CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 24, 35, 59, 63, 70, 73, 77, 79, 88 of 2008

Tuesday, this the 2nd day of September, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

O.A.24/2008

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Residing at "Genova", Vattayal,
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4 Joseph Xavier,
Accountant H.P.O., Cherthala,
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5 P.K.Sajilakumari,
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Kollam Dn,
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6 K.Jayaprakash,
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7 R Rajiasree,
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10 L.Jayasree,
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11 V.Suresh Kumar,
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12 S.Sarala Devi Kunjamma,
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14 K.Krishna Kumar,
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Pathanamthitta Dn,
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15 K Chandra Babu,
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Adoor – 691 523.

16 V.R.Vijayakumar,

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O/o. Supdt. of Post Offices,
Thiruvalla Dn, Thiruvalla-689 101
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17 Gouri Sankar P,
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18 P.Surendran,
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Vazhoor P.O.-686 504. ... Applicants

By Advocate Mr.B Manimohan

V/s.

1 Union of India represented by its
Secretary,
Ministry of Communication and I.T.,
New Delhi.

2 The Director General of Posts,
Department of Posts, Dak Bhavan,
New Delhi-110 001.

3 The Chief Post Master General,
Kerala Circle, Trivandrum.

4 The Post Master Geenral,
Central Region, Kochi-682 018.

5 The Superintendent of Post Offices,
Alappuzha Dn, Alappuzha

6 Sr. Superintendent of Post Offices,
Kollam Dn, Kollam.

7 The Superintendent of Post Offices,
Mavelikkara Dn, Mavelikkara.

8 The Superintendent of Post Offices,
Pathanamthitta Dn., Pathanamthitta

9 The Superintendent of Post Offices,
Thiruvalla Dn, Thiruvalla.

10 Sr.Superintendent of Post Offices,
Ernakulam Dn, Kochi-682 011.

11 Superintendent of Post Offices,
Changanacherry Dn,
Changanacherry. ... Respondents.

By Advocate Mr.P.S.Biju ACGSC

OA 35/2008

1 Sunny Thomas,
SPM, Karimkunnam,
Thodupuzha.
Residing at Edapazhathil House,
Purapuzha, Thodupuzha.

2 Mr.K.P.Zacharia, SPM, Kumali,
residing at Kombithara,
Kumali P.O., Idukki.

3 G.Sunil, Postal Assistant (TBOP),
Kattappana H.P.O.,
residing at M.G.Mandhiram,
Kallar P.O., Tookupatam, Idukki.

4 Jose Dominic,
Accountant, H.P.O.,
Thodupuzha, residing at C2,
Postal Quarters, Thodupuzha. ... Applicants.

By Advocate Mr.M.R.Hariraj

V/s

1 Union of India represented by
the Secretary to the Government of India,
Ministry of Communications,
Department of Posts, New Delhi.

2 The Chief Post-master General,
Kerala Circle, Thiruvananthapuram.

3 The Superintendent of Post Offices,
Idukki Division, Thodupuzha. ... Respondents

By Advocate Mrs Mini R Menon ACGSC

OA No.59/2008

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Pin 695 014.
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Parassala P.O. 695 502

2 M.L.Sreelatha

Sub Post Master, Cotton Hill P O,
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3 M.R.Rajalakshmi Ammal,
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Trivandrum.

4 N.Ajithakumari,
Postal Assistant, Vattiyoorkavu PO
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Peroorkada 695 005.

5 T.G.Prasannakumari
O.A., Postal Stores Depot,
Trivandrum-695 023.
residing at T.C.2/2139/1, AN/48,
Viswavihar, T.P.S.Road, Pattom,
Trivandrum.-4.

6 Susan Cherian.
Postal Assistant, Mavelikkara HPO
residing at Kakkamparambil
Punnamood, Mavelikkara-690 101. ...Applicants

By Advocate Mr.B Manimohan

V/s

1 Union of India represented by
Secretary, Ministry of Communications & I.T.,
New Delhi

2 The Director General of Posts
Department of Posts,
Dak Bhavan, New Delhi-110 001.

3 The Chief Post Master General
Kerala Circle, Trivandrum

4 Superintendent of Post Offices
Thiruvananthapuram South Division
Thiruvananthapuram

5 Superintendent of Post Offices
Mavelikkara Division, Mavelikkara. ... Respondents

By Advocate Mr.TPM Ibrahim Khan SCGSC

OA 63/2008

1 VijayanP.Pakarath
Marketing Executive, Manjeri HPO

Manjeri 676 121, Malapuram.
Residing at "Pakarath House',
Pookolathur, Pulpatta PO, Manjeri.

2 C Ambika,
Office Assistant (TBOP),
O/o.the Superintendent of Post Zoffices,
Manjeri Division, Manjeri, residing at
"Pranavam', Karikkad, Trikkalangode PO,
Malapuram District.

3 V.S.Roy
Accountant (TBOP),
Postal Divisional Office, Manjeri
Residing at "Vettathu House",
Pandikkad Post, Malapuram District.

4 K.P.Mini
L.Sg. Postal Assistant,
Tenhipalam Post Office, Malappuram
residing at "Anjali", Tenhipalam,
Malapuram District Pin 673 636.

5 L Mohammed
Sub Postmaster (BCR),
Tenhipalam Post Office, Malapuram,
residing at Palliyil House, Peruvallur Post,
Via Kondoti, Malapuram District. ... Applicants

By Advocate Mr.Shafik M.A.

V/s

1 Union of India represented by
Secretary/Director General,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi.

2 The Chief Postmaster General,
Kerala Circle, Trivandrum-33.

3 The Assistant Director (Rectt)
O/o Chief Postmaster General,
Kerala Circle, Trivandrum ... Respondents

By Advocate Mr.George Joseph ACGSC

OA 70/2008

A Muralidharan
Sub Postmaster, Valancheri Post Office,
Tirur Divn – 676 552.
residing at "Sathya Vilas",
Thiruvegappura PO,
Palakkad 679 304. ... Applicant

By Advocate Mr.Shafik M.A

V/s.

1 Union of India represented by
Secretary/Director General,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi

2 The Chief Postmaster General
Kerala Circle, Trivandrum

3 The Superintendent of Post Offices
Tirur Division, Tirur – 676 104. ... Respondents

By Advocate Mr. George Joseph ACGSC

OA 73/2008

1 Sri MSalahudeen
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Via Panoor, Kannur District-670 692.

2 Sri M Noordeen
Accountant (TBOP),
Head Post Office, Thalasseri
residing at "Hisham Manzil",
PO KottayamPayil, Via Pathayakunnu,
Kannur-670 691. ... Applicants

By Advocate Mr.Shafik M.A

V/s.

1 Union of India represented by
Secretary/Director General,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi

2 The Chief Postmaster General,
Kerala Circle, Trivandrum-33. ... Respondents

By Advocate Mr.Subhash Syriac

OA 77/2008

1 K.J.Dolima
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2 G.Sivaprasad,
Sub Post Master (LSG), Kottiyam,
Kollam Division, residing at "Manichazhiyam",
Divya Nagar 65, Pattathanam Kollam. ... Applicants

By Advocate Mr.Shafik M.A.

V/s.

1 Union of India represented by
Director .General,. Department of Posts,
Dak Bhavan, Sansad Marg, New Delhi

2 The Chief Postmaster General,
Kerala Circle, Trivandrum-33.

3 The Superintendent. of Post Offices,
Kannur Division, Kannur-670 001.

4 The Superintendent. of Post Offices,
Kollam Division, Kollam 691 001. ... Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

OA 79/2008.

Smt .Rachel Varughese,
Assistant Post Master (Accounts),
Thiruvall Head Post Office, Thiruvall,
Residing at "Pallttutharayil House",
Pullad, Thiruvalla. ... Applicant

By Advocate Mr.Shafik M A

V/s.

1 Union of India represented by
Secretary/Director General,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi

2 The Chief Postmaster General
Kerala Cricle, Trivandrum

3 The Superintendent of Post Offices
Thiruvalla Division,
Thiruvalla 689 101. ... Respondents

By Advocate Mr.Sunil Jose ACGSC

OA 88/2008

1 G Ravikumar
Public Relations Inspector (Postal),
General Post Office,
Thiruvananthapuram.

2 Shaji S.Rajan
Office Assistant,
Office of the Senior
Superintendent of Post Offices,

Thiruvananthapuram North Division
Thiruvananthapuram ... Applicants

By Advocate Mr.C.B.Sree Kumar

V/s

1 The Union of India represented by its
Secretary, Ministry of Communication and I.T.,
New Delhi.

2 The Chief Postmaster General
Kerala Circle, Thiruvananthapuram

3 The Senior Supdt. of Post Offices
Thiruvananthapuram North Division
Thiruvananthapuram ... Respondents

By Advocate Mr.TPM Ibrahim Khan SCGSC

These applications having been finally heard on 9.7.2008, the Tribunal on 2.9.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

These O.As are identical in nature and therefore, they are disposed of by this common order.

2. Brief facts of the case are that the applicants are General Line .officials in the Department of Post. All of them are candidates for the Limited Departmental Competitive Examination for promotion to the cadre of Postal Services Group B for the accumulated vacancies for the period 2003-06 which was scheduled to be held on 16th and 17th of February, 2008. Their grievance is that the Chief PMG vide his letter No.Rectt/10-6 dated 19.11.2007 intimated the respective Superintendent of Post Offices that the application received from these applicants for admission to the above mentioned examination have been rejected on the ground that they are not in Lower Selection Grade (LSG for short) with five years service as on 1.1.2006.

3. According to the Department of Posts, Postal Superintendent/Postmasters Group'B' Recruitment Rules, 1987 (Annexure A-2 in O.A.24/2008), the method of recruitment to the cadre of Postal Services Group'B' is "by promotion". 94% of the posts is filled up by promotion from amongst the officers holding the post of Inspector, Post Offices and Inspector, Railway Mails with 5 years regular service in the scale of Rs.1640-2900 including service in the scale of Rs.2000-3200, if any or equivalent; failing which with 8 years regular service in the scale of Rs.1400-2300 or above or equivalent. The remaining 6% is filled by promotion from amongst the General Line officials by means of Departmental Competitive Examination amongst the officers belonging to the Higher Selection Grade(HSG for short) I in the scale of Rs.2000-3200, HSG II in the scale of Rs:1640-2900 and Lower Selection Grade (LSG for short) in the scale of Rs.1400-2300 with 5 years regular service in either or all the 3 cadres together. In the present case, all the applicants are aspiring for promotion under the said 6% quota. Some of them are HSG II promoted under the Biennial Cadre Review scheme (BCR scheme for short) and others are LSG promoted under the Time Bound One Promotion (TBOP for short) scheme. The submission of the counsel for applicants in O.A.24/2008 Shri B Mani Mohan and adopted by the counsel in other O.As is that with the introduction of the TBOP and BCR schemes, the aforesaid provisions of the recruitment rules have become irrelevant and non-operational. According to the TBOP scheme introduced from 30.11.1983, all Postal Assistants having 16 years of regular service have been promoted as LSG and their pay has been fixed under FR 22 (1)(a)(1) which governs promotion. Prior to the introduction of the TBOP scheme, 1/3rd promotions to LSG were made on the basis of a competitive examination of the Postal Assistants with 10 years service and 2/3rd promotions to LSG were made on the basis of seniority-cum-fitness. Since the Postal

Assistants with 16 years service have been promoted as LSG under the TBOP scheme, the 1/3rd promotion used to be made on the basis of competitive examination have come to an end, as no one was left for such examinations. Again, in order to assure at least 2 promotions to every Postal Assistants, those Postal Assistants who have been granted promotion under the TBOP scheme were again granted promotion after completion of 26 years to the grade of HSG II under the BCR scheme and their pay have been fixed under FR 22(1)(a)(1). Such HSG II officials were also given promotion as HSG I on the basis of seniority. The contention of the applicants is that since they were given the scale of LSG and HSG II under the TBOP/BCR schemes, they have been treated as LSG promoted in terms of the Recruitment Rules of 1987 (supra). They have also submitted that the respondents have been permitting LSG – HSG personnel under the TBOP/BCR schemes in the previous years since 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 2000 and 2001 to 2002 to appear in the similar Limited Departmental Examination held in those years and some of the applicants in these O.A themselves were permitted to appear in those examinations. They have, therefore, submitted that the denial of opportunity to them to appear in the proposed examination for filling up the accumulated vacancies for the years 2002-06 is arbitrary and discriminatory. They have also produced Annexure A-16 letter dated 12.5.2003 inviting applications for the combined Postal Assistants Group B Examinations for the vacancies 2001-02 in which the following eligibility condition has been prescribed for the General Line officials and on the basis of which some of the applicants were participated in the examination:

> "General line officials belonging to Higher Selection Grade I, Higher Selection Grade II, and Lower Selection Grade working in Post Offices/Divisional offices with 5 years of regular service in either or all the cadres together and have a satisfactory record of work, conduct, character are eligible to appear for the examination."

The applicants have further stated that for the 2007 examination for the

vacancies of 2003-2006, exactly similar notification (Annexure A-17) dated 3.5.2007 has been issued and there is no justification for the respondents to deny the opportunity to applicants to participate in the said examination.

4. Counsel for the applicants have relied upon a number of orders of the various Benches of this Tribunal, High Courts and the Apex Court. The Madras Bench of this Tribunal in its order dated 19.3.2004 in O.A.679/2003 – **K Perumal & another v. Union of India and others** (Annexure A-21) held that the TBOP and BCR schemes are promotions corresponding to LSG and HSG II respectively and they cannot be treated as mere financial upgradation. The operative part of the said order as under:

> "On going through the facts, we do not subscribe to this reply of the respondents. As mentioned earlier, in all correspondence and letters issued by the respondents from 1991 to 1993 it has been specifically mentioned that OTBO/BCR are promotions and they correspond to LSG and HSG II. There was not even a whisper as to the fact that the so called promotions were only financial upgradations. What we can infer now is that the respondents have invented the term 'financial upgradations' now and want to apply this term in retrospect in respect of the promotions given to the applicants way back in 1991. In our opinion, such actions on the part of the respondents is totally illegal and is incorrect. They cannot change the nomenclature, viz. 'promotions' and deny the consequential benefits after a lapse of 11 years and that too without putting the applicants on notice. It is now well settled that in matters relating to seniority settled issues should not be disturbed/distorted after a long lapse of time. When the respondents gave the date of promotions to the HSG II in the year 1992, the applicants have a legitimate expectation which they have been nurturing since 1992. Now that the settled position cannot be unsettled in the year 2002 and without assigning any reasons and the contention of the respondents that the promotions given earlier are to be construed only as financial upgradations, in our considered view cannot be accepted as the same is unreasonable and such an argument goes against the letter and spirit of the communications issued by the respondents themselves from 1991 to 1993. Therefore, this argument put forward by the respondents has to fail."

The aforesaid order was upheld by the High Court of Madras vide judgment dated 24.9.2004 in W.P.No.27062/2004 of the W.P.M.P.No.32951/2004 –

Union of India and others v. K Perumal & others. The said judgment reads as under:

> "This is an unreasonable case filed by the Union of India challenging the order of the Tribunal, in which, the Tribunal had held that promotion to the post of HSG-II can be given only in accordance with Recruitment Rules.
>
> 2. The learned counsel for the petitioners submitted that such notional promotions are given only to avoid stagnation in the lower post. But, when it is admitted that promotion to the post of HSG-II can be given only according to the Recruitment Rules, the notional promotions also should be done only according to the Recruitment Rules. Any deviation by way of administration orders cannot be sustained. So, the Tribunal is correct in setting aside the impugned order, in which notional promotions have to be given on the basis of the conditions mentioned in the impugned order."

5. The Chandigarh Bench of this Tribunal in O.A.715/2004 dated 18.4.2006 – **Bishan Das Sharma & others v. Union of India & others** – and connected cases, following the order of the Madras Bench in Perumal's case as upheld by the Madras High Court (supra), held as under:

> "Therefore, keeping in view this aspect of the case, we dispose of these OAs while applying the decision rendered by Chennai Bench of the Tribunal in K Perumal (supra) which was further upheld by the Madras High Court in which it was held that the BCR and LSG are promotions and not mere financial upgradations. Therefore, impugned orders whereby seniority of some of the applicants have been disturbed are hereby quashed alongwith impugned orders issued by the respondents debarring some of the applicants to appear in the competitive examination, where the departmental results have been declared, respondents are directed to send detail marks thereof to concerned applicants without any delay."

6. Mr Mani Mohan, learned counsel for the applicants has argued that the judgment of the Madras High Court in K.Perumal's case (supra) is applicable to all the Benches of this Tribunal. He submitted that when a judgment of a High Court anywhere in India on a particular issue and unless there is a contrary decision by a Larger Bench of a High Court of by the Apex Court, the said decision of the High Court is binding on all Benches of the Central Administrative Tribunal. In this regard, he relied upon the order the Full Bench of Chandigarh

Bench of this Tribunal in **Piran Ditta & others v. Union of India and others** [2005(1) ATJ 430] - O.A.7 /JK/2003 dated 14.1.2005 - (Annexure A-22) in which it was held as under:

> "37. There is another way of looking at the matter. From the either end, there can be no dispute about the binding nature of the decisions of the different High Courts and of the Supreme Court. The Full Bench of this Tribunal (Principal Bench) in the case of **Dr A.J.Dawar v. Union of India and Anr** O.A.No.555/20001 decided on 16.4.2004 in unambiguous terms observed that since the Central Administrative Tribunal is an all India Tribunal, all decisions of different High Courts would bind. The Full Bench concluded:
>
> "17. Consequently, we hold:
>
> 1. that if there is a judgment ,of the High Court on the point having territorial jurisdiction over this Tribunal, it would be binding;
>
> 2. that if there is no decision of the High Court having territorial jurisdiction on the point involved but there is a decision of the High Court anywhere in India, this Tribunal would be bound by the decision of that High Court;
>
> 3. that if there are conflicting decisions of the High Courts including the High Court having the territorial jurisdiction, the decision of the Larger Bench would be binding; and
>
> 4. that if there are conflicting decisions of the High Courts including the one having territorial jurisdiction then following the ratio of the judgment in the case of Indian Petrochemicals Corporation Limited [(2001) 7 SCC 469] (supra), this Tribunal would be free to take its own view to accept the ruling of either of the High Court rather than expressing third point of view."

7. The Apex Court in State of Rajasthan v. Fateh Chand Soni [(1996) 1 SCC 562 (Annexure A-20) held that in the literal sense, the word 'promotion' means 'to advance to a higher position, Grade or honour. Para 8 of the said judgment reads as under:

> "8. The High Court, in our opinion, was not right in holding that promotion can only be to a higher post in the Service and appointment to a higher scale of an officer holding the same post does not constitute promotion. In the literal sense the word 'promotion' means "to advance to a higher position, grade, or honour". So also 'promotion' means "advancement r preferment in honour, dignity, rank or grade". (See: Webster's Comprehensive Dictionary, International Ed., p.1009) 'Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression 'promotion' has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post".

8. In support of the arguments on behalf of the applicants that their pay has been fixed under FR 22(1)(a)(1) and only on promotion such fixation is done, Mr Mani Mohan has relied upon the order of the Bangalore Bench of this Tribunal in Vijaydev.C.S. v. Navodaya Vidyalaya Samithi & Ors [2007(3)(CAT),134]. In which it was held as under:

> "16. The following findings emerge from the facts, case laws and illustrations:
>
> (1) Placing in the higher grade of scale is a promotion.
>
> (2) In all cases of promotion pay in the grade is to be fixed under FR 22(I)(a)(1) which are statutory Rules."

9. Respondents in their reply submitted that the rejection of the applicants' requests for admission to said examination was for the reasons that they were only clerical line officials placed under TBOP/BCR scheme and were not actual LSG/HSG-II officials promoted as per the Recruitment Rules with minimum 5 years regular service as LSG on 1.1.2006. They have further submitted that the Department had introduced TBOP/BCR since 1983 and 1991 respectively aiming at upgradation of pay for the employees who were otherwise facing problems of stagnation in their career progression and these financial upgradations cannot be equated as promotions in the cadre of norm based posts as LSG/HSG-II Postal Assistants as promotions to the cadres of LSG/HSG-II/HSG-I are allowed only to the norm based supervisory posts which is limited to 431/112/112 posts in the circle as a whole whereas financial upgradations to TBOP and BCR have been granted to all Postal Assistants in the department with 16/26 years of service and are otherwise eligible for the same.

10. In support of their aforesaid contentions, they relied upon the order of the Madras Bench of this Tribunal dated 13.07.2004 in O.A.845/2003 – **A.Eugine Christy v. Union of India & another** wherein it has been declared that the

applicant therein who has not been promoted to LSG/HSG-II was not eligible for appearing in the PS Group B Examination (Annexure R-7). Further, the Ahmedabad Bench of this Tribunal vide its order dated 20.10.2004 in OA.No.427/2003 – **Kum. Chandrabala Nanalal Thakkar v. Union of India & others** - held that the TBOP officials are not entitled to treat themselves as equivalent to holders of LSG posts for the purpose of participating in the Postal Service Group B Examination. They have also relied upon the order of the Full Bench of the Hyderabad Bench dated 6.4.2005 in O.A.976/2003 & connected cases – **Abdul Gaffar & others v. Union of India and others** (Annexure R-4) in which the order of the Madras Bench in O.A.845/2003 decided on 13.7.2004 (**A.Eugine Christy v. Union of India & another**) (supra) and the contradictory order of the same Bench in O.A.679/2004 – **K Perumal & another** decided on 19.3.2004 (supra) were considered. In O.A.845/2003, the department cancelled permission already granted to the applicants therein to appear in departmental examination on the ground that the applicants therein were granted financial upgradation under TBOP/BCR Scheme, but were not promoted to LSGHSG.II grades. The said case was dismissed by the Tribunal holding that the applicants therein do not fulfil the eligibility criteria prescribed for appearing in the PSD grade B examination and that the candidature of the said applicants therein has been rightly cancelled noting the submission of the respondents that vide letter dated 12.11.2002, the department had clarified that TBOP/BCR placements are only financial upgradation and they have no connection with regular promotion in LSG/HSG.II. In view of the conflicting orders in the aforesaid two OAs, the Full Bench considered the following specific question:

> "Whether the respondents can substitute the nomenclature viz. "promotions" by the word "financial upgradation" in respect of the promotions given to the applicants during the period from 1989 to 2002 under TOBP/BCR scheme which came into operation in 1983 and 1991 respectively in terms of the clarificatory circular dated 12.11.2002/Recruitment Rule 2002 and consequently deny consideration of the candidature of the applicant holding that they are not eligible as they are not having 5 years of service in LSG/HSG II

post as on 01.01.2002."

The findings of the Full Bench was as under:

"33. At this stage, it must be noted that there has been a total confusion in the Department pertaining ,to the true import of the said Scheme. More often than once, they said that it was a promotion being granted. We are informed that keeping in view the said confusion, Department is not promoting the concerned persons to their normal channels of promotion as per the recruitment rules. So much so, as has been pointed out, that some of the applicants even were allowed to take the said departmental examination holding that keeping in view the benefit of the TBOP and BCR Schemes, they were eligible to do so. Many such persons may have been given even the said advantage. This is because the earlier instructions made them eligible. In face of this situation, we are conscious that the Government act as a model employer. We are aware that it is not for this Tribunal to pass any order relaxing rigorous of the rules but in face of the said situation that has developed, it would be appropriate that in accordance with the rules the Government may consider if it would like to relax keeping in view the confusion and the fact that earlier they were allowed even to take the exam.

34. Resultantly, we answer the reference as under:

1) The TBOP and BCR schemes were financial upgradation in the scales. The substitution of the nomenclature of promotion by the word financial upgradation in the scheme does not make any legal difference because of the reasons that we have recorded above.

2) Denial of consideration of the candidature of the applicants holding that they are not eligible as they have less than 5 years of service in LSG/HSG-II post as on 01.01.2002, is in order.

3) The appropriate authority may consider the relaxation of the Rules in the light of our findings above."

11. Respondents have further submitted that the Chennai Bench of this Tribunal in OA No. 77/08 – **P.Rajendran v. Union of India and others** (Annexure R-6) decided on 15.2.2008 has considered the very same issue and clearly differentiated that the TBOP/BCR Schemes are only the financial upgradations and not regular promotions to LSG/HSG. The Tribunal in its order dated 15.02.2008 held as under:

"16. In this regard, by a circular dated 8.9.2003, it is specifically clarified that the persons who are promoted to LSG or HSG should first complete five years of service. It is, however, made clear that

the officials in the cadre of TBOP or BCR without being promoted to LSG either notionally or regularly are not eligible to appear for the above examination. When the applicant entered the cadre of LSG only on 11.10.2004, he cannot be held to be eligible for appearing in the examination on the ground that he was given the TBOP w.e.f. 26.9.1997 It is well settled principle, each case has to be examined on its own facts and circumstances. There cannot be any deviation of any of the conditions stipulated to permit to take the examination when it is prescribed by the Rules and Circulars. When the applicant did not have the requisite number of years of service for taking the examination and if he is permitted to take the examination, it would result in arbitrary exercise of power of the court. Therefore, the question of relaxation of any condition to permit the applicant to take the examination cannot be provided with. It is settled principle that it is open to the appointing authority to lay down the requisite qualification for conducting any examination or recruitment as this pertains to the domain of the policy making authority. Normally, it is for the State to decide the qualification required and the courts cannot substitute their requirement or either assess what the requirement should be. Therefore, denying permission to take the examination following the conditions stipulated are not arbitrary or unconstitutional ad that it is within the limits of Article 14 of the Constitution".

12. It is the further contention of the respondents that in the beginning LSG was a circle cadre but from 1985 onwards, it became a Divisional cadre. As per Directorate's letter dated 12.11.2002, all LSG vacancies upto 6.2.2002 were filled on notional basis as per the then existing rules. After the introduction of Fast Track Promotion, all 1/3rd vacancies which have arisen from 7.2.2002 to 31.12.2005 and 2/3rd vacancies which have arisen in 2004 were filled up. All unfilled vacancies upto 31.12.2006 were filled up as per revised recruitment rules dated 18.5.2006 and orders issued on 3.5.2007. In Kerala Circle, Fast Track Promotion Examination for the 1/3rd LSG vacancies for the years 2002 and 2003 was stayed by this Tribunal. Examination for 2004 vacancies was held and 13 officials qualified in the examination and they were promoted to LSG cadre. The examination for 2005 was postponed by the Directorate. The O.A against holding of examination for 2002 and 2003 vacancies was dismissed by this Tribunal in view of the new recruitment rules (Annexure A-3). Thus all the 2/3rd vacancies in the LSG cadre in the year 2002, 2003, 2005 and 2006 have been filled up by convening DPC from Circle level as per Annexure A-3 order. Since

LSG was a divisional cadre from 1985, officials were promoted to the LSG cadre at the divisional level from 1985 to 2005. Hence the contention of the applicants that no promotions were made after 1983 is not true.

13. The respondents have also submitted that even though the officials placed under TBOP/BCR schemes (up-gradations) were not entitled to appear for the Examination, but in the course of time such up-gradations have been construed in some quarters as 'promotion' against the regular supervisory pots of HSG-I/HSG-II/LSG and the officials who were placed under TBOP/BCR schemes were also permitted to take part in previous examinations by wrong interpretation of rules. The Department has, therefore, clarified the position by issuing the Annexure R-2 OM dated 23.4.2001 which reads as under:

"No.137-18/2001-SPB II
MINISTRY OF COMMUNICATIONS
DEPARTMENT OF POSTS
DAK BHAVAN, SANSAD MARG

DATED AT NEW DELHI THE 23 APRIL, 2001.

OFFICE MEMORANDUM

The Department has introduced Time Bound One Promotion Scheme and BCR Scheme since 1983 and 1991 respectively. These schemes aim at upgradation of pay for the employees who were otherwise facing problems of stagnation in their career progression. In the course of time such upgradations have been construed in some quarters as 'promotion' against the regular supervisory posts available in the Department. Upgradation under TBOP/BCR schemes and promotion to LSG/HSG-II as per provisions of Recruitment Rules are two distinct matters. Therefore, to clarify the position for all concerned, it has been decided that the status of operative officials at various point of their career should be indicated by the following designations/nomenclature as applicable:

i)	Upto 16 years	- PA/SA
ii)	After 16 years service	- PA/SA (TBOP)
iii)	Those who have got promotion to LSG	- LSG
iv)	After 26 years of service if the LSG official has not been promoted to HSG.II	- LSG(BCR)
v)	Those who are not LSG but have crossed 26 years of service	- PA/SA(BCR)

vi) Those who are promoted to HSG-II - HSG.II

vii) Those who are promoted to HSG.I - HSG.I

2. Specific care should be taken to ensure that there is no deviation from these designations in any circumstances.

3. It is also reiterated that Circles should hold DRC at regular intervals, at least once a year, to fill up all the vacancies in LSG, HSG.II& HSG.I to ensure operational efficiency at these levels.

(R.SRINIVASAN)
ASSISTANT DIRECTOR GENERAL(SPN)"

14. When the General Line officials who belonged to TBOP/BCR schemes were again permitted to appear in the last PS Group B examination for the vacancies of 2001 and 2002 held from 23-09-2003 to 24-09-2003, the Director General (Posts), New Delhi vide his letter No.9-36/92-SPG dated 5/8 September 2003, (Annexure R-5), again issued clarification reiterating that the clerical line officials who are promoted to Lower selection Grade or Higher selection Grade and are having five years service in the LSG either on notional or regular basis or in combination of both would only be eligible for appearing in the Departmental Competitive Examination for promotion to PS Group 'B'.

15. As regards the present cases are concerned, they have submitted that in response to Annexure A-10 notification, 94 officials have applied for the above examination and out of them, only 2 officials who belonged to the Lower selection Grade with 5 years service in that cadre were admitted to take part in the Examination. All others including the applicants herein who were not having the required grade of LSG and above and were placed under TBOP/BCR Scheme were held not entitled to take part in the examination and accordingly their applications have been rejected. They have, therefore, justified the decision of the Chief Postmaster General in rejecting the applications of ineligible applicants including the applicants herein under intimation to them as the same

is well within the law, and in accordance with rules specified in the Statutory Postal service Group B Recruitment Rules 1987 as well las the Annexure R-5 clarificatory order issued by the Department.

16. Applicants, in the rejoinder, have submitted that before the introduction of TBOP scheme, there was a scheme known as 1/3rd LSG Promotion Scheme through a competitive examination. Those Postal Assistants who had 10 years regular service were eligible to appear for that examination. Balance 2/3rd LSG posts were filled up by routine promotion on the basis of seniority cum fitness. When TBOP scheme was introduced in 1983, the aforesaid system of promotion to 1/3rd of the total LSG posts through competitive examination came to an end. They also submitted that the Annexure R-2 produced by the respondents is nothing but an office memorandum and it has no sanctity of a rule or law. Further, Annexure R-2 is dated 23.4.2001 which has been issued after many years of the introduction of TBOP and BCR schemes. It was issued to cater to the needs of some vested interest in the department seeking to deny the rightful opportunity of persons like the applicants herein. Even the department did not give any sanctity to the said OM. and clarified later vide its letters dated 28.7.2003 and 5.9.2003 (Annexure A-19) that those who were promoted to LSG and HSG-II under TBOP and BCR schemes were eligible to appear for Postal Superintendent's Group'B' Cadre Examination provided they have 5 years service jointly or severally in the respective grade(Annexure A-19). They have also submitted that the Annexure R-5 produced by the respondents is also nothing but a copy of the clarification dated 5.9.2003 of the Department incorporated in Annexure A-19 and by no stretch of imagination the said circular dated 5.9.2003 can be given interpretation as rendered now by the respondents.

17. From the facts as detailed above, we are of the firm view that controversy

involved in the matter has already been settled by the order of the Full Bench (Hyderabad) dated 6.4.2005 in the case of **Abdul Gaffer and others** (supra). It has been held in unequivocal terms in that order that TBOP and BCR schemes are only financial upgradations in the scales and not promotions. The Chennai Bench which passed the order in **K Perumal's** case (supra) itself vide order in **P.Rajendran's** case (supra) made it "*clear that the official in the cadre of TBOP or BCR without being promoted to LSG either notionally or regularly are not eligible to appear*" in the examination. In the above facts and circumstances of the case, these OAs fail and accordingly they are dismissed. The interim order passed in these cases provisionally permitting the applicants to appear for the Postal Services Group'B' Examination also stands vacated, if the Examination has not already been held/the applicants have already appeared in the Examination.

18. There shall be no order as to costs.

DR K.S.SUGATHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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