BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. Nos. 1) 170/93, 2) 740/92, 3) 171/93, 4) 172/93,
5) 901/93, 6) 936/93, 7) 937/93, 8) 940/93,
9) 964/93, 10) 967/93, 11) 968/93, 12) 969/93,
13) 982/93, 14) 986/93, 15) 1178/93, 16) 402/93

1) V.P. Dhaneshwar ... Applicant (in OA No. 170/93)

2) P.T. Wasekar ... Applicant (in OA No. 740/92)

3) S.B. Sonavane ... Applicant (in OA No. 171/93)

4) S.B. Thite ... Applicant (in OA No. 172/93)

5) V.S. Chaugule ... Applicant (in OA No. 901/93)

6) N.B. Bartakke ... Applicant (in OA No. 936/93)

7) A.R. Udas ... Applicant (in OA No. 937/93)

8) S.S. Hadke ... Applicant (in OA No. 940/93)

9) S.K. Gonjare ... Applicant (in OA No. 964/93)

10) K.B. Vyas ... Applicant (in OA No. 967/93)

11) K.K. Chavan ... Applicant (in OA No. 968/93)

12) D.R. Bhosale ... Applicant (in OA No. 969/93)

13) M.D. Mahamuni ... Applicant (in OA No. 982/93)

14) K.P. Bhor ... Applicant (in OA No. 986/93)

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15) K.A. Mohite ... Applicant (in OA No. 1178/93)

16) Mohd. Nazeeruddin ... Applicant (in OA No. 402/93)

v/s

Union of India & Ors. ... Respondents

CORAM : 1) Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.

2) Hon'ble Shri M.R. Kolhatkar, Member (A).

APPEARANCE

1) Shri S.P. Kulkarni, counsel for Applicants in S.No. 1 to 16 except S.No. 5 and Shri B. Dattamurthy for Shri C.B. Kale, counsel for the Applicant in S.No. 5.

2) Shri P.M. Pradhan, counsel for the Respondents in all the matters.

ORAL JUDGEMENT DATED: 21-2-1995

(Per: Hon'ble Shri Justice M.S. Deshpande, Vice Chairman)

1. This judgement is to decide 16 cases including the O.A. 170/93- V.P. Dhaneshwar v/s Department of Posts.

2. The O.A. 170/93 is an illustration of controversy which arises in all these cases. Shri Dhaneshwar was appointed as Postal Clerk on 10-8-1959 and after serving the Department as a Clerk, he was promoted to the higher grade i.e. L.S.G. from 30-11-1983. Thereafter he was appointed in standard L.S.G. post in 1983 and is working at Aurangabad. 37 junior officials came to be promoted on 1-6-1992. The Department of Posts introduced a scheme now known as Biennial Cadre Review (vide order dated 11-10-1991). Shri Dhaneshwar completed 26 years of service on 10-8-1985 and claimed to have become eligible for the benefit under the scheme and for being granted the Higher Selection Grade-II Scale of Rs. 1600-2660 on that date on the

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basis of that w.e.f. 1-10-1991. He was given a charge sheet on 12-11-1991 and an order of punishment was passed on 1-1-1992 directing withholding of one increment for one year and directing recovery of Rs. 10,000/- in instalments. The Departmental Promotion Committee which met on 13-7-1992 have considered him for promotion under the Biennial Cadre Review and on the basis of the charge sheet of 12-11-1991, he was denied the benefit of the scheme. The only point raised in this petition and also in the other connected petitions and was argued was whether if the departmental proceedings are initiated after expiry of 26 years of service when the Govt. servant became eligible for the benefit under the Biennial Cadre Review and it results in a punishment, those departmental proceedings should come in the way of his being granted the benefit of the Biennial Cadre Review Scheme. No other point was pressed and the learned counsel for the Applicant made it clear that if there are any rules including Rule 135, P & T Manual, Vol.III, they are not challenging those provisions and press for decision only on the point mentioned above. On the other hand, Shri Pradhan, the learned counsel for the Respondents stated that under the Biennial Cadre Review Scheme, the department is vested with the power to deny the benefit of the scheme to such of the employees whose services do not continue to be satisfactory until 1-10-1991 and the benefit of the scheme can be denied to such an employee in appropriate case. Biennial

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Cadre Review was introduced by DG (P) Memo No. 22-1/89-PE 1 dated 11-10-1991 and it was observed that the Department had, in the first instance, considered the Time Bound One Promotion Scheme for basic operative Group 'C' and 'D' cadres after completion of 16 years of satisfactory service and implemented the same vide Office Memo No. 31-26/83-PE I dated 17-12-1983, and the staff unions had been pressing for acceptance of their demand for second Time Bound Promotion on completion of 26 years in the basic grade. That concept was not however accepted, but with a view to providing relief to the employees, Government have accepted the need for Biennial Cadre Reviews i.e. (once in two years) under which the incumbents of the existing posts would be enabled to draw pay in higher scales on completion of 26 years of service, not only for providing promotional opportunities for the staff concerned but also on the basis of functional justification. It added that while it is at the same time realised that in many cases the officials concerned may continue to perform the same tasks even in the higher scale, efforts would be made to utilise them for providing better supervision and for dealing with work involving comparatively higher responsibilities and better skills. Therefore, the following instructions were accordingly issued.

(i) The Scheme will come into effect from 1-10-1991.

(ii) The criterion for promotion will be eligibility of 26 years of satisfactory service

and certain cadres were created to which this scheme was made applicable. The Scheme came to be modified

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by letter dated 18-6-1993 by stating that from the instructions in question it would be observed that the criteria for promotion under Biennial Cadre Review will be eligibility of 26 years of satisfactory service and there was no relationship between the availability of posts and the promotions under this Biennial Cadre Review. The other remaining contents in this scheme would not be relevant for the purpose of this judgement.

3. The contention on behalf of the Applicant was that as soon as it is shown that the employee had completed 26 years of satisfactory service, he would, under the Memo dated 11-10-1991, be entitled to draw higher pay in the higher scale and as pointed above clause (iv) reiterated that the criterion for promotion will be eligibility of 26 years of satisfactory service. The grammatical reading of the scheme would show that the only eligibility criterion was 26 years of satisfactory service irrespective of whether the completion had occured before or after coming into the operation of the scheme dated 11-10-1991 or the date from which the scheme came to be operated i.e. 1-10-1991. The learned counsel for the Respondents however states that since the scheme came into operation from 1-10-1991, it was necessary to read into the provisions of the scheme that the satisfactory service should have continued even on the date on which this scheme came into force. This, however, in our view is not what the scheme provides. We will have to go by the language of the scheme itself and if it provides that the criterion for promotion will be the eligibility

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of 26 years' satisfactory service, the right to the benefit would arise as soon as 26 years' satisfactory service is completed and that service was found to be satisfactory service. No other eligibility criteria have been provided in this scheme. Merely because the benefit was to be conferred on the basis of past service, even if there was penalty rendered prior to 1-10-1991, it would be straining the language of the scheme to hold that the satisfactory service should have continued after the scheme came into operation as in the instant case which occured after 26 years of service, though the departmental action was called for, it would not come in the way of the employee getting the benefit of this scheme.

4. The view that we are taking is supported by the observations of C.A.T. Hyderabad Bench in C.J. Prabhakar Rao v/s Senior Superintendent of Post Offices - 1994 (1) ATJ 212. There the Charge memo was issued on 24-8-1985 and the disciplinary authority passed the order dated 23-10-1990 by imposing penalty of reduction in the Time Scale by 10 stages for a period of 3 years. The employee had completed 16 years of service on 12-6-1985. The Tribunal observed "As such, the D.P.C. which is to consider the case of the Gr. 'C' employee in regard to Time Bound one promotion or Time Bound 2nd promotion has to peruse the record of the concerned employee upto the date the Time Bound one promotion or 2nd promotion is due and it should not take into consideration the record subsequent to that date." We, therefore, find it difficult to agree with the submission of the learned counsel for the Respondents that in the present case the scheme cannot be given retrospective effect

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because it has been introduced by an administrative order. What is overlooked in this argument is that the scheme takes note of the past events for conferring benefit on the employee i.e. the event before the scheme came into effect although the benefit of the scheme is to be given only from 1-10-1991. In all the 16 cases, the Department Promotion Committee have recommended action on the basis of events which occured after the concerned employee had completed 26 years of service. The only direction that we need make in all these cases is as follows :-

(a) A Review DPC shall be held and it shall consider whether the employee concerned had rendered 26 years' satisfactory service. If he had done so, irrespective of whether the date fell before or after the scheme came into effect i.e. before 1-10-1991, the Review DPC shall consider the records of the service of the Applicant only for those 26 years and determine the eligibility of the Applicant for being granted the benefit of the Biennial Cadre Review on that basis. Should there be any other material apart from this against the employee concerned, the Review DPC will be free to take them into consideration for determining the eligibility of the Applicant for the benefit of the BCR Scheme;

(b) The impugned orders passed in these cases are set aside and the Respondents are directed to constitute Review DPC and take steps accordingly within 4 (four) months from the date of communication of the order. No other point is decided in the present application. No order as to costs.

(c) The Review DPC should consider the Applicant only once in terms of the directions stated above and if it appears that the benefit to which he will be entitled on the basis of service in question were given, the benefit already given to the Applicant in the present case will stand.

(M.R. Kolhatkar)
Member (A)

(M.S. Deshpande)
Vice Chairman

ssp.