CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

CAMP AT AURANGABAD

ORIGINAL APPLICATIONS NO 527/98, 939/98, 941/98 & 942/98

THURSDAY, THE NINTH DAY OF AUGUST, 2001

CORAM: SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
SHRI M.P. SINGH. MEMBER (A)

O.A. NO. 527/98

1. Uttam Bhagwanrao Hayatnagarkar,
PASBCO Beed, HO.

2. Ajinath Sarjerao Misal,
PASBCO Aurangabad, HO.

3. Ramrao Ashruba Tandle,
PASBCO Aurangabad, HO.

4. Baburao Bajirao Varkate,
PASBCO Beed HO.

5. Ratnakar D.Dumane,
PASBCO Aurangabad PO,

6. Bhika sudamarao Vidyaagar,
PASBCO Beed HO

7. Dharmaraj V.Mujmule,
PASBCCO Aurangabad HO.

8. Dilip Devidas Deshmukh,
PASBCO Beed HO.

9. Shivaji Dashrathrao Khedkar,
PASBCO Beed HO.

10. Anant Kashinathrao Kulkarni,
PASBCO Beed HO. .... Applicants

By Advocate Shri A.G. Deshpande.

Vs.

1. Union of India,
through Secretary,
Ministry of Communications,
New Delhi.

2. The Director General,
Department of Posts,
New Delhi.

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3. The Chief Post Master General,
Maharashtra Circle,
Mumbai.

4. Smt. M.S. Chintwar,
Postal Assistant, Savings Bank
Coantrol Organisation, Head Post Office,
Aurangabad.

5. Smt. Gaonkar,
Postal Assistant,
PASBCO, Savings Bank Control Organisation
Head Post office,
Pune. ... Respondents

By Advocate Shri V.S. Masurkar.

O.A. NO. 939/1998

Shri Shaik Jamil Ahmed Rahim,
S/o Shaikh Rahim Karim,
Age: 40 Years, working as
Postal Assistant (TBOP), SBCO,
Ahmed Nagar-414 001. ... Applicant

O.A. NO. 941/98

Shri Atmaram Radheba Nagargoje,
Son of Radheba Ambu Nagargoje,
Age: 41 years, working as
Postal Assistant (TBOP) SBCO
Savings Bank Control Organisation (SBCO),
Ahmednagar Head Post Office,
Ahmednagar-414 001. ... Applicant

O.A. NO. 942/98

Shri Chandrakant Bankatrao Mahale,
Son of Bankatrao Ramchandra Mahale,
Age: 40 years, working as
Postal Assistant (TBOP) SBCO,
Savings Bank Control Organisation,
Ahmednagar Head Post Office,
Ahmednagar. ... Applicant

By Advocate Shri S.P. Kulkarni

Vs.

1. Union of India through
Director General (Posts),
Department of Posts,
Government of India, Ministry of

...3.

Communication, Department of Posts,
Sansad Marg,
New Delhi-110 001.

2. Chief Postmastr General,
Maharashtra Circle,
Old G.P.O. Building, 2nd Floor,
Near C.S.T. Central Railway,
Fort, P.O. Mumbai-400 001.

3. Senior Superintendent of Post
Offices, Ahmednagar Division,
Ahmednagar-414 001.

4. Smt. S.R. Gaokar,
Postal Assistant (TBOP) SBCO,
Ahmednagar Head Post Office,
Ahmednagar-414 001. .... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R (ORAL)

Shri M.P. Singh. ... Member (A)

In all the above mentioned applications, the facts and the reliefs claimed by the applicants are similar. We therefore, proceed to dispose of all these OAs by passing a common order.

2. The facts in brief of OA No.527/98 are as follows: The applicants, ten in number, have prayed for a direction to the respondents to declare the orders dated 8th February, 96 (together with orders dated 5.8.97 and 1.1.98) and 1st December, 97 as null and void. They have also sought a direction to the respondent No.3 to promote the applicant No.1 to 5 from the date on which their junior i.e. 4th respondent is

promoted and also to promote the applicant NO.6 to 10 from the date on which their junior i.e. 5th respondent is promoted with all consequential benefits.

3. The admitted facts are that all the applicants were appointed as LDC in the postal department. The department of posts & Telegraph vide their letter dated 17th December, 1983 introduced a Time Bound One Promotion (TBOP) Scheme for regular employees in the operative cadre. The scheme came into effect from 30th December, 1983. As per this scheme all officials belonging to basic grade in Group C & D to which there is a direct recruitment either from outside and or by means of Limited Departmental Competitive Examination from lower grade and who have completed 16 years service in that grade were to be placed in the next higher grade. The officials who have completed 16 years of service and were promoted to the next higher grade were to continue to operative duties unless they were posted to regular supervisory post in their turn. The promotion under the TBOP scheme was linked neither to vacancies nor posts in the lower selection grade but completion of 16 years of satisfactory service in the grade. The Department of Posts vide letter dated 26th July, 1991 extended TBOP to the staff working in savings

bank control organisation in the department with effect from 01st August, 1991. Prior to introduction of the TBOP scheme to the staff in the savings bank control organisation, there were two cadres of clerks namely, Lower Division Clerks and Upper Division Clerks. On introduction of the TBOP scheme, these posts were replaced by the posts of Postal Assistants in the scale of Rs. 975-1660. The promotion under the TBOP scheme was to be given from the Postal Assistants on completion of 16 years of service.

4. Respondent No.4 was appointed in Bombay Telephones on 20.4.1976 and was transferred under Rule 38 of P & T Volume IV to SBCO as LDC with effect from 28.9.81. She was placed in TBOP scheme with effect from 19.4.92. Similarly respondent No.5 was appointed in Bombay Telephone on 23.12.1978 and she came on transfer under Rule 38 of the P & T Volume IV to SBCO as LDC on 03rd January, 1984. She was placed in TBOP scheme with effect from 25th December, 1994 on completion of 16 years of service. Since the respondents No.4 & 5 were transferred under Rule 38, they were given the bottom seniority. Accordingly, respondent No.4 was placed in the seniority list below applicants 1 to 5 and respondent No.5 was placed below applicants 6 to 10.

5. By filing this OA, the applicants are contending that since respondents No.4 & 5 are junior to them and have been placed in the higher grade under TBOP scheme they should also be given higher grade under TBOP with effect from the same date on which respondents No.4 & 5 were given higher grade. They have also filed representations to the respondents to grant the higher scale with effect from the date their juniors have been given, but the same have been rejected. They have, therefore, filed this OA claiming the aforesaid reliefs. Heard learned counsel for both the rival contesting parties and perused the records.

6. The controversy to be considered by us is as to whether the applicants can be given higher scale without putting in 16 years of service as required under the TBOP scheme. The learned counsel for the applicants drew our attention to para 8 of the letter dated 17th December, 1983 under which the scheme was introduced. As per para 8 of the aforesaid letter, these officials on promotion to higher scale of pay on completion of 16 years of service will maintain their inter se seniority in the lower grade for purposes of promotion to supervisory posts justified on standards. This is to protect the interest of the senior officials who may not

be eligible for promotion in a particular year for non-completion of 16 years of regular service, but are promoted on the basis of recommendation of a subsequent DPC. He also drew our attention to the letter dated 5th August, 1997 issued by the Department and stated that as per this letter, the applicants are entitled to claim promotion under TBOP/BCR on the analogy of NBR with reference to their juniors if their juniors are brought to their unit under Rule 38 of P & T Manual Volume IV in a lower grade and on the crucial date they were still working in the lower grade. Respondents 4 and 5 have been transferred under Rule 38 of the P & T Volume IV and therefore, the applicants are entitled for the higher grade under TBOP scheme from the date their juniors have been placed in that grade.

7. On the other hand, the learned counsel for the respondents submitted that respondents 4 and 5 have been given higher scale from the year 1992 and 1994 respectively and the applicants have filed these OAs on 5th June, 1998 and therefore, the OA is barred by limitation. Learned counsel for the applicant submitted that the OA is not barred by limitation as he is challenging the order of 1.9.97 by which, the promotion of Respondent No.4 and 5 was restored.

8. The learned counsel for the respondent then submitted that the letter of 17th December, 1983 and 5.8.1997 on which the learned counsel for the applicants has relied upon, have been further amended by letter dated 1st February, 1998. He drew our attention para 2 in the aforesaid letter for clarification and submitted that the respondents cannot be given higher grade under TBOP scheme before completion of 16 years of service. He also drew our attention to the judgment of the Hon'ble Supreme Court dated 15th December, 1998 in case of D.C. Sarkar & another Vs. UOI & another AIR 1999 (SC) 598. He submitted that the same issue has been discussed by the Hon'ble Supreme Court and has held as under:

> "17. On the facts of the present case and especially in view of the aforesaid decisions, we are of the view, that when the transfer is in public interest, and not on request, the two employees transferred, cannot be in a worse position than those in the above rulings who have been transferred on request and who, in those cases accepted that their names could appear at the bottom of seniority list. Even in the case relating to request transfers, this Court has held, as seen above, that the part service will count for eligibility for certain purpose though it may not count for seniority.
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> 18. Hence the transfer order and concerned circular of 1983 which required that the past service should not count for seniority, cannot have any bearing on eligibility for time-bound promotion. Seniority and time-bound promotions are different concepts, as stated above."

9. We have considered the submissions of both the learned counsel and have perused the clarification dated 01.01.1998 issued by the Ministry of Communication and also aforesaid judgment of the Hon'ble Supreme Court. We are of the considered view that the applicants cannot claim higher grade under TBOP scheme before completion of 16 years of service.

10. In view of this, the OA fails and is accordingly dismissed. The other connected OAs also stand dismissed. No costs.

(M.P. SINGH)
MEMBER (A)

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

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