower grade and on the crucial date he was still working, in the lower grade. Promotions under TBOP/BCR do not affect the seniority of officials in any manner as the same are based on the length of service of the official(s) concerned and not on the criterion of seniority. However, if an eligible official is found unfit for promotion under BOP/BCR, he will be losing seniority in the same manner as a person who is dropped from promotion in the usual manner. In the very same order, it was stated that UDCs working in Circle Offices and Regional Offices on or before 26-06-1993 will be entitled for promotion to TBOP/BCR with reference to the date of promotion of LDCs to the respective grade if the LDC had been brought on transfer under Rule 38 P&T Manual, Volume IV on or before 26.06.1993 (the crucial date) and was still working as such on that date.

10. The above orders were, however, superseded by Annexure R 1(c) order dated 17-05-2000 in the wake of the decision by the Apex Court in the case of R. Prabha Devi and others vs Union of



India, wherein the Apex Court had observed, "Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post."

11. Thus, service of 16 years, as per administrative instructions, was held to be the criterion for promotion to the higher grade and promotion on the basis of seniority as per the Statutory Rules was given a go-bye.

12. When the applicants claimed parity with 22 individuals in whose case, on the basis of seniority, promotion under OTBP scheme was granted from the date juniors who were the beneficiaries of One Time Bound Promotion were granted, the same too had not been agreed to stating that in their case, the said 22 individuals were seniors by virtue of their having qualified in the typing test prior to those who were promoted under the OTBP scheme and there was a clarification from the Ministry, whereas, the applicants in this OA are seniors to others by virtue of the fact that the beneficiaries of the OTBP Scheme were placed at zero level seniority on their moving from earlier unit to this unit. Their service in R.T.P. was also reckoned to work out 16 years of service.

14. The question is whether the applicant is entitled to promotion to the next higher grade of LSG(OTBP) from the date their juniors were promoted, if so under which provision of the Rules.

15. In the case of the applicants, prior to introduction of OTBP scheme, Statutory Rules provided for promotion based on the basis of seniority. In fact the Apex Court in the case of Balkishan vs Delhi Administration 1989 Supp (2) SCC 355 has held as under:-

"9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from being contrary to Article 16(1) of the Constitution."

16. Again, it is trite law that administrative instructions cannot possibly be a substitute for a notification, which stands as a requirement of the statute. (See Subhash Ramkumar Bind vs State of Maharashtra (2003) 1 SCC 506).

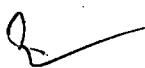


17. Thus, when the rules provide for seniority as the criterion for promotion the same cannot be stultified by an administrative instruction and further, seniority is the spine for promotion or confirmation as contained in the decision by the Apex Court in the case of *Bal Kishan (Supra)*.

18. There is a direct authority in regards to this case. In **Union of India vs Leelamma Jacob (2003) 12 SCC 280**, the contesting respondents before the Apex Court were employees who were promoted to Grade II from Grade I and were selected for such promotion on the basis of departmental examinations held in 1981. As a consequence of this promotion, the other officers in Grade I who had not passed the departmental examination became junior to them irrespective of the length of their service in Grade I. In 1983 the government framed the One Time-Bound Promotion Scheme (OTBP Scheme). It provided inter alia that the promotion to Grade II posts on the basis of departmental examinations would be abolished. It also provided for promotion to those who had continued in regular service for 16 years in the basic grade, namely, Grade I to Grade II. The Scheme, however, made it clear that these promotions by reason of the OTBP Scheme would not affect the seniority of those who had been promoted to Grade II under the 1979 Rules. As such the contesting respondents before the Supreme Court and other like promotees were all senior to those employees who obtained the benefit of the OTBP Scheme.

19. In 1990 there was a further Scheme, which was called the Biennial Cadre Review (BCR). It provided that those who had continued in regular service for 26 years in the basic grade and those who were in service as on 1-1-1990 would be entitled to promotion.

20. The contesting respondents before the Apex Court challenged the BCR Scheme before the Central Administrative Tribunal (Bangalore Bench) in July 1992. It was contended by them that the beneficiaries of the BCR Scheme were persons who were junior to them in Grade II and they had been promoted to Grade III at higher scales of pay overlooking their claims. They had, thus, prayed for a declaration that the BCR Scheme be declared void, illegal and discriminatory. An alternative prayer was made for consideration of their case for extending to them the higher scale of Grade III and granting them the seniority in Grade III from the respective dates when their juniors were promoted. The Tribunal held that the BCR Scheme appears to be in violation of the 1979 Recruitment Rules and that since it was well settled that administrative instructions could not modify the provisions framed under Article 309, the Scheme was liable to be struck down. However, the Tribunal did not strike down the Scheme since a large number of staff had already been granted relief on that basis over a period of time. Hence, the Tribunal allowed the



alternative prayer of the applicants before it by directing the respondents to consider the case of the applicants for extending to them the higher scale of pay of Grade III with effect from the respective dates their juniors were extended the said scale of pay with all consequential benefits, including pay scales-cum-seniority, etc.

21. The decision of the Bangalore Bench of the Tribunal was followed by the Central Administrative Tribunal, Madras Bench. Being aggrieved by the decisions of the Tribunals special leave petitions were filed by the administration. The Apex Court has held as under:-

"... we are of the view that the appeals must be dismissed and the decision of the Tribunal be upheld. The reasoning of the Tribunal particularly its finding that the BCR Scheme in fact amounted to an amendment of the existing Rules by an administrative order is unexceptionable. Logically speaking this should lead us to strike down the Scheme altogether. However, given the fact that the Scheme has been in operation since 1990 and also that the contesting respondents are quite content with having their alternative prayer as granted by the Tribunal we do not do so.

15. In addition to the fact that the Scheme is in contravention of the existing Rules, by virtue of the BCR Scheme the contesting respondents' seniority in Grade II was taken away. Those who had not been able to pass the examinations for promotion from Grade I to Grade II and who had continued to serve in Grade I were allowed to leapfrog over the contesting respondents by the BCR Scheme by being granted scales of pay in respect of posts in Grade III. As a result not only were the contesting respondents superseded without being considered for promotion to Grade III at all when their juniors were considered, but their chances of being further promoted to Grade IV were effectively forestalled as promotion from Grade III to Grade IV would be strictly on the basis of seniority presumably in the grade below. Since the contesting respondents having not at all being promoted to Grade III they would not be in a position to be considered for promotions to Grade IV whereas the beneficiaries of the BCR Scheme would, by virtue of the Scheme be in a position to be considered for further promotion to Grade IV. Indeed according to the contesting respondents the BCR Scheme has resulted in some of its beneficiaries getting Grade IV of pay already. There is also substance in the submission of learned counsel for the respondents that the Recruitment Rules as well as the BCR Scheme provide for consideration of suitability and fitness as criteria for



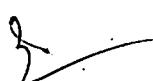
advancement. Necessarily the consideration for promotion to the next grade should be from the grade immediately below. As a result of the BCR Scheme however the beneficiaries have been promoted from Grade I to Grade III and possibly Grade IV without any consideration of their suitability in terms of the Rules or Scheme. Nevertheless the contesting respondents do not seek the withdrawal of any benefits which may have already been granted under the BCR Scheme to these employees. What they only want is that they should be granted at least a parity with those who in Grade II were junior to them. It has to be recorded that the system of promotion by examination from Grade I to Grade II has since been abolished in 1983 therefore, the contesting respondents represent a class of employees who had been promoted on the basis of departmental examinations successfully taken by them prior to that date.

.....

17. Incidentally clarifications have been issued from time to time by the appellants in 1992 and in 1994 by which it appears to us that the appellants have compounded the confusion. The clarifications purport to state that the seniority of those who were in Grade II by reason of their merit would be maintained in Grade II although they would not be entitled to the scales of pay which their juniors were getting in Grade III. It has also been "clarified" that the promotion of such officials, namely, merit-based Grade II employees to Grade IV, that is, in the pay scale of Rs 3200 would be governed by their seniority quite overlooking the fact that if the contesting respondents remained in Grade II they would not be in a position to be considered for promotion to Grade IV at all. The "clarification" cannot take away the rights of the contesting respondents for promotion on the basis of the seniority in Grade II as obtained in 1983. Nor can they be denied any benefit to which any of their juniors may be entitled by virtue of either of the OTBP Scheme or the BCR Scheme.

18. For the aforesaid reasons, we uphold the decision of the Central Administrative Tribunal (Bangalore Bench) as well as the decision of the Central Administrative Tribunal, Chennai impugned before us in these appeals and dismiss the appeals without any order as to costs."

22. The above decision of the Apex Court clinches the issue. The ratio in respect of BCR scheme equally applies to OTBP as well. The decision in the case of R. Prabhadevi does not apply in respect of this case since, here, the lacuna in this case is that the statutory rule is being upset or modified by an administrative action,



which has been held as illegal by the Apex Court. If the provisions of OTBP were also by way of a statutory provision, specifically superseding the other statute stipulated promotion based on seniority, then only the decision of R. Prabhadevi would have come to the rescue of the respondents. That is not the case here.

23. Again, the justification given in respect of 22 seniors being granted promotion at par with the juniors and negating the same on the ground that the so called juniors carried their past service for the purpose of benefit under OTBP scheme cannot be accepted in view of the above decision of the Apex Court.

24. In view of the above, the *OA is allowed*. It is declared that the applicants are entitled to be considered for promotion to the next higher grade of LSG (OTBP) from the dates their juniors were promoted. However, their promotion shall be only notional actual benefits would be from the date they are promoted (and if already promoted from that date). This order shall be complied with, within a period of five months from the date of communication of this order.

25. Under the circumstances, there shall be no order as to costs."

6. The respondents have denied the contention of the applicant in this case. They have submitted that initially ie., up to 1985, LSG was a Circle cadre. It became a Divisional cadre with effect from 13.12.1985. Till the amendment of the Recruitment Rules on 18.5.2006, promotion to this cadre was granted from among officials of the division on the basis of their seniority in the Postal Assistant cadre in the divisions. Though Fast Track promotion was introduced in the year 2002 for filling up of 2/3rd quota of vacancies, 1/3rd quota of vacancies were continued to be filled at divisional level based on the divisional seniority. As per amended Recruitment Rules made vide notification dated 18.5.2006, promotion to the cadre of Lower Selection Grade is a Circle cadre and the promotion is by 'selection' as per the seniority of Postal Assistants in the Circle. The basis for seniority up to



.13.

3.11.1992 was the date of confirmation. As per the Circle seniority, 238 Postal Assistants were promoted to LSG in 2007 and 128 in 2008. The applicant was promoted to LSG vide Annexure A-8 on 3.10.2008 and he joined the Trivandrum Medical College Post Office on 1.11.2008. As regards seniority of Government servants was concerned, it was being determined in accordance with the general principles of seniority contained in Ministry of Home Affairs O.M.No. 9/11/55-RPS dated 22.12.1959. One of the basic principles enunciated in the said OM is that 'seniority follows confirmation'. However, on the basis of the judgment of the Apex Court in Direct Recruit Class II Engg. Officer's Assn. Vs. State of Maharashtra (supra) dated 2.5.1990, the Department of Personnel and Training issued O.M./2000 II/5/90-Estt.(D) dated 4.11.1992 laying down that seniority of a person regularly appointed to a post would be determined by the order of merit at the time of initial appointment and not as per the date of confirmation. It was specifically mentioned that seniority already determined according to existing principles on the date of issue of those orders need not be re-opened. While the applicant was appointed as Postal Assistant with effect from 23.9.1975 and confirmed on 1.3.1982 Smt.C.K.Devoo was appointed as Postal Assistant on 10.3.1976 and was confirmed on 10.3.1978. She came to Kannur Postal Division from Irinjalakuda Division under Rule 38 transfer of P&T Manual Vol.IV. Therefore, she was shown below the applicant in the Annexure A-1 Divisional Gradation List. The position of an official in the Divisional Gradation List and that in the Circle Gradation List may vary in some cases



.14.

when an official who is confirmed in his initial recruiting unit as Postal Assistant joins a new unit under Rule 38 of P&T Manual Vol.IV. He will become junior in that unit/division. However his seniority in the Circle Gradation List would be based on the date of confirmation in the Postal Assistant cadre. This procedure was followed till confirmation was de-linked from seniority as per Annexure R-3. In the case of the applicant, though he was appointed as Postal Assistant earlier than Smt.Devoo and was senior to her in Divisional Gradation List, in the Circle Gradation List, his position was below her. Therefore, the applicant was promoted to the cadre of LSG later as per his circle seniority in the cadre of Postal Assistant vide Annexure A-8 letter dated 3.10.2008. As such, there is no discrimination on the part of the respondents as contended by the applicant and the respondents have only acted as per the extant rules on the subject.

7. As regards the orders of this Tribunal in O.A.314/07 and O.A.408/07 (supra) were concerned, they have submitted that they have filed Writ Petitions against them and obtained a stay from the Hon'ble High Court of Kerala. They have also submitted that the Annexure A-9 order of this Tribunal in O.A.1024/00 (supra) is not relevant to the facts of the present case as the same was relating to placement of officials under TBOP/BCR based on the date of placement of their juniors. TBOP/BCR are only financial up-gradations based on completion of 16/26 years of service whereas promotion to LSG is made on the basis of 'selection' by a



.15.

Departmental Promotion Committee subject to availability of vacancy. However, aforesaid order has also been challenged before the Hon'ble High Court and obtained stay.

8. We have heard Smt.R.Jagada Bai learned counsel for the applicant and Smt.Aysha Youseff,ACGSC for the respondents. In our view, this OA is fully covered by the decisions of this Tribunal in OA 777/07 (supra) which was based on the earlier two decisions of this Tribunal in OA 314/07 and OA 408/07 (supra) wherein it has been declared that the promotion to the LSG cadre is to be made on the basis of merit position in the initial grade of appointment and ordered to conduct a review promotion. Accordingly, the Annexure A-7 letter dated 24.7.2007 of the 4th respondent rejecting the claim of the applicant for promotion to the cadre of Lower Selection Grade at par with his juniors is quashed and set aside. The respondents shall hold the review of promotion made vide Annexure A-5 order dated 3.5.2007 and modify the Annexure A-8 order dated 3.10.2008 suitably antedating the promotion of the applicant to the cadre of Lower Selection Grade within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this 15th day of March 2010)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

asp