CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 225/95, 991/97, 718/97, 1001/97 and 497/2001

the 25th day of FEBRUARY 2002

CORAM: Hon'ble Shri Justice B.Dikshit, Vice Chairman

Hon'ble Shri M.P. Singh, Member (A)

1. Dilipm Raghunandan Chaubal
Residing at : 60, Trupti,
Jay-Prakash Nagar,
Goregaon East, Bombay.

2. Pralhad Govind Gode
Residing at : 2/15,
Ravikiran Chawal,
Survodaya Nagar,
Bhandup West, Bombay.

3. Hanumant Ganpat Nalawade
Residing at : C/26, R.No.4,
Municipal Colony, Barve Nagar
Ghatkopar West, Bombay. ...Applicants in OA 225/95

1. Shrikrishna Janardan Sail
Residing at Matru Krupa
Building, Room No.5,
1st floor,
Thakurli (East) Tilaknagar,
Dombivli (East) ...Applicant in OA 991/97

1. P.Sivan
Residing at Chawl No. F
Room No.4, Shivneri
Co. Operative Housing
Society, Mangal Ragho Nagar
Tisgaon Road,
Katemanivli P.O.
Kalyan (East) Dist. Thane. ...Applicant in OA 718/97

1. Devdas Krishna Abnave
Residing at 3/513,
Navmaharashtra Nagar,
M.P. Mill Compound
Tardeo, Mumbai. ...Applicant in OA 1001/97

By Advocate Shri S.P. Kulkarni

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V/s

1. Union of India through
The Director,
Department of Post,
Bombay G.P.O.
G.P.O. Building (Old)
Near V.T. Bombay.

2. The Chief Postmaster General
Maharashtra Circle
G.P.O. Building (Old),
2nd floor, Near V.T. Bombay.

3. Smt. Geeta S.Iyer
Assistant Post Master (Accounts)
T.B.O.P. Bombay G.P.O.
Bombay.

4. Smt. M.P. Geeta
Time Scale Accountant,
Dadar Head Post Office,
Bombay. ...Respondents in
OA 225/95

1. Union of India through
Director General (Posts)
Ex-Officio - Secretary,
Department of Posts, Ministry
of Communications, Government
of India, Dak Bhawan,
Parliament Street,
New Delhi.

2. Chief Postmaster General
Maharashtra Circle, Old GPO
Building, Near C.S.T. Central
Railway, Fort, Mumbai.

3. Director of Postal Services
(City) Office C.P.M.G.
Maharashtra Circle, Old CPO
Building, Near CST,
Fort Mumbai.

4. Senior Superintendent of Post
Offices, Mumbai City East
Division, Dadar H.P.O. Building,
Opp Pritam Complex,
Dr.B.A. Road, Dadar, Mumbai. ...Respondents in
OA 991/97

5. Senior Superintendent of
Air Mail Sorting Division
Air Port Complex Sahar
Mumbai.

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6. Shri M. Inniah
(T.B.O.P.) Accountant
AMPC, Air Mail Processing,
Mumbai. ...Respondent in OA 718/97

7. Shri S.S. Dhavalkar
APM (Accounts),
Andheri HPO, Mumbai. ...Respondent in 1001/97

By Advocate Shri S.S. Karkera for Shri P.M.Pradhan.

1. S.P. Mulay
A.P.M. Accountant
Ahmednagar H.O.
Ahmednagar. ...Applicant in OA 497/2001

By Advocate Shri S.P. Kulkarni.

V/s

1. Union of India through
The Secretary,
Ministry of Communication,
Department of Posts.
New Delhi.

2. The Chief Post Master Gerneral,
Maharashtra Circle, GPO
Bombay.

3. The Post Master General
Poona Region,
Poona.

4. Sr. Superintendent of Post
Offices, Ahmednagar Division
Ahmednagar HO, Ahmednagar.

5. Smt. N.N. Dhumane,
A.P.M. Accountant
Ahmednagar Head Post Offices,
Ahmednagar. ...Respondents in OA 497/2001/

By Advocate Ms. H.P. Shah.

O R D E R

{Per M.P. Singh, Member (A)}

The issue raised in these all the 5 OAs and relief claimed by the applicants are identical. We therefore proceed to dispose of all the OAs by passing a common order. OA 1001/97,

2. The OA 1001/97, Shri Devdas Krishna Abenave V/s Union of India is taken as a leading case. In this OA the applicant is challenging the letter dated 31.1.1997 issued by Chief Post Master General, Maharashtra Circle.

3. The brief facts of the case are that the applicant joined the postal service in clerical cadre of Postal Assistants (Rs. 975 - 1660). Thereafter he qualified in the examination for the posts of Post Office and R.M.S. Accountant (PO & RMS) in the year 1990. As per the Recruitment Rules which were in existance prior to 1970, the posts of PO & RMS Accountants were filled as per seniority in Divisional Gradation list (Rule 276). Thereafter the criterian for posting qualified PO & RMS Accountants was changed to that of Posting such qualified Accountants as per year of passing vide letter dated 12.3.1970 (Exhibit A -5). Accordingly gradation list were being prepared and circulated on the basis of above criterian. These PO & RMS Accountants are further eligible for promotion to the Lower Selection Grade cadre (Rs. 1400 -2300) for being posted in LSG

Accountants Cadre. As per serial No. 15 of Recruitment Rules, 1976 (Exhibit A -19 page 18 and 19), 66 2/3 % posts of LSG Accountants were filled by promotion on the basis of seniority-cum fitness and 33 1/3 % by selection. The above percentage (1 /3rd selection orders) was introduced in 1973 and discontinued in 1983 on the introduction of TBOP Scheme. After implementation of TBOP Scheme, the promotion was on the basis of seniority -cum fitness. Even after introduction of TBOP scheme and subsequent clarificatory orders , the seniority list of PO & RMS Accountants and LSG Posts (Accountants) continued to be in force on the basis of criteria adopted in 1970 i.e. year of passing.

4. The Department of Posts thereafter introduced second Time Bound Promotion Scheme in 1991. As per clarificatory order issued on 5.9.1992 (Exhibit A -12), the settled system of promoting from T/S Accountants Gradation list was given a twist in as much as the posting of Smt. Geetha was done on the basis of length of Service in clerical Cadre. This was challenged by those who were Senior to her in T/S Accountants Gradation list namely Shri D.R. Chawbal and others in OA No. 225/95. Thereafter the department of Post continued to issue clarificatory Orders on this subject. The basic issue involved in this OA is that the applicant is adversely affected due to imminent posting of Shri R.R. Shah (1995 qualified Accountants) and others who are juniors to the applicant. The

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above mentioned persons had qualified in the examination later than applicant and as such stand junior in so far as their posting to the posts of Accounts Cadre line of LSG is concerned. This is the main issue involved in this OA.

5. According to the applicant the similar issue was a subject matter in OA 45/91 in the case of Bed Singh V/s Union of India and others, which was decided by the Principal Bench of this Tribunal, vide its order dated 24.2.1995. In that case, the Tribunal has held that the promotion to the post of LSG is to be made in accordance with the Recruitment Rules of 1976. According to the applicant this judgement of the Tribunal has been implemented by the respondents and has become final. Since the Respondents have not extended the benefits of the aforesaid judgement of the Tribunal in OA 45/91 to the applicant, he has filed the present OA claiming the following reliefs:

> (a) This Hon'ble Tribunal be pleased to call for the entries correspondence, Recruitment Rule Orders Office Notes etc. on the question of PO & RMS Accountants, Promotion.
>
> (b) This Hon'ble Tribunal be pleased to hold that the law laid down in Bed Singh's case (Principal Bench CAT, New Delhi), is equally applicable to the subject case of applicant.
>
> (c) Hold and declare the decision arrived at in order dated 31.1.1997 (Exhibit A-1) as arbitrary being in-consistent with seniority list of 1.7.1991.
>
> (d) Hold and declare that TBOP/ BCR Scheme and orders can not take away or un-settle the Procedure of Seniority reckoning vide seniority list as dated 1.7.1991 of P O & RMS, Accountants the right of consideration L.S.G. of Promotion to LSG as per Recruitment Rules, 1976 Supervisors and Orders of 1970 (Norm based Standard) etc.
>
> (e) Hold and declare that the seniority in the list of PO & RMS Accountants as 1.7.1991 is to be reckoned for promotion to the post of LSG (Accountant / Supervisory) posts, irrespecitve of any orders under TBOP / BCR Scheme.

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(f) Hold and declare that Promotion / Posting to the post of LSG (Accountant) line of PO & RMS Accountants on the basis of length of service instead of Recruitment Rules on record as arbitrary.

(g) Hold and declare that the qualification and to the post of LSG Supervisor and Posting of PO & RMS Accountants to the Post of LSG Supervisor Post is not of discretionery but of mandatory nature and elevation in the hierarchy of PO & RMS Accountants has nexus with experience gained in Accountants line (i.e. length of service as Accountants and not a length of Service as Postal Assistant).

(h) Hold and declare that though PO & RMS Accountant is not a separate Cadre the PO & RMS Accounts as a line distinct from General Line as evident from the fact that even now 'Option' is obtained from would be TBOP beneficiary to exercise option.

(i) Hold and declare that furhter promotion to HSG - II (Standard) Posts of Accounts line and General line is in the ratio of 20 : 80 and one out of five posts of HSG-II is to go to the Accountants line LSG Supervisors. In this context impugned order seals off / encroaches upon these mandatory provisions arbitrarily.

(j) Direct respondents to regulate promotions to the Posts of Standard LSG Suspervisor Accounts Line strictly as per Seniority List of PO & RMS Accountants (as was being done till 1994 or thereabout) on record and not to misconstrue or to misinterprete TBOP / BCR Scheme orders so as to take away the right of consideration of applicant to such posts.

(K) Any other and such further order / relief as may be deemed fit and proper by this Hon'ble Tribunal.

(l) Cost of OA if awarded be paid to the applicant.

5. The respondents have contested the case and have stated that as per Rule 276 of P & T Manul Vol. IV, PO & RMS Accountants were appointed to the post on the basis of their seniority in the basic cadre of clerks. The Department of Posts vide their letter dated 18.3.1970 decided that appointment to these allowance posts be made according to the year of passing of the qualifying examination. Thereafter PO & RMS Accountants were

appointed as per the year of passing. The supervisory posts of LSG Accountants were filled in as per the Posts and Telegraphs (Selection Grade Posts) Recruitment Rules 1976 in the ratio of 2/3rd posts on the basis of seniority-cum-fitness and 1/3rd by way of examination. The clerks in Post Offices with 10 years regular service in the grade who had passed PO & RMS Accountants examination were eligible for promotion in the Selection grade posts on availability of vacancies.

6. In the year 1983, the Department of Posts introduced One Time Bound Promotion Scheme for promotion to the LSG scale of pay for Postal / Sorting Assistants including PO & RMS Accountants. These officials on completion of 16 years satisfactory service were eligible for placement in the LSG scale of pay of Rs. 1400 - 2300 (pre - revised). The Department also introduced Biennial Cadre Review for promotion to the next higher scale of pay, (HSG - II) on completion of 26 years of satisfactory service. This scheme is applicable to those cadres to which TBOP scheme is introduced with effect from 30.11.1983 and is given effect from 1.10.1991. After the introduction of TBOP and BCR scheme for giving benefits to the employees of promotional avenues and placement in higher scale, the DGP &T New Delhi vide their letter dated 3.3.1992 issued the circular that the supervisory posts are to be manned by the officials promoted to HSG II under the BCR Scheme. The Department of Posts also issued an order vide letter dated 15.2.1992 indicating the manner in which the supervisory posts of LSG Accountants are to be filled in. As per the aforesaid order if BCR HSG - II officials with PO & RMS

Accountants qualification are not available, then TBOP LSG officials with PO & RMS Accountants qualifications are to continue. With the introduction of these two schemes i.e. TBOP / BCR, there was no scope for promotion to the Selection Grade post of LSG Accountants under the Recruitment Rules of 1976. The Department of Posts vide their letter dated 24.9.1996 clalrified that the seniority in the postal Assistant cadre is not changed by virtue of their passing PO & RMS Accountants examination earlier than their seniors. Therefore, the applicant cannot approach this Tribunal stating therein that the respondents are not making selection as per the Recruitment Rules 1976 after the Accountants having got the benefit under the TBOP and BCR Scheme. Since the applicant has not completed 16 years of service and had not challenged the scheme and guidelines issued by the department, he is not entitled for promotion as per Recruitment Rules. In view of the submission the application deserves to be dismissed.

7. We have heard the rival contention of parties and perused the records.

8. The main issue involved in this case is whether the seniroty of the PO & RMS Accountants has to be regulated in accordance with the criterian laid down in the Recruitment Rules 1976 or the instructions issued by the respondents on introduction of TBOP and BCR Scheme. The recruitment Rules of 1976 have been framed under proviso to Article 309 of the Constitution, and therefore have mandatory force. These rules

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provide that those who have passed PO & RMS Accountants examination are eligible for promotion after completion of only 10 years of service. They will also rank senior to those who passed the examination subsequently and also to those who have been considered under TBOP Scheme on the basis of 16 years of service. This Principle of Seniority based on merit as a result of passing the PO & RMS Accountants Examination hasbeen incroporated in DGP & T letter dated 13.12.1959 and also letter dated 12.3.1970. The same view has been reiterated vide letter dated 10.1.1974 that seniors cannot be ignored just because they had not completed requisite number of years for being eligible to LSG. The Rules are of a mandatory nature and administrative instructions are merely directory in nature. The recruitment rules will prevail over administrative instructions. Only those administrative instructions which supplement the rules acquire mandatory force. The administrative instructions issued by the respondents which are inconsistent with rules will be treated as merely directory in nature. A similar issue has been decided by the coordinate Bench of the Tribunal vide their judgement dated 24.2.1995 in the Case of Bed Singh V/s Union of India in OA NO: 45/91. In that judgement, the Tribunal has held as under:

> The cruical question is the applicability of the rules. The Rules of 1976 have not been amended and are applicable is admitted by the respondents also. The applicant has passed the PO & RMS Accountants Examination stipulated in Serial No.15 of the Recruitment Rules. He has also completed 10 years of service. As such, the applicant is entitled for promotion under the said rules and is not claiming promotiuon under TBOP but under the Statutory rules of 1976. As such, his case should be considered on merits by holding a review DPC and if he is suitable, he should be promoted with all consequential benefits. The OA is thus allowed on the respondents are directed to consider the case of the applicant on merit under the Statutory rules of 1976 to the grade of LSG.

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The respondents shall implement these directions within a period of two months from the date of a receipt of certified copy of this order.

9. On perusal, we find that the present OAs are covered on all fours by the judgement of Principal Bench Dated 24.2.1995, in the case of Bed Singh in OA No 45/91. Therefore we respectfully agree with the findings of the aforesaid Judgement of the Tribunal. It is also admitted by the learned counsel for the respondents that Bed Singh's judgement has been implemented by them and has attained finality. The learned counsel for the respondents also admitted that the statutory Rules of 1976 have not been superseded and are still in force.

10. For the reasons recorded above, the impugned order dated 31.1.1997 is quashed and set aside. The OA is allowed and the respondents are directed to consider the case of the applicant on merit under statutory Rules of 1976 by holding a review DPC and if he is found suitable, he should be promoted from the date his immediate junior was promoted with all consequential benefits. The respondents shall implement these directions within a period of 3 months from the date of receipt of a copy of this order.

11. OA 225/95, 991/97, 718/97 and 497/2001 also stand disposed of accordingly. No order as to costs.

Judgement despatched to applicant/respondent (s) on 26/2/97

OA 225/95

(M.P.Singh)
Member (A)

(B.Dikshit)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORITINAL APPLICATION NO: 225/95, 718/97, 991/97, 1001/97, 497/2001, 758/2001 and 918/2001

CP 5/2003 in OA 225/95
CP 7/2003 in OA 718/97
CP 6/2003 in OA 991/97
CP 8/2003 in OA 1001/97
CP 9/2003 in OA 497/2001
CP 11/2003in OA 758/2001
CP 10/2003in OA 918/2001

TRIBUNAL'S ORDER DATED;7.3.2003

Shri S.P.Kulkarni counsel for the applicant. Mrs. Hena P. Shah counsel for the respondents.

Mrs. H.P. Shah states that interim stay has been granted by the High Court. C.P.be kept in sine die list till the decision of the High Court. Either party will be free to revive the C.P.

(K.V. Sachidanandan)
Member(J)

(Govindan S.Tampi)
Member(A)

NS