CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA Nos.131/06, 132/06, 133/06 & 134/06.

Jaipur, this the 19th day of September, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Bhairu Lal
S/o Gorhan Lal
Aged about 55 years,
R/o Plot No.60, Janakpuri-I,
Imliwala Phatak, Jaipur.

... Applicant in OA No.131/2006.

Madan Lal Jasoria
S/o Shri Ram Nath,
Aged about 56 years,
R/o 56, Joshi Colony,
Rajmal Ka Talab,
Jaipur.

... Applicant in OA No.132/2006.

Nanu lal Kumher
S/o Shri Ram Niwas
Aged about 55 years,
R/o Plot No.13, Janakpuri-I,
Imli Phatak,
Jaipur.

... Applicant in OA No.133/2006.

G. R. Pushp
S/o Ram Singh
Aged about 51 years,
R/o Plot No.191, Avadhpuri-II,
Mahesh Nagar,
Jaipur.

... Applicant in OA No.1342006.

By Advocate : Shri P. N. Jatti in all the OAs.

Vs.

1. Union of India through
Secretary to the Govt. of India,
Department of Posts, Dak Bhawan,
Sansad Marg,
New Delhi.

2. The Principal Chief Postmaster General,
Rajasthan circle,
Jaipur-7.

3. The Senior Superintendent
Railway Mail Service,
JP Dn.
Jaipur.

4. Head Record Officer,
Railway Mail Service,
JP Dn. Jaipur.

Respondents in all the OAs.

By Advocate : Shri Tej Prakash Sharma in all the OAs.

: O R D E R (ORAL) :

By this common order, we propose to dispose of the aforesaid OAs (OA NO.131/06, 132/06, 133/06 and 134/2006).

2. Briefly stated, the facts of the case are that the applicants are the employees working under the Postal Department. They were granted higher pay scale in BCR after rendering 26 years of service. However, the said benefit was not granted from the date when the applicants have completed 26 years of satisfactory service. They were granted the said benefit w.e.f. 1st January/1st July after completion of their 26 years of service. The grievance of the applicants in these OAs is that they should have been granted higher pay scale under the BCR on completion of 26 years of service w.e.f. the date when they have completed 26 years of service and not from the later date viz 1st January/1st July. For that purpose representations were also made to the Chief Post Master

General, Rajasthan Circle, Jaipur. However, the said representation was rejected by the Chief Post Master General, copy of which was conveyed to the applicants vide common order dated 8.12.2005. However in the case of applicant in OA No.132/2005, the copy of rejection of representation was conveyed to him vide letter dated --/11/2005(Annexure A/1). It is these orders which are under challenge in the OAs. It may be stated that the applicant in OA No.131/2006 is claiming the benefit in the higher pay scale under BCR Scheme w.e.f. 17.9.99 instead of 1.1.2000. In the case of applicant in OA No.132/2006, the benefit in higher pay scale under BCR has been granted to him w.e.f. 1.7.95 but he is claiming the said benefit from 1.3.99 when he has completed 26 years of service. Similarly the applicants in OA No.133/2006 and 134/2006 are claiming the said benefit w.e.f. 1.9.99 and 19.2.2000 instead of 1.1.2000 and 1.7.2000 respectively. It is on these basis the applicants have filed these OAs thereby praying for quashing the impugned orders and to grant them the benefit of higher pay scale under BCR on completion of 26 years of service.

3. Notice of this application was given to the respondents. The stand taken by the respondents in the reply is that no doubt the applicants have completed 26 years of service prior to granting them benefit in higher scale under BCR Scheme but as per Para IX of BCR Scheme

introduced by the Department of Posts vide DG letter dated 11.10.1991, the crucial date for grant of biennial increment is 1st January or 1st July as the case may be when the employees have completed 26 years of satisfactory service. The respondents have also opposed this application on the ground of limitation by stating that the representations have been made after a lapse of 6/10 years and in view of the law laid down by the Apex Court in the case of Bhoop Singh vs. Union of India, 1997 Vol.3 LSC 322 ~~and~~ the applications are hopelessly time barred.

4. We have heard the Learned Counsel for the parties and gone through the material placed on record.

5. Before we decide the matter on merit, let us examine whether the applications filed by the applicants are within the period of limitation. According to us, the reliance placed by the Learned Counsel for the respondents to the judgment of Bhoop Singh (supra) is clearly misplaced and is not applicable in the facts and circumstances of this case. That was a case where the cause of action was not continuous whereas it is a case of wrong fixation of pay. The grievance of the applicants is that they are entitled to the higher grade from earlier date than the date when they have been held entitled by the respondents. Thus, it is a case of continuous wrong. The delay in seeking the remedy at the

most may disentitle the applicants for recovery of arrears calculated on the basis of difference in the pay which has become time barred and thus not recoverable. But admittedly they would be entitled to proper fixation in higher pay scale from the earlier date, if their claim is found justified. At this stage, it will be useful to quote the decision of the Apex Court in the case of M. R. Gupta v. Union of India, AIR 1996 SC 669, whereby the Apex Court has held as under :-

> "In a case, the appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the delay and laches etc. to disentitle him to those reliefs."

Thus, the contention raised by the respondents that the application is time barred and the same should be rejected cannot be accepted in view of the law laid down by the Apex Court in the case of M.R. Gupta (supra).

6. Now let us consider the matter on merit. The matter on this point is no longer res-integra. The same is fully covered by the decision dated 28.8.2006 rendered by this Tribunal in OA No.169/2005 "Shiv Lahori Vs UOI" where an identical issue was involved. At this stage, it will be useful to quote Para 5 & 6 of the judgment which thus reads as under :-

> "5. We are of the firm view that the applicant has made out a case for grant of relief as the matter is no longer res-integra and the same is covered by the decision of the Full Bench, Chandigarh of the Tribunal in the case of Piran Dutta & 25 others vs. Union of India & Ors., reported in 2005 (1) ATJ 430. The question which was placed before the Full Bench was as follows :-
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> "Whether the benefits under BCR Scheme dated 11.10.91 (Annexure A-1) are to be granted from the date one completes 26 years of satisfactory service. OR
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> From the crucial dates of 1st January or 1st July as the case may be, which is based on the Biennial Cadre Review of posts to be placed against such identified fro upgradation from these crucial dates each year as per subsequent clarifications".
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> The question was answered as follows :-
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> "The benefit under the Biennial Cadre Review Scheme dated 11.10.1991 has to be granted from the date one completes 26 years of satisfactory service."
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> 6. Thus, in view of the decision rendered by the Full Bench in the case of Piran Dutta (supra), the benefit given under the Biennial Cadre Review Scheme has to be granted to the applicant when he completed 26 years of service on 1.4.2004. At this stage it may also be noticed that even the Hon'ble High Court of Judicature for Rajasthan, Jaipur Bench in DB Writ Petition No.5574/2001 decided on 19.01.2005 has upheld the eligibility of the respondents therein to grant the benefit under Biennial Cadre Review Scheme from the date when the respondents therein have completed 26 years of service. Thus, in the light of the decision rendered by the Full Bench, Chandigarh of the Tribunal in the case of Piran Dutta (supra) and also in view of the decision

rendered by the Hon'ble High Court of Rajasthan, Jaipur bench, we hold that the applicant is entitled to the grant of higher pay scale of Rs.5000-8000/- under Biennial Cadre Review Scheme on completion of 26 years of service w.e.f. 1.4.2004. Accordingly, the respondents are directed to accord the benefit of the higher pay scale of Rs.5000-8000/- to the applicant w.e.f. 1.4.2004 alongwith consequential benefits.

7. For the foregoing reasons, we are of the firm view that the present case is fully covered by the decision rendered by this Tribunal in the case of Shiv Lahari (supra). Accordingly, the OAs are allowed. We hold that the applicants are entitled to grant of higher scale under BCR on completion of 26 years of service w.e.f. 18.9.99 instead of 1.1.2000 in the case of applicant in OA No.131/2006, 25.3.1995 instead of 1.7.95 in the case of applicant in OA No.132/2006, 18.9.99 instead of 1.1.2000 in the case of applicant in OA No.133/2006 and 19.02.2000 instead of 1.7.2000 in the case of applicant in OA No.134/2006. As respect arrear, it is directed that the respondents shall accord the benefit of higher pay scale notionally from the aforesaid date and actual benefit from the date of submission of representation in October 2005.

(J. P. SHUKLA)
ADMINISTRATIVE MEMBER

(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./