CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

MA No.91 of 2013 in OA No.410/2008

Wednesday this the 12th day of June, 2013.

CORAM

Hon'ble Dr.K.B.S.Rajan, Judicial Member
Hon'ble Mr.George Joseph, Administrative Member

1. Thankamma A.T., age 49 years
D/o V.M.Thankappan
Gramin Dak Sevak, Pathanamthitta Division
Pathanamthitta.
Residing at Olikal House,
Nedumkunnam P.O.
Nedumkunnam, Karukachal – 686 542.

2. Satheesh Kumar, age 45 years
S/o C.T.Kesavan
Gramin Dak Sevak, Kozhancherry College P.O.
Pathanamthitta Division,
Pathanamthitta.
Residing at Chandiyil House,
Kozhancherry East P.O.-689 641.

3. K.C.Balachandran Nair, age 46 years
S/o Chandrasekharan Nair
Gramin Dak Sevak, Elappupara,
Pathanamthitta Division
Pathanakthitta.

4. Aji Kumar V.A., age 46 years
S/o Achuthan Pillai
Gramin Dak Sevak, Elanthoor,
Pathanamthitta Division,
Pathanamthitta.
Residing at Thekkethil,
Elanthoor-689 643. Misc. Applicants

(By Advocate: Mr.M.R.Hariraj)

Versus

1. The Superintendent of Post Offices
Pathanamthitta Division
Pathanamthitta.

2. The Chief Postmaster General
Kerala Circle
Thiruvananthapuram-695 033.

3. Union of India represented by
The Secretary to Govt of India
Ministry of Communications
New Delhi-110 001. Respondents

(By Advocate: Mr.P.A.Asiz)

This Misc. Application having been heard on 7th June, 2013, the Tribunal on 12.6.13 delivered the following:

ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

This Tribunal earlier passed a common order dated 15-12-2008 directing that all the Group D vacancies must be filled without waiting for any clearance from the screening committee. This order was upheld by the High Court. Despite the same, since the orders were not complied with, many a Contempt Petition was filed and these Contempt Petitions were disposed of by a common order dated 29th July, 2011. The following is the main crux of the said order:-

14. Arguments were heard and documents perused. Certain salient features relating to Contempt Proceedings are apt to be referred to here and the same are as under:-

(a) Right or wrong the order has to be obeyed. - Director of Education vs Ved Prakash Joshi (2005) 6 SCC 98.

(b) Flouting an order of the court would render the party liable for contempt. (ibid)

(c) It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. (ibid) (Also K.G. Derasari v. Union of India and Bihar Finance Service House Construction Cooperative Society Limited v. Gautam Goswami, (2008) 5 SCC 339 :)

(d) casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment (Dinesh Kumar Gupta vs United India Insurance Company (2010) 12 SCC 770)

(e) Once an order has attained finality, even if difficulties exist in implementation, the order has necessarily to be carried out in letter and spirit. - State of Rajasthan vs Mohan Singh (1995) Supp (2) SCC 153 at para 2. (Also see K.A. Ansari vs Indian Airlines Limited (2009) 2 SCC 164, wherein the Appx Court in an unambiguous term held, Difficulty in implementation of an order passed by the court, howsoever grave its effect may be, is no answer for its non-implementation.)

15. In the instant case, the act on the part of the respondents cannot be said to be such that there has been a deliberate disobedience. At least so far! The latitude given vide order dated 27-10-2010 cannot in fact change the original colour of the order of this Tribunal as upheld by the High Court. As stated in ***Ved Prakash Joshi*** *(supra) Right or Wrong the order has to be complied with.*

16. Once the Apex court has held that there cannot be any variation in the order to be complied with, the option made available to the respondents vide order dated 27-10-2010 has to be harmoniously construed with the spirit of the original order. Even in that order dated 27-10-2010, the mandate is that all the applicants shall be accommodated. Thus, when harmoniously read, all that the said order meant was only that attempt should be made to locate vacancies and if vacancies are not available, then other vacancies should be diverted. That far and no further.

17. Now, certain basic facts in the act of the respondents should be addressed here. First, they have been harping upon the fact of a number of posts having been abolished. True, these posts would have been abolished at the material point of time. But it was at a juncture when the posts to be filled up by the GDS or Casual Labourers were treated as Direct Promotion and provision for abolition of posts is available for direct recruitment vacancies only and not for any other category of vacancy. However, the High Court itself has declared that there is no question of abolition of posts in respect of vacancies tenable by the applicants. This declaration after perusing the documents produced by the Respondents leads to a situation that the posts were not abolished. For such a declaration takes retrospective effect. For, when the Court clarifies a legal position, the same applies not only for the future but also has the retrospective effect. In this regard the decision of the Apex Court in the case of ***Rajasthan State Transport Corporation vs Bal Mukund Bairwa*** *(2), (2009) 4 SCC 299 is relevant. In that decision, the Apex Court has observed -*

> *" 52. As has been pointed by Justice Cardozo, in his famous compilation of lectures The Nature of the Judicial Process, that in the vast majority of cases, a judgment would be retrospective. It is only where the hardship is too great that retrospective operation is withheld. A declaration of law when made shall ordinarily apply to the facts of the case involved."*

18. Thus, at this juncture, there is no meaning in harping upon the same point of the post having been abolished. The said abolition even if made by a positive act, becomes non-est and in fact there must be automatic resurrection of the abolished posts. This is the legal position in so far as the availability of post is concerned. As a matter of fact at one point of time referring to certain other documents filed in a different O.A the SCGSC has given the information that the department made earnest attempt in getting the posts which were earlier abolished, revived and as many as 424 posts in various divisions pertains to Group D posts in Kerala Circle from 2002-2009 and these were brought back to existence. And on the basis of seniority all the GDS and on Division basis these posts are also being filled up.

19. Thus respondents are not reluctant at all in fully complying with the order of this Tribunal. Now that the vacancies do exist, and eligible persons available for being accommodated, their promotion could comfortably be executed subject to other provisions of law relating to age as well as seniority position. These promotions would then be with retrospective effect but on notional basis so that those who are promoted would have the benefit of that many years of service for the purpose of pension. Pay could however be actual (after catering for annual increment as per the rules from the date of initial notional promotion) from the date the individuals function the promotional post.

20. It is possible that some of the GDS employees who are in their late fifties may not be prefer even promotion if they are not entitled to any pensionary benefits due to not fulfilling the requisite years of service on regular basis. They could, as GDS continue upto 65 years, while their age of superannuation would be 60 in case of their appointment in Group D post. Thus, options could be called for from such of the individuals who are to be accommodated against the vacant posts.

21. In view of the above, taking judicious note of the fact that so far no contumacious act has been committed, we are inclined to ***close*** *these Contempt Petitions, but with the firm direction that in so far as implementation of the earlier order dated 15-12-2008 which stands upheld by the High Court as early as in 2009, action should be taken to fill up all the vacancies meant for GDS and Casual labourers. The 424 posts referred to by the respondents shall all be filled up. There shall be a time bound plan in this regard and progress thereof shall be monitored by the Chief Post Master General. Adequate budgetary provisions should therefore be made to cater for the salary and other benefits to the incumbents. The entire action of consideration of the cases of applicants and similarly situated persons in Kerala Circle should be completed within a period of six months. This part of the order is passed invoking the provisions of order 24 of the CAT Procedure Rules, 1987, for proper implementation of the order of the Tribunal. No cost.*

2. One of the Divisions dealt with in the above said orders is Pathanamthitta Division. According to the applicant, the information he obtained under the RTI relating to vacancy position etc., is as under:-

Sl No.	Question	Reply
1.	How many Group 'D' posts are vacant as on 31-05-2010	23
2.	How many posts were filled now	Nil
3.	How many posts are still vacant	23
4.	The reason for not filling the remaining Posts	No sanction received from CO
5.	How many GDS employees are officiating as Group 'D' in the Division	20

3. The claim of the applicant is that when vacancies are available, and an order passed by the Tribunal as upheld by the High Court and directions granted in CP also being in favour of the applicants, there cannot be any impediment in granting the appointment to the applicants, whereas, they are adamant in not granting the said appointment.

4. The stand taken by the respondents is that in Pathanamthitta Division, there were initially ten posts identified for being filled up for the period 2002 -2008, out of which 9 vacancies were filled up. One post could not be filled up for want of eligible casual labourers. Subsequently 2 more posts which arose in the year 2009 were also filled up taking the total tally of posts filled up to 11 out of 12 vacancies identified for being filled up. According to the respondents, this position has been upheld by the Tribunal in OA No. 692 of 2011 which had dismissed the OA filed the applicant therein vide Annexure R-5. Two more MTS posts were filled up vide order dated 23-03-2011 at Annexure R-3. And, the remaining MTS on merit were selected based on the result of the examination held on 27-01-2013 and appointed on 11-02-2013, vide Annexure R-4.

5. It has also been stated that in all 424 vacancies were identified by the Circle, out of which 381 posts were filled up and the remaining 43 vacancies could not be filled up for want of eligible ST candidates/casual labourers. Attempt was made to have the unfilled vacancies filled up by appointing eligible ST candidates/casual labourers, apart from neighbouring divisions from all the Divisions but the Directorate did not approve of the same but advised to carry forward the vacancies. These cvould not be filled up due to a stay order passed by the Tribunal in OA No. 536 of 2012.

6. Counsel for the applicant submitted that the respondents have all through harp upon only the approval of the Screening Committee, whereas the Tribunal clearly held that such an approval is not at all warranted as the same is required only for direct Recruitment and in so far as the posts against which the applicants are to be accommodated, these are not direct recruitment post and as such, no approval is necessary. This position has been clearly reflected in the common order passed on 15-12-2008 and reiterated in the order on Contempt Petitions. Attention was invited to para 18 of the said order extracted above. Again, the counsel stated that, that there are vacancies as of now to the extent of 23 have been confirmed through RTI. This information cannot be untrue. In so far as the order in OA No. 592 of 11 is concerned, the same was based on the information furnished to the Tribunal and anything not in conformity with the common order passed in December, 2008 as upheld by the High Court need not be taken into consideration save for that particular case.

7. Counsel for the respondents has submitted that the contents of the counter would give the picture and there is only one vacancy.

8. Arguments were heard and documents perused. The counter is totally silent about the information received by the applicant through RTI. It only gives the statistics relating to the vacancies as of 2010. May be so; however, what is expected of the respondents is as to how those 23 vacancies were dealt with. If the particulars given relate to 2010, and if the details furnished by the respondents to the Tribunal in their reply in OA No. 592 of 2011 relates to subsequent period, then they should co-relate the same with the earlier position and explain how the vacancies were consumed. No information is available in this regard. It is not known whether the twenty GDS are still officiating there as per the RTI information still continue to officiate and whether the vacancies against which they are so officiating belong to promotion quota where the applicants or his seniors could be accommodated.

9. The matter needs a better analysis by a senior officer. It is appropriate that the Director of Postal Services under whom the Pathanamthitta Division falls takes up the case and consider the same in proper perspective and render a report within a period of two months. The Superintendent of Post Office, Pathanamthitta Division shall make available all the materials to the DPO. In case the post of DPO is vacant, then it is the next higher authority that should take up the case. The applicants should be informed of the exact position.

10. With the above, the MA is closed.

(K.George Joseph)
Administrative Member

(Dr.K.B.S.Rajan)
Judicial Member

aa.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 312 of 2008

w i t h O.A. Nos.

221/08, 402/08, 203/08, 243/08, 263/08, 280/08, 314/08, 345/08, 352/08, 357/08, 368/08, 372/08, 381/08, 399/08, 404/08, 405/08, 406/08, 407/08, 408/08, 410/08, 412/08, 421/08, 422/08, 436/08, 437/08, 463/08, 524/08, 525/08, 560/08, 118/08, 573/08, 541/08, 583/08 618/08, 485/08 and 598/08.

Monday, this the 15th day of December, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K NOORJEHAN, ADMINISTRATIVE MEMBER

1. O.A. NO. 312/2008

1. M. Raveendran, S/o. Sri. M. Kuttan,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Tirur 676 101, Residing at Moothedaun House,
PO Meenadathur, (Via) Thanaloor,
Malappuram - 676 307.

2. A. M. Habeebullah, S/o. late M.A. Rahiman,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Palakkad, residing at Parisha Manzhil,
2/8, Pumb Engine Road, Olavakkot.

3. M. Manikandan, S/o. late P. Sivasankaran Nair,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Palakkad, Residing at Moorkath House,
Pre-Cot New Colony, Chedayankalai,
Kanjukode West - 678 623.

4. A Zakheer Hussain, S/o. late M.A Rahim,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Palakkad, Residing at 3/78, Mullath House,
Kunnumpuram, Kalpathy, Palakkad.

5. C.K. Rajith Babu, S/o. late K. Balakrishnan,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Kannur, Residing at 'Balakrishnan', PO Kuzhunna,
Kannur 670 007.

6. V.K. Raveendran, S/o. late V.K. Krishnan,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Tirur, Residing at Velankandiparambil House,
(PO) B.P. Angady, Tirur, Malappuram - 676 102

7. K. Haridasan, S/o. late Baskaran Nair,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Tirur, Residing at Kundulli House, Ayankalam PO,
Thavanoor, Malappuram- 679 594.

8. K. Chandran, S/o. late Khasi,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Shornur, Residing at Nambamthodi,
Muthaliyar Street, Shornur.

9. V.K. Lakshmanan S/o. late K. Kothelan,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Olavakkot, Palakkad-2, Residing at Varkkad House,
Muttikulangara PO, Palakkad - 678 594.

10. P. Sivasankaran, S/o. late U. Pazhaniappan,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Palakkad, Residing at UDC II Quarters,
Near Police Station, Malampuzha.

11. K. Premarajan, S/o. Sri. K.K. Kumaran,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Vadakara, Residing at 'Thanal', Poothur PO,
Vadakara -673 104.

12. C.P. Asokan, S/o. late C.P. Kannan,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Vadakara, Residing at 'Swathinilayam',
PO Keezhal, Vadakara.

13. K. Vasudevan, S/o. Smt. K. Narayaniamma,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Shornur, residing at Kadambath House,
Kavalappara, Shornur.

14. R. Rajashekharan, S/o. Sri. R. Raman Muthali,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Shornur, Residing at Mampattukundu,
PO Shornur, Pin 679 121.

15. C.P. Abdul Majeed, S/o. Sri. C.P. Moidu,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Tirur, Residing at Cheriyeripeediakkal House,
PO Thekkummuri, Tirur -5.

16. N. Balachandran Nambiar, S/o. late K. Kunhikannan Nair,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Kasaragode, Residing at P&T Home,
Pulikunnu, Kasaragode - 671 121.

17. Narayanan T.V. , S/o. late N. Padmanabhan,
Working as Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division,
Kasaragode, Residing at Thuluvan Veedu,
Cheruvichery, Mathamangalam PO,
Kannur - 670 306.

18. T.K. Balasubramanyan, S/o. the late Choyikutty T.K.,
aged 46 years, Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS, 'CT' Division,
Kozhikode, Residing at Ponnamparambath House,
PO Karaparamba, Pin 673 010.

19. V. Mohandas, S/o. late V. Chandramenon,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS, 'CT' Division,
Kozhikode, Residing at Gokkattilparamba,
Katcherikunnu, Pokkunnu PO, Kozhikode - 673 013.

20. T.K. Venugopalan, S/o. late T.K. Gopalakrishnan,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS, 'CT' Division,
Kozhikode, Residing at Poonadathparamba,
Near Rarichan Road, PO Eranjipalam,
Kozhikode - 673 006. : Applicants

(By Sri.O.V.Radhakrishnan, Senior Advocate with Advocates Smt.K.Radhamani Amma, Sri.Antony Mukkath, Sri.K.V.Joy and Sri.K.Ramachandran)

VS.

1. Superintendent,
RMS, 'CT' Division, Kozhikode.

2. Postmaster General,
Northern Region, Kozhikode.

3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Director General of Posts,
Dak Bhavan, New Delhi.

5. Union of India
Represented by its Secretary,
Ministry of Communications
New Delhi. : Respondents

(By Advocate Smt.K.Girija, ACGSC)

2. O.A. No. 221/2008

G. Savithri,
Casual Labourer (Temporary Status)
RMS TV Division,
Thiruvananthapuram - 36.

(By Advocate Mr. Sasidharan. Chempazhanthiyil)

Vs.

1. The Senior Superintendent,
RMS TV Division,
Thiruvananthapuram - 36.

2. The Director of Postal Accounts,
Kerala Circle, Thiruvananthapuram -1.

3. Union of India, represented by
Chief Post Master General,
Kerala Circle, Trivandrum-33. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

3. O.A. No. 402/2008

1. K.K. Umesan, S/o. Krishankutty,
Working as Gramin Dak Sevak Branch
Postmaster, Pouthenpuzha, P.O., Residing at
Sumesh Bhavan, Mukkada P.O., Kottayam Dist.

2. A.N. Viswanathan, S/o. Narayanan,
Working as Gramin Dak Sevak Mail Deliverer,
Mukkada, Residing at Appukkunnel House,
Karinilam P.O., Mundakkayam : 686 513

3. K. Sreeramachandran, S/o. Krishnan Nair,
Working as GDS Mail Packer, Changanassery
College P.O., Residing at Kunnampilly house,
Vazhappally West P.O., Changanassery.

4. V.R. Mohandas, S/o. Raman Nair,
Working as GDS Mail Deliverer, Chirkkadavu P.O.,
Residing at Vathalloor House, Kavumbhagam,
Thekkekavala P.O. : 686 519

5. P.M. Abdul Majeed, S/o. Nainar Mohammed, Working as GDS Mail Deliverer/Mail Carrier, Palampra, Residing at Pallipparambil House, Koovappaly P.O., Kanjirappally.

6. V.K. Devadas, S/o. Karunakaran Nair, Working as GDS Mail Deliverer, Theerthapadapuram P.O., Residing at Valiplackal House, Chamampathal P.O., Vazzhoor : 686 517

7. O.M. Evo, S/o. Mathew, Working asGDS Mail Deliverer, Karikkattoor Centre P.O., Residing at Olickara House, Karikkattoor.

8. V.V. Philippose, S/o. Varghese, Working as GDS Mail Deliverer, Alapra P.O., Residing at Vettiplavil House, Alapra P.O., Karikkattoor: 686 544

9. V.T. Sosamma, D/o. Thomas Chacko, Working as GDS Branch Postmaster, Kanjirapara P.O., Residing at Vandanathu Vayalil House, Kanjirapara P.O., Devagiri : 686 555. ... Applicants.

(By Advocate Mr. P.C. Sebastian)

VS.

1. The Superintendent of Post Offices, Changanassery Division, Changanassery Pin : 686 101

2. The Postmaster General, Central Region, Kochi : 682 018

3. The Director General of Posts, Dak Bhavan, New Delhi.

4. The Union of India, Represented by its Secretary to Govt. of India, Ministry of Communications, Department of Posts, New Delhi ... Respondents.

(By Advocate Mr. A.D. Raveendra Prasad, ASGSC)

4. O.A. No. 203/2008

1. T.A. Sherly, D/o. late T.X.Augustine, GDS MD, Varappuzha Landing, Varappuzha SO, Aluva Division, residing at Thaipparambil House, Thundathumkadavu, Varappuzha PO, Pin -683517.

2. M.A. Bavu, S/o. Sri. Aimu, GDS MD, Nechikode, Alangad SO, Aluva Division, Residing at Mattangal House, Alangad PO, Kottapuram-683511.

3. A.V. Prakash, S/o. late A. Velayudhan,
GDS MD, Asamannoor SO,
Aluva Division, Residing at Areekadan House,
Punnayam, Asamannoor PO, Pin 683 549.

4. K.K. Valsala, D/o. Sri. Kelan,
GDS MP, Alangad SO, Aluva Division,
Residing at Karekunnel House,
Alangad PO, Kottappuram683511.

5. C.R. Ramachandran, S/o. Late T.G. Ramakrishnan Nair,
GDS MD, North Kuthiyathode,
Puthenvelikkara SO, Aluva Division,
Residing at Chullikkattu House,
Thaleekkara, Chengamanad PO, Pin 683578.

6. K.M. Mohanan, S/o. The late Maniyan,
GDS MD, Kongorppilly, Koonammavu SO, Aluva Division
Residing at Kaithathara, Valiath, Ththappilly BO,
Mannam (Via) Pin 683520.

7. K.S. Rajappan, S/o. late K.C. Sreedharan,
GDS MD, Gothuruth,
Moothakunnam SO, Aluva Division,
Residing at Koomullamparambu,
Thekkumpuram, Chendamangalam. : Applicants

(By Sri.O.V.Radhakrishnan, Senior Advocate with Advocates Smt.K.Radhamani Amma, Sri.Antony Mukkath, Sri.K.V.Joy and Sri.K.Ramachandran)

VS.

1. Senior Superintendent of Post Offices,
Aluva Division, Aluva

2. Postmaster General,
Central Region, Kochi.

3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Director General of Posts,
Dak Bhavan, New Delhi.

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

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

O.A. No. 243/2008

Padmakumar. P.S.,
GDS BPM,
Parandode P.O.,
Aryanad. ... Applicant.

(By Advocate Vishnu S. Chempazhanthiyil)

Vs.

1. The Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram - 14.

2. Union of India, represented by the
Chief Post Master General,
O/o the C.P.M.G., Kerala Circle,
Trivandrum - 695 033. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

6. O.A. No. 263/ 2008

1. K. Rajan,
GDS MD,
Speed Post Centre,
Thiruvananthapuram GPO.

2. P. Omanakuttan,
GDS MD,
Ayroor, Varkala.

3. V. Madhusoodanan Pillai,
GDS MD, Vattappara P.O.,
Thiruvananthapuram - 28.

4. G. Pradeep Kumar,
GDS BPM, Ayroor,
Varkala.

5. P. Asokan,
GDS MP, Ayroor,
Varkala. .... Applicants

(By Advocate Vishnu S. Chempazhanthiyil)

Vs.

1. The Senior Superintendent of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram - 1.

2. Union of India, represented by the
Chief Post Master General,
O/o the C.P.M.G., Kerala Circle,
Thiruvananthapuram - 695 033. ... Respondents.

(By Advocate S. Abhilash, ACGSC)

7. O.A. No. 280/2008

K. Rajendran, S/o. late M. Kesavan,
GDS MC, Koovappady,
Presently working as Group D (Officiating),
Perumbavoor HO, residing at Veliyanattu House,
Pezhakkappilly P.O, Muvattupuzha. : Applicant

(By Sri.O.V.Radhakrishnan, Senior Advocate with Advocates Smt.K.Radhamani Amma, Sri.Antony Mukkath, Sri.K.V.Joy and Sri.K.Ramachandran)

VS.

1. Senior Superintendent of Post Offices,
Aluva Division, Aluva

2. Postmaster General,
Central Region, Kochi.

3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Director General of Posts,
Dak Bhavan, New Delhi.

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

(By Advocate Sri.A.D.Raveendra Prasad, ACGSC)

8. O.A. NO. 314/2008

1. K.A Aniachan, S/o. Sri. K.V. Antony,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS 'EK', Division,
Ernakulam, Kochi-16,
Residing at Kodavasserry House,
Haritha Nagar IInd,
Kochi University PO, Kochi-682 022.

2. P.S. Shahid, S/o. late S. Shahid Hussain,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS 'EK', Division,
Ernakulam, Kochi-16, Residing at Vadakkath House,
Koovappadam, Kochi -682 002.

3. K.K. Shaji, S/o. late Kochappan,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS 'EK', Division,
Ernakulam, Kochi-16, Residing at Kolothar House,
Nayarambalam PO, Kochi-682 509.

4. V.A Anandakumar, S/o. late Achuthan Nair V.,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS 'EK', Division,
Ernakulam, Kochi-16, Residing at Madathiparambil House,
Eroor PO, Thrippunithura.

5. M. Sreekumar, S/o. late D. Muraleedharan Nair,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS 'EK', Division,
Ernakulam, Kochi-16, Residing at Kanjili House,
Near NSS Karayogam, Nayathode P.O,
Angamali.

6. N. Radhakrishnan, S/o. late E.S Narayanan,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS 'EK', Division,
Ernakulam, Kochi-16, Residing at 'Athira' Nivas,
Thiruvankulam, Ernakulam District.

7. V.M. Ramani, S/o. Sri V. Madhavan Pillai,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS 'EK', Division,
Ernakulam, Kochi-16, Residing at
Valamthodathi House, Maradu PO.

8. B.K. Usha, D/o. late Krishnan Nair,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS 'EK', Division,
Ernakulam, Kochi-16, Residing at Kuriyedath House,
Thiruvankulam PO.

9. E.V. Chandran, S/o. Sri. E. Unnikrishnan,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS 'EK', Division,
Ernakulam, Kochi-16, Residing at Radha Nivas,
Narikkal Parambu, Kadavanthara Road,
Kalour PO, Kochi-17.

10. N.K. Nandakumar, S/o. Sri. P. Krishna Pillai,
Working as Gramin Dak Sevak Mail Man,
Head Record Office, RMS 'EK', Division,
Ernakulam, Kochi-16, Residing at Parappillil House,
Kadavanthara PO, Pin 682 020. : Applicants

(By Sri.O.V.Radhakrishnan, Senior Advocate with Advocates Smt.K.Radhamani Amma, Sri.Antony Mukkath, Sri.K.V.Joy and Sri.K.Ramachandran)

VS.

1. Superintendent,
RMS 'EK' Division, Ernakulam.

2. Postmaster General,
Central Region, Kochi.

3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Director General of Posts,
Dak Bhavan, New Delhi.

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

(By Advocate Sri. P.S.Biju, ACGSC)

9. O.A. No. 345/2008

1. C. Soman,
GDS MP/MC,
Murukumpuzha Post Office,
Trivandrum

2. C. Sahadevan,
GDS BPM,
Kattaikoam, Trivandrum

3. V.K. Gopakumar,
GDS MP,
Kilimanoor, Trivandrum. ... Applicants.

(By Advocate Vishnu S. Chempazhanthiyil)

Vs.

1. The Senior Superintendent of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram - 1.

2. Union of India, represented by the
Chief Post Master General,
O/o the C.P.M.G., Kerala Circle,
Thiruvananthapuram – 695 033. ... Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

10. O.A No: 352/2008

1. D. Mohan Das, S/o. P. David,
Gramin Dak Sevaks, Mail Man,
HRO, RMS 'TV' Division, Thiruvananthapuram.

2. C. Murugan, S/o. N. Choodamani,
Gramin Dak Sevaks, Mail Man,
HRO, RMS 'TV' Division, Thiruvananthapuram-1,
24/721, Mettukada, Thycaet P.O., Trivandrum.

3. Alexander, S/o. George,
Gramin Dak Sevaks, Mail Man,
SRO, Kayamkulam, Manimotil Neriam Pattil,
Kattachira, Pallickal P.O., Kayamkulam.

4. Gopala Krishnan V., S/o. N. Venkatachalam,
Gramin Dak Sevaks, Mail Man,
HRO, RMS 'TV' Division, Thiruvananthapuram-1,
TC-23/18013, Vaxhavila Veedu, vallyasala,
Trivandrum-36.

5. H. Asok Kumar, S/o. Haridasan Nair,
Gramin Dak Sevaks, Mail Man, HRO,
RMS 'TV' Division, Thiruvananthapuram-1,
TC. 48/193, (PRA 32), Amaruvila Veedu,
Ambalathara, Poonthara P.O., Trivandrum.

6. A Rema devi, D/o. Ramakrishna Pillai,
Gramin Dak Sevaks, Mail Man, HRO,
RMS 'TV' Division, Thiruvananthapuram-1,
Saraya Nivas, Valiyasala, Chala P.O., Trivandrum.

7. K.P. Siva Prasad, S/o. K.P. Parameswaran Nair,
Gramin Dak Sevaks, Mail Man, SRO, Kottayam,
Kannattamadathil, Kanjiram P.O., Kottayam.

8. A Salim Kumar, S/o. Abdulla,
Gramin Dak Sevaks, Mail Man,
HRO, RMS 'TV' Division, Thiruvananthapuram-1,
Manu Bhavan, Valiyavila Veedu, G.R. Road,
Oorattukala, Neyyattinkara.

9. A. Anil Kumar, S/o. K. Appukuttan Nair,
Gramin Dak Sevaks, Mail Man, HRO,
RMS 'TV' Division, Thiruvananthapuram-1,
A. R House, Palottu Vila, Malayinkil P.O.,
Trivandrum.

10. K. Sree Kantan, S/o. M. Krishnan,
Gramin Dak Sevaks, Mail Man, HRO,
RMS 'TV' Division, Thiruvananthapuram-1,
Krishna Bhavan, Vatlavila, Tirumala P.O.,
Trivandrum.

11. P.K. Anil Kumar, S/o. Kuttan Pillai,
Gramin Dak Sevaks,
Mail Man, HRO, RMS 'TV' Division,
Thiruvananthapuram-1, Siva Vilasam,
Venmannar, Ezhukone. ... Applicants.

(By Advocate Mr. M.R. Hariraj)

vs.

1. The Senior Superintendent of
Railway Mail Service, 'TV' Division,
Trivandrum.

2. The Chief Post Master General, Kerala Circle,
Trivandrum-33.

3. Union of India, represented by the Secretary to
Government of India, Ministry of Communication,
New Delhi. ... Respondents.

(Mr. TPM Ibrahim Khan, SCGSC)

11. O.A. 357/2008

1. Velayudhan M., S/o. Unnialan
GDS MD, Puduppalli, Malappuram
District, Residing at Madakkara House,
P.O. Puduppalli, Malappuram District : 676 102

2. I.P. Devayani, D/o. V.I. Chathappan,
GDS SV, Tirur HPO, Tirur, Residing at "Ayswarya"
Tirur - 1

3. N.K. Sivadasan, S/o. Late K. Madhavan Nair,
GDS MD, Valiyakunnu BO, Valanchery, Residing
at "Narmatthody House", P.O. Valiyakunnu,
Via. Valanchery : 676 552

4. Sukumara Prasad, S/o. Late K. Daniel,
GDS MD, Codacal, Residing at Kalarikkal House,
Beeranchira, P.O. Codacal, Triprangode, Tirur: 676 108

5. P.V.Aravindakshan, S/o. Late K. Velayudhan Nair,
GDS MD II, Mudur, Residing at "Perinchirivalappil House",
P.O. Kalady, Malappuram : 679 582

6. Smt. A.Pankajakshi, D/o. A. Kunhikrishnan Nair,
GDS BPM, Karippol, Malappuram District, Residing at
"Ambalavally House", Post Punnathala, Via. Valanchery,
Malappuram.

7. T.P.Sadanandan, S/o. Late Gopalan Nair,
GDS MD, Tolavannur EDSO, Malappuram District,
Residing at "Thoonchath Parambil", Tolavannur P.O.,
Valancheri, Malappuram : 676 557

8. N.V.Krishnan, S/o. N.V. Pengan,
GDS MD, Eswaramangalam, Tavanur, Residing at
"Nayadivalappil House, P.O. Athalur, Tavanur,
Malappuram District.

9. C.K.Krishnankutty, S/o. Late Nadi,
GDS MD, Kiari PO, Malappuram District, Residing at
"Chengenakkattil House", P.O. Kiari, Via. Edarikkode,
Malappuram District. ... Applicants.

(By Advocate Mr. Shafik M.A.)

VS.

1. Union of India, represented by
The Chief Postmaster General,
Kerala Circle, Trivandrum

2. The Superintendent of Post Offices
Tirur Division, Tirur. ... Respondents

(By Advocate Mrs. Mini R. Menon)

12. O.A. 368/2008

1. A.Mohanasundaran, S/o. Sankaran Nair,
GDS BPM, Thelakkad, Pattikkad, Malappuram
District, Residing at Azhakath House, Thelakkad P.O.,
Via. Pattikad, Malappuram : 679 325

2. Mathew Varghese, S/o. Varghese,
GDS MD, Kalkundu PO, Manjeri Division, Malappuram
District, Residing at " Kanangampathiyil House",
Kalkundu P.O., Malappuram District.

3. M.K.Abdul Asees, S/o. Kunhali,
GDS MD, Palemad BO, Edakkara, Manjeri Division,
Malappuram, Residing at "Mundenpilakkal",
Palemad B.O., Edakkara, Malappuram : 679 331

4. Smt. P.Vanajakumari, W/o. K.S. Karunakaran Nair,
GDS BPM, Modapoika BO, Edakkara, Manjeri Division,
Malappuram District, Residing at Ambalaparambil,
Modapoika BO, Edakkara, Malappuram : 679 331

5. Ummer Poonthala, S/o. Mohammed,
GDS MD, Chemrakkatur BO, Areakode, Manjeri Division,
Malappuram District, Residing at 'Munhakottil House',
P.O. Chemrakkattur, Areacode, Malappuram ... Applicants.

(By Advocate Mr. Shafik M.A)

VS.

1. Union of India, represented by
The Chief Postmaster General,
Kerala Circle, Trivandrum

2. The Superintendent of Post Offices
Manjeri Division, Manjeri, Malappuram ... Respondents.

(By Advocate Mr. M.M. Saidu Mohammed)

13. O.A. No. 372/2008

1. F. Saji.,
GDS MD,
Poovathoor P.O.,
Pazhakutty, Nedumangad.

2. G. Sajikumar,
GDS MP, Peroorkada P.O.,
Thiruvananthapuram.

3. K. Anil Kumar,
GDS MP, Kanjirampara,
Thiruvananthapuram .

4. V.S. Ajithkumar,
GDS MP/MC,
Pulluvila P.O., Thiruvananthapuram.

5. B. Mohana Chandran,
GDS BPM, Vedivachan Kovil,
Balaramapuram.

6. P. Sakthidharan Nair,
GDS MD, Maruvamoodu B.O.,
Nemom, Thiruvananthapuram.

7 V. Chandra Babu,
GDS MD, Kottakakam,
Aryanad, Thiruvananthapuram.

8. S. Sasikumar,
GDS MD, Pachalloor,
Thiruvannathapuram.

9. R. Kumari Sailaja,
GDS BPM, Kattakada,
Thiruvananthapuram.

10. D. Watson,
GDS MD, Kattakode,
Thiruvananthapuram.

11. E. Valsala,
GDS BPM, Amachal,
Kattakada, Thiruvananthapuram.

12. K. Madhusoodanan Pillai,
GDS MD, Kokkottela P.O.,
Aryanad, Thiruvananthapuram.

13. M. Gopakumara Nair,
GDS MP, Poojappura Junction P.O.,
Thiruvananthapuram.

14. T. Surendran,GDS MD, Chalkottukonam P.O.,
Amaravila, Thiruvananthapuram.

15. N. Murukan,
GDS MC, Kokkottela P.O.,
Aryanad, Thiruvananthapuram.

16. S. Sreekumaran Nair,
GDS MD, Cheeriyakolla P.O.,
Karakonam, Thiruvananthapuram.

17. N. Soman,
GDS BPM, Chullimanoor,
Nedumangad, Thiruvananthapuram.

18. D. Sankaran Kutty,
GDS MP, Sasthamangalam P.O.,
Thiruvananthapuram.

19. K. Manikantan Nair,
GDSMD, Vellyannoor P.O.,
Vellanad, Thiruvananthapuram.

20. D. Parameswaran Nair,
GDS MD-I, Pozhiyoor P.O.,
Thiruvananthapuram.

21. S. Sobhana Kumari,
GDS BPM, Nettayam P.O.,
Thiruvananthapuram.

22. All India Postal Extra Departmental Employees Union,
Kerala Circle, Represented by its Circle Secretary,
D. Sankaran Kutty,
GDS MP, Sasthamangalam P.O.,
P&T House, Thiruvananthapuram - 1. ... Applicants.

(By Advocate Vishnu S. Chempazhanthiyil)

Vs.

1. The Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram - 14.

2. Union of India, represented by the
Chief Post Master General,
O/o the C.P.M.G., Kerala Circle,
Thiruvananthapuram - 695 033. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

14. O.A. No. 381/2008

1. N. Sugandhi,
GDS BPM,
Kavalayur, Moongode,
Thiruvananthapuram.

2. M. Subeena Kumari,
GDS BPM,
Ponganadu,
Thiruvananthapuram .... Applicants.

(By Advocate Vishnu S. Chempazhanthiyil)

Vs.

1. The Senior Superintendent of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram - 1.

2. Union of India, represented by the
Chief Post Master General,
O/o the C.P.M.G., Kerala Circle,
Thiruvananthapuram - 695 033. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

15. O.A. No 399/2008

1. A.V.Premarajan, S/o. Late A.V. Koran,
GDS MD II Aroli, Kannur : 670 566

2. K.K.Jayan, S/o. Late K.C. Kunhiraman,
GDS MD, Poduvancherry, Padachira : 670 621

3. Raveendran, S/o. K. Kumaran,
GDS MP, Talap, Kannur : 670 002

4. P.A. Gopalakrishnan, S/o. P.K. Ayyappan,
GDS MP, Vellad PO, Via Alakode : 670 571

5. K. Suresh Babu, S/o. K. Kumaran,
GDS MD II, Iriveri, Kannur : 670 614

6. K. Mukundan, S/o. Late Achutha Warrier,
GDS MD I, Ariyil PO, Pattuvam : 670 143

7. K.G. Radhakrishnan, S/o. Late Gopalan Nair,
GDS MD I, Manakadavu, Alakode : 670 571

8. S.T.Govindan, S/o. Late K.P. Narayanan Nambiar,
GDS MD II, Naduvil : 670 582

9. K.T.N. Balakrishnan, S/o. V. Krishnan Nair,
GDS MC, Thattummal, Cherupuzha : 670 511

10. M.P. Visanathan, S/o. Late M.K. Parameswaran Nair,
GDS MP, Chemperi : 670 632

11. P.V. Janardhanan, S/o. Late Kannan Komaram,,
GDS MD II, Kariveliur : 670 521

12. E. Prasanth, S/o. M. Krishnan,
GDS MP, Kannur Civil Station, Kannur : 670 002

13. P.V. Sathyavathi, D/o. P.V. Kunhiraman,
GDS BPM, Nanicherry PO,
Parassinikadavu : 670 563

14. Parukutty.P.V , D/o. Appa K.V,
GDS MP, Pattuvam : 670 143

15. K. Remeshan, S/o. Raman Nair P,
GDS MD II, Koyyode, Kadachira : 670 621

16. M. Vijaya Raghavan, S/o. Raghavan M,
GDS MD, Kuttikol, Taliparamba : 670 141 ... Applicants.

(By Advocate Mr. P.K.Ravishanker)

VS.

1. Union of India, repreented by its
Secretary, Department of Posts,
New Delhi

2. Chief Post Master General
Office of the CPMG, Kerala Circle,

Thiruvananthapuram

3. The Post Master General
Nothern Region, Kozhikode

4. The Superintendent of Post Offices,
Kannur Division, Kannur. ... Respondents.

(By Advocate Mr. S. Abhilash, ACGSC)

16. O.A. No. 404 /2008

1. K. Krishna Pillai,
GDS MP,
Neyyattinkara Town P.O.,
Thiruvananthapuram.

2. K. Unnikrishnan Nair,
GDS MD, Venpakal,
Neyyattinkara HO,
Thiruvananthapuram. ... Applicants.

(By Advocate Vishnu S. Chempazhanthiyil)

Vs.

1. The Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram - 14.

2. Union of India, represented by the
Chief Post Master General,
O/o the C.P.M.G., Kerala Circle,
Thiruvananthapuram – 695 033. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

17. O.A. No. 405/2008

1. P.M. John, S/o. P.T. Mani,
Working as GDS MD, Peroor, Residing at
Pokkidiyil House, peroor P.O., Kottayam : 686 637

2. C.B. Prathapkumar, S/o. Bhaskara Pillai,
Working as GDS MD Mannanam P.O., Residing at
Karathedath House, Arpookara P.O., Kottayam : 686 608

3. S. Prasannakumar, S/o. Sankara Pillai,
Working as GDS Stamp Vendor, Kaduthuruthy,
Residing at Lekha House, Kumaranelloor P.O.,
Kottayam

4. N.P. John, S/o. Paulose,
Working asGDS MD Ramapuram.P.O., Residing at
Njarakkattu House, Anthinad P.O., Kottayam.

5. P.N. Gopakrishnan Nair, S/o. Narayanan Nair,
Working as GDS MD, Kidangoor South.P.O.,
Residing at Punnavelil House, Kidangoor South,
Kottayam : 686 583

6. M.S. Pankajakshan Nair, S/o. Sukumaran Nair,
Working as GDSMD/MC Kummanam P.O.,
Residing at Mecheril House, Aymanam P.O.,
Kottayam :

7. A.J. Joy, S/o. Joseph,
Working as GDS MD, Thiruvampady.P.O.,
Residing at Anchampil House, Thiruvampady,
Neizhoor : 686 612

8. N.M. Joseph, S/o. Michale,
Working as GDS MD, Memuri, Residing at
Njarakkattil House, Memur P.O., Kottayam : 686 617

9. K. Vidyasagar, S/o. C.K. Kelappan,
Working as GDS MD, Muthambalam, Residing at
Kareeknnel House, Thiruvandoor,
Kottayam : 686 037

10. S. Ushakumary, D/o. Narayana Pillai,
Working as GDS SPM, Chempu.P.O., Residing at
Kankumangalam, Chempu P.O., Vaikom.

11. C. Gopalakrishnan, S/o. Chellappan Chettiar,
Working as GDS Stamp Vendor, Bharanaganam,
Residing at Kunnathu House, Kanam P.O., Kottayam

12. P.N. Ramadevi, D/o. Narayanan Nair,
Working as GDS Mail Packer, Monippally, Residing at
Amabdiyil House, Monippally P.O., Kottayam.

13. M.B. Somasundaram, S/o. Bhaskaran,
Working as GDSMD/MC, Anjoottimangalam,
Anjoottimangalam P.O., Kottayam.

14. M.G. Chandrashasan, S/o. Gopalain,
Working as GDS Mail Carrier, Kurinjl, Residing at
Muttiyanikunnel House, Kaimkannam,
Nellappara : 686 586

15. K.K. Jayachandran, S/o. Kumaran
Working as GDS MD, Ullanad.P.O., Athinad,
Residing at Kandathinkara House, Ullanad,
Anthinad P.O. ... Applicants.

(By Advocate Mr. P.C. Sebastian)

VS.

1. Senior Supdt. of Post Offices,
Kottayam Division, Kottaym : 686 101.

2. The Post Master General,
Central Region, Kochi : 686 018

3. The Director General of Posts,
Dak Bhavan, New Delhi.

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

(By Advocate Mr. Subhash Syriac, ACGSC)

18. O.A. No. 406/2008

1. P.P. Radhakrishnan, S/o. Prahhakaran Pillai, Gramin Dak Seval Mail Packer, Kalamassery Post Office, Ernakulam Division, Ernakulam : 683 104, Residing at Puthalath Marayil House, Ferry Road, Kalamasery.

2. Sheela M. Joseph, Gramin Dak Sevak Stamp Vendor, Vyttila Post Office, Ernakulam Division, Ernakulam : 683 019, Residing at Puthiyadath House, Panangad P.O., Kochi : 682 506

3. George K Varghese, S/o. K.V. Varkey, Gramin Dak Sevak Mail Packer, Matsyapuri P.O., Ernakulam Division, Kochi – 682 029, Residing at Kunamkuzhakkal House, Panntuparambil, Irimpanam, Ernakulam : 682 309

4. Indira.K.R, W/o. B. Muraleedharan, Gramin Dak Sevak Branch Post Master, Vadacode.P.O., Ernakulam Division, Thrikkakara : 682 021, Residing at Kallingal House, Kalamassery P.O., Ernakulam : 683 104.

5. Lissy .P.P , W/o. Thomas P.V, Gramin Dak Sevak Branch Post Master, Vadayampady.B.O., Ernakulam Division, Puthencruz : 682 305

6. K.K. Giri Kumar, S/o. Kuppuswamy, Gramin Dak Sevak Mail Deliverer, Kothad, Ernakulam Division, Chittoor, Kochi – 682 027, Residing at Laxmi Nivas, Hanuman Kovil Road, Kochi – 27

7. Lakshmi Devi. P, W/o. K.C. Raveendran, Gramin Dak Sevak Branch Post Master, Eroor South P.O., Ernakulam Division, Eroor : 682 306, Residing at Pulickal House, Eroor South P.O., Eroor : 682 006

8. Elizabeth Koshy, W/o. P.V. Eldhose, Gramin Dak Sevak Branch Post Master, Rajagiri Post Office, Ernakulam Division, Kalamassery – 683 104, Residing at Venmony Villa,, K.D.P.P.O (KD Plot), Kalamassery – 683 109

9. P. Jalaja, W/o. O. Chandrasekharan, Gramin Dak Sevak Branch Post Master, Edappally North, Ernakulam Division, Edappally North : 682 034.

10. Sasi K.N, S/o. Narayanan, Gramin Dak Sevak Mail Deliverer, Nadakavu BO, Udayamperoor Post Office, Ernakulam Division, Ernakulam : 682 307, Residing at Kizhakkeveliyil House, Udayamperoor, Ernakulam : 682 307

11. Thomas.E.V , S/o. Varghese E.A, Gramin Sevak Branch Post Master, Pizhala Branch Office, Ernakulam Division, Chittoor – 682 027, Residing at Edathil House, Pizhala P.O., Chittoor, Ernakulam : 682 027.

12. R.S. Valsa, W/o. P.N. Sidharthan, Gramin Dak Sevak SPM, Azheekal, Ernakulam Division, Vypeen : 682 510 , Residing at Paruthezeth House, P.U. Radhakrishnan P.P. Sheela M. Joseph George K Varghese Indira K.R. Lissy P.P, K.K. Giri Kumar Lakshmi Devi P. Elizabeth Koshy P. Jalaja Sasi K.N. Thomas E. Vthuvype, Ernakulam : 682 508

13. Rajendran.V, S/o. S. Vankadachilam, Gramin Dak Sevak Mail Deliverer, Rajagiri Post Office.Ernakulam Division, Kalamassery : 683 104, Residing at Sopanam, Rajagiri P.O., Kalamassery : 683 104

14. Chandran.K.K, S/o. Krishnan, Gramin Dak Sevak Mail Deliverer II, Kanjiramattom.P.O., Ernakulam Division, Ernakulam District : 682 315, Residing at Kallamparambil House, Kanjiramattom P.O. : 682 315

15. Thilakan.K.S, S/o. Sekharan (late), Gramin Dak Sevak Branch Postmaster, Nedumgad.B.O., Ernakulam Division, Nayarambalam : 682 509, Residing at Kattoonil, Edavankad P.O., Ernakulam : 682 502.

16. Saseendran.K.K, S/o. Raman Kunju Kutty, Gramin Dak Sevak Mail Deliverer, Kaninadu.P.O., Ernakulam Division, Vadavucode P.O. :682 310, Residing at Kandothumoolayil, Kanilinadu P.O., Valavucode, Ernakulam : 682 010

17. Syed Sulaiman.K.S, S/o. Syed Ismail, Gramin Daak Sevak Mail Deliverer, Kumbalangi South P.O.,Ernakulam

18. K.A. Jossy, S/o. K.F. Anthappan, Gramin Dak Sevak Branch Post Master, Chellanam P.O., Kannamally, Ernakulam Division, Cochin – 682 008, Residing at Kurisinkal House, Kandakkadavu, Andikkadavu P.O., Kannamally, Cochin – 682 008

19. Murugesh Babu.V.K, S/o. V.A. Kunjan, Gramin Dak Sevak Kannamaly, Ernakulam Division, Cochin : 682 008, Residing at Vazhakuttathil House, Kannamaly P.O., Cochin : 682 008.

20. Daisy K.A, W/o. Sebastian K.A., Gramin Dak Sevak Branch Post Master, Puthuvype, Ochanthuruth, Ernakulam Division, Cochin – 682 508, Residing at Kappithamparambil, Puthuvype P.O., Kochi. ... Applicants.

(By Advocate Ms. Rekha Vasudevan)

VS.

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

2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram.

3. The Senior Superintendent of Post Offices,
Ernakulam Division, Ernakulam. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

19.O.A. NO. 407/2008

1. T.A. Prasad, S/o. late Kunjan Achuthan,
Working as Gramin Dak Sevak Mail Deliverer,
Pangada BO, Pampady SO, Kanjirappilly Sub Division,
Changanassery Division, Residing at Thakidiyil House,
Pangada PO, Pampady, Kottayam.

2. K.R. Soman Nair, S/o. late Raghavan Nair,
Working as Gramin Dak Sevak Mail Packer,
Kunnamvechoochira, Mundakkayam Sub Division,
Changanassery Division, Residing at Kizhakkepparambil
House, Kunnamvechoochira, Kottayam.

3. H. Asharaf, S/o. late Hameed Rawther,
Working as Gramin Dak Sevak Mail Deliverer,
Pallikkachira Kavala SO, Changanassery Division
residing at Mangalawkunnil House,
Payippad, Pallickachira PO, Kottayam. : Applicants

(By Sri.O.V.Radhakrishnan, Senior Advocate with Advocates Smt.K.Radhamani Amma, Sri.Antony Mukkath, Sri.K.V.Joy and Sri.K.Ramachandran)

VS.

1. Superintendent of Post Offices,
Changanassery Division, Changanassery-686 101.

2. Postmaster General,
Central Region, Kochi.

3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Director General of Posts,
Dak Bhavan, New Delhi.

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

(By Advocate Sri.Sunil Jose, ACGSC)

20. O.A. No. 408 of 2008

1. J. Samuel Kutty, S/o. Late, p. John,
   Gramin Dak Sevaks, Mail Deliverer,
   Mannady, Pathanamthitta Division,
   Pathanamthitta, Residing at Thachakottukizhakethil,
   Mannady, Adoor, Pathanamthitta, Pin-691530.

2. P. Karthikeyan Pillai, S/o. M. Purushothaman Pillai,
   Gramin Dak Sevaks, Mail Carrier, Cherukulam,
   Pathanamthitta Division, Pathanamthitta,
   Residing at Abhilash Bhavan, Anchal,
   Pathanapuram : Pin-691306. ... Applicants.

(By Advocate Mr. M.R. Hariraj)

Vs.

1. The Suprintendent of Post Offices,
   Pathanamthitta Division, Pathanamthitta.

2. The Chief Post Master General, Kerala Circle, Trivandrum-33.

3. Union of India, represented by Secretary to
   Government of India, Ministry of Communication,
   New Delhi. ... Respondents.

(By Advocate Mrs. Aysha Youseff)

21. O.A. 410/2008

1. K.K.Rajan Kutty, S/o.T.O.Kunjukunju, Gramin Dak Sevaks, Ayravan Branch Office, Pathanamthitta Division, Pathanamthitta, Residing at Kundonumelathil, Ayravan P.O., Pathanamthitta, Pin-689691.

2. K.K.Sasi,S/o.Krishnan,
   Gramin Dak Sevaks, Mail Deliverer,
   Naranammoozhy, Pathanamthitta Division,
   Pathanamthitta, Residing at Kallunkal House,
   Adichipuzha P.O., R. Perunad, Pin-689711.

3. N. Balakrishnan, S/o. Narayanan,
   Gramin Dak Sevaks, Karavoor,
   Pathanamthitta Division, Pathanamthitta,
   Residing at Mangaithu Veedu, Karavoor P.O.,
   Piravanthoor, Pin-689696.

4. K. Vijayan, S/o. Kochika, Gramin Dak Sevaks, Kunnicode,
   Pathanamthitta Division, Pathanamthitta, Residing at Pazhamthottil
   Veedu, Kunnicode P.O., Vilakudy Village, Pin-691508.

5. Thankamma A.T., D/o. V.M. Thankappan,
Gramin Dak Sevaks, Pathanamthitta Division,
Pathanamthitta, Residing at Parakkal Olikal House,
Nedumkunnam P.O., Nedumkunnam,
Karukacha Pin-686542.

6. K. Ramachandran Pillai, S/o. G. Karunakaran Pillai,
Gramin Dak Sevaks, Thadicadu,
Pathanamthitta Division, Pathanamthitta,
Residing at Devi Dersan Thevarthottam,
Thadicadu P.O., Anchal, Pin-691306.

7. R. Ravindra Bhakthan, S/o. Ramachandra Bhakthan,
Gramin Dak Sevaks, Kattur, Pathanamthitta Division,
Pathanamthitta, Residing at Chakkattu House,
Cherkole P.O., Pin-689650.

8. Rajan Nair, s/o. K.P. Krishnan Nair,
Gramin Dak Sevaks, Manampuzha,
Pathanamthitta Division, Pathanamthitta,
Residing at Muduvarickal, Kadampanda South,
Adoor, Pin-691553.

9. Sathesh Kumar, S/o. C.T. Kesavan,
Gramin Dak Sevaks, Kozhencherry College P.O.,
Pathanamthitta Division, Pathanamthitta,
Residing at Chandayil Hosue,
Kozhencherry East P.O., Pin-689641.

10. P.R. Sasi, S/o. P.K. Raghavan, Gramin Dak Sevaks, Mampara,
Pathanamthitta Division, Pathanamthitta, Residing at Edamuriyil
Veedu, Kallayakpuzha, Makkuzhi P.O., Pin-689664.

11. K.C. Chandrachandran Nair, S/o. Chandrasekharan Nair,
Gramin Dak Sevaks, Elappupara, Pathanamthitta Division,
Pathanamthitta.

12. Ajil Kumar V.A., S/o. Achuthan Pillai,
Gramin Dak Sevaks, Elanthoor, Pathanamthitta Division,
Pathanamthitta, residing at Thekkethil,
Elanthoor, Pin-686643.

13. K. Navab, S/o. P.A. Hameed Sahib, Gramin Dak Sevaks, Uthimoodu,
Pathanamthitta Division, Pathanamthitta, Residing at Thadathil House,
Ranny P.O., Pin-686672.

14. Sujatha K., D/o. Krishnan Kutty, Gramin Dak
Sevaks, Edamulakal, Pathanamthitta Division,
Pathanamthitta, Residing at Ettivila Veedu,
Placheri P.O., Pin-691331. .... Applicants.

(By Advocate Mr. M.R. Hariraj)

Vs.

1. The Superintendent of Post Offices,
Pathanamthitta Division, Pathanamthitta.

2. The Chief Post Master General, Kerala Circle, Trivandrum-33.

3. Union of India, represented by Secretary to Government of India, Ministry of Communication, New Delhi. ... Respondents

(By Advocate Mr. P.A. Aziz, ACGSC)

22. O.A. 412/2008

1. P.C. Anilkumar, S/o. K.P. Chandrasekharan Nair, Gramin Dak Sevak Mail Man, SRO, RMS TV Division, Kottayam, Residing at Kizhakeppazhoor, N.S.H. Mount P.O., Kottayam : 682 006

2. S. Sarin, S/o. P.N. Sabu, Gramin Dak Sevak Mail Man, SRO, RMS, TV Division, Kottayam, Residing at Kattamparambil House, Velloor P.O., Pampady : 686 575 ... Applicants.

(By Advocate Mr. M.R. Hariraj)

VS.

1. Senior Supdt. of Railway Mail Service, TV Division, Trivandrum - 1

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

3. Union of India, represented by Secretary to Government of India, Ministry of Communications, New Delhi. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

23. O.A. NO. 421/2008

1. P.A.Bhaskaran, S/o. late Aryan, Working as Gramin Dak Sevak Mail Deliverer, Vavad, Residing at Pallikunnummel House, P.O.Puthupady, Via Thamarasserry, Calicut.

2 Rajamma Raghavan, D/o. Sri.Raghavan, Working as Gramin Dak Sevak Branch Postmaster, Puthur P.O. Koduvally-673 572. Residing at 'Karapattapoyil House, Omasserry Post, Koduvally, Calicut-673 572.

3. Vinod Justin.M.K., S/o. late Benchamin M.K. Working as Gramin Dak Sevak Letter Box Peon, Calicut HPO, Residing at Marakkattu Poyil House, Vellimadukunnu P.O., Calicut -673 012.

4. P.Arunkumar, S/o. late Raghavan Nair,
Working as Gramin Dak Sevak Mail Deliverer,
Kolathara P.O., Calicut, Residing at Paranattil House
(Gokulam) P.O.Kolathara, Calicut-673 655.

5. C.M.Issac, S/o. late Mathew,
Working as Gramin Dak Sevak Mail Carrier,
Nenmenikunnu, Calicut, Residing at Cheerakathottathil
Nambikolly, Cheeral (Via)-673 595, Kozhikode.

6. Manoharan.K.V., S/o. late Chathunni,
Working as Gramin Dak Sevak Mail Packer,
Arakinar, Residing at Thodukapadom, Arakinar P.O.,
Calicut-673 028.

7. Viswanathan P.T., S/o. late Ramankutty,
Working as Gramin Dak Sevak Branch Postmaster,
Thachampoyil, Residing at Puthentheruvil House,
Thachampoyil P.O., Thamarassery (Via),
Calicut-673 573. : Applicants

(By Srl.O.V.Radhakrishnan, Senior Advocate with Advocates Smt.K.Radhamani Amma, Sri.Antony Mukkath, Sri.K.V.Joy and Sri.K.Ramachandran)

VS.

1. Senior Superintendent of Post Offices,
Calicut Division, Calicut-673 003.

2. Postmaster General,
Northern Region, Calicut.

3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Director General of Posts,
Dak Bhavan, New Delhi.

5. Union of India
Represented by its Secretary,
Ministry of Communications
New Delhi. : Respondents

(By Advocate Smt. K.Girija, ACGSC)

24. O.A. NO. 422/2008

1. K.P.Ravindran, S/o. Sri. Parangodan,
Working as Gramin Dak Sevak Mail Carrier,
Naduvattom and acting Postman, Chalisseri - 679 536
Residing at Kizhakepurakkal House,
Tiruvegapara PO.

2 K.Unnikrishnan, S/o. late K.Kali,
Working as Gramin Dak Sevak Mail Deliverer,
GS Sadan, Perur, Ottapalam-679 302
Residing at Vaniyamparambil House,
P.O.Perur, Ottapalam.

3. M.Narayanan, S/o. late Raman Nair,
Gramin Dak Sevak Mail Deliverer,
Peringode, presently working as acting Group D,
Trithala-679 534
Residing at Manalath House, P.O.Kavukkod,
Via Chalissery, Palakkad District-679 536.

4. M.Pariyani, S/o. Kunchan,
Gramin Dak Sevak Mail Deliverer-II,
Kanhirapuzha, presently working as acting Postman,
Mannarkkad-678 582, Residing at Mundakunnath House,
Kanhirapuzha P.O.-678 591.

5. K.C.Chathu, S/o. late Thoompan,
Gramin Dak Sevak Mail Deliverer,
Presently working as acting Postman, Sreekrishnapuram,
Residing at Kanattuthody, P.O.Sreekrishnapuram-679 513.

6. M.V.Chandrasekharan, S/o. late Krishna Variar.M.V.
Working as Gramin Dak Sevak Mail Deliverer,
Karkitamkunnu-678 605.
Residing at Melevariyam, Karkitamkunnu P.O.

7. K.C.Thankappan, S/o. late Neelakandan,
Gramin Dak Sevak Mail Packer,
Kanniampuram-679 104 , presently working as
Acting Group-D, Ottapalam HO,
Residing at Kuzhikattil House,
Kanniyampuram P.O., Ottapalam-679 104. : Applicants

(By Sri.C.V.Radhakrishnan, Senior Advocate with Advocates Smt.K.Radhamani Amma, Sri.Antony Mukkath, Sri.K.V.Joy and Sri.K.Ramachandran)

VS.

1. Superintendent of Post Offices,
Ottappalam Division, Ottapalam-679 101.

2. Postmaster General,
Northern Region, Kozhikode.

3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Director General of Posts,
Dak Bhavan, New Delhi.

5. Union of India
Represented by its Secretary,
Ministry of Communications
New Delhi : Respondents

(By Advocate Smt. Mini R Menon, ACGSC)

25. O.A. NO. 436/2008

1. **Smt. Laly Thomas, D/o. Easo Thomas,**
GDSSV, Kayakulam H.O.,
Residing at Kaikara Tharyil, Kappil Mekku,
Krishnapuram P.O.

2. Sri. K. Vijayan, S/o. S. Kuttappan,
GDSMD, Vettiyar P.O., Residing at Sreekanth,
Vettiyar P.O.

3. Sri. K. Gopalakrishnan, S/o. Kunchan,
GDSMD, Choolatheruvu, residing at Kottolil, Chingoli.

4. Sri. P. Gopalakrishnan, S/o. Parameswaran,
GDSMD, Pela, residing at Manappallil Vadakkethil,
Pela, Thattarambalam P.O.

5. Smt. P.S. Sreekumari, D/o. Sivarama Pillai,
GDSSV, Mavelikkara H.O., Residing at Elayakandathil
Thekkethil, Kandiyoor, Thattarambalam P.O.

6. Smt. Sudharma G., D/o. Gopalan,
GDSMP, Kareelakulangara, Residing at Chakkummuri
Vadakkekandathil, Ramapuram, Keerikad.

7. Sri. S. Chandran Pillai, S/o. Sukumara Pillai,
Muthukulam South, residing at Malappurathu
Kizhakkethil, Muthukulam South. .... Applicants.

(By Advocate Mr. M.R. Hariraj)

Vs.

1. The Superintendent of Post Offices,
Mavelikara Division, Mavelikara.

2. The Chief Post Master General, Kerala Circle,
Trivandrum-33.

3. Union of India, represented by Secretary to
Government of India, Ministry of Communication,
New Delhi. ... Respondents.

(By Advocate Mr. S. Abhilash, ACGSC)

26. O.A.No.437/2008

1. P.K. Ramachadran, S/o. Kochukunju Kittan, GDSMD,
Muthoor Residing at Puthnchirayil, Pallakara,
Thiruvalla.

2. S. Vijayan, S/o. Sankaran, GDSMD, Pandanad, Residing at Kandathil
House, Vanmazhy, Pandanad P.O., Chengannur.

3. M.T. Jayakumar, S/o. Late. V.K. Thankappan Pillai, GDSMD, Kuttur, Residing at Chettymadathil, Manjadi P.O., Thiruvalla.

4. V.J. Vijayan, S/o. Krishnan Janardhanan, GDSMD, Karikuzhy B.O., Residing at Vallikandathil, Karikuzhy P.O., Thalavady, Alappuzha.

5. K.V. Rajan, S/o. K.P. Vasu Panicker, GDSMD, Malakkara, residing at Kurumpolil, Vanmazhy, Pandanad P.O., Chengannur. ... Applicants.

(By Advocate Mr. M.R. Hariraj)

Vs.

1. The Superintendent of Post Offices, Thiruvalla Division, Thiruvalla.

2. The Chief Post Master General, Kerala Circle, Trivandrum-33.

3. Union of India, represented by Secretary to Government of India, Ministry of Communication, New Delhi. .... Respondents.

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

27. O.A. NO. 463/2008

K.G. Subramanyan,
S/o. the late Gopalan Chetty,
Working as Gramin Dak Sevak Mail Deliverer,
Nenmenikkunnu BO, Calicut Division,
Residing at Kakkavayal House,
Nenmenikkunnu P.O.,
Via. Cheeral, Pin -673 595. : Applicant

(By Sri.O.V.Radhakrishnan, Senior Advocate with Advocates Smt.K.Radhamani Amma, Sri.Antony Mukkath, Sri.K.V.Joy and Sri.K.Ramachandran)

VS.

1. Senior Superintendent of Post Offices, Calicut Division, Calicut-673 003.

2. Postmaster General, Northern Region, Calicut.

3. Chief Postmaster General, Kerala Circle, Thiruvananthapuram.

4. Director General of Posts, Dak Bhavan, New Delhi.

5. Union of India
Represented by its Secretary,
Ministry of Communications
New Delhi. : Respondents

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

28. O.A. No. 524/2008

1. R. Udayan,
GDS MD,
Chittatumukku P.O,
Thiruvananthapuram

2. S. Reghunathan Nair,
GDS MD,
Ayroorpara PO,
Pothencode,
Thiruvananthapuram ..... Applicants.

(By Advocate Mr. Vishnu S. Chempazhanthiyil)

Vs.

1. The Senior Superintendent of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram - 1.

2. Union of India, represented by the
Chief Post Master General,
O/o the C.P.M.G., Kerala Circle,
Thiruvananthapuram – 695 033. ..... Respondents.

(By Advocate Mrs. Mini R. Menon)

29. O.A. No. 525/2008

1. S. Gopalakrishna Naik,
GDS BPM,
Ednad B.O.,
Kumble MDG – 671 321,
Kasaragode.

2. K. Vasu,
GDS MD,
Ramdasnagar B.O.,
Kudlu SO – 671 124,
Kasaragode.

3. S. Shankaranarayana,
GDSBPM,
Shiribagilu BO, Kudlu – 671 124,
Kasaragode.

4. N.P. Shivarama Shetty,
GDSMD,
Kumbla MDG – 671 321,
Kasaragode.

5. B. Shridhara,
GDSP,
Perla S.O. – 671 552,
Kasaragode.

6. P. Koosappa Gowda,
GDSMD, Kakkebettu BO,
Mulleria SO – 671 543,
Kasaragode. ... Applicants.

(By Advocate Vishnu S. Chempazhanthiyil)

Vs.

1. The Superintendent of Post Offices,
Kasaragode Postal Division,
Kasaragode.

2. Union of India, represented by the
Chief Post Master General,
O/o the C.P.M.G., Kerala Circle,
Thiruvananthapuram – 695 033. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

30. O.A No. 560/2008

1. V.K. Mohanan, S/o. Kunji Ayyappan,
GDSMD, Karumathara, Irinjalakuda Division,
Residing at Variyath Parambil House,
Puthenchira P.O., Pin-680 682, Trissur.

2. Radhika K., W/o. Ramachandran,
Madavana, Residing at Koonezhatg House,
Methala P.O., Kodungallur, Pin-680 669.

3. T.G. Radhakrishanan, S/o. Gorlian,
LB Peon, Residing at Thekkedath House,
Annamanada P.O., Trissur.

4. C.M. Subramanian, S/o. Madhavan C.K.,
Perinjanam, Residing at Chennara House,
Padiyoor P.O., Pin-680 695, Trissur.

5. Shanmughan K.C., S/o. Cherungoran,
Kaipamangalam Beach, Residing at
Kalathedath House, Perinjanam P.O.,
Trissur : 680 686 ... Applicants.

(By Advocate Mr. M.R. Hariraj)

Vs.

1. Union of India, represented by Secretary to Government, Department of Posts, Ministry of Communication, New Delhi.
2.

2. The Superintendent of Post Offices,
Irinjalakuda Division, Irinjalakuda.

3. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

31. O.A. No. 118/2008

K.J. Kuriakose, GDS Mailman,
Sub Record Office, Railway Mail Service,
Kottayam. ... Applicant.

(By Advocate Mr. Siby J. Monippally)

1. Union of India rep. by
Chief Postmaster General,
Kerala, Trivandrum

2. The Superintendent, Railway Mail Service,
Trivandrum Division, Trivandrum ... Respondents.

(By Advocate Mr.Raveendra Prasad A.D., ACGSC)

32. O.A. No. 573/2008

P.V.Mohanan
S/o. late Neelakandan,
GDS MC, Keezhillam, Perumbavoor SO,
Residing at Venchattukudy House,
Keezhillam P.O, Perumbavoor, PIN:683 541. : Applicant

(By Sri.O.V.Radhakrishnan, Senior Advocate with Advocates Smt.K.Radhamani Amma, Sri.Antony Mukkath, Sri.K.V.Joy and Sri.K.Ramachandran)

VS.

1. Senior Superintendent of Post Offices,
Aluva Division, Aluva

2. Postmaster General,
Central Region, Kochi.

3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Director General of Posts,
Dak Bhavan, New Delhi.

5. Union of India
Represented by its Secretary,
Ministry of Communications
New Delhi. : Respondents

(By Advocate Sri. TPM Ibrahim Khan, SCGSC)

33. O.A. No. 541/2008

T. Sreenivasan,
S/o. Sri. K. Chandran Nair,
Gramin Dak Sevak Mail Man,
Sub Record Office, RMS, 'CT' Division, HRO Calicut,
Presently officating as Group D, RMS, 'CT', Division,
Residing at 'Sreepadmam', Thatteril House,
Pantheerankavu Post, Calicut-19 : Applicant

(By Sri.O.V.Radhakrishnan, Senior Advocate with Advocates Smt.K.Radhamani Amma, Sri.Antony Mukkath, Sri.K.V.Joy and Sri.K.Ramachandran)

VS.

1. Superintendent,
RMS, 'CT' Division, Kozhikode.

2. Postmaster General,
Northern Region, Kozhikode,

3. Chief Postmaster General, Kerala Circle,
Thiruvananthapuram.

4. Director General of Posts,
Dak Bhavan, New Delhi.

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

(By Advocate Sri. TPM Ibrahim Khan, SCGSC)

34. O.A No. 583/2008

1. K.H. Meera Sahib,
GDS MP,
Vadasserykara P.O.,
Pathanamthitta District.

2. K.J. Somasekharan Nair,
GDS MP,
Madamom P.O.,
Pathanamthitta District.

3. T.T. Thomas,
GDS MP,
Maniyar, Vadasserykara,
Pathanamthitta District.

4. M. Kochuraman,
GDS MP,
Pazhakulam,
Pathanamthitta District. .... Applicants.

(By Advocate Vishnu S. Chempazhanthiyil)

Vs.

1. The Superintendent of Post Offices,
Pathanamthitta Postal Division,
Pathanamthitta.

2. Union of India, represented by the
Chief Post Master General,
O/o the C.P.M.G., Kerala Circle,
Thiruvananthapuram - 695 033. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

35. O.A. No. 618/ 2008

1. K. Rajasekharan Nair,
Casual Labourer,
Thiruvananthapuram GPO,
Thiruvananthapuram.

2. K. Ramachandran Nair,
Casual Labourer,
Thiruvananthapuram GPO,
Thiruvananthapuram. ... Applicants.

(By Advocate Vishnu S. Chempazhanthiyil)

Vs.

1. The Senior Post Master,
Thiruvananthapuram GPO,
Thiruvananthapuram - 1.

2. The Senior Superintendent of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram - 1.

3. Union of India, represented by
Chief Post Master General,
Kerala Circle, Trivandrum-33. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

36. O.A. No. 485/2008

1. K.K. Ayyappan, S/o. Kurumban,
Working as Gramin Dak Sevak Mail Deliverer,
Valayanchirangara P.O., Residing at
Kalluvettamparambil House, Valayanchirangara P.O.

2. K.R. Sasikumaran, S/o. Rambhadran,
Working as Gramin Dak Sevak Mail Deliverer,
Pezhakappally, Residing at Kaniankottil House,
Peshakappally P.O., Muvattupuzha : 686 674

3. N.P. Varghese, S/o. Philipose, Working as
Gramin Dak Sevak Mail Deliverer, Pezhakappally,
Residing at Nariyalil House, Nanari P.O.,
Muvattupuzha. ... Applicants.

(By Advocate Mr.P.C. Sebastian)

VS.

1. The Senior Supdt. of Post Offices,
Aluva Division, Aluva : 683 101

2. The Postmaster General,
Central Region, Kochi – 682 018

3. The Director General of Posts,
Dak Bhavan, New Delhi.

4. The Union of India, Represented by the
Secretary to Government of India,
Ministry of Communications, Department
of Posts, New Delhi ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

37. O.A. No. 598/2008

1. M. Ashokan, S/o. K. Narayanan,
GDS MD/MC, Mayipad Post,
Kasargod District.

2. K.M. Jose, S/o. M.M. Mathew,
GDS MC, Paramba, Kasargod District. ... Applicants.

(By Advocate Mr. P.K. Ravi Shanker)

VS.

1. Union of India, represented by its
Secretary, Department of Posts,
New Delhi.

2. Chief Postmaster General,
Office of the CPMG, Kerala Circle,
Thiruvananthapuram : 695 033

3. Postmaster General,
Northern Circle, Kozhikode.

4. The Superintendent of Post Offices,
Kasargod Division, Kasargod. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Before plunging into the facts of the case in each O.A. it would be appropriate, at the very outset, to focus upon the spinal issue involved in these O.As.

2. In the Postal Department, there are various Group D Posts. Earlier, there existed the Indian Posts and Telegraphs (Class IV posts) Recruitment Rules, 1970, which have, by the Department of Posts (Group 'D' Posts) Recruitment Rules, 2002 (vide notification dated 23rd January 2002), been superseded. The said 2002 Recruitment Rules provide for the methods to fill up various Group D posts. The schedule annexed to the Rules is in two parts viz.,

(a) Part I: Posts of Circle and Administrative offices; and

(b) Part II: Posts of Subordinate Offices.

3 We are not concerned with the former, i.e. part I, but only with the latter i.e. Part II and here again, the relevant posts are as contained in serial No. 1 under that Part of the Schedule, i.e. Peons, Letter Box Peons, Mail Peons, Packer, Porter, Runner, Van Peon, Orderly, Gate-men, Attendant-cum-Khansama, Cleaner in Mail Motor Service and Pump-men. These belong to the General Central Service Group 'D' Non-Gazetted posts carrying the pay scale (V CPC) of Rs 2550-55-2660-60-3200. The educational and other qualifications required for direct recruits is Middle School Standard Pass for all with desirable qualifications specified for some of the posts, such as Attendant-cum-

Khansama, etc., Probation is for two years. The method of Recruitment shall be in the manner specified below:-

"A test shall be held to determine the working efficiency of the candidates holding the post specified against Sl.No.2 for filling up the posts. In case the suitable candidates are not found to fill up the posts by such test, the remaining posts shall be filled up by the methods as specified below

(i)75% of the vacancies remaining unfilled after recruitment from employees mentioned at Sl.No.2 shall be filled by Gramin Dak Sevaks of the Recruiting Division or Unit where such vacancies occur failing which by Gramin Dak Sevaks of the neighbouring Division or Unit by selection-cum-seniority;

(ii)25% of the vacancies remaining unfilled after recruitment of employees mentioned at Sl.No.2 such vacancies shall be filled up by selection-cum-seniority in the following order:-

(a) by casual labourers with temporary status of the recruiting division or unit failing which,

(b) by full time casual labourers of the recruiting division or unit failing which,

(c) by full time casual labourers of the neighbouring division or unit failing which,

(d) by part time Casual Labourers of the recruiting division or unit failing which,

(iii)by direct recruitment.

Explanation.-1. For Postal Division or Unit, the neighbouring Division or Unit, as the case may be, shall be the Railway Mail service sub Division and vice versa.

2. The afore-mentioned test shall be governed by the instructions issued by the Central Government from time to time."

(Reference to Sl. No. 2 in the above provision means the post of Chowkidar /Watchman /Safaiwala/ scavenger/Gardener/Mali/ Water-man/ Bhisti/ Mazdoor/ Hamal/ Cleaner/ Rest House Attendant/ Battery men/ Ayah (Lady Attendant) / Mechanical Workmen /By

Hand Peon Lascars. These posts also carry the same scale of pay i.e. Rs 2550 – 3200.)

4. The composition of Departmental Promotion Committee has been as prescribed in column No.13 of the said schedule and the same is as under:-

(i) Divisional Head/Group A Postmaster as	*Chairman*
(ii) Another Group A or Group B Postal/RMS officer as the station or in the region as	Member
(iii) A Group B Officer from Telecom Department at the station or in the Region as	Member
The composition of DPC in PTCs shall be as follows:	
(i) Vice Principal as	Chairman
(ii) Administration Officer as	Member
(iii) A Group B Officer of Department of Telecom at the station/District as	Member

5. The Department has issued an office Memorandum dated 16th May, 2001 in regard to filling up of vacancies falling under the method of Direct Recruitment and according to the same, approval of the screening committee was made a pre-requisite for filling up such posts. The said Memorandum reads as under:-

"OFFICE MEMORANDUM

Sub: Optimisation of direct recruitment to civilian posts

The Finance Minister while presenting the Budget for 2001-2002 has stated that all requirements of recruitment will be scrutinized to ensure that fresh recruitment is limited to 1 per cent of total civilian staff strength. As about 3 per cent of staff retire every year, this will reduce the manpower by 2 per cent per annum achieving a reduction of 10 percent in five years as announced by the Prime Minister.

1.2 The Expenditure Reforms Commission had also considered the issue and had recommended that each Ministry/Department may formulate Annual Direct Recruitment Plans through the mechanism of Screening Committees.

2.1 All Ministries/Departments are accordingly requested to prepare Annual Direct Recruitment Plans covering the requirements of all cadres, whether managed by that Ministry/Department itself or managed by the Department of Personnel & Training etc. The Task of preparing the Annual Recruitment Plan will be undertaken in each Ministry/Department by a Screening Committee headed by the Secretary of that Ministry/Department with the Financial Adviser as a Member and JS (Admn) of the Department as Member Secretary. The Committee would also have one senior representative each of the Department of Personnel & Training and the Department of Expenditure. While the Annual Recruitment Plans for vacancies in Group B, C and D could be cleared by this Committee itself, in the case of Group A services, the Annual Recruitment Plan would be cleared by a Committee headed by Cabinet Secretary with Secretary of the Department concerned, Secretary (DOPT) and Secretary (Expenditure) as Members.

While preparing the Annual Recruiting Plans, the concerned Screening Committees would ensure that **direct recruitment** does not in any case exceed 1% of the total sanctioned strength of the Department. Since about 3% of staff retire every year, this would translate into only 1/3rd of the direct recruitment vacancies occurring in each year being filled up. Accordingly, direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the Department. While examining the vacancies to be filled up, the functional needs of the organisation would be critically examined so that there is flexibility in filling up vacancies in various cadres depending upon their relative functional need. To amplify, in case an organisation needs certain posts to be filled up for safety/security/operational considerations a corresponding reduction in direct recruitment in other cadres of the organization may be, done with a view to restricting the overall direct recruitment to one third of vacancies meant, for direct recruitment subject to the condition that the total vacancies proposed for filling up should be within the 1% ceiling. The remaining vacancies meant, for direct recruitment which are not cleared by the Screening Committees will not be filled up by promotion or otherwise and these posts will stand abolished.

2.3 While the Annual Recruitment Plan would have to be prepared immediately for vacancies anticipated in 2001-02, the issue of filling up of direct recruitment vacancies existing on the date of issue of these orders, which are less than one year old and for which recruitment action has not yet been finalised, may also be critically reviewed by Ministry/Departments and placed before the Screening Committees for action as at para 2.2 above.

2.4 The vacancies finally cleared by the Screening Committees will be filled up duly applying the rules of reservation, handicapped, compassionate quotas thereon. Further, administrative Ministries /Departments/ Units would

obtain before hand a No Objection Certificate from the Surplus Cell of the Department of Personnel & Training/Director General, employment and Training that suitable personnel are not available for appointment against the posts meant for direct recruitment and only thereafter place indents for Direct Recruitment. Recruiting agencies would also not accept any indents which are not accompanied by a certificate indicating that the same has been cleared by the concerned Screening Committee and that suitable personnel are not available with the Surplus Cell.'

3. **The other modes of recruitment (including that of 'promotion') prescribed in the Recruitment Rules/Service Rules would, however, continue to be adhered to as per the provisions of the notified Recruitment, Rules/Service Rules.**

4. The provisions of this Office Memorandum would be applicable to all Central Government Ministries/Departments/ Organisation including Ministry of Railways, department of Posts, department of Telecom, autonomous bodies wholly or partly financed by the Government, statutory corporation/ bodies, civilians in Defence and non/combatised posts in Para Military Forces.

5. All Ministry/Departments are requested to circulate the orders to their attached and subordinate offices, autonomous bodies, etc under their administrative control. Secretaries of administrative Ministries/Departments may ensure that action based on these orders is taken immediately."

6. In view of the fact that the remaining vacancies of Group D, after recruitment from non test category of Group D employees mentioned at Serial No. 2 (of Part II of the Schedule), are tenable by G.D.S. and Casual Labourers, at the prescribed percentage of 75% and 25% respectively, when the respondents did not take up steps to fill up such vacancies, a number of O.As were filed before the Tribunal. Some of the O.As were filed by the G.D.S., while some other by casual labourers. These O.As were allowed and when the respondents had taken up the matter before the Hon'ble High Court,the High Court after due considerations upheld the decision of the Tribunal and thus, dismissed the writ petitions. The details are given in the succeeding paragraphs.

7. OA No. 977/2003, OA 277/2003 and OA 115/2004 were filed by casual labourers and the decision of the Tribunal, allowing the O.As had been upheld by the High Court in WP 3618/2006 and CWP 4956/2006 decided on 22nd March 2007. The Tribunal in OA 115/2004 also held that approval of the Screening Committee is not necessary in such cases. OA 345/2005 and OA No. 263 of 2006 were filed by Gramin Dak Sevaks and these OAs have also been allowed.

8. Vide Order dated 7th October, 2005, in OA No. 977/2003 and 277/2003, the Tribunal has held as under:-

> "The question that arises therefore for consideration is whether the Screening Committee's approval is mandatory for filling up the posts with reference to the Recruitment rules. No documentary proof has been produced by the respondents to show what is the mandate of the Screening Committee referred to by them. It has been stated that Screening Committee's approval is required for filling up the vacancies by direct recruitment. From the reading of the rules it appears that the filling up of Group D posts by the method prescribed in Column 11 cannot be construed as the method for direct recruitment as direct recruitment has been prescribed as an alternative method only if the above procedure failed. Thus the method of recruitment followed appears to be in the nature of promotion only. If that be so, the policy followed by the respondents for appointment of Group D only with the approval of the Screening Committee is incorrect. It has resulted in filling up only limited vacancies on regular basis and filling up the remaining vacancies on ad hoc basis from the GDS and has created a situation where all the vacancies got to be manned by GDS only leaving out the other 25% category of Casual Labourers from consideration. This is certainly discriminatory and in violation of the prescription n the Recruitment rules.
>
> 10. Coming to the applicants in these OAs, it is admitted by the respondents themselves that the applicant in OA No.277/2004 belongs to the first preferential category and is the senior most and eligible to be appointed. It is also admitted by the respondents that the applicant in O.A.977/2003 is second in the list. Therefore both the applicants are eligible to be considered against the 25% quota for Casual Labourers and belonged to the first preferential category among the Casual Labourers i.e full time casual labourers with temporary status. Since the vacancy position has not been clearly stated by the respondents we are not in a position to compute the actual number of vacancies which fell within the 25% quota to which the applicants belong. However, the clear position that has emerged is that there are posts which the

respondents had not filled up on regular basis but which are being manned by making short term appointments from the GDS. In our view this action of the respondents is contrary to the Recruitment Rules and therefore illegal and discriminatory and that the applicants should have been considered against the 25% quota available to them. However, we are not in a position to accept the argument of the learned counsel for the applicants that the O.As are covered by the decision of this Tribunal in O.A. 901/2003 which was pertaining to the applicability of upper age limit of 50 years for appointment to the Group-D posts in the Recruitment Rules and not to the question of filling up the quota earmarked for casual labourers.

11. Though the applicants have prayed for certain other reliefs like increment. bonus, GPF contribution and other consequential benefits these are not pressed during the arguments and therefore have not been considered.

12 In view of the above, we hold that the omission of the respondents in filling up the substantive vacancies in Group-D which arose in Kollam Division in accordance with Annexure A4 Recruitment Rules is not sustainable and direct the respondents to take immediate steps for computing the Group-D vacancies available (year-wise) against 25% quota for Casual Labourers in accordance with the Recruitment Rules2002 and to appoint the applicants to these posts from the date of available vacancies with an consequential benefits within a period of three months from the date of receipt of a copy of this order.".

9. The above decision was challenged by the respondents in WP (c) No.3618 and 4956 of 2006 and the High Court by Judgment dated 22nd March, 2007 held as under:-

" The petitioners herein are challenging the common judgment of the Central Administrative Tribunal in O.A.Nos.977/2003 & 277/2004. Short facts leading to the case are the following:

2. The respondents in the writ petitions are working as Casual Labourers and they approached the Tribunal to issue appropriate directions to take immediate steps to appoint them as Group D against 25% quota set apart for casual labourers under the relevant recruitment rules 2002. The respondent in writ petition No.36118/2006 who is the applicant in O.A.977/2003, has been doing sweeping work in the office of the Senior Superintendent of Post Offices, Kollam Postal division, Kollam. She was appointed as a full time casual labourer with effect from 1.1.1997 and is continuing as such. The Department has conferred temporary status to him in implementation of an earlier order passed by the Tribunal. The respondent in Writ Petition No.4956/2006 who is the applicant in O.A.277/2004 was conferred with

temporary status with effect from 2.5.1999. In both cases the respondents claim their right for appointment against 25% vacancies of Group D posts.

3. The Tribunal in paragraphs 9 and 10 of the order, after considering the contentions of the parties, found that the method of recruitment provided in claims like these, is in the nature of promotion and it is not by way of any direct recruitment. It was also found that the contention raised by the petitioners that approval of the Screening Committee is mandatory for filling up of the posts, is not correct. The Tribunal, on an analysis of the relevant column of the recruitment rules, clearly found that the casual labourers who are entitled to be considered for promotion was left out from being promoted, resulting in discriminatory treatment. The Tribunal clearly found that there were sufficient vacancies which would definitely fall under the 25% category set apart for casual labourers. This being a finding of fact, it cannot be interfered with in proceedings under Article 227 of the Constitution of India and the petitioners could not point out that the said finding is perverse.

4. As far as the claim of the respondents for promotion is concerned, the petitioners clearly admitted in the pleadings that the applicant in O.A.277/2004, the respondent in Writ Petition No.4956/2006 is the seniormost eligible to be appointed and the respondent in writ Petition No.3618/2006 is the second in the list. They being casual labourers with temporary status, they are clearly covered by the method of recruitment. Accordingly, the Tribunal directed the petitioners to fill up the substantive vacancies in Group D which arose in Kollam Division in accordance with the relevant recruitment rules and to appoint the respondents to those posts from the date of vacancies.

5. The main contention raised by the petitioners is that prior approval of the Screening Committee is a must for filling up of the vacancies and also that the method of recruitment is only by way of direct recruitment. A reading of the recruitment rules will show that the contention raised by the petitioners that only direct recruitment is the method, is not correct. Apart from that, they are not justified in contending that prior approval of the Screening Committee is required, as the same is not provided under the recruitment rules. The finding rendered by the Tribunal that the respondents who are applicants before it are entitled for promotion, is therefore perfectly in order. At any rate, the view taken by the Tribunal is not so perverse warranting interference by this court under Article 227 of the Constitution of India.

Hence, the writ petitions are dismissed upholding the order of the Central Administrative Tribunal."

10. In OA No. 115/2004, the Tribunal by its order dated 23rd December 2005 held as under:-

"6. Nowhere it is mentioned in the above rules that the method of recruitment is by way of direct recruitment. According to the rules, the first method to be followed is by a test to determine the eligibility of the candidates holding the post specified in the rules and in case suitable candidates are not found, the remaining posts shall be filled up 75% by GDS of the Recruiting Division or Unit failing which by GDS of the neighbouring Division or Unit by selection cum seniority and 25% from casual labourers under four sub categories namely, (1) temporary status, (2) full time labourers of the recruiting division, (3) full time casual labour of the neighbouring division or unit failing which by (4) part time casual labour in that order."

11. The above decision of the Tribunal was upheld by the Hon'ble High Court in WP No. 22818/2006 by its judgment dated 22nd March 2007 in the following words:-

" Therefore, the Tribunal was right in holding the Casual Labourers have got a claim in respect of 25% of the vacancies remaining unfilled after recruitment of employees mentioned at serial No.2 and such vacancies shall be filled up by selection cum seniority in the order mentioned in that column itself. The contention raised by the petitioners therefore falls to the ground.

6. The Tribunal was right in holding that Annexure R2 relied upon by the petitioners cannot have the effect of modifying the recruitment rules. The relevant recruitment rules do not provide for any clearance from the Departmental Screening Committee. If at all there was a ban, it was limited to direct recruitment vacancies going by paragraph 3 of Annexure R2. Hence, the argument raised by the petitioners in that regard was also rejected rightly by the Tribunal. The Tribunal has only directed the petitioners to assess the actual number of vacancies and fill them up according to the recruitment rules and consider the applicant in his turn in accordance with the preference provided for in the said rules. We find that the view taken by the Tribunal is not perverse warranting interference under Article 227 of the Constitution of India.

7. Therefore, the writ petition is dismissed"

12. In yet another case, OA No.346/2005, this Tribunal dealt with the same subject matter and passed an elaborate order on 2.11.07. The operative part of the said order is worth reproducing here as under:

"11 On a wholesome reading of the columns pertaining to the selection and mode of recruitment as provided in the schedule to Part 1 of these rules it can be reasonably concluded that the scheme of recruitment envisaged only "promotion" by "selection-cum-seniority" initially from the categories as mentioned in the category 2 in schedule 2 and in case such categories are not available by the same method of "selection cum seniority" from the categories as mentioned in col. 11 of the Recruitment Rules in accordance with the percentages as stipulated Only if any of the above methods fail the provision had been made in for "direct recruitment." Since the term "direct recruitment" is specifically referred to in the Recruitment Rules with reference to failing which clause as a last resort, it would be a natural corollary that the rest of the procedure should be construed as promotion. This view is further fortified by the provision of the Recruitment Rules relating to the consideration of the DPC and also by the method of selection prescribed as "selection cum seniority". In a case of direct recruitment there is no scope for seniority. Even if there is any ambiguity in the Recruitment Rules, a harmonious interpretation of the various provisions in the rules has to be undertaken and on that basis we had come to the conclusion that the selection of GDS under the 75% quota and also the selection of Casual Labourers under the 25% quota would fall under the category of promotion only. The orders in the OAs referred to supra and as confirmed by the Hon'ble High Court relate to part-time and full time Casual Labourers under the same rules who qualified under the 25% quota. However, the principle whether the method of selection was direct recruitment or promotion would remain the same for both the categories. We therefore reiterate our earlier view. In this context, adverting to Annexures R-4 and R-5 orders of the Full Bench of this Tribunal referred to by the respondents, it is seen that Annexure R-4 order that the points referred to the Full Bench were whether the appointment of GDS as Postman in the 25% seniority quota is by way of direct recruitment or promotion. The rules of promotion to the post of Postman are entirely different from the rules in question in this O.A. Therefore, any reliance of this has no basis.

12 The second aspect is whether for filling up the existing vacancies the approval of the Screening Committee is required or not. The answer to this question flows directly from the decision above whether the posts are to be filled up by direct recruitment or by promotion. It is clear that Annexure R-2 memorandum of the Department of Personnel and the instructions contained therein was limited to direct recruitment vacancies. Para 3 thereof is specific in this regard and this was already dealt with by us elaborately in our order in O.A. 115/2004. Therefore the reliance of the respondents on the Memorandum again has no basis and only shows the reluctance on the part of the respondents to accept the settled legal position. It is no doubt, true that it is the prerogative of the Department to take a conscious decision whether at any point of time the

vacancies arising should be filled up or not. They can take a conscious decision not to fill up a post on the existence of a situation. While accepting their reliance on such a ratio in the judgment of the Hon'ble Supreme Court in AIR 1991 SSC 1612. It is also true that the court further observed therein:

> "....However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates as reflected at the recruitment test, and no discrimination can be permitted....."

There is no such stand taken by the respondents that they had taken any such decision not to fill up the posts.

13 The applicants have claimed that there are 27 vacancies, the respondents have now stated that from the year 2005, 29 posts are lying vacant of which 8 Group-D posts are to be abolished. This is a decision within the authority of the department and we cannot find fault with the same. However, it is not clear whether this recommendation for abolishing the 8 posts was accepted by the competent authority. In any case, the respondents have admitted that there are three posts vacant at present but they are unable to fill up those posts since the clearance of the Screening Committee is awaited. We have already held that the approval of the Screening Committee is not mandatory for filling up the vacant posts by promotion in accordance with the Recruitment Rules. A decision for abolishing the posts has to be distinguished from a decision for getting the clearance for filling up. While abolishing is a permanent measure, obtaining clearance is a temporary restriction imposed by certain instructions. In this case it has been found that the restriction would operate only in the case of direct recruitment. Therefore, it is to be reiterated that such a clearance from the Screening Committee is not required to go ahead with the filling up of the three vacant posts admittedly available in the Division and the Screening Committee can be apprised of the position.

14 In the result, the respondents are directed to consider the case of the applicants excluding applicants 1 & 3 in accordance with their rank and seniority under the 75% quota set apart for Gramin Dak Sevaks under the Recruitment Rules 2002 without waiting for clearance of the Screening Committee and to promote them according to their eligibility and seniority against the available vacancies. It shall be done within two months from the date of receipt of this order. The OA is disposed of as above. No costs."

13. In fact earlier, the Full Bench of the Chandigarh Bench in OA No. 1033/2003 framed the following questions and answered as contained hereunder by its order dated 26th May 2005:-

"Applicant Sh. Surjith Singh filed this case praying for the following relief:

(i) This Hon'ble Tribunal may be pleased to call for the entire record of the case.

(ii) After perusal of the same, this Hon'ble Tribunal may be pleased to issue appropriate order or direction as it may deem fit in the facts and circumstances of the case for counting of service of the applicant rendered as EDBPM from 7.7.89 to 7.3.94 as a qualifying service for the purpose of determining his pension and other retiral benefits.

(iii) This Hon'ble Tribunal may further be pleased to grant any other appropriate relief to the applicant as it may deem fit kin the facts and circumstances of the case in the interest of justice, equity and fair play.

Finding that there was a legal question involved which required opinion of Full Bench, the matter was referred to the Hon'ble Chairman, CAT, Principal Bench, New Delhi. After obtaining orders from Hon'ble Chairman the Full Bench heard the following points of reference:

(i) Whether the post of Extra Departmental Branch Post Master being a feeder post for further promotion to Group D is a public post?

(ii) Whether the service rendered as EDBVPM followed by promotion as Group D employee which is a pensionable post can be taken into consideration or the purpose of determining as qualifying service for the purpose of pension and other benefits.

(iii) Whether the view taken by a Division Bench of this Tribunal in O.A.No.283/HP/2003 (Ratan Singh vs. Union of India and others) decided on 4.4.2003 is correct view?

The Full Bench has answered the legal questions referred to it in the following manner:

(i) Extra Departmental Agents are holders of Civil Posts as has been held by the Apex Court in State of Assam & Others v. Kanak Chanra Dutta AIR 1967 SC 884 as also in Superintendent of Post Offices and others v. P.K.Rajamma and others.

1977 3 SCC 94 but their appointment to Group D is not by promotion but only by recruitment.

(ii) The service rendered as Extra Departmental Branch Post Master even if followed by appointment as Group D is not to be reckoned as a qualifying service for the purpose of pension.

(iii) O.A.No.238/HP/2003 (Rattan Singh vs Union of India and others) was correctly decided.

It is clear from the pleadings of the applicant that he seeks declaration of counting his entire service as EDA w.e.f. 7.7.1989 to 7.3.1994 to be counted as qualifying service for purpose of pension and if not entire service at least half of it to be so counted. A Bench of this Tribunal in the case of Rattan Singh v. UOI in O.A.238/HP/2003 on similar circumstances and facts as pleaded by the applicant in the present case has taken a view that services rendered as Extra Departmental Agent (including EDBPM) followed by regular appointment as Group D cannot be reckoned for computing the qualifying service for pension. The Full Bench has held that view to be correct. In these circumstances the claim made by the applicant is not tenable under the law. In the judgment in case of Rattan Singh (supra), the Bench had taken into consideration the provisions of Rule 4 of the 1964 Rules applicable to the EDAs which clearly lays down that the EDAs are not entitled to any pensionary benefits. At this stage, we would like to make reference to a recent judgment of Hon'ble Supreme Court in the case of UOI and others v. Kameshwar Prasad 1998 SCC (L&S) page 447 wherein the system and object of engaging EDAs and their status was considered and adjudicated upon. It has been held that P&T Extra Departmental Agent (C&S) Rules, 1964 are a complete code governing service, conduct and disciplinary proceedings against EDAs. Rule 4 thus will have its full force besides what the Full Bench has held in the reference made by this Bench in the case of Kameshwar Prasad, the Supreme Court held that EDAs are government servants holding civil posts, getting protection of article 311(2). They have explained as to what is the nature of such appointment in para 2 of the report which we are reproducing below for understanding the same.

"The Extra Departmental Agents system in the Department of posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmaster, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the

Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the department for the purpose."

In view of the findings recorded by the Full Bench and the points of law decided by it and the opinion expressed by the Hon'ble Supreme Court as mentioned above, we find that his O.A has no merit. Applicant cannot count any part of his service rendered as EDBPM for joining it with regular services as Group D for computing the qualifying services for pension.

Learned counsel has appeared in the court little late and at his request we had given him the option to address arguments, as he desired. We had pronounced in the open court that this O.A stands disposed of without mentioning whether it is being allowed or being dismissed to enable the learned counsel to argue on whatever points he wanted to address before the disposal of the O.A to be followed by the detailed order. We, however, record with sad heart that he has failed to address any further arguments except what he mentioned at the Bar that the applicant fell short of ten years of his regular service by merely three months. While having been selected as a Group D on regular post, the respondents had failed to give him posting orders immediately. Had they given him regular appointment immediately after his selection, he would have had ten years of qualifying service making him eligible for pensionary benefits. The court can have compassion for litigants but cannot go against the rule to grant him the benefits which under the rules, cannot be given. If he is short of the requisite length of service, this court cannot fill up that gap. Being not possessed of the requisite length of service, one cannot find fault with the actions of the respondents in denying him pensionary benefits.

Before parting, we may make reference to another judgment in the case of Dhyan Singh vs. State of Haryana and others 2003 SCC (L&S) page 1020 in which it was held that a person who is given appointment by Govt. under a scheme, that employment not being the part of formal cadre of services of that Govt. it is difficult to hold that the period for which an employee rendered service under such scheme could be counted for the purpose of pensionary benefits. In our opinion system of EDAs and their engagement is definitely under such a scheme and they perform the duties not as member of any formal cadre of the Central Govt.

For the reasons discussed above, this O.A is dismissed. No order as to costs."

14. The aforesaid decision of the Full Bench was relied upon by the Respondents and the Tribunal in its order dated 2-11-2007 observed as under:-

> "....Similarly Annexure R-5 order on the Full Bench the point of reference were as follows:
>
> (i) Whether the post of Extra Departmental Branch Postmaster being a feeder post for further promotion to group-D is a public post?
>
> (ii) Whether the service rendered as EDBPM followed by promotion as Group-D employee which is a pensionable post can be taken into consideration for the purpose of determining as qualifying service for the purpose of pension and other benefits?
>
> (iii) Whether the view taken by a Division Bench of this tribunal in O.A. NO. 283/HP/2003 (Ratten Singh Vs. Union of India and others)decided on 4.4.2003 is correct view?
>
> Hence the legal question referred to the Full Bench was whether the service rendered as an EDA can be considered as qualifying service for purpose of pension on the ground that it is a public post. It is also an entirely unrelated issue and the Recruitment rules for the post of Group-D which is under consideration in this case were not covered by the above judgment. Hence we do not find that as far as this issue is concerned the stand of the respondents is legally defensible and the matter has already been settled by other earlier decisions as confirmed by the Hon'ble High Court.

15. In yet another WP © No. 11466/2007 in which the Respondents were the Department (relating to O.A. No. 321/2004) the High Court in passed the following order:-

> *"Counsel for the respondents submitted that the point raised in this case is covered by the judgment in W.P.(C) No. 22818 of 2006 and W.P.(C) No. 3618/2006 stating that Screening Committee's approval is not necessary for filling up the posts, by way of promotion. Respondents can take a decision as to how many posts are to be filled up by way of promotion.*
>
> *Writ petition is disposed of as above."*

16. It was with the above back ground, the applicants in the present set of O.As have approached the Tribunal praying for a direction to the respondents to fill up the vacant posts in Group D against the quota of GDS/Casual labourers as the case may be. The brief facts of the case in each of the above O.As is given in the succeeding paragraphs.

16.1) *OA No. 118/08:* The applicant is working as Gramin Dak Sevak Mail Man in the Sub Record Office of Railway Mail Service, Kottayam. He fulfills the qualifications etc for being considered for appointment to the Group D post. He turned fifty years as on 01-12-2006. According to the applicants, the respondents ought to have considered the case of the applicant for absorption in Group D post against the vacancy which arose in 2005 but they had not considered. It is only now that the respondents are taking step to fill up the vacancy. The prayer of the applicant in this OA is that the applicant should be considered for absorption in group D.

Respondents have contested the O.A. According to them, vacancies that arose in 2005 had already been filled up by considering the GDS who were senior to the applicant in the Division. In the order of seniority the applicant stands at Serial No.12 and his seniors were considered for appointment in preference to the applicant. Since his date of birth is 01-12-1956, he has crossed the age of 50 years as of 01-12-2006. In the above circumstances, in accordance with CPMG letter dated 30th April, 2004, cases of GDS over 50 years cannot be considered for recruitment to the Group D post.

16. 2) <u>OA No. 203/2008 and M.A. No. 322/2008 u/r 4(5) of CAT(P) Rules, 1987 :</u>

Applicants, 7 in number are working in Aluva Division as Gramin Dak Sevaks. There are 8 clear vacancies remaining under the Aluva Postal Division, for want of approval of the Screening Committee as evidenced by Annexure A-2 letter dated 03-04-2008. Such a clearance is not at all needed in view of the decision by this Tribunal in OA No. 977/2003 and 277/2004, as confirmed by the High Court in W.P.(C) No. 3618/2006.

Respondents have contested the OA. According to them the decision by the Apex Court in the case of *P.U. Joshi and others vs Accountant General, Ahmedabad and others* with C.A. No. 10983/1996 and *Union of India and others vs Basudeba Dora and others (2003) SCC (L & S) 191* is specific that the department has full powers to amend or modify the rules of recruitment etc., and in this case, approval of the screening committee is essential. This decision has been taken as a part of an initiative to reduce expenditure and bring down revenue deficit.

16.3) <u>OA No. 221/2008:</u> The applicant is at present working as GD Sevaks in Trivandrum (North) Division. At present there are 18 vacancies of Group D under the 1st Respondent, but the same have not been filled up on the ground that screening committee had not approved the vacancies for filling up. Such a clearance is not at all needed in view of the decision by this Tribunal in OA No. 977/2003 and 277/2004, as confirmed by the High Court in W.P.(C) No. 3618/2006.

Respondents in their counter stated that the applicant does not possess the minimum required qualification for being considered for appointment to the post of Group D. Recruitment

Rules provide for the requisite qualifications in this regard, vide Annexure R-1. The seniority of the applicant has also been questioned. Vide Annexure R-2, screening committee's recommendations are required to fill up the direct recruitment vacancies and such vacancies are to be restricted to 1/3rd of the vacancies in a year and overall, it should be restricted to 1% of the total posts in a cadre. In fact after the changed scenario, i.e. after the judgments of the Tribunal and of the High Court in the O.As and Writ Petition as referred to above, the matter is under examination by Postal Directorate and no general order revising policy decision has been received by the respondents so far. Again, it has been contended that the applicant would be considered for appointment to the Group D post (non test category) according to her seniority position as and when her turn comes.

16. 4) <u>OA No. 243 of 2008</u>: The applicant is working as GDSBPM in Trivandrum South Division. His grievance is that the respondents are reluctant to fill up the Group D post from the Gramin Dak Sevaks, despite Recruitment Rules providing for the same. He has also referred to various decisions of the Tribunal and the High Court to hammer home the point that approval of the screening committee is not at all essential for filling up such posts.

Respondents have filed the reply in which they have stated that there are 18 vacancies available in the division and approval of the screening committee is essential to fill up the same. It was in 2005 that clearance was given for only one vacancy in 2005 which stood filled up from among the G.D.S. Annexure R-1 contains the list of vacancies in various divisions which would be

filled up after receipt of the approval of the Screening committee. After the decision of the Tribunal and the High Court in some cases, the scenario hitherto existed has undergone a change and the matter stands referred to the Postal Directorate for examining the matter and for taking a decision in consultation with the Ministry of Personnel and Training. No policy decision has so far been taken by the Directorate in this regard. Respondents have also referred to a communication dated 25th April, 2008 which provides for engagement of GDS over 50 years under extra cost arrangement against the vacant Group D/Postman posts.

16.5) **OA No. 263/2008 and MA No. 365/2008 (u/r 4(5) of the CAT(P) Rules, 1987:** The Applicants are functioning as Gramin Dak Sevaks under the first Respondent i.e. the Senior Superintendent of Post Office, Trivandrum North Division. Their seniority position in the gradation list is respectively 38, 55, 64, 124 and 142. 15 vacancies in Group D posts are available, which are tenable by the Gramin Dak Sevaks, whereas the respondents have not been taking any steps to fill up the same on the ground that approval of the Screening Committee is awaited. In fact, these vacancies are not direct recruitment vacancies and as such screening committee's recommendations are not at all required as held by this Tribunal in a number of cases, i.e. OA No. 901/2003, 977/2003, 115/2004 and 346/2005. The High Court has also upheld the decision of the Tribunal vide judgment in WP (C) No. 22818/2006 decided on 22nd March, 2007. The applicants have, therefore, sought for a direction to the respondents to fill up the vacancies in Group D post in

accordance with the Recruitment Rules, 2002 from amongst the Gramin Dak Sevaks.

16.6) OA No. 280/08: The applicant, is presently working as Group D (officiating) in Perumbavoor Head Post Office. He was earlier appointed as E.D.M.C. In 1979. His rank in the seniority list of G.D.S. in Aluva Postal Division is 134. There are 8 clear vacancies of Group D posts. These have not been filled up by the respondents due to their misconceived impression that they belong to Direct Recruitment and clearance from the Screening Committee in accordance with letter dated 16th May 2001 would be required, whereas, as per the decision of this Tribunal as also the High Court, vide order in OA No. 901/2003, 977/2003 and 115/2004 as also judgment dated 22nd March 2007 in WP(C) No. 22818/2006, these posts are filled up by promotion method. Hence this OA seeking a direction to the respondent to consider the case of the applicant for regular promotion as Group D under the 75% quota as per Recruitment Rules.

Respondents have contested the O.A. According to them provisions of OM dated 16th May 2001 do apply to the case of the applicant. They have further invited the attention of the Tribunal to the decision of the Apex Court in the case of *P.U. Joshi v. Accountant General,(2003) 2 SCC 632*, wherein it has been held as under:-

> "Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions

envisaged in the Constitution of India and it is not for the statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

Respondents have therefore, prayed for dismissal of the OA. The applicant has filed his rejoinder reiterating the contention as in the OA and also inviting the attention of the Tribunal to the decision in the case of *Amrit Lal Berry v. CCE, (1975) 4 SCC 714*, wherein the Apex Court has held as under:-

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

16.7) **OA No. 312/2008 and M.A. No. 425/2008 u/r 4 (5) of the CAT (P) Rules, 1987 :** The applicants herein, 20 in number are

serving as Gramin Dak Sevaks in RMS 'CT' Division Kozhikode, some of whom were initially appointed as Casual labourers and later on appointed as Gramin Dak Sevaks. Their claim is that they should be considered for appointment against the 75% quota for Group D posts. They have relied upon the decision by this Tribunal in earlier O.As, viz OA No. 977/2003, 277/2004, 115/2004 and 346/2005 etc., some of which were upheld by the High Court. Respondents have relied upon the full Bench decision of the Chandigarh Bench in OA No.1033/2003 to contend that Group D posts not being promotional post, for filling up of the vacancies, clearance from the Screening Committee would be very much essential. That the posts are to be filled up by Direct Recruitment is evident from notification dated 10th September, 2002. As per 16th May 2001, there shall be a screening under optimisation of Direct Recruitment to Civilian Posts.

Rejoinder has also been filed by the applicants to hammer home their point that the posts are to be filled up by promotion and not direct recruitment.

16.8)**OA No. 314/2008 and MA No. 426/2008 u/r 4(5) of the CAT(P) Rules 1987:** The applicants, 10 in number, were initially engaged as casual labourers and later on were appointed as Gramin Dak Sevaks Mail Man in Head Record Office, RMS, Ernakulam Division. There are in all as many as 22 vacancies in Group D posts, which could be filled up on the basis of seniority (and the applicants figure in the seniority list vide Annexure A-6 at serial Nos. 9 to 14, 17, 18, 20 and 24 but the respondents are reluctant in filling up the same. Reason given is that clearance

from the Screening Committee has not been obtained. The applicants contend that such a clearance is not at all necessary in view of the decisions by this Tribunal in a number of cases, as up held by the High Court in a few cases. Eg: OA 901/2003, 977/2003, 113/2004, 346/2004 .

Respondents have contested the OA. According to them, the vacancies are to be filled up by way of direct recruitment, as could be seen from order dated 10th September, 2002 which stated, "*Gramin Dak Sevaks, casual labourers and part time casual labourers may be considered against the vacancies for direct recruitment subject to such condition laid down by the Department from time to time.*" Thus, the applicants cannot be promoted against the vacant post. The Apex Court in the case of State of J & K vs Shiv Ram Sharma (1999 Scc (L&S) 80) observed that it is permissible to the Government to prescribe rules/guidelines in the matter of appointment or promotion from one cadre to a different one. The Central Service Group D(Non Gazetted) is the last grade among the categories of the Departmental employees and as such, the question of promotion does not arise because promotion can be given only to incumbents occupying positions within like category of posts. Guidelines have been formulated vide order dated 16th May, 2001 for filling up of the vacancies and these cannot be ignored. Obviously, positioning of casual labourers as Group D cannot be considered as promotion, since casual labourers are not holders of any post below group D posts. If this be so, it cannot be that GDS would be considered on the basis of promotion as the posts of GDS purely being on contract basis, cannot form any feeder category . As per the decision of the Apex Court in the case of P.U. Joshi vs Accountant General of

India, the Tribunal cannot direct the respondents to fill up the posts before a policy decision is formulated by the Directorate. Judgments relied upon by the applicants did not take into consideration the fact that GDS are outside the purview of the orders connected with recruitment to departmental posts.

16.9) **OA No. 345/2008 and MA 454/2008(Under Rule 4(5) of CAT(P) Rules 1987):** The applicant is at present working as Casual Labour in RMS TV Division. In terms of the Recruitment Rules, 25% is earmarked to be filled up from among the casual labourers. When the applicant staked her claim she was informed that she would be considered as and when her turn arises. Despite the existence of vacancies and the applicant eligible, she had not been given the post on the ground that the screening committee had not approved the vacancies. Such a clearance is not at all needed in view of the decision by this Tribunal in OA No. 977/2003 and 277/2004, as confirmed by the High Court in W.P.© No. 3618/2006.

16.10)**OA No. 352/2008 and MA 458/2008(Under Rule 4(5) of CAT(P) Rules 1987) :** The applicants presently working as GDS, Mail Man in RMS Trivandrum Division, were appointed to the services during the period from 1991 to 1996. They are eligible for consideration for promotion as Group D against 21 vacancies which remain unfilled due to non clearance by the Screening Committee, whereas, such a clearance is not at all needed in view of the decision by this Tribunal in OA No. 977/2003 and 277/2004, as confirmed by the High Court in W.P.(C) No. 3618/2006. Order in OA No. 346/2005 also covers the

case of the applicants as they are similarly situated as the applicants in the said OA.

Respondents have contested the OA. According to them, applicants No. 4 and 5 filed OA No. 933/1996 before the Tribunal for directing the respondents to grant temporary status of Group D to them, but the Tribunal by its order dated 09-01-1998 permitted them to withdraw the application and to submit representation to the Chief PMG, Kerala Circle who was directed to consider the same and pass a speaking order. Representations so submitted were carefully considered and a speaking order passed, rejecting their claim, vide Circle Office Memo dated 25-05-1998. As per the Government orders in extant, only after receiving the clearance from the Screening committee that vacancies could be filed and though the recruitment rules provide for inducting GDS and Casual Labourers in Group D post, they cannot be treated to have been 'promoted' as the post of Group D is the lowest rung in the hierarchy of the Central Government and thus, there can be no promotion to the lowest rung. Decision in the case of C.C. **Padmanabhan and others vs Director of Public Instruction and others (AIR 1981 SC 64)** has been relied upon by the respondents in regard to the defination of the term, 'promotion'. Further, G.D.S. Cannot be considered as part of the formal cadre of services of the Postal Department. They are governed by a complete and separate code, for recruitment, conduct and disciplinary proceedings. And, as long as their employment is under a separate scheme not being a part of the formal cadre of postal Department, they cannot be treated to be in the 'same service' or 'class of service' thereby entitling them to be considered for 'promotion' in its legal sense. The preference given

to them as well as to the casual labourers is only with a view to enable them to get regular appointment and such appointment cannot be treated as 'promotion'. Reliance has been placed upon the Full Bench Decision of the Chandigarh Bench of the Tribunal in OA No. 1033/PB/2003, decided on 28th day of March 2005 had considered the following questions as reference and answered as extracted **hereunder:-**

(a) Whether the post of Extra Departmental Branch Post Master being a feeder post for further promotion to Group D is a public post.

(b) Whether the service rendered as EDBPM followed by promotion as Group D employee which is pensionable post can be taken into consideration for the purpose of determining as qualifying service for the purpose of pension and other benefits?

(c) Whether the view taken by a Division Bench of this Tribunal in OA No. 238/HP/2003 (Rattan Singh vs Union of India and others) decided on 4.4.2003 is correct view?

Decision on the above reference ad seriatim:

*(i) Extra Departmental Agents are holders of Civil posts has been held by the Apex Court in **State of Assam & Others vs Kanak Chandra Dutta AIR 1967 SC 884** as also in **Superintendent of Post Offices and others vs P.K. Rajamma and others 1977(2) SLR (SC) 226**, but their appointment to Group D is not by promotion but only by recruitment.*

(ii) The service rendered as Extra Departmental Branch Post Master, even if followed by appointment as Group D, is not be reckoned as qualifying service for the purpose of pension.

(iii) OA No. 238/HP/2003 (Rattan Singh vs Union of India and others) was correctly decided.

Again, reference has been invited to communication dated 10th September, 2002, vide Annexure R-4, wherein it is clearly stated that GDS and Casual Labourers and part-time casual labourers may be considered against the vacancies for direct recruitment subject to such conditions laid down by the Department from time to time. It has also been emphasized in

the counter that Instruction of the Government in regard to direct recruitment is that the same shall be restricted to 1% of the total strength in the entire cadre, and in a year only 1/3rd of the vacancies shall be filled up by direct recruitment.

16.11) OA No. 357/2008 and OA 368/08 with M.A. 463/2008 and M.A 476/08: The applicants in these cases, who are working as GDS in the department since 1979-80, claim that they are entitled to appointment on seniority cum fitness basis to the extent of 75% of the vacancies to the post of Group D. 10 vacancies of Group D in the Tirur Division and 8 in Manjeri Division are available which have not so far been filled up due to absence of clearance from the Screening Committee, whereas, such a clearance is not essential for filling up the vacancies as these are not meant for direct recruitment. And, already, such a ruling has been spelt out by the Tribunal as upheld by the Hon'ble High Court. As some of the applicants are nearing 50 years of age, they represented for the vacancies to be filled up but there has been no action on the part of the respondents. Hence, this O.A.

Respondents have contested the OA. According to them, the vacancies do need the clearance from the Screening Committee and it would be only after receipt of clearance from the screening committee that the vacancies would be filled up in accordance with the Recruitment Rules. The rank in the seniority of the applicants has also been questioned by the respondents stating that there are seniors to them too. As per Annexure R-1 order of the nodal Ministry, i.e. Ministry of Personnel, Public Grievances & Pensions, Dept. of Personnel &

Training O.M. No. 2/8/2001 PIC dated 16th May, 2001 fresh recruitments shall be limited to 1% of total Civilian Staff Strength. Direct Recruitment would be filled up only to the extent of one-third of the vacancies arising every year with a view to reducing the strength in every department. In so far as the past decisions are concerned, the respondents have implemented such judgments on "case to case basis only after getting approval from Directorate."

16.12)**O.A. No. 372/08 and MA No. 485/2008 (U/R 4(5) of the CAT(P) Rules, 1987** : The applicants are working as Gramin Dak Sevaks in Trivandrum North Division, having been in service from the period ranging 1979-'82. Their seniority position, vide Annexure A-1 has also been crystallized. Vide Annexure A-2, 20 vacancies of Group D posts are to be filled up and these, according to Recruitment Rules are to be filled up from the non-test category of other Group D employees and remaining vacancies, if any, shall be divided as 75% and 25% to be filled up from among Gramin Dak Sevaks and Casual Labourers respectively. Any vacancy remaining still unfilled, would be thrown open to direct recruitment. In fact, all the above 20 posts are being managed by G.D.S. on mazdoor basis. In addition, there are 5 more vacancies in the Trivandrum South Division. Respondents are reluctant to fill up these posts on the assumption that these are Direct Recruitment vacancies for which approval of the screening committee is required. According to the decision of this Tribunal in OA No. 901/2003, the posts to be filled up from among Gramin Dak Sevaks are not direct recruitment posts and as such approval of the screening

committee is not a pre-requisite for filling the posts. Other decisions of this Bench viz order in OA No. 977/2003, 277/2004, 115/2004 have also been referred to in this OA. The restriction on recruitment vide order dated 16-05-2001 would be applicable where the recruitment is on direct recruitment basis and the case of the applicants does not fall in that category. The applicants have also referred to the fact that the orders of this Tribunal in this regard have been upheld by the Hon'ble High Court of Kerala, vide order in WP© No. 22818/2006, vide Annexure A-4. It has further been stated that yet another order of the Tribunal is in OA No. 346/2005 in respect of RMS EK Division which went in favour of the applicants therein. Though the applicants filed representations to the respondents, the same had not been considered. The applicants thus, has prayed for a direction to the respondents to fill up the aforesaid 20 posts in Trivandrum North Division from in accordance with recruitment Rules apportioning 75% of the vacancies and if the applicants are found eligible and suitable on the basis of seniority and fitness, to accommodate them against the vacancies.

Respondents have contested the O.A. According to them, the vacancies are to be cleared by screening committee and the lone vacancy that was cleared was for 2005 which had been filled up by a GDS BPM. There are at present 18 Group D vacancies which are manned by engaging willing GDS under Extra Cost Arrangement. The applicants cannot claim promotion as the posts they hold cannot be said to be in the same service under Postal Department. Reference was made to C.C. Padmanabhan & others vs Director of Public Instructions and others AIR 1981 SC 64, which describes the term promotion.Engagement of GDS cannot

be equated to that of any regular post in the Department of posts. The Gramin Dak Sevaks are governed by a complete and separate code governing their service, conduct and disciplinary proceedings. The respondents have further referred to the order dated 16th May 2001 of the Ministry of Personnel, vide Annexure R-1. Further, they have referred to order dated 31-07-2008 wherein it has been stated that a committee has been set up to review the optimisation scheme introduced vide letter dated 16th May 2001 and a decision at the cabinet level would be taken in this regard. It has also been submitted that in the wake of various decisions of the Tribunal as upheld by the High Court of Kerala, due to changed scenario, the matter has been taken up with the Postal Directorate from where decision is awaited. The respondents have further referred to the decision of the Apex Court in Dhyan Singh vs State of Haryana (2003) SCC L & S 1020, wherein it was held that when a person is given appointment by Government under a scheme, that employment not being part of formal cadre of services of that Government, it is difficult to hold that the period for which an employee rendered his service under the scheme should be counted for the purpose of pensionary benefits, and the respondents submit that the GDS cannot claim that they have a right to be promoted to a regular post. That the GDS cannot claim promotion has also been reiterated by referring to the Full Bench Decision in the caser of Surjit Singh vs nionof India and others, decided on 28th March 2005 by the Chandigarh Bench, vide Annexure R-3. Again, reference has been invited to communication dated 10th September, 2002, vide Annexure R-4, wherein it is clearly stated that GDS and Casual Labourers and part-time casual labourers

may be considered against the vacancies for direct recruitment subject to such conditions laid down by the Department from time to time.

16.13) **O.A. No. 381/2008 and MA No. 498/2008 (u/r 4(5) of the CAT(P) Rules, 1987** : Two applicants have filed this O.A. They are at present serving as Gramin Dak Sevaks under Sr. Superintendent of Post Offices, Trivandrum (North). The seniority position of the applicants is respectively 41 and 65 in the July 2005 list vide Annexure A-1. There are 18 Group D vacancies available, while the number admitted by the respondents is 15, vide AnnexureA-2. These vacancies have been kept unfilled for want of approval by the screening committee. All these posts are managed by engaging GDS on mazdoor basis.According to the applicants, there is no need for such clearance from the screening committee as held by the Tribunal in OA No. 901/2003, 977/2003, 115/2003 and 346/2005. These vacancies could be filled up in accordance with the Recruitment Rules, whereby 75% of the vacancies would be filled from amongst the Gramin Dak Sevaks on the basis of suitability cum seniority. Hence this OA praying for a direction to the respondents to take immediate steps to fill up the vacancies as per the Recruitment Rules.

Respondents have contested the O.A. According to them, vide order dated 4th July 2001 coupled with order dated 16th May 2001, instructions of the Government in regard to direct recruitment is that the same shall be restricted to 1% of the total strength in the entire cadre, and in a year only 1/3rd of the vacancies shall be filled up by direct recruitment and that for this

purpose Screening Committee's recommendations should be obtained. Accordingly, it was in 2005 that one vacancy was cleared by the screening committee and one of the Gramin Dak Sevaks had been appointed. In so far as the past decisions are concerned, the respondents have implemented such judgments on "case to case basis only after getting approval from Directorate. No general case has so far been taken up with the Directorate. The respondents herein cannot take independent decision.

16.14) **O.A. No. 399/2008 M.A. No. 423/2008 (under Rule 4(5) of the CAT (P) Rules, 1987:** The applicants are working at Kannur Division as Gramin Dak Sevaks. There are 16 vacancies of Group D against which the applicants are entitled to be accommodated. The resistance of the respondents is that due to non receipt of approval from the Screening Committee the vacancies could not be filled up, whereas, as held by the Tribunal in OA No. 973/2003 and 277 of 2004, as confirmed by the High Court, such a requirement is not there for the vacant posts as the bar is applicable only in respect of vacancies under direct recruitment. The applicants have, therefore, come up in this OA for a direction to the respondents to consider their cases for filling up the vacant posts of Group D on regular basis.

Respondents have contested the OA on the basis of the order dated 16th May, 2001 as per which direct recruitment should be restricted to one third of the total vacancies and that vacancies arising in a whole year could be filled up only upto 1% of the total D.R. Vacancies. Approval of the Screening Committee to fill up the above posts is mandatory. There are 77 other GDS in the Division senior to the 9th Applicant. Even if it is decided to

fill up the vacancies, all the applicants cannot be accommodated in view of the fact that only 75% of the vacancies could be filled up by GDS and further, there is required to be due community representation as per rules.

16.15)<u>O.A. No. 402/2008 and M.A. No. 529/2008u/r 4(5) of the CAT(P) Rules1986</u> : The applicants are all Gramin Dak Sevaks working for the past more than 25 years. Applicants 2,4,5,6,7 and 8 are GDS Mail Deliverers while Applicant No.3 is Mail Packer. They are senior most in the GDS Changanassery Division eligible for promotion to Group D, vide Annexure A-1 extract. According to the Annexure A-2 recruitment Rules, the educational qualifications as for direct recruits are not insisted for promotion. Since 2003 as many as 11 vacancies of Group D are available, which are not being filled up by the respondents on the ground that approval of the screening committee in accordance with the Ministry of Personnel O.M. dated 16th May 2001 has not been received, whereas, such a clearance from the screening committee is not required as held by this Tribunal in OA No. 977/2003, OA No. 115/2004 (Annexure A-5) and other similar cases. Reference to High Court judgment in the case of WPC 22818/2006 was also invited by the applicants. (The High Court of Kerala in that case held that "*the Tribual was right in holding the casual labourers have got a claim in respect of 25% of the vacancies remaining unfilled after recruitment of employees mentioned at serial No. 2 and such vacancies shall be filled up by selection cum seniority in the order mentioned in that column.*" The High Court has also held that "*Annexure R2 relied upon by the petitioners cannot have the effect of modifying the recruitment rules.*

The relevant recruitment rules do not provide for any clearance from the Departmental Screening Committee. If at all there was a ban, it was limited to direct recruitment vacancies going by para 3 of Annexure R-2. "}

The version of the respondents include that the contention of the applicants that they are senior most is denied. In a tabular statement they have indicated the seniority position. There are 11 group D vacancies in the Division. As per recruitment rules, the posts are to be filled up not by promotion and this fact has not been brought to the notice of this Tribunal in OA No. 115/2004. The Apex Court in the case of State of J & K vs Shiv Ram Sharma (1999 (L&S) 801) observed that it is permissible to the Government to prescribe rules/guidelines in the matter of appointment or promotion from one cadre to a different one. Annexure A-2 Recruitment Rules were issued on that basis and the applicant cannot challenge the provisions of Rules and Regulations whereby selection from the cadre of GDS to Group D is not by promotion. Group D posts are the entry cadre to any Government Department, the GDS which are a category of Extra Departmental employees unique only to the Department of posts as well as casual labourers are treated as feeder pool, to give them an opportunity to become Government Servants, and recruitments are to be made as per the revised Recruitment Rules 2002 for the vacancies declared by the Department yearly as per the existing guidelines on recruitment formulated as per OM dated 16th May 2001. The GDS is a separate category and is entirely different from regular cadres of the Department.The appointments of GDS are on contract basis.When a GDS is recruited as Group 'D', he is given severance amount of Rs

20,000/- after joining the departmental post. The service rendered while working as GDS has no relation with the post of Group 'D'to which the GDS is recruited and the amount was given on that account. Since the selection of GDS or casual labourer as Group 'D' is only through recruitment, approval of the Screening Committee is required for filling up Group D posts as per Annexure R-2 order dated 16th May 2001. The Tribunal/courts have passed several orders indifferent cases according to their circumstantial merits. The respondents have respectfully obeyed the orders and acted accordingly. Since approval of the Screening Committee is required as per order dated 16th May, 2001, the respondents cannot deviate from the policy of the Government, but as simultaneously in various cases court has issued orders, respondents have sought directions from the Directorate in view of the changed scenario consequent to the judgments. Judgments in O.As, produced by the applicant cannot be taken as a yardstick to be applied in all similarly situated. The respondents have implemented such judgments on a case to case basis only after getting approval from the Directorate. No amendment of the Group D Recruitment Rules has been made by the Department so far. As per the decision of the Apex Court in the case of P.U. Joshi and others vs Accountant General, Ahmedabad and others with Civil Appeal No. 10983 of 1996 and Union of India and others vs Basudeba Dora and others (2003 SCC(L&S) 191), this Tribunal cannot direct the respondents to fill up a post before a policy decision is formulated by the Directorate. The judgment referred to by the applicants did not take into consideration the fact that GDS are outside the purview of the orders connected with recruitment to departmental posts and hence they cannot be

promoted directly to the Group D civil post carrying definite scale of pay and also that GD Sevaks do not come under the purview of Fundamental Rules.

16.16) **O.A. No. 404 of 2008 and MA No. 531 of 2008 (under Rule 4 (5) of the CAT(P) Rules 1987) :** The applicants are presently working as GD Sevaks inTrivandrum South Division; in terms of Recruitment Rules, they are eligible for promotion as Group D and there are at present 25 vacancies of Group D under the 1st respondent. However, the same have not been filled up on the ground that screening committee had not approved the vacancies for filling up. The Tribunal in a series of cases held that approval of the screening committee is not necessary in respect of posts unless they are to be filled up by direct recruitment. Such orders in OA No. 977/2003 and 277/2004 have been upheld by the High Court of Kerala in CWP No. 3618/2006 and WP© No. 4956 of 2006. Similarly, in respect of Ernakulam division, Tribunal has already held in OA 346 of 2005 which is in favour of the applicant in that OA. Thus the respondents are bound to fill up the post through Gramin Dak Sevaks, but no amount would be paid by the applicant.

Respondents have contested the O.A. on the basis of the order dated 16th May, 2001. As due to the decision by the Tribunal and the High Court, the scenario had undergone a change, the matter has been referred to the Directed for their final decision. They have also reflected the seniority position of various applicants and contended that as per the statement given in the reply, the first applicant would be able to get his turn only after 14 above him stood transferred

The applicant has filed his rejoinder, in which he has annexed the total vacancy position obtained from the respondents under the R.T.I. Act, 2005, as per which, the total number of vacancies is twenty (20). As regards seniority position, it has been stated in the rejoinder that out of 20 vacancies 75% thereof to be earmarked to the GDS would cover all the applicants.

16.17) **OA No. 405 of 2008 and MA No. 537 of 2008 (u/r 4(5) of the CAT(P) Rules, 1987) :** The applicants are Gramin Dak Sevaks working in Kottayam Postal Division. Applicants 1, 2, 4 to 9 and 13 to 15 are GDS Mail Deliverers, while applicants No. 3 and 11 are Stamp Vendors. Applicant No. 10 is working as GDS Sub Post Master and Applicant No. 12 is a Mail Packer. Relying upon the seniority of the G.D.S. vide Annexure A-1 and the Recruitment Rules, 2002 vide Annexure A-2 read with Annexure A-3, the applicants have claimed promotion to the Group D posts against the sixteen clear Group D vacancies, vide Annexure A-4. Applicants rely upon the decision of this Bench in OA No. 114/2004, vide copy at Annexure A-5 and also judgment of the High Court in CWP No. 22818/2006.

Respondents have contested the O.A. According to them, as per recruitment rules, the posts are to be filled up not by promotion and this fact has not been brought to the notice of this Tribunal in OA No. 115/2004. The Apex Court in the case of State of J & K vs Shiv Ram Sharma (1999 (L&S) 801) observed that it is permissible to the Government to prescribe rules/guidelines in the matter of appointment or promotion from one cadre to a different one. Annexure A-2 Recruitment Rules were issued on that basis and the applicant cannot challenge the provisions of

Rules and Regulations whereby selection from the cadre of GDS to Group D is not by promotion. Group D posts are the entry cadre to any Government Department, the GDS which are a category of Extra Departmental employees unique only to the Department of posts as well as casual labourers are treated as feeder pool, to give them an opportunity to become Government Servants, and recruitments are to be made as per the revised Recruitment Rules 2002 for the vacancies declared by the Department yearly as per the existing guidelines on recruitment formulated as per OM dated 16th May 2001. Apex Court cases have also been relied upon.

16.18) **O.A.485/08 and M.A. 621/08** : On the same line as in OA 402/08, 3 applicants have claimed identical relief and the same contested by the respdts.

16.19) **O.A. No. 406 of 2008 and M.A. No. 538/2008 u/r 4(5) of CAP(P) Rules, 1986:** The applicants 20 in numbers (of whom 10 belong to OBC category) are working as Gramin Dak Sevaks in the Ernakulam Division. 31 vacancies in Group D post arose in Ernakulam Division. All these have been presently occupied by Gramin Dak Sevaks on extra cost basis. These have been kept unfilled for want of approval from the Screening Committee, whereas, such an approval is not necessary in these cases, in view of the decision by the Tribunal in OA No. 977/2003, 115/2004 and 346/2005 as upheld by the High Court. Hence this OA with a prayer for a direction to the respondents to fill up the vacancies as per the 2002 Rules. According to respondents, the nature of appointment as GDS being contractual in nature, they do not figure in the cadre in which the Group D post is contained. And,

promotion from one cadre to a different cadre is not permissible as per the law laid down by the Apex Court in the case of State of J & K vs shiv Ram Sharma (1999 SCC (L & S) 801). Again, as per 16th May 2001 memorandum, screening committee's approval is essential.

16.20) <u>OA 407/2008 and MA 539/2008 (u/r 4(5) of CAT(P) Rules, 1987):</u>

Applicants in this OA, employed as Gramin Dak Sevaks are under the administrative control of the Superintendent of Post Offices, Changanassery Division. They are aspirants to Group D posts in accordance with the provisions of the relevant Recruitment Rules, 2002 vide Annexure A-1. According to them there are 11 clear vacancies of Group D cadre remaining unfilled as on 30-06-2008. These have not been filled up as the approval of the screening committee is awaited. However, according to the applicants, in view of the decision by this Tribunal in OA No. 977/2003 and 115/2004, OA No. 901/2003 and 346/2005, these vacancies need not have to have the approval of the Screening Committee as the same is are required only for direct recruitment. The decision of the Tribunal has also been upheld by the High Court in WP 22818/2006 (in respect of OA 115/2004). As such the applicants have prayed for a direction to the respondents to take suitable action for filling up of the vacant posts in Group D from out of the G.D.S. in accordance with the rules.

Respondents have contested the O.A. According to them, even if no approval of the screening committee is required, in the instant case, the applicants would not be eligible for recruitment to Group D as these have crossed the age of 50 years and the age

limit for the GDS for consideration for the post of Group D is 50 years. Again, the respondents have contended that the decision in the case of State of J & K vs Shiv Ram Sharma (1999) SCC(L & S) 801 clearly spells out that there is no indefeasible right to be promoted. Again, as per order dated 16tgh May, 2001, filling up of the vacancies are to be restricted to 1% of the overall strength and only one-third of the vacancies could be filled up in a year. Further the term of appointment of the applicant would go to show that the same is in the nature of a contract. In view of the above, the respondents have prayed for dismissal of the O.A.

16.21)<u>O.A. No. 408/2008 and M.A. No. 540/2008 u/r 4(5) of the CAT(P) Rules, 1986:</u> The applicants 2 in numbers are working as Gramin Dak Sevaks in Pathanamthitta Postal Division. Recruitment Rules provide for consideration of the GDS against Group D posts, whereas the respondents, despite clear vacancies (20 in number) are not filling up the same on the ground that approval of the screening committee is essential. However, such an approval is not essential in view of the decisions by the Tribunal in OA No. 977/2003, 277/2004 and High Court judgment in W.P. © No. 3618/2006 and 4956/2006. In respect of Ernakulam Division, order in OA No. 346/2006 is relevant. Applicants being similarly situated, they are entitled to the benefits already granted to their counterparts in the other Divisions.

Respondents have contested the O.A. referring to the order dated 16th May 2001, 10th September, 2002, Full Bench judgment decision of the Chandigarh Benchmmmm in OA No. 1033/2003 and have also stated that at a high level committee the matter

would have to be discussed and a decision taken in view of the judgment of the High Court holding that the posts are filled up not by direct recruitment.

16.22)<u>OA No. 410/2008 and M.A. No. 541/2008 u/r 4(5) of the CAT (P) Rules, 1986:</u> The applicants, 14 in numbers are presently working as Gramin Dak Sevaks in the Pathanamthitta Postal Division. According to them, in terms of the Recruitment Rules they are eligible for promotion as Group D. There are 17 vacancies which arose in 2006 and 2007. G.D.S. officials are officiating on extra costs system in these posts. The posts have not been filled up on regular basis on the ground that clearance of the Screening Committee is still awaited. Approval of the Screening Committee, according to the applicants, is not essential in these cases in view of the decision in OA No. 977/2003 and 277/2004, as upheld by the High Court in WP(C) No. 3618/2006 and WP(C) No. 4956/2006 as also of the division in OA No. 346/2005. Hence, this OA praying for a direction to the respondents to consider the case of the applicants for appointment to the Group D posts against the 75% quota of the vacancies remaining unfilled after filling up the posts from amongst the non-test category.

Respondents have in their reply submitted that in view of the recent judgments of this Tribunal and High Court to the effect that appointment of GD Sevaks to Group D is not by direct recruitment but by promotion, the scenario has undergone a change and the matter stands referred to Directorate for taking a decision in consultation with the ministry of Personnel and Training. No policy decision has so far been taken by the

Directorate in this regard and further instructions are awaited. If the department has to go by the verdict of the Tribunal/High Court, then the maximum age factor will lose its significance and all the eligible GDS below 60 years will have to be considered for promotion to Group D cadre. Reservation applicable to OBC would also not be available in such a situation. Respondents have referred to the letter dated 31-07-2008 wherein it has been stated that it has been decided to set up a high power committee to review the staff requirement taking into account outsourcing as well as use of IT, as also exemptions therefrom and the Recommendations of the Committee/Cabinet Secretary would be obtained and then placed before the Cabinet to decide the continuity of the Scheme as well as exemption.

16.23) **O.A. No. 412/2008 and M.A. No. 542/2008 u/r 4(5) of the CAT(P) Rules, 1986:** The applicants, 2 in numbers are presently working as Gramin Dak Sevaks in the RMS TV Division. According to them, in terms of the Recruitment Rules they are eligible for promotion as Group D. There are 19 vacancies which arose in 2006 and 2007. The posts have not been filled up on regular basis on the ground that clearance of the Screening Committee is still awaited. Approval of the Screening Committee, according to the applicants, is not essential in these cases in view of the decision in OA No. 977/2003 and 277/2004, as upheld by the High Court in WP(C) No. 3618/2006 and WP(C) No. 4956/2006 as also of the division in OA No. 263/2006. Hence, this OA praying for a direction to the respondents to consider the case of the applicants for appointment to the Group D posts in accordance with the provisions of the Recruitment Rules

Respondents have contested the OA. According to them, there is no scope of GDS being promoted to Group D as promotion would mean promotion from a lower post in the same hierarchy, as held by the Apex Court in the case of C.C. Padmanabhan & Others vs Director of Public Instruction and others (AIR 1981 SC 64). The respondents have further referred to letter dated 1-07-2008 wherein it has been stated that the matter has been referred to the Ministry for a decision at the highest level. Chandigarh Bench Full Bench judgment in OA 1033/2003 has also been relied upon by the respondents.

16.24) **OA No. 421/2008 and MA No. 559/2008 (u/r 4(5) of CAT(P) Rules, 1987):** The applicants (seven in numbers) are working as Gramin Dak Sevaks coming under the administrative control of S.S.P. Calicut Division. According to them, there are as many as 18 clear vacancies in Group D posts, which have not been filled up due to want of clearance from Screening Committee, whereas, as per various decision of the Tribunal and the High Court, for filling up of these posts under the 2002 Recruitment Rules, such a clearance from screening committee are not required. Hence, this OA for a direction to the respondents to fill up the vacancies in Group D posts on the basis of the Recruitment Rules, 2002 from among GDS.

16.25)**OA No. 422/2008 and MA No. 559/2008 (u/r 4(5) of CAT(P) Rules, 1987):** The seven applicants in this OA are working as Gramin Dak Sevaks coming under the administrative control of S.P. Ottappalam Division. According to them, there are as many as 9 clear vacancies in Group D posts, which have not

been filled up due to want of clearance from Screening Committee, whereas, as per various decision of the Tribunal and the High Court, for filling up of these posts under the 2002 Recruitment Rules, such a clearance from screening committee are not required. Hence, this OA for a direction to the respondents to fill up the vacancies in Group D posts on the basis of the Recruitment Rules, 2002 from among GDS.

16.26)**O.A. No. 436/2008 and M.A. No. 574/2008 u/r 4(5) of the CAT(P) Rules, 1986:** The applicants, 7 in numbers are presently working as Gramin Dak Sevaks in the Mavelikara Postal Division. According to them, in terms of the Recruitment Rules they are eligible for promotion as Group D. There are 17 vacancies which arose in 2006 and 2007. G.D.S. officials are officiating on extra costs system in these posts. The posts have not been filled up on regular basis on the ground that clearance of the Screening Committee is still awaited. Approval of the Screening Committee, according to the applicants, is not essential in these cases in view of the decision in OA No. 977/2003 and 277/2004, as upheld by the High Court in WP(C) No. 3618/2006 and WP(C) No. 4956/2006 as also of the division in OA No. 263/2006. Hence, this OA praying for a direction to the respondents to consider the case of the applicants for appointment to the Group D posts in accordance with the provisions of the Recruitment Rules.

Respondents have contested the OA. According to them, the nature of appointment of the applicants as GDS being one of contractual in nature, vide specimen appointment order, they do not figure in the cadre in which the Group D post is contained.

And, promotion from one cadre to a different cadre is not permissible as per the law laid down by the Apex Court in the case of State of J & K vs shiv Ram Sharma (1999 SCC (L & S) 801). Again, as per 16th May 2001 memorandum, screening committee's approval is essential.

16.27) <u>OA No. 437/2008 and MA No. 575/2008 u/r 4(5) of the CAT (P) Rules,1986:</u> The applicants, 5 in numbers are presently working as Gramin Dak Sevaks in the Thiruvalla Postal Division. According to them, in terms of the Recruitment Rules they are eligible for promotion as Group D. There are 6 vacancies which arose in 2006 and 2007. G.D.S. officials are officiating on extra casts system in these posts. The posts have not been filled up on regular basis on the ground that clearance of the Screening Committee is still awaited. Approval of the Screening Committee, according to the applicants, is not essential in these cases in view of the decision in OA No. 977/2003 and 277/2004, as upheld by the High Court in WP(C) No. 3618/2006 and WP(C) No. 4956/2006 as also of the division in OA No. 346/2005. Hence, this OA praying for a direction to the respondents to consider the case of the applicants for appointment to the Group D posts in accordance with the provisions of the Recruitment Rules.

16.28)<u>OA No. 463/2008:</u> The applicant is working as Gramin Dak Sevak Mail Deliverer under the administrative control of the first respondent. He is an aspirant to Group D post in accordance with the provisions of the relevant Recruitment Rules, 2002 vide Annexure A-1 According to the applicant, there are 18 clear vacancies of Group D cadre

remaining unfilled as on 30-06-2008. These have not been filled up as the approval of the screening committee is awaited. However, according to the applicants, in view of the decision by this Tribunal in OA No. 977/2003 and 115/2004, OA No. 901/2003 and 346/2005, these vacancies need not have to have the approval of the Screening Committee as the same is are required only for direct recruitment. The decision of the Tribunal has also been upheld by the High Court in WP 22818/2006 (in respect of OA 115/2004). As such the applicant has prayed for a direction to the respondents to take suitable action for filling up of the vacant posts in Group D from out of the G.D.S. in accordance with the rules.

Respondents have contested the O.A. According to them, the applicant's date of birth being December, 1958, he would be completing 50 years by December, 2008. His seniority in the list of GDS is 43 in the division. As the GDS are outside the purview of recruitment rules to departmental posts, the appoint of GDS to Group D cannot be considered as promotion. Approval of the screening committee is absolutely essential in accordance with Annexure R-1 communication dated 11 May, 2001. Hence, the applicant is not entitled to any relief.

16.29) **OA No. 524/2008 and M.A. No. 655/2008(u/r 4(5) of the CAT(P) Rules, 1987 :** Two applicants have filed this O.A. They are at present serving as Gramin Dak Sevaks under the 1st Respondent, i.e. Sr. Superintendent of Post Offices, Trivandrum (North). The seniority position of the applicants is respectively 67 and 180 in the July 2005 list vide Annexure A-1. There are 18 Group D vacancies available, while the number admitted by the

respondents is 15, vide AnnexureA-2. These vacancies have been kept unfilled for want of approval by the screening committee. All these posts are managed by engaging GDS on mazdoor basis. However, there is no need for such clearance from the screening committee as held by the Tribunal in OA No. 901/2003, 977/2003, 115/2003 and 346/2005. These vacancies could be filled up in accordance with the Recruitment Rules, whereby 75% of the vacancies would be filled from amongst the Gramin Dak Sevaks on the basis of suitability cum seniority. Hence this OA praying for a direction to the respondents to take immediate steps to fill up the vacancies as per the Recruitment Rules.

16.30)**OA No. 525/2008 and MA 656/2008 (u/r 4(5) of the CAT(P) Rules, 1987:** The six applicants herein are working as Gramin Dak Sevaks under the Superintendent of Post Offices, Kasargode Postal Division. They are amongst the senior most of the G.D.S. At present there are 8 vacancies of Group D, which could be filled up by promoting the applicants. These posts are manned by the G.D.S. only on mazdoor basis. The vacancies have been kept unfilled on the ground that screening committee's approval has not been given, whereas in accordance with the decisions in OA No. 901/2003, 977/2003, and 115/2004 of this Tribunal, there is no need to have the nod from the Screening Committee as these vacancies are to be filled by way of promotion and screening committee's recommendations are required only for filling up of the post by Direct Recruitment. In respect of Ernakulam Division, this Tribunal has passed an order on the above lines in OA No. 346/2005. Decision of the High Court of Kerala in WP(C) No. 22818/2006 has also been referred to. The

applicants pray for a direction to the respondents to fill up the vacancies as per the 2002 Recruitment Rules from among the G.D.S..

Respondents have contested the O.A. They have contended that the contention that the applicants are senior most amongst the GDS cannot be accepted as the selection for appointment to the cadre of Group D is made on the basis of seniority cum fitness and after holding a duly constituted departmental Promotion committee. The eight vacancies have been kept unfilled due to the fact that the screening committee's recommendations are not available. As per the DOPT O.M. dated 16th May 2001, vacancies inter alia of Group D cannot be filled up without clearance from the screening committee. As regards decision of the Tribunal and High Court, compliance has been made on case to case basis only and since the instructions on having screening committee's clearance have not been modified, directions have been sought from the Directorate in view of the changed scenario consequent to the recent judgments of the CAT/High Court.

16.31)**OA No. 541/2008 :** The applicant was appointed as ED Mail Man w.e.f. 19-09-1991 under the RMS 'CT' Division, Kozhikode. Since 04-01-2008 he has been asked to perform the duties of a Group D in HRO, Kozhikode which he has been performing. There are as many as 28 clear vacancies as on 30-04-2008 under the RMS 'CT' division, Kozhikode awaiting approval of the Screening Committee as per Annexure A-3 order. But approval of the screening committee is not essential in view of the decisions in a number of cases, i.e. O.A. No 901/2003,

977/2003 and order in OA 115/2004. The last order i.e. order in OA 115/2004 has also been upheld by the High Court in WP© No. 22818/2006. The Recruitment Rules framed in 2002 clearly provide for these posts to the extent of 75% of the vacancies remaining unfilled after exhausting the Non test category, being filled up from among the G.D.S. Hence this O.A.

Respondents have contested the OA. They have relied upon the full Bench decision of the Chandigarh Bench in OA 1033/2003 decided on 28-03-2005, Ministry of Personnel OM dated 16th May, 2001 and Ministry of Communications and I.T. OM dated 10-09-2002 to support their contention that the vacancies can be filled up only after obtaining the screening committee's recommendations.

16.32)<u>OA No. 560/2008 and MA No. 705/2008 u/r 4(5) of the CAT (P) Rules,1986:</u> The applicants, 5 in numbers are presently working as Gramin Dak Sevaks in the Thiruvalla Postal Division. According to them, in terms of the Recruitment Rules they are eligible for promotion as Group D. There are 8 vacancies which arose in 2006, 2007 and 2008. G.D.S. officials are officiating on extra costs system in these posts. The posts have not been filled up on regular basis on the ground that clearance of the Screening Committee is still awaited. Approval of the Screening Committee,according to the applicants, is not essential in these cases in view of the decision in OA No. 977/2003 and 277/2004, as upheld by the High Court in WP(C) No.3618/2006 and WP(C) No. 4956/2006 as also of the division in OA No. 263/2006. Hence, this OA praying for a direction to the respondents to consider the case of the applicants for

appointment to the Group D posts in accordance with the provisions of the Recruitment Rules.

16.33) OA No. 573/2008: The applicant is functioning as Gramin Dak Sevak Mail Deliverer, Keezhillam BO under the administrative control of Senior Superintendent of Post Offices, Aluva Division.His seniority position in the Division is 146. He is an aspirant to Group D post in accordance with the provisions of the relevant Recruitment Rules, 2002 vide Annexure A-1. According to the applicant, there are 8 clear vacancies of Group D cadre remaining unfilled as on 30-06-2008. These have not been filled up as the approval of the screening committee is awaited. However, according to the applicants, in view of the decision by this Tribunal in OA No. 977/2003 and 115/2004, OA No. 901/2003 and 346/2005, these vacancies need not have to have the approval of the Screening Committee as the same is are required only for direct recruitment. The decision of the Tribunal has also been upheld by the High Court in WP 22818/2006 (in respect of OA 115/2004). As such the applicant has prayed for a direction to the respondents to take suitable action for filling up of the vacant posts in Group D from out of the G.D.S. in accordance with the rules.

Respondents have contested the O.A. According to them, The mode of recruitment to the post of Group D is by way of Direct Recruitment and that with a view to accommodate the G.D.S. and casual labourers, they are, against the direct recruitment vacancies, 'inducted' into the regular post in Group D cadre and the same cannot be construed as an automatic entitlement for the GD Sevaks to be 'promoted' to various posts in

Group D Cadre. They have relied upon the decision of the Apex Court in the case of CC Padmanabhan and others vs Director of Public Instructions and others (AIR 1981 SC 64). Vide order dated 4th July 2001 coupled with order dated 16th May 2001, instructions of the Government in regard to direct recruitment is that the same shall be restricted to 1% of the total strength in the entire cadre, and in a year only 1/3rd of the vacancies shall be filled up by direct recruitment and that for this purpose screening Committee's recommendations should be obtained. The respondents have further referred to the decision of the Apex Court in Dhyan Singh vs State of Haryana (2003) SCC L & S 1020, wherein it was held that when a person is given appointment by Government under a scheme, that employment not being part of formal cadre of services of that Government, it is difficult to hold that the period for which an employee rendered his service under the scheme should be counted for the purpose of pensionary benefits, and the respondents submit that the GDS cannot claim that they have a right to be promoted to a regular post. That the GDS cannot claim promotion has also been reiterated by referring to the Full Bench Decision in the case of Surjit Singh vs Union of India and others, decided on 28th March 2005 by the Chandigarh Bench, vide Annexure R-2. Again, reference has been invited to communication dated 10th September, 2002, vide Annexure R-4, wherein it is clearly stated that GDS and Casual Labourers and part-time casual labourers may be considered against the vacancies for direct recruitment subject to such conditions laid down by the Department from time to time.

16.34) <u>O.A. No. 583/2008 and M.A. No. 744/2008 (u/r 4(5) of the CAT(P) Rules, 1987:</u> The applicants, 4 in number, are presently serving as G.D. Sevaks in Pathanamthitta Postal Division. In terms of the Recruitment Rules, they are eligible for promotion as Group D and at present there are 8 vacancies under the first respondents, which have been kept unfilled on the ground that screening committee's approval has not been given, whereas in accordance with the decisions in OA No. 977/2003 and 277/2004 of this Tribunal, as upheld in WP (C) 3618/2006 and 4956/2006, there is no need to have the nod from the Screening Committee as these vacancies are to be filled by way of promotion and screening committee's recommendations are required only for filling up of the post by Direct Recruitment. In respect of Ernakulam Division, this Tribunal has passed an order on the above lines in OA No. 346/2005.

Respondents have contested the O.A. The mode of recruitment to the post of Group D is by way of Direct Recruitment and that with a view to accommodate the G.D.S. and casual labourers, they are, against the direct recruitment vacancies, 'inducted' into the regular post in Group D cadre and the same cannot be construed as an automatic entitlement for the GD Sevaks to be 'promoted' to various posts in Group D Cadre. They have relied upon the decision of the Apex Court in the case of CC Padmanabhan and others vs Director of Public Instructions and others (AIR 1981 SC 64). Vide order dated 4th July 2001 coupled with order dated 16th May 2001, instructions of the Government in regard to direct recruitment is that the same shall be restricted to 1% of the total strength in the entire cadre, and in a year only 1/3rd of the vacancies shall be filled up by direct

recruitment and that for this purpose screening Committee's recommendations should be obtained. Accordingly, it was in 2005 that one vacancy was cleared by the screening committee and one of the Gramin Dak Sevaks had been appointed. In so far as the past decisions are concerned, the respondents have implemented such judgments on "case to case basis only after getting approval from Directorate. Further, they have referred to order dated 31-07-2008 wherein it has been stated that a committee has been set up to review the optimisation scheme introduced vide letter dated 16th May 2001 and a decision at the cabinet level would be taken in this regard. The fact of the GDS being granted severance amount on their becoming Group D employees has also been specified. Again, reliance has been placed upon the full bench decision of the Chandigarh Bench in the case of Surjit Singh vs Union of India decided on 28th March 2005.

16.35) OA No. 598/08 and MA 774/2008 u/r 4(5) of CAT(P) Rules 1987 :

Two applicants have filed this O.A. They are serving as G.D. Sevaks in Kasargod Division. According to them, there are at present 6 vacancies of Group D under the 4th Respondent which are not being filled up due to want of clearance from the Screening Committee. However, the contention of the applicants is that such a clearance is not needed in this case since the vacancies are not for direct recruitment as held in a number of cases, such ON Ano. 977/2003, 115/2004, 277/2004, 346/2004 etc., Hence this OA.

Respondents have contested the O.A. According to them the appointment of the applicant is only in the nature of a

contract and they do not figure in the feeder grade in the hierarchy, as Group D is the entry post in the cadre. Again, they have relied upon the decision of the Full Bench of the Chandigarh Bench in Oa No. 1033/2003. Again, they have referred to the order dated 16th May, 2001 and order dated 10th September, 2002 of the DOPT/Ministry of Communications and Information Technology respectively about the nature of appointment and the requirement of screening committee's clearance before the vacancies are filled up.

16.36)<u>O.A. No. 618/2008 and MA No. 806/2008(Under Rule 4(5) of CAT(P) Rules 1987)</u>: The applicants are functioning in Trivandrum Division as casual labourers from 01-07-1992 with temporary status having been granted from 01-01-1996 vide Annexure A-1 order dated 15-03-1996. Vide Annexure A-2 order dated 05-10-1999 they were treated at par with Group D personnel. Vide Annexure A-7 order dated 3rd March 1999, in OA 6/1999, the respondents had committed that the appointments to Group D post would be made from casual labourers with temporary status like the applicants on the basis of their seniority. Recruitment Rules for the Group D posts in respondents' organization came into force in 2002, according to which 25% of the vacancies which remain unfilled after recruitment of non-test category employees is given to casual labourers for their absorption and the method of recruitment for filling up the vacancies by Gramin Dak Sevaks and Casual Labourers is selection cum seniority. As per Annexure C, they are the senior most amongst the temporary status casual labourers. As per Annexure A-4 order dated 27th November

2007, obtained from the respondents under the Right to Information Act, 2005, 5 posts of Group D vacancies have arisen in the Trivandrum GPO. There are in all 15 vacancies in the Trivandrum (North) Division including the GPO. Subsequently, two more vacancies at Trivandrum GPO arose and thus there are in all 7 vacant posts at GPO, Trivandrum. If the above posts in the entire Division are filled up, the applicants are sure to be appointed under their 25% quota. Non filling up of the vacancies is said to be due to fact of non receipt of the clearance from the Screening Committee, as according to the respondents, all the Group D posts are direct recruitment. However, vide OA No. 977/2003 and OA 277/2003 filed by casual labourers of Kollam the above issue had been considered and the same have been upheld by the High Court in WP 3618/2006 and CWP 4956/2006 decided on 22nd March 2007. The Tribunal in OA 115/2004 also held that approval of the Screening Committee is not necessary in such cases, vide Annexure A-5. As there had been no further action by the respondents the applicants have moved this tribunal for a direction to the respondents to take immediate steps for promoting the applicants to Group D as the basis of their running seniority against one of the existing vacancies which falls under the 25% quota set apart for Casual Labourers under the Recruitment Rules 2002 and such a promotion be from the date of their entitlement with all consequential benefits.

17. Though in some cases reply has not been filed, at the time of arguments, counsel for the respondents have stated that the stand taken in the reply in some of the OAs is adopted in all the other cases where no reply has been filed, as the legal issue involved is one and the

same and the facts as contained in the O.As are by and large admitted ones.

18. Senior Counsel for the applicants argued in respect of the legal issue involved and other counsel in respect of their cases adopted the same.

19. The senior counsel, cogently argued the matter as under:-

(a) That the contentions of the respondents are not maintainable for, in so far as the contention that the posts are to be filled up by direct Recruitment, the same already stands rejected by the High Court itself. As such, the self same point cannot be agitated here.

(b) That even if the objections/contentions are maintainable, this Tribunal cannot, after the High Court has decided the issue, deal with the same issue as judicial discipline warrants that the decision of the High Court is followed by the Tribunal.

(c) If law provides, for any valid reason, that the matter can be re-agitated by the respondents and judicial discipline is also not hampered if the Tribunal deals with the issue again, then also, the decision as arrived at the earlier occasion alone could be possible as the provisions of the Rules clearly would go to show that the posts that are to be filled up by G.D.S. and/or Casual Labourers do not fall under Direct Recruitment.

20. As regards (a) above, the senior counsel argued that the case of the respondents is that screening committee's approval is a pre-

requisite for filling up the vacancies in Group D posts from amongst the G.D.S, and Casual Labourers as per the provisions of the Recruitment Rules, as these posts are filled up by direct recruitment and provisions of Office Memorandum dated 16th May 2001 squarely apply to such posts. Precisely this was the issue in the earlier O.As, viz OA No. 977/2003, 115/2004, 345/2004 etc., of this Tribunal, which have vividly dealt with the subject matter and held that screening committee's approval for filling of these posts in Group D is not required at all. Once this issue stood conclusively decided not only at the level of this Tribunal, but even at the High Court level, the respondents cannot be permitted to reopen the issue again, as '*constructive res-judicata*' stares at their face. A number of decisions have been cited in this regard by the senior counsel. He has argued that the finality and conclusiveness of judicial decisions cannot be tinkered with by successive attempts to re-agitate the issue. The re-opening of matters which have once been adjudicated upon is barred by principles of res judicata. A cause of action which results in a judgment must lose its identity and vitality and merged with judgment when pronounced. It cannot therefore, survive the judgment or give rise to another cause of action on the same facts. An earlier decision may seem to be incorrect if the court had acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it. However, a decision which has become final and binding on the parties cannot be attacked because of a deficiency of parties or the court had not the benefit of the best argument. A prior decision of the Tribunal on identical facts and law binds the Tribunal on the same points of law in a later case. Thus, these objections are not maintainable on the basis of the principles of constructive res judicata.

21. As regards (b) above, the senior counsel argued that in fact, once the decision of the Tribunal has been taken up before the High Court and the High Court has decided the issue, the order of the Tribunal gets merged with the judgment of the High Court and as such, the Tribunal cannot in any event deal with the same issue again. Judicial discipline warrants that the Tribunal does not reconsider the very same issue as that would amount to sitting in appeal over the decision of the High Court. To substantiate this limb of argument also, the senior counsel relied upon a number of decisions of the Apex Court.

22. Assuming without accepting that such a reconsideration is possible, then again, the provisions of the Rules clearly show that the method of filling of the posts by G.D.S. and Casual Labourers is NOT by Direct Recruitment and consequently, approval of the screening committee is not required. Many decisions have been cited by the senior Counsel in support of this argument.

23. The cases relied upon by the Senior Counsel are as under:-

(a) *Somawanti v. State of Punjab,(1963) 2 SCR 774,* wherein it has been held as under:-

> The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided. That point has been specifically decided in the three decisions referred to above.

(b) **CCE v. Alnoori Tobacco Products,(2004) 6 SCC 186,** wherein reference was invited to the following portion:

> 11. *Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated.*

Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark on lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In London Graving Dock Co. Ltd. v. Horton (AC at p.761), Lord MacDermott observed: (All ER p. 14 C-D) (emphasis supplied)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge...."

(c) Union of India v. Arun Kumar Roy, (1986) 1 SCC 675 : Reference was invited to the following passage in that judgment:

17. The effect of Rule 5 of the Rules fell to be considered by this Court in two decisions viz. Senior Superintendent, R.M.S. v. K.V. Gopinath and Raj Kumar v. Union of India. The respondent relied strongly upon the following observations reported in (1972) 3 SCR 530 at p. 532: (SCC p. 869, para 3)

"The proviso to sub-rule (b) however gives the government an additional right in that it gives an option to the government not to retain the services of the employee till the expiry of the period of the notice: if it so chooses to terminate the service at any time it can do so forthwith "by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rate at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month'. At the risk of repetition, we may note that the operative words of the proviso are 'the services of any such government servant may be terminated forthwith by payment'. To put the matter in a nutshell, to be effective the termination of service has to be simultaneous with the payment to the employee of whatever is due to him. We need not pause to consider the question as to what would be the effect if there was a bona fide mistake as to the amount which is to be paid. The Rule does not lend itself to the interpretation that the termination of service becomes effective as soon as the order is served on the government servant irrespective of the question as to when the payment due to him is to be made. If that was the intention of the framers of the Rule, the proviso would have been differently worded. As has

often been said that if 'the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense', 'and not to limit plain words in an Act of Parliament by considerations of policy, if it be policy, as to which minds may differ and as to which decisions may vary'.

This decision was rendered on February 18, 1972. It was the validity of an order dated September 25, 1968, terminating the respondent therein, that was in question in that case. We would like to observe, with respect, that the amendment brought into Rule 5(1)(b), with effect from May 1, 1965, escaped the notice of the Bench that decided that case. The error was subsequently corrected by another Bench of this Court in the decision in Raj Kumar v. Union of India, by stating: [SCC p. 14, para 2, SCC (L&S) p. 199, para 2]

> *"The effect of this amendment is that on May 1, 1955, as also on June 15, 1971, the date on which the appellant's services were terminated forthwith it was not obligatory to pay to him a sum equivalent to the amount of his pay and allowances for the period of the notice at the rate at which he was drawing them immediately before the termination of the services or as the case may be for the period by which such notice falls short. The government servant concerned is only entitled to claim the sums herein before mentioned. Its effect is that the decision of this Court in Gopinath case[1] is no longer good law. There is no doubt that this rule is a valid rule because it is now well established that rules made under the proviso to Article 309 of the Constitution are legislative in character and therefore can be given effect to retrospectively."*

(d) *State of Bihar v. Kalika Kaer,(2003) 5 SCC 448, at page 453 :*

4. *The reason which has been indicated to hold that the decision in the case of Ramkrit Singh was per incuriam is that it did not consider the question as to whether the Consolidation Authorities are courts of limited jurisdiction or not. Hence, an observation was made that the civil court while disposing of suits after revival of their jurisdiction at the end of consolidation proceedings would merely pass a decree in terms of decision of the Consolidation Authority. It is observed that cases where jurisdiction of the civil court is not barred in terms of Section 4(b) or Section 37 of the Act, "the civil court cannot pass a decree only in terms of decision of the Consolidation Authorities" after revival of the suit. Whatever has been held or observed in the case of Ramkrit Singh may not appear to be correct or may seem to be against the provisions of the Act but that would not be a valid ground to hold that the earlier judgment was rendered*

per incuriam or that decision would not be binding on the Bench of a coordinate jurisdiction. In respect of other points no reference has been made to the Full Bench decision of Ranbir Singh.

5. At this juncture we may examine as to in what circumstances a decision can be considered to have been rendered per incuriam. In Halsbury's Laws of England (4th Edn.) Vol. 26: Judgment and Orders: Judicial Decisions as Authorities (pp. 297-98, para 578) we find it observed about per incuriam as follows:

> *"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow ; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the court had not the benefit of the best argument , and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake"-*

Lord Goddard, C.J. in Huddersfield Police Authorities case observed that where a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.

6. In a decision of this Court reported in Govt. of A.P. v. B. Satyanarayana Rao it has been held as follows: (SCC pp. 264-65, para 8)

> *"The rule of per incuriam can be applied when a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. ... We, therefore, find that the rule of per incuriam cannot be invoked in the present case. Moreover, a case cannot be referred to a larger Bench on mere asking of a party. A decision by two Judges has a binding effect on another coordinate bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law."*

7. According to the above decision, a decision of the coordinate Bench may be said to have ceased to be good law only if it is shown that it is due to any subsequent change in law.

(e) ***Supdt. of Post Offices v. P.K. Rajamma, (1977) 3 SCC 94,*** regarding the status of a GDS:

> *4. It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in Kanak Chandra Dutta case are clearly satisfied in the case of the extra departmental agents.*

(f) C.C. Padmanabhan v. Director of Public Instructions, 1988 Supp SCC 668

> *5. Promotion is thus defined in clause (11) of Rule 2 of the Kerala State and Subordinate Services Rules, 1958:*
>
> > *" 'Promotion' means the appointment of a member of any category or grade of a service or a class of service to a higher category or grade of such service or class."*
>
> *This definition fully conforms to the meaning of "promotion" as understood in ordinary parlance and also as a term frequently used in cases involving service laws. According to it a person already holding a post would have a promotion if he is appointed to another post which satisfies either of the following two conditions, namely—*
>
> *(i) that the new post is in a higher category of the same service or class of service;*
>
> *(ii) the new post carries a higher grade in the same service or class.*
>
> *6. It is common ground between the parties that in the instant case the two posts belong to the same service or class of service. Applying the above test, therefore, to them it would follow that the appointment of an HSA to the post of an AEO would be a promotion if, and only if—*

"(a) the post of an AEO is of a higher category than that of an HSA or

(b) the post of an AEO carries a higher grade than that of an HSA"

In case of either of these conditions being fulfilled, the appointment of an HSA to the post of an AEO would be a promotion within the meaning of the clause above reproduced.

(g) *P. Raghava Kurup v. V. Ananthakumari,(2007) 9 SCC 179,*

"... in Malinakhya Byasak v. Shyam Sunder Haldar their Lordships observed as follows:

> *"In construing a statute it is not competent to any court to proceed upon the assumption that the legislature has made a mistake and even if there is some defect in the phraseology used by the legislature, the court cannot aid the defective phrasing of an Act or add and amend, or by construction, make up deficiencies which are left in the Act."*

18. No attempt is made in this case to add or subtract any word. It is only after reading the two provisions of the Rules harmoniously the result can be achieved without any violence to any of the provisions of the Act or the Rules. The object as already indicated above, was to provide promotional avenues to the non-teaching staff for the post of teacher provided they fulfill requisite qualifications."

(h) *State of Rajasthan v. Fateh Chand Soni, (1996) 1 SCC 562 :*

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 'promote' means "to advance to a higher position, grade, or honour". So also 'promotion' means "advancement or preferment in honour, dignity, rank, or grade". (See: Webster's Comprehensive Dictionary, International Edn., 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".

9. In Lalit Mohan Deb v. Union of India[2], the pay scale of all the Assistants in the Civil Secretariat in Tripura was Rs80-180 and on the basis of the recommendations of the Second Pay Commission appointed by the Government of India the scales were revised and 25% of the posts were placed in the Selection Grade in the scale of Rs 150-300 and the rest continued in the old pay scale of Rs 80-180. For the purpose of filling the Selection Grade posts, a test was held and those who qualified in the said test were appointed to the Selection Grade. The Assistants in the Selection Grade and the Assistants in the old pay scale were doing the same type of work. This Court observed that "provision of a Selection Grade in the same category of posts is not a new thing" and that "a Selection Grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the Selection Grade to prevent stagnation on the maximum of the scale" and that "Selection Grades are, therefore, created in the interest of greater efficiency". The Court took note of the fact that the basis for selection of some of the Assistants to the Selection Grade scale was seniority-cum-merit which is one of the two or three principles of promotion widely accepted in the administration and, therefore, the creation of Selection Grade in the category of Assistants was not open to challenge. In that case, the Court had proceeded on the basis that the appointment to the higher grade amounted to promotion.

24. Counsel for the respondents argued that law does provide for reconsideration of an issue already decided, though it is an exception to the general principle. As for example, when a judgment is rendered *per incuriam*, the same need not be considered as precedent. Again, doctrine of *sub-silentio* is yet another gateway to depart from precedent. The counsel argued that the Gramin Dak Sevaks, do hold a civil post but, *such a post is outside the regular civil services* {as per the decision of the Apex Court in the case of P.K. Rajamma, (supra)}. Hence, they cannot claim any promotion to the post of Group D since the post they hold do not fall within the hierarchy of service in the Postal Department. The case of casual labour is still worse as they do not hold any civil post at all. It is trite that promotion is generally understood to mean appointment of a person of any category or grade of a service or a class of service to a higher category or grade of such

service or class. As to the existence of a Departmental Promotion Committee, the counsel argued that a mere constitution of Departmental Promotion Committee cannot conclude the issue that the appointment of GDS or Casual Labour is one of promotion. Recruitment Rules as a whole should be considered and they are clear that vacancies against which the GDS and Casual Labourers are considered are vacancies for direct recruitment and nothing else. There is no quota set apart for direct recruitment and direct recruitment is resorted to only in the event of eligible candidates not found to fill up the posts from the other categories enumerated therein. Merely because of respondents' failure to challenge the earlier judgments, department would not be barred from resisting subsequent cases involving similar issue or challenging subsequent judgments realizing the seriousness and the magnitude of issue or its financial implications.

25. In support of the contention, the learned counsel for the respondents relied upon the following judgments:-

(a) C.C. Padmanabhan and Others vs Director of Public Instructions & Ors (AIR 1981 SC 64)

(b) Director General Rice Research Institute vs K.M. Das (AIR 1995 SC 122)

(c) Superintendent of Post Offices vs P.K. Rajamma (1977)3 SCC 374

(d) Union of India and others vs Kameshwar Prasad, (1998 SCC (L&S) 447)

(e) Union of India and another vs S.S. Ranade (1995) 4 scc 462

(f) Judgment dated 14th November, 2008 in CP © No. 169/05 in the case of P.P.C. Rawani and others vs Union of India and others.

(g) Col. B.J. Akkara (Retd) vs Government of India (2006) 11 SCC 709

(h) State of Maharashtra vs Digambar (1995) 4 SCC 683

(i) Union of India vs A.S. Gangoli (2007) 6 SCC 196

(j) State of U.P. vs Synthetics and Chemicals (1991) 4 SCC 139

(k) Municipal Corporation of Delhi vs Gurnam Kaur (1989) 1 SCC 101

(l) B. Sharma Rao vs U.T. of Pondicherry AIR 1967 SC 1480

(m)N. Bargavan Pillai vs State of Kerala (2004) 13 SCC 217

(n) State of Haryana and others vs AGM Management Services Ltd (2006) 5 SCC 520

(o) Ramesh Chand vs Registrar cum Deputy Commissioner,

26.Arguments were heard and documents perused. Counsel for respondents in OA No. 423/08 has also submitted a written argument, which has also been scanned through.

27.Admittedly, the relevant Recruitment Rule has once undergone a judicial scrutiny in the hands of the Tribunal as well as High Court and the interpretation and decision thereof by the Tribunal, as upheld by the High Court, has also not been challenged by the Department before the Apex Court. In other words, the decision as rendered by the High Court has attained finality. And that decision is that for filling up the vacancies in Group D posts through the G.D.S. and Casual Labourers, clearance from the Screening committee is not a pre-requisite. Under these circumstances, normally it should be held that the issue is no longer *res integra*. However, since, the counsel for the respondents has relied upon certain doctrines, viz. Doctrine of *per incuriam* as well as *sub silentio* it cannot be possible to dismiss the case of the applicants in a single sentence that the respondents are precluded to contend here that the method of recruitment in the case of GDS or Casual labour is not one of promotion but only a sort of an induction, resembling the same colour as of a direct recruitment. At the same time, the resistance by the applicants that judicial discipline warrants that this Tribunal does

not reconsider the case as the same would mean sitting in appeal against the judgment of a superior court also cannot be lost sight of. Hence, in order to arrive at a decision in respect of these O.As, the following substantial questions of law are to be considered:-

a) Whether the doctrine of '*res-judicata*' or '*constructive res-judicata*' or *stare decisis* would apply in these batch matters.

b) Whether the respondents are barred from raising the self same contentions on the same legal point, which stands concluded by virtue of the judgment of the High Court? In other words, do the respondents enjoy 'any right to set right what (according to them) was said wrongly in the past'

c) Whether the earlier judgment is hit by doctrine of *per-incuriam*?

d) Whether the earlier judgment is hit by doctrine of *sub-silentio*?

e) To succeed in these O.As, whether it is sufficient for the applicants to prove that the appointment in question is one 'not falling under direct recruitment'?

f) Whether the appointment falls under promotion?

g) If not under promotion, whether the appointment falls under the category of direct recruitment?

h) If the character of appointment does not fit in either for promotion or for direct recruitment, how to hold the character of this appointment?

i) Even if the doctrines of *res-judicata* or *constructive res-judicata* or *stares decisis* do not apply, whether it would be appropriate for the Tribunal to arrive at a different conclusion than the one already arrived at by it and up-held by the High Court. In other words, whether a decision deviating from the earlier decisions would be within the judicial discipline of the Tribunal?

28. Discussion on the above questions cannot but be with reference to the submissions made by the parties and the decisions of the superior Courts. The same are considered in the succeeding paragraphs.

Answer to Questions (a) (c) and (d)

29. The relevant rule relating to recruitment to group D posts as contained in the Recruitment Rules, 2002 notified on 23-01-2002 has been subjected to scrutiny upto the High Court level. According to the decision, Screening Committee's recommendation is not essential since the method of recruitment is one of promotion for which such a clearance from Screening Committee is not a pre-requisite. In view of the above, the general rule is 'to follow the earlier decision if the facts are alike'. It has been held in the case of *Bachan Singh v. State of Punjab, (1979) 3 SCC 727*, as under:-

> *"The root of the doctrine of precedent is that alike cases must be decided alike. Only then it is possible to ensure that the court bound by a previous case decides the new case in the same way as the other court would have decided it."*

30. At the same time, yet another question arises. In ***Distributors (Baroda) (P) Ltd. v. Union of India, (1986) 1 SCC 43,*** the Supreme Court had observed as under:-

> *"Jackson, J. who said in his dissenting opinion in Massachusetts v. United States "**I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday.**" Lord Denning also said to the same effect when he observed in Ostime v. Australian Mutual Provident Society : "**The doctrine of precedent does not compel Your Lordships to follow the wrong path until you fall over the edge of the cliff.**" (Emphasis supplied)*

31. *"Res judicata"*, it is observed in *Corpus Juris*, (Vol 34, p. 743) "is a rule of universal law pervading every well regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law ; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — *interest republicae ut sit finis litium;* the other, the hardship on the individual that he should be vexed twice for the same cause —

nemo debet bis vexari pro eadem causa". (Quoted in the judgment by the Apex Court in ***Daryao v. State of U.P.,(1962) 1 SCR 574)***

32. Constructive Res judicata is provided for in Explanation XI to Sec 11 of the C.P.C.

> "*Explanation VI provides that where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. It is clear that Section 11 read with its Explanation VI leads to the result that a decree passed in suit instituted by persons to which Explanation VI applies will bar further claims by persons interested in the same right in respect of which the prior suit had been instituted. Explanation VI thus illustrates one aspect of constructive res judicata*" ***(See Ahmad Adam Sait v. M.E. Makkri,(1964) 2 SCR 647).***

33. Doctrine of *Stare Decisis* (to stand by past decisions) is that where a rule has become settled law it is to be followed although some possible inconvenience may grow from a strict observance of it, or although a satisfactory reason is wanting, or although the principle and the policy of the rule may be questioned. Under Stare Decisis Rule, a principle of law which has become settled by a series of decisions generally followed in similar cases. This rule is based on expediency and public policy and although generally it should be strictly adhered to by the Courts, it is not universally applicable. This rule of stare decisis is not so inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the court and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result. (See **Maktul vs Manbhari AIR 1958 SC 918)**

34. The striking difference between Doctrine of *Res- judicata* and doctrine of *Stare Decisis* is that the former applies to the decision in the

dispute, while latter operates as to the rule of law involved. *Res judicata* normally binds only the parties to the litigation, while *Stare Decisis* binds everyone, including those who come before the courts in other cases. *Res judicata* applies to all the courts, while Stare decisis is brought into operation only by the decisions of the higher courts. *Stare decisis* operates at once.

35. In *Bengal Immunity Co. Ltd. v. State of Bihar,(1955) 2 SCR 603*, the Apex Court has observed as under:-

In *Hertz* v. *Woodman* (218 US 205) Mr Justice Lurton observed:

> *"The rule of stare decisis, though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the court, which again is called upon to consider a question once decided."*

24. Mr Justice Brandeis while delivering his dissenting opinion in *Washington* v. *Dawson &Co.*, (264 United States 219) thus expressed himself with regard to the propriety upon the part of the Supreme Court of departing from its earlier doctrines if it has come to consider those doctrines as erroneous:

> "The doctrine of *stare decisis* should not deter us from overruling that case and those which follow it. The decisions are recent ones. They have not been acquiesced in. They have not created a rule of property around which vested interests have clustered. They affect solely matters of a transitory nature. On the other hand, they affect seriously the lives of men, women, and children, and the general welfare. *Stare decisis* is ordinarily a wise rule of action. But it is not a universal, inexorable command. The instances in which the Court has disregarded its admonition are many."

25. The same learned Judge in a dissenting opinion in *David Burnet* v. *Coronado Oil & Gas Company*(285 US 393) reiterated the same position in the manner following:

> "*Stare decisis* is not, like the rule of *res judicata*, a universal, inexorable command."

After quoting the passage from the judgment of Mr Justice Lurton in *Hertz* v. *Woodman*(*1913 AC 107*) above cited the learned Judge proceeded:

> "*Stare decisis* is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right.... This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation. But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function... Recently, it overruled several leading cases, when it concluded that the States should not have been permitted to exercise powers of taxation which it had theretofore repeatedly sanctioned. In cases involving the Federal Constitution the position of this Court is unlike that of the highest court of England, where the policy of *stare decisis* was formulated and is strictly applied to all classes of cases. Parliament is free to correct any judicial error, and the remedy may be promptly invoked."

36. In the instant case, **all that we have to see is whether the doctrine of *stare decisis* applies and if so, whether the case comes within the excepted category i.e. whether it could be departed from.**

37. The legal point argued by the counsel for the respondents is the doctrine of *sub silentio*. Reliance has been placed by the counsel for the respondents to the case of Municipal Corporation of Delhi vs Gurnam Kaur (1989) 1 SCC 101 and State of U.P. vs Synthetics and Chemicals (1991) 4 SCC .

38. In *Municipal Corpn. of Delhi v. Gurnam Kaur, (1989) 1 SCC 101*, the Apex Court has held as under:-

> 11. *Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this*

Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words :

> *A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour.; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.*

12. *In Gerard v. Worth of Paris Ltd. (k), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority.*

39. In *State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139,* the Apex Court has held as under:-

> *41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur.-The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.*

40. It is thus to be seen now as to whether in respect of the earlier decisions, doctrine of *sub-silentio* does apply, to enable the respondents to keep away the legal position as decided therein and argue afresh on the same issue in the present batch of cases. In their counter as also in their arguments, the respondents had highlighted only the contention that the Tribunal was in error (so also the Hon'ble High Court) in holding that for G.D.S. And casual labourers, appointment to the Group

D post is 'promotion'. Many a decision had been relied upon by the respondents from C.C., **Padmanabhan and others vs Director of Public Instruction & Others (AIR 1981 SC 64)** followed by decision in **Director General Rice Research Institute, Cuttack vs K.M. Das (AIR 1995 SC 122)** and **Union of India and another vs S.S. Ranade (1995) 4 SCC 462**, etc., all focusing upon as to what promotion is. **According to the respondents, in the earlier decisions, the Tribunal (or for that matter, the Hon'ble High Court) did not appreciate the fact that recruitment to the Group D posts from amongst the G.D.S. or Casual Labourers is not a promotion but of direct Recruitment and as such clearance from Screening Committee is a pre-requisite for filling up the vacancies in Group D.** We have to differ. For, in order to hold that the doctrine of *sub silentio* applies to a particular judgment, it should be proved that the judgment has not considered a particular law. Here, the conclusion arrived at by the Tribunal that recruitment to Group D posts from out of the G.D.S. and serving Casual Labourers is one of promotion and not direct recruitment is a conscious decision and after due application of mind, and as such it cannot be termed as *"the particular point of law involved in the decision is not perceived by the court or present to its mind."* Indeed, a perusal of the decisions of this Tribunal in the earlier cases would confirm that it was not the case passed in *silentio* but one of examination *'in extenso'!*

41. Similarly, the earlier judgments cannot be branded as passed *per incuriam*. For, as held by the Apex Court in the case of *Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, (1990) 3 SCC 682*, the Latin Expression *per incuriam* means through inadvertence. i.e. If the Court has acted in ignorance of a decision of the same Court or higher Court or if it has been passed without considering

the relevant statute. None of the above applies in this case. The Tribunal as well as the High Court was conscious of the relevant Rules and the very subject matter revolved round the interpretation of the relevant rule and there has not previously been any decision on the point, ignorant of which the Tribunal has passed the earlier orders, which have been upheld by the High Court.

42. Thus, **answer to Questions (a), (d) and (e) is that the principles of Res-judicata or constructive Res judicata do not apply in these cases. Again, there being no trace in the decisions of any such factor to hold that the decisions are *per incuriam*, or passed in *sub silentio* etc., the decisions would not be hit by these principles.**

43. **Answer to Question (b):** i.e. whether the respondents are barred from raising the self same points as raised in the earlier cases:

44. *In Union of India* v. *Raghubir Singh, (1989) 2 SCC 754,* the Apex Court has held as under:-

> *9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court.*

45. Again, in the case of ***Bharat Sanchar Nigam Ltd. v. Union of India,(2006) 3 SCC 1,*** the Apex Court has held as under:-

> *20.The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is*

distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why the courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam. However, these are fetters only on a coordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction.

46. A precedent, thus, is not binding if it was rendered in ignorance of the statute or a rule having the force of a statute. In such circumstances, it can be said that the matter was decided *per incuriam*. **In order that a case can be decided per incuriam, it is not enough that it was inadequately argued.** It must have been decided in ignorance of a rule of law binding on the Court such as a statute (See observations in Salmond on Jurisprudence, 12th Edition, pages 150 and 169).

47. From the above principle, however, there has been a slight deviation in the decisions of the Apex Court in the recent past. Counsel for the respondents in this regards rely upon the decision of the Apex Court in the case of ***Col. B.J. Akkara (Retd.) v. Govt. of India,(2006) 11 SCC 709,*** wherein the Apex Court has observed as under:-

A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the State is not

prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a "pick-and-choose" method only to exclude petitioners on account of mala fides or ulterior motives.(emphasis supplied)

48. The above observation was, in a re-affirming tone, cited in a subsequent decision in the case of **Union of India vs A.S. Gangoli (2007) 6 SCC 196.**

49. Similar observation of the Apex Court was made by the Apex Court earlier also in the case of State of Maharashtra vs Digambar (1995) 4 SCC 683, wherein the it was stated as under:-

16.*We are unable to appreciate the objection raised against the prosecution of this appeal by the appellant or other SLPs filed in similar matters. Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where SLPs are filed by the State against judgments of the High Court, such SLPs may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. **Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matters where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest.*** (emphasis supplied)

50. Thus, when a particular legal issue has been decided in a particular fashion and the same, on not having been challenged, has attained finality, on the basis of the gateway now provided by the Apex Court vide the above decisions, there is no bar against the State in defending the other cases on the same lines as it defended the earlier case. To this extent, the respondents are certainly right in raising the self same contentions as they had raised in the earlier O.As.

51. In view of the above, answer to question (b) i.e. Whether the respondents are barred from raising the self same contentions as they had raised on the same legal point in the earlier cases, which had attained finality by virtue of the judgment of the High Court is therefore, in answered in negative.

52. **Answer to Question (e):** Since the requirement of clearance from Screening Committee is with reference to Direct Recruitment Vacancies only, all that is to be seen is whether the vacancies sought to be filled up are by way of Direct Recruitment or not. Hence, it is sufficient if the applicants prove that the posts to be filled up by G.D.S. or Casual Labourers, do not belong to Direct Recruitment quota.

53. Answer to Question No. (f) to (h) – whether the vacancies fall under promotion or direct recruitment or neither and if neither, what would be the character of such appointment? The Tribunal as well as the High Court has already held that vacancies are being filled up by promotion of GDS and Casual Labourers. It is to be kept in mind that in the earlier cases also, the primary question was whether screening committee's approval is essential, and answer to this question lies on the question whether the posts are to be filled by the method of Direct

Recruitment. Counsel for the respondents in the written arguments submitted that the mere existence of DPC does not mean that the posts are filled up by promotion. Decision by the Apex Court in the case of S.S.Ranade *(1995) 4 SCC 462*, has been relied upon by the counsel in support of this contention. A perusal of the said judgment would go to show that the same does not assist the case of the respondents. For, what was decided therein was whether Commandant (Selection Grade) gives the benefit of increased age of retirement under Rule 9. It does not deal about whether a post is filled up by promotion or direct recruitment or what are the characteristics of promotion. Though nothing much need be said in regard to this question as the Tribunal and even the Hon'ble High Court has held that the posts are filled up by promotion, yet, since in the course of arguments, both the sides laid emphasis upon this aspect, the same is discussed here keeping in mind the judicial discipline that the decision of the higher court is not deviated.

54. As stated earlier, the schedule to the Recruitment Rules is of two parts and some posts are filled up 100% by Direct Recruitment and some are filled up 100% by promotion. **For Direct Recruit Posts, the DPC is meant only for confirmation, while for promotional posts, the DPC is meant for promotion itself.** In so far as the post in question in these cases, as extracted above, vide Column No. 11 of the schedule, the posts are first filled up from the non-test category of Group D and it is only the remaining that are filled from amongst G.D.S. (upto 75% of the remaining vacancies) and casual labourers (upto 25%). If at all there be any unfilled vacancies after exhausting the above method, such vacancies alone are to be filled up by Direct Recruitment. Thus, **when there is a specific mention of Direct**

Recruitment for the residual posts, it gives an impression that the other two modes are not by Direct Recruitment. Classification of recruitment in this regard seems to have been made as (a) from among serving individuals (i.e. non test category, G.D.S. and Casual labourers, the last two coming under failing which category) and (b) from the open market. The latter (from open market) alone is specified as Direct Recruitment. As to the character of the other mode, the Rules are silent to reflect as to whether the same is by way of direct Recruit or by way of promotion. Of course, from the functions mandated to the DPC, it could be held that the other mode falls under Promotion, as held by the Tribunal in its earlier order, as upheld by the High Court. However, in the absence of clear mention in the recruitment rules, external aid has to be resorted to. Administrative instructions normally fill up the gap. A few related instructions at this juncture may clear the cloud. These are as under:-

(a) While impressing upon all concerned as to the need to hold DPC on time, the D.G. Posts, vide letter No. 47-11/93 SPB.I dated 25th August, 1993 has stated as under:-

> "DPC for appointment to Group D:
>
> It has been reported to the Directorate that in number of circles, the Departmental promotion committee for ED Agents to Group D is not being held in time. As the maximum age prescribed for **promotion of ED Agents to Group D** is 50 years, some of the ED Agents lost their chance to get promoted as Group D. It is, therefore, requested that the DPCs for **promotion of ED Agents to Group D** should be held as per the prescribed schedule, particularly keeping in view those cases where some of the ED Agents due for promotion are nearing the age of 50 years as prescribed in the recruitment rules." (emphasis supplied)

(b) Vide D.G. P & T letter No. 34/1/60-SPB-1, dated 20th July, 1961 and 34/5/65-I dated 30th September 1965, no medical examination

is conducted when the GDS (Erstwhile ED Agents) and part time employees were appointed to Group C or D posts. It is pertinent to point out here that the subject matter of this letter has been indicated as, "No further medical examination on promotion"

55. The above memorandum would go to show that in so far as consideration of the case of GDS to group D post, the same has not been treated as by way of direct recruitment.

56. One more aspect to be considered here is that recruitment from amongst the G.D.S. and Casual Labourers, is based on **selection-cum seniority**. Selection here means a sort of filtration process whereby those who do not fulfill the qualifications are filtered (for, there is a single seniority, vide clarification No. 2 in Dept of Posts letter dated 6th May 1991) and among those who fulfill the qualifications, selection is by way of seniority. **It is trite that the question of seniority does not arise in case of Direct Recruitment.**

57. As the issue could be restricted to the question whether the posts are to be filled up by direct recruitment or not theother mode could be any thing else. Notwithstanding the fact that the above OMs use the term 'promotion' and seniority is also considered as a factor since other attendant aspects such as fixation of pay under FR 22(a) et., have not been catered for, the other mode need not necessarily be one of Promotion in strict sense. Hence, it is to be seen whether the other mode could fall under any other recognized mode of recruitment than promotion or direct recruitment.

58. In fact, even prior to the current Recruitment Rules, 2002, recruitment to Group D was taking place under the 1970 Rules. Sometimes in 1989, the Respondents had issued a modification to the procedure. While considering whether part time casual labourers are entitled to Temporary Status as full Time Casual Labourers, the Apex Court has referred to the aforesaid modification to the recruitment procedure in respect of Group D posts from out of G.D.S etc., The Apex Court has stated as under in the case of *Secy., Ministry of Communications v. Sukkubai, (1997) 11 SCC 224* as under:-

> *"6. The respondents, however, have relied upon a letter dated 17-5-1989 issued by the Government of India, Ministry of Communications, Department of Posts giving a clarification regarding casual labourers and part-time casual labourers. The need for the clarification arose because by virtue of the notification dated 24-2-1989 the schedule annexed to the Indian Posts and Telegraphs (Group 'D' Posts) Recruitment Rules, 1970 was amended. As a result of the amendment under the head "Subordinate Offices" in Item II the following entries were inserted in column 9 as follows:*
>
> > *"In the Schedule annexed to the Indian Posts and Telegraphs (Group 'D' Posts) Recruitment Rules, 1970, under the heading 'Subordinate Offices' in Item II, in column 9, the existing entries '100% Direct Recruitment' shall be substituted by the following:*
> >
> > *'By means of an interview from amongst the categories specified and in the order indicated below. Recruitment from the next category is to be made only when no qualified person is available in the higher category.*
> >
> > *(i) Extra-departmental agents of the recruiting division or unit in which vacancies are announced.*
> >
> > *(ii) Casual labourers (full-time and part-time) of the recruiting division or unit.*
> >
> > *(iii) Extra-departmental agents of neighbouring division or unit.*
> >
> > *Explanation.—For Post Division, the neighbouring division will be the Railway Mail Service Division and vice versa.*
> >
> > *(iv) Nominees of the 'Employment Exchange.' "*
>
> *7. **Thus, instead of 100% direct recruitment to these posts**, the persons who were described in items (i) to (iv) of that notification were given preference for appointment. Item*

(ii) of the notification refers to casual labourers (full-time and part-time) who were thus given preference for absorption in the posts in question. As a result of the aforesaid letter of 17-5-1989, it was clarified (in para 2) that all daily-wagers working in Post Offices or in RMS Offices and other offices set out therein are to be treated as casual labourers. Those casual labourers who are engaged for a period of eight hours a day should be described as full-time casual labourers. Those casual labourers who are engaged for a period of less than eight hours a day should be declared as part-time casual labourers. All other designations should be discontinued.

..... ."

9. .....It is, however, stated before us by the learned counsel for the appellants that the priorities for absorption in Group 'D' posts which were set out in the letter of 17-5-1989 are still in force and that part-time casual labourers are also entitled to absorption as per the said letter. .... they will be absorbed in accordance with the priorities set out in the letter of 17-5-1989 provided they fulfill the eligibility criteria.

59. Thus, the term 'instead of 100% direct recruitment' appearing in the above judgment of the Apex Court confirms that the mode of recruitment of in service persons (non test category Group D employees, G.D.S. and Casual labourers) do not fall under direct recruitment. For, the term 'direct recruitment' obviously means 'recruitment from open market'. The distinction or difference between recruitment from open market and recruitment from amongst the G.D.S. and casual labourers is thus clear. The absorption of the latter cannot be termed as Direct Recruitment. The Apex Court in the above case did not indicate that the in-service recruitment is one of direct recruitment. This distinguishes this case from the decision of the Apex Court in the case Dr. P.P.C. Rawani, in a contempt matter, decided on 04-11-2008 referred to by the counsel for the respondents in the written brief, wherein the Apex Court described the regularized doctors as 'in service direct recruit'.

60. Almost, a similar situation (recruitment from open market and from in-service candidates) occurred in the case of appointment in the Orissa Government Press. Therein, an 'Appointment & Promotion

Committee' was to deal with promotion and recruitment. The Tribunal held that the Committee's recommendation is required for direct recruitment also. The Apex Court in that context has held as under in the case of *Govt. of Orissa v. Haraprasad Das, (1998) 1 SCC 487* :-

> *"....It may be recalled at this stage that the posts of Copy holders in the Government Press are base level Class III posts and are required to be filled up by direct recruitment from open market under Rules 10 and 11 of the Rules.*
>
> *10. We also find that the Tribunal has not correctly construed Rules 9, 10 and 11 of the Rules. Rule 9 which refers to the Committee is the Appointment and Promotion Committee which has to deal with promotions and recruitment of only in-service employees. Rules 9 and 10 of the Orissa Government Recruitment Rules, 1976 deal with recruitment of in-service employees and promotion of employees; and, in respect of the recruitment and promotion of such employees the Appointment and Promotion Committee has a role to play but in cases of direct recruitment from the open market the Appointment and Promotion Committee does not come into the picture at all and, therefore, the Tribunal was wrong in holding that the selection list prepared for direct recruitment from open market was required to be approved by the said Committee and it could become a valid selection list only after its approval by the said Committee."*

61. From the above decision of the Apex Court, it is clear that the Apex Court has distinguished between direct recruitment on the one hand and in-service recruitment on the other. Thus, we can safely say that 'direct recruitment' is one way of recruitment, promotion is another way and there is an intermediate mode, i.e. 'recruitment of in-service employees'. The non-test category as well as applicants fall under this category. This mode of recruitment has the shade of promotion rather than direct recruitment, as could be seen from the terminology used in various O.Ms cited above and also when the question of seniority is involved in making the recruitment.

62. It is to pertinent to point out here that the endeavour of the Government is to absorb as many GDS and Casual labourers as

possible. It was for this reason that when adequate number of Gramin Dak Sevaks in the same Division are not available, attempt is made to consider Gramin Dak Sevaks from neighbouring Divisions as well. Further, even after filling up the 75% and 25% respectively when the remaining vacancies are sought to be filled up by Direct Recruitment, in that method also, the GDS and casual labourers may participate, vide note appended to the schedule. When such is the clear intention of the government, in case there be any depletion in the number of vacancies, the same would act diagonally opposite to such an intention of the government. Provisions of OM dated 16th May, 2001 warranting limitation of vacancies and screening committee's approval cannot, therefore, be made applicable to vacancies in Group D posts to be filled up from amongst GDS and Casual Labourers.

63. Lastly, the remaining question is whether the Tribunal could discuss the issue which has once been decided by the High Court. In our humble opinion, since the O.As are maintainable, as stated above, the Tribunal, being the court of first instance, has to analyse the facts of the case and telescope upon the same the law involved or declared by the Higher Courts. In the instant case, in fact even in the earlier cases, the question was whether the provisions of OM dated 16th May, 2001 which insist for clearance of the Screening Committee would apply and the Hon'ble High Court had held that the provisions do not apply. That the posts are filled up by promotion as held by the High Court would be understood only to focus the point that the mode of recruitment is NOT by way of Direct Recruitment and hence provisions of OM dated 16th May 2001 would not apply. That far and no further! In the present cases also, the finding has been to the same extent. That earlier it was held that the mode of recruitment of GDS etc., is promotion and now it

is shown as 'in service recruitment' would not matter much, as both of them are in tandem, they being different and distinguishable from direct recruitment. There is no deviation or departure from the decision of the High Court.

64. In view of the above, all the O.As are allowed in the following terms. It is declared that there is absolutely no need to seek the clearance of the Screening Committee to fill up the vacant posts in various Divisions which are to be filled up from out of G.D.S. and Casual Labourers as per the provisions of the Recruitment Rules, 2002. Respondents are directed to take suitable action in this regard, so that all the posts, majority of which appear to be already manned by the G.D.S. themselves working as 'mazdoors'at extra cost, are duly filled. In a few cases (e.g. OA 118/2008), the claim of the applicants is that they should be considered against the vacancies which arose at that time when they were within fifty years of age. In such cases, if the applicants and similarly situated persons were within the age limit as on the date of availability of vacancies, notwithstanding the fact that they may by now be over aged, their cases should also, if otherwise found fit, be considered subject, of course, to their being sufficiently senior for absorption in Group D post. If on the basis of their seniority, their names could not be considered due to limited number of vacancies and seniors alone could considered for appointment against available vacancies, the respective individuals who could not be considered be informed accordingly.Time calendared for compliance of this order is nine months from the date of communication of this order.

65. No costs.

(Dated, the 15th December, 2008)

(K. NOORJEHAN)
ADMINISTRATIVE MEMBER

(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.

CERTIFIED TRUE COPY
Date .....

Deputy Registrar