

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.346/2001

THURSDAY, THIS THE 6th DAY OF FEBRUARY, 2003.

C O R A M

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. Smt.M.L.Vasundara Devi
W/o Shri K.Rangaraj
Sree Ragam, VIII/228,
Mangayil School Road
Maradu - 682304.
2. Smt. Sissy Jacob
S/o Jacob Chacko
Quarters No.BJ5,
P&T Staff Quarters,
Thevara, Kochi.
3. Shri K.B.Suresh Babu
S/o K.A.Bhaskaran
Kollamgott House
Cherai P.O.,
4. Smt.C.A.Sheela
W/o P.Unnikrishnan
Chaithram, Chembumukku
Kakkanad West P.O.
5. Shri Jolly Thomas
S/o A.O.Thomas
Putthenpurakkal, Kodikuthumala,
Asokapuram, Aluva.
6. Smt.Usha N.K.
W/o E.Balan
Shibu, Vytila, Ernakulam.

Applicants

(All are Working as Lower Selection Grade
Postal Assistants, (Circle Office,
Postmaster General's Office
Kochi.)

(By advocate Mr.K.S.Bahuleyan)

Versus

1. Union of India represented by
Director General (Posts)
Government of India
Ministry of Communications
Department of Posts
New Delhi.
2. Chief Postmaster General
Kerala Circle
Trivandrum.

3. Postmaster General
Central Region
Kochi. Respondents

(By advocate Mr.P.J.Philip, ACGSC)

The application having been heard on 20th December, 2002, the Tribunal delivered the following on 6th February, 2003.

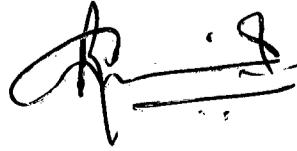
O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants, six in number, working as Lower Selection Grade Postal Assistants (Circle Office) in Postmaster General's Office, Kochi, aggrieved by A-15 series [A-15(a) to A-15(f)] orders dated 22.12.2000 issued by the 3rd respondent rejecting their representations for earlier promotion under Time Bound One Promotion/Biennial Cadre Review [TBOP/BCR] Schemes and A-13 letter dated 17.5.2000 issued by the 1st respondent revising the guidelines for considering placement under TBOP/BCRT Schemes, filed this Original Application seeking the following reliefs:

- [i] Call for the records leading to Annexures A15 (a) to A15 (f) dated 22.12.2000 issued by the Postmaster General, Central Region, Kochi to the applicants and quash them;
- [ii] Direct the respondents to promote the applicants also to Lower Selection Grade (TBOP) and HSGII (BCR) with effect from the dates of promotion of their juniors, having lesser length of service, in the cadre of P.A.(CO) with all consequential benefits;
- [iii] Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant and
- [iv] Grant the cost of the Original Application.

2. According to the averments of the applicants in the OA, the Department of Posts as per A-1 letter No.4-12/88-PE I (Pt) dated 22.7.93 of the Directorate extended the scheme of TBOP and BCR to Group 'C' staff of Administrative Offices (Circle Offices) in the Department. According to A-1, the post of LDCs (Rs.950-1500) and UDCs (Rs.1200-2040) in the Circle Offices, except to the extent of LDCs/UDCs who opted to remain in the existing scales, would be abolished and an equal number of posts



of time scale Postal Assistants (C.O.) (Rs.975-1660) would be created with effect from 26.6.93. Paragraph 3.6 of A-1 provided that the existing officials who did not opt for the old scales would be considered for grant of first promotion in the higher scale of Rs.1400-2300 if they completed/had completed 16 years of service as LDC or as LDC and UDC or as Postal Assistant/Sorting Assistant and UDC taken together and then for second promotion in the next higher scale of Rs.1600-2660 after completion of 26 years of service. A-1 further provided that in cases where a senior had not completed the prescribed period of service, whereas his/her junior had become eligible then only the junior should be considered eligible for promotion. However, when the senior completed the prescribed service and was adjudged suitable for promotion then his/her original seniority would be restored vis-a-vis his/her juniors in the lower grade. Pursuant to the A-1 instructions, the Chief Postmaster General, Kerala Circle, Trivandrum issued A-2 memo dated 19.1.94 conveying sanction for abolition of the post of UDC/LDC in Circle Office and the two Regional Offices with effect from 26.6.93 as all the incumbents of the posts had opted for the grade of Postal Assistants (CO). A-2 further provided for creation of an equal number of posts of Postal Assistants (Circle Office). Pursuant to A-1 and A-2 orders the Director of Postal Services, Kerala Circle, Trivandrum as per A-3 memo dated 7.3.94 ordered redesignation of 111 LDCs/UDCs as Postal Assistant (CO) with effect from 26.6.93. The Directorate vide its A-4 letter dated 8.2.96 communicated its decision to consider the UDCs in the Circle Office (along with officials of some other cadres) whose seniority was adversely affected by implementation of BCR Scheme placing their juniors in the next higher scale of pay, for the next higher scale of pay

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from the dates their immediate juniors became eligible for the next higher scale. By letter dated 26.3.96 it was further clarified that the orders contained in A-4 would also be applicable to the officials whose seniority was adversely affected by implementation of the TBOP Scheme. By A-5 letter dated 1.1.98, the Directorate further clarified that the UDCS working in circle offices and regional offices on or before 26.6.93 would be entitled for promotion to TBOP/BCR with reference to the dates of promotion of LDCs to the respective grade if the LDC had been brought on transfer under Rule 38 of P&T Manual Vol.IV on or before 26.6.93 and was still working as such on that date. Pursuant to A-4 orders, 22 Postal Assistants (CO) in Kerala Circle were promoted to the cadre of LSG (TBOP) with effect from 26.6.93 as per A-6 order dated 24.4.96. In pursuance of A-4 and A-5 orders, the Chief Postmaster General, Kerala Circle, Trivandrum by A-7 memo dated 22.12.99 ordered promotion of 40 UDCs to HSG II as they were senior to one Komalam who was promoted to HSG II with effect from 1.7.98 under the BCR Scheme. Aggrieved by the non-promotion to TBOP/BCR with reference to the dates of promotion of the junior Smt.Komalam, the first applicant submitted A-9 representation to the Chief Postmaster General, Kerala Circle, Trivandrum. The Chief Postmaster General, Kerala Circle by A-10 letter dated 30.12.99 addressed to the Postmaster General, Central Region, Kochi rejected the claim of the 1st applicant and directed him to give a suitable reply. The 1st applicant submitted A-11 representation to the Director General of Posts, New Delhi in the month of February 2000. The Postmaster General, Kochi by his letter dated 19.7.2000 (Annexure A12) intimated the 1st applicant that her case had been examined in the Chief Post Master



General's office and that her representation had been withheld in his office as the applicant was not entitled to promotion as claimed in her representation. In A-12 it had been stated that all modificatory orders issued in the matter had been superceded by A-13 letter dated 17.5.2000 and hence the representation was withheld. As A-11 was withheld without considering the grievances, the applicant submitted A-14 further representation to the Director General of Posts, New Delhi on 20.7.2000. The Postmaster General, Central Region, Kochi by A-15 (a) letter dated 25.12.2000 informed the 1st applicant that her representation dated 20.7.2000 was forwarded to the Directorate for consideration and that the Chief Postmaster General, Kerala Circle vide letter dated 28.11.2000 had intimated that the representation had been considered in the Directorate and rejected by the competent authority. Applicants 2 to 6 who were working as Lower Selection Grade Postal Assistant (CO) at Post Master General's Office had also submitted identical representations claiming promotion to TBOP/BCR with effect from the dates of promotion of PAs (CO) having lesser length of service than them. Annexure A-16 is the copy of the representation dated 24.7.2000 submitted by 2nd applicant Smt. Sissy Jacob. The representations submitted by applicants 2 to 6 were also rejected by the Directorate and the same was intimated to them by the Postmaster General, Central Region, Kochi by A-15 series of letters. Treating the former UDCs and LDCs differently on or after 26.6.93 would be violative of the equality clause enshrined in Article 14 of the Constitution and hence A-4 modificatory order and A-5 letter dated 1.1.98 conferring the benefit of placement of UDCs in the higher scale with effect from the date of promotion of their junior LDCs to

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the higher scale was arbitrary, unreasonable and discriminatory and claiming that all the seniors in the cadre of Postal Assistant (CO) whether former UDC or LDC were entitled to placement in the higher grades with effect from the dates of promotion of their junior Postal Assistant (CO), the applicants filed this Original Application seeking the above reliefs. According them, they were seniors to Smt.P.Komalam and were entitled to promotion to HSG II (BCR with effect from 1.7.98, the date of promotion of Smt.Komalam to HSG II). It was also submitted that according to Rules 272A(1) and 272B(1) of the P&T Manual Vol.IV, promotion to the Lower Selection Grade and Higher Selection Grade in Circle Offices was to be made in the order of seniority-cum-fitness. These rules had not been superceded by the administrative orders relating to promotion to LSG/HSG under the TBOP/BCR Schemes. As such the promotions made under the administrative orders relating to TBOP and BCR would also be in conformity with the Rules in P&T Manual Vol.IV. Thus the applicants senior to Smt.Komalam in A8 gradation list of PAs (CO) were also entitled to promotion to LSG (TBOP) and HSG-II (BCR) with effect from her date of promotion to the LSG (TBOP) and HSG-II (BCR). It was further submitted that if the length of service was taken as the criterion for promotion to the BCR then also the applicants would be entitled to promotion to HSG-II w.e.f. 1.7.98 as many of the officials promoted to HSG-II as per A7 order were having only lesser length of service than them. The points raised in A-11 and A-9 representations had not been considered in the reply given. For the above reasons, the applicants filed this OA seeking the above reliefs.

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3. Respondents filed reply statement resisting the claim of the applicants. According to them, no person junior to the applicants in the cadre had been promoted to Higher Selection Grade-II (BCR) except Smt.P.Komalam who was at Sl.No.113 of the corrected gradation list (Annexure R-1). According to them, she (Smt.Komalam) was transferred from Circle Office, Mumbai in accordance with Rule 38 of P&T Manual, Vol IV with effect from 26.6.90 in the LDC cadre. As on 26.6.93 when the TBOP/BCR scheme was introduced she remained in the LDC cadre itself. She was promoted to HSG-II cadre with effect from 1.7.98 under the BCR Scheme having completed 26 years of service (Annexure R-2). Pursuant to A-4 notification and A-5 clarification, UDCs working in circle offices and regional offices on or before 26.6.93 would be entitled for promotion under BCR scheme with reference to the date of promotion of an erstwhile LDC who had been brought on transfer under Rule 38 of P&T Manual, Vol.IV on or before 26.6.93 and was still working as such on the said date. Accordingly 40 eligible erstwhile UDCs who were senior to Smt.P.Komalam were promoted to HSG-II (BCR) cadre with effect from 1.7.98 by order dated 22.12.98 (Annexure A7). According to them, the 40 UDCs promoted as per A-7 were functionally in a higher cadre than the applicants, i.e. they were UDCs on 26.6.93, the crucial date on which the schemes of TBOP/BCR were introduced in Administrative Offices (CO) whereas the applicants were LDCs on that date. If the erstwhile UDCs were not promoted a situation would have arisen when Smt.P.Komalam, an erstwhile LDC would become superior to her erstwhile functionally senior UDCs. It was to prevent this kind of anomaly that the DG (Posts) issued A-4 and A5 orders. The circumstances leading to the issue of A-4 order had been mentioned in Directorate R-3 letter dated 26.12.95. It was

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submitted that the gradation list with grading as UDC/LDC had relevance on 26.6.93 also. The gradation list as on 1.7.89 which was in existence on 26.6.93 was followed with comparative seniority of UDCs/LDCs. This seniority was followed when the gradation list on 1.7.95 was issued. Therefore, the grading available on or before 26.6.93 was still relevant and would have relevance in future also. The UDCs were in a functionally higher cadre than the applicants. The 22 officials promoted to LSG (TBOP) vide order dated 24.4.96 were given promotion on the basis of promotion granted to one N.Viswanathan, a former LDC, Circle Office. He became LSG (TBOP) by virtue of his length of service. The promotion granted to them was not on the basis of promotion granted to Smt.Komalam. There was no provision for promoting LDCs when another LDC was promoted and the applicants were not given promotion. Smt.P.Komalam was at S1.No.113 and above her there were 60 former LDCs and many of these LDCs were not even in the LSG (TBOP), the stepping stone of becoming HSG II(BCR). Therefore, the applicants could not be promoted to HSG II (BCR) with effect from 1.7.98. The seniority between Smt.P.Komalam and others had to be taken as cadre seniority. Smt.P.Komalam and the 1st applicant were in the same cadre (LDC as on 26.6.93). An LDC or Postal Assistant or Sorting Assistant was eligible to take UDC examination after completion of 5 years. It was only the sixth or seventh year an official could become UDC. The contention that those mentioned in A11 were having lesser length of service was not a plausible argument as they were in higher cadre after passing UDC examination.

4 Applicants filed rejoinder reiterating the points made in the OA.

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5. Respondents filed additional reply statement and the applicants filed additional rejoinder.

6. Heard the learned counsel for the parties. The learned counsel for the applicants Mr.K.S.Bahuleyan took us through the factual aspects as contained in the OA. He submitted that both LDCs and UDCs had become Postal Assistants (Circle Office) with effect from 26.6.93. Thereafter, making separate rules for those Postal Assistants who were LDCs on or before 26.6.93 was discriminatory and violative of Article 14. He cited the judgement of the Hon'ble Supreme Court in Mervyn Continho and others Vs. Collector of Customs, Bombay and others [AIR 1967 SC 52]. As per P&T Manual Vol.IV, promotion to Lower Selection Grade and Higher Selection Grade in circle offices were to be made in the order of seniority-cum-fitness. These rules had not been superceded by administrative orders relating to promotion to LSG/HSG under the TBOP/BCR schemes. Learned counsel for the respondents reiterated the points made in the reply statement.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

8. We find that the Government of India, Ministry of Communication, Department of Posts by A-1 letter dated 22.7.93 had extended the Time Bound One Promotion (TBOP) and Biennial Cadre Review (BCR) to Group 'C' staff of Administrative Offices (Circle Offices) in the Department of Posts. It is also not disputed that the said scheme which came into operation on 26.6.93 was optional as far as LDCs and UDCs in the Circle

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Offices were concerned. They had to give an option under FR-23 according to which they may retain their existing scale of pay which would be personal to them. Those who did not opt for their old scales would be brought into the grade of Postal Assistants (CO) and their pay would be fixed under FR 22(I)(a) (2) by treating the posts in the time scale as not involving assumption of higher duties and responsibilities. Paragraph 3.6 of the Scheme reads as under:

"3.6 The existing officials who do not opt for the old scales would be considered for grant of first promotion in the higher scale of Rs.1400-2300 if they complete/have competed 16 years of service as LDC or as LDC and UDC or as Postal Assistants/Sorting Assistant and UDC taken together, and then for second promotion in the next higher scale of Rs.1600-2660 after completion of 26 years of service. Their pay on grant of promotions under Time Bound One Promotion Scheme and second promotion will be fixed under FR 22(I)(a)(1)."

9. Further, paragraph 3.12 states as follows:

"3.12 Under this Scheme, only such officials as have completed 16 years of service as Postal Assistants/UDC/LDC Grade will be eligible for promotion to the next higher grades of Rs.1400-2300 and Rs.1600-2660 respectively, if they are otherwise eligible. In cases where a senior has not completed the prescribed period of service, whereas his/her junior has become eligible, then only the junior shall be considered eligible for promotion. However, when the senior completes the prescribed service and is adjudged suitable for promotion, then his/her original seniority will be restored vis-a-vis his/her juniors in the lower grade. In such cases, promotion under this scheme will be subject to the condition that the senior employee shall not be able to claim the benefit of higher pay fixation merely on the ground that officials who were junior to him in the lower grade are now drawing higher pay by virtue of early promotion."

10. By A-4 letter dated 8.2.96 followed by A-5 letter dated 1.1.98, certain modifications were made in the scheme. These two letters read as under:

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"No.22-5/95-PE.I
Government of India
Ministry of Communications
Department of Post

Dak Bhavan, Sansad Marg
New Delhi 110 001.
Dated 8.2.96

To

All Heads of Postal Circles.

Subject Modifications of TBOP/BCR Scheme - instructions regarding.

Time Bound One Promotion Scheme and Biennial Cadre Review Schemes were introduced vide this office letters No.31-26/83-PE.I dated 17.12.83, No.20-2/88-PE.I dated 26.7.91, No.22-1/89-PE.I dated 11.10.91 and No.4-12/88-PE.I (Pt.) dated 22.7.93 with a view to improve promotional prospects of employees of the Department of Post. As per these Schemes, officials who complete prescribed satisfactory length of service in the appropriate grades are placed in the next higher grade. Subsequently, it was noticed that some officials e.g. UDCs in the Circle and SBCO, LSG (both 1/3rd and 2/3rd) P.O. & R.M.S. Accountants, who were senior before the implementation of the schemes were denied higher scales of pay admissible under the Schemes while some junior officials became eligible for higher scale of pay by virtue of their length of service. Some of the affected officials filed applications before various benches of the Central Administrative Tribunals demanding higher scale of pay from the date their juniors were made eligible under these Schemes.

2. The case has been examined in consultation with the Ministry of Finance, Department of Expenditure. It has now been decided that all the officials, such as UDCs in the Circle Office and SBCO, LSG (both 1/3rd and 2/3rd) P.O/ & R.M.S. Accountants, whose seniority was adversely affected by implementation of BCR Scheme placing their juniors in the next higher scale of pay will now be considered for next higher scale of pay from the date their immediate juniors became eligible for the next higher scale. This will, however, not be applicable to the officials who are senior to those officials, brought on transfer under Rules 38 of P&T Vol.IV and are placed in the next higher scale of pay by virtue of length of service.

3. The inter-se seniority of the officials in the lower grade will be kept intact for the purpose of eligibility for promotion to next higher grade.

4. Heads of Circles are requested to settle all such pending cases/representations etc. according to the above guidelines within 60 days of issue of these orders.

5. A compliance report i.e. number of officials benefited (in detail) may be furnished to the Department after implementation of these instructions.



6. This issues in concurrence with the Ministry of Finance, Department of Expenditure vide their I.D.No.5(37) E.III/94 dated 19.12.95 and Internal Finance Advice Section vide their Dy.No.418/FA/96 dated 5.2.96.

7. Please acknowledge the receipt of the letter.

8. Hindi version will follow.

Sd/-
Alok Saxena
Asst.Dir.General(Estt.)"

Annexure A-5

"No.22-5/95-PE.I
Government of India
Ministry of Communications
Department of Posts

Dak Bhavan
Sansad Marg
New Delhi
Dated 1.1.98.

To

All Heads of Postal Circles.

Subject Implementation of TBOP/BCR scheme - Clarification in respect of order of even number dated 5.8.97.

I am directed to refer to the following lines of para 2 (lines 12-13) of this office letter of even number dated 5.8.97 "Inter-alia the officials would be entitled to claim promotion under TBOP/BCR on the analogy of NBR with reference to their junior if the junior was brought to that under Rule 38 P&T Manual IV in a lower grade and on the crucial date he was still working in the lower grade". Representations have been received that reference to NBR in the aforesaid portion of the letter is unwarranted as the officials concerned are working in their parent cadre itself whereas NBR regulates proforma promotions of the officials working outside their normal line of promotion.

The matter has been carefully examined and it has been decided to delete the above phrase. The aforesaid para 2 is, therefore, amended to read as follows:

2. The case has been examined in consultation with the Ministry of Finance, Department of Expenditure. It has now been decided that all the officials, such as UDCs in Circle Office and SBCO, LSG (both 1/3rd and 2/3rd), PO & RMS Accountants will now be considered for next higher scale of pay from the date(s) 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 Vo.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 Vol.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 official 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 TCOP/BCR, he will be losing seniority in the same manner as a person who is dropped from promotion in the usual manner.

UDCs working in Circle Offices and Regional Offices on or before 26.6.93 will be entitled for promotion to TBOP/BCR with reference to the date of promotion of LDCs to the respective grade if the LDC has been brought on transfer under Rule 38 P&T Manual Vol.IV on or before 26.6.93 (the crucial date) and was still working as such on that date. Cadre authorities of the UDCs, Circle Office, are also requested to personally ensure that the benefit of this decision is given only w.r.f. such cases of Rule 38 transfers which were strictly covered by the conditions laid down therein.

Sd/-
(Madhuri Dabral Sharma)
Asstt.Dir.General(Estt.)"

2-A-13

11. By subsequent letter dated 17.5.2000, the Department of Posts revised the guidelines. The said letter which is impugned here reads as under:

"No.22-6/2000-PE.I
Government of India
Ministry of Communications
Department of Posts

Dak Bhavan
Sansad Marg
New Delhi.
Dated 17.5.2000

To

All Heads of Postal Circles.

Sub: Revision of guidelines for considering placement under TBOP/BCR scheme in cases where seniors are considered for placement at par with their juniors - clarifications regarding.

In supersession of our previous orders/instructions No.22-5/95-PE.I dated 8.2.96, 5.8.97 and dated 1.1.98, it has now been decided that the following instructions/guidelines will be applicable w.e.f. the date of issue of orders in regard to placements under TBOP/BCR scheme. The



guidelines/instructions are issued in the light of the recent judgement of Hon'ble supreme Court in its judgement of March 8, 1988 in the case of R.Prabhadevi and others vs. Union of India and others. This judgement/guidelines have been circulated by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide their OM No.AB-14017/12/97-Estt(RR) dated 24th September 1997 and OM No.AB 14017/12/88-Estt.(RR) dated 25.3.96 and further endorsed to all Heads of Postal Circles vide this office letter No.137-2/98-SPB.II dated 22.5.98. According to these instructions and as per the judgement of Hon'ble Supreme Court "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.

It is further reiterated that placements under Time Bound One Promotion (TBOP) and Biennial Cadre Review (BCR) Schemes are based on the length of service of the official(s) concerned and not on the criterion of seniority. Seniors in the gradation list therefore cannot claim higher scale of pay at par with their juniors if their juniors have got higher scale of pay by virtue of their completion of the prescribed period of service i.e. 16/26 years respectively. Juniors have been placed in the higher scale of pay based on their completing the requisite number of years' service which their seniors have not completed. In other words, TBOP/BCR schemes are not promotions against the norms based posts in LSG & HSG II grades but only placements in the same scale of pay on completion of 16 and 26 years of service respectively. Eligibility condition for placement in the higher scale of pay under the scheme is 16 and 26 years of service respectively. Clearly, seniors in gradation list will not be considered for next higher scale of pay from the date their immediate juniors become eligible for next higher grade without completing the prescribed period of service as per the eligibility condition of placements in the higher scale of pay.

However, seniority in the gradation list will remain intact. TBOP and BCR officials will also be considered against norms based posts (supervisory posts) as per their seniority and fitness basis in their turn.

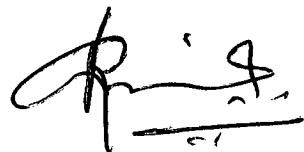
In the light of the above instructions, cases already settled will not be re-opened. However, cases which have not been settled so far may be settled as per the above directions.

Please acknowledge the receipt of this letter.

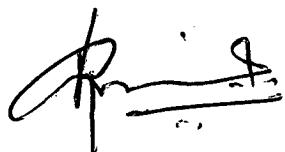
Sd/-
(Karuna Pillai)
Director (Estt.)"



12. What we find is that the applicants want the benefit of A-1 letter dated 22.7.93. As per this letter, the applicants would be eligible for the TBOP and BCR schemes only on completion of 16 & 26 years of service. Admittedly, LDCs in scale Rs.950-1500, who opted for this scheme in accordance with A-1 letter dated 22.7.93 had been placed in higher scale Rs.975-1660. When the applicants had opted for the TBOP/BCR schemes as per letter dated 26.12.93, they expected that they would be eligible for promotion to the grade of 1400-2300 and Rs.1600-2660 on completion of 16 & 26 years of service respectively. We are of the view that just because of the instructions dated 8.2.96 by which certain officials who fulfilled the conditions stated therein had become eligible for being placed in the higher grades of Rs. 1400-2300 or Rs.1600-2660, the same would not automatically be applicable to the applicants. Government servants like the applicants are eligible for the benefits as per the service conditions laid down by the Government. Applicants admittedly were recruited as LDCs and they had accepted the TBOP/BCR schemes by which they became eligible for promotion on completion of 16/26 years of service. According to the applicants' own averments and the submissions made by the learned counsel for the applicants, the applicants became aggrieved only because of A-4 letter dated 8.2.96 and A-5 letter dated 1.1.98. Their plea was that both LDCs and UDCs had become Postal Assistants (CO) with effect from 26.6.93 and once all of them had become Postal Assistants (CO) on 26.6.93, treating those Postal Assistants (CO) who were UDCs prior to 26.6.93 different from Postal Assistants (CO) who were LDCs prior to 26.6.93 would be discriminatory. We find no merit in this submission. The applicants admittedly were in grade Rs.950-1500 and by virtue of

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the introduction of TBOP scheme in the Circle Offices, they had derived an advantage by going into the grade of Rs.975-1660. As against this, UDCs were brought down from the grade of Rs.1200-2040 to the grade of Rs. 975-1660. Under these circumstances, if the respondents had decided that those who came on transfer as LDC prior to 26.6.93 and who were working as LDC as on 26.6.93 when completed 16/26 years and were placed in the grade of Rs.1400-2300 (when they completed 16 years of service) or in the grade of Rs.1600-2660 (when they completed 26 years of service), their seniors who were UDCs on that date viz. 26.6.93 may also be placed in the scale of Rs.1400-2300/1600-2660, the same was a policy decision for ameliorating the grievance of such senior UDCs who by virtue of the scheme had been granted a grade lower than what they were getting prior to 26.6.93. In our view, the said modificatory orders could not be considered as discriminatory because LDCs to UDCs were not equals in that the former had derived an advantage, the latter had suffered monetarily. Further, perhaps the authorities did not realize at that time by this modification they were modifying the scheme itself, which was essentially a scheme of granting a higher scale on the basis of length of service without any consideration of seniority. Realizing this and keeping in view the judgement of the Hon'ble Supreme Court, they had issued A13 letter withdrawing A4 and A-5 letters as also another letter. When the department themselves had withdrawn their earlier letters, what in effect the applicants are seeking is to reintroduce the said superceded letters. We find that these two letters would be against the dictum laid down by the Hon'ble Supreme Court that "seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility

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conditions prescribed in the relevant rules". A person must be eligible having regard to the eligibility conditions prescribed for the post before he can be considered for promotion. Seniority cannot be a substitute for eligibility nor can it override in the matter of promotion to the next higher post. As the applicants had admittedly not completed 16/26 years of service for being eligible to the grade of Rs. 1400-2300 or Rs.1600-2660 on the dates when their junior Smt.P.Komalam had completed the length of service and as per letter dated 22.7.93 the eligibility for these grades are completion of 16/26 years, the applicants are not entitled for the reliefs sought for.

13. In the result, we hold that this OA has no merit and is only to be dismissed. Accordingly we dismiss this OA leaving the parties to bear their respective costs.

Dated this the 6th February, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

aa.



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER