IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Jaipur, this the 30th day of November, 2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

ORIGINAL APPLICATION No.167/2006

H.L.Meena,
s/o Shri Fanji Ram,
r/o A-165, Mahesh Nagar,
Jaipur, presently working as
BCR SA in the office of the C.S.O.
Jaipur.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

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

2. The Principal Chief Post Master General, Rajasthan Circle, Jaipur.

3. The Senior Superintendent, Railway Mail Service, Opp. Radio Station, M.I.Road, Jaipur

4. Head Record Officer, Railway Mail Service, JP Dn., Jaipur Opp. Radio Station, M.I.Road, Jaipur.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORIGINAL APPLICATION No.174/2006

D.P.Sharma-II,
s/o Shri Rameshawar Prasad,
r/o Plot No.2A,
Near Rajendra Floor Mill,
Shiv Colony, Tonk Phatak,
presently working as SA BCR
in the office of the Railway Mail
Service, JP Dn.,
Jaipur.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

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

2. The Principal Chief Post Master General, Rajasthan Circle, Jaipur.

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

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

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORIGINAL APPLICATION No.239/2006

S.D.Gaur,
s/o Shri Narain Dutt Gaur,
r/o Plot No.375,
Mahadev Tekri,
Khanwas, Bhusawal,
Jalgaon, presently working as SA BCR
in the office of Senior superintendent,
Railway Mail Service, JP Dn.
Jaipur.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

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

2. The Principal Chief Post Master General, Rajasthan Circle, Jaipur.

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

4. Head Record Officer, Railway Mail Service, JP Dn., Jaipur, Opp. Radio Station, M.I.Road, Jaipur.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORIGINAL APPLICATION No.284/2006

Sita Ram Garg,
s/o Shri Kanhiya Lal,
r/o Indira Colony,
Sawai Madhopur,
presently retired SA BCR
Office of the Railway Mail
Service, Sawaimadhopur.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

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

2. The Principal Chief Post Master General, Rajasthan Circle, Jaipur.

3. The Senior Superintendent, Railway Mail Service, JP Dn. Opp. Radio Station, M.I.Road, Jaipur

4. Head Record Officer, Railway Mail Service, JP Dn., Jaipur, Opp. Radio Station, M.I.Road, Jaipur.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

O R D E R (ORAL)

By this common order, we propose to dispose of these Original Applications as the issue involved is same.

2. Briefly stated, facts of the case are that the applicants are postal employees who were placed to the next higher grade under Biennial Cadre Review (BCR) Scheme after completion of 26 years of service. As per the scheme, the officials who have completed 26 years of service between 1st January to 30th June were given second time bound promotion under the BCR scheme from 1st July of the year whereas the officials who have completed 26 years of service from 1st July to 31st December were given promotion under BCR scheme from 1st January of the next year. The grievance of the applicants is that they should be granted upgradation under the BCR scheme from the date they completed 26 years of service instead of 1st January/1st July. At this stage, it will be relevant to mention that applicant in OA No.167/2006 namely Shri H.L.Meena, was

granted higher pay scale of BCR w.e.f. 1.1.2005 instead of 1.07.2004, as according to the applicant, he has completed 26 years of service on 15.07.2004. However, according to the respondents as per service record the applicant has completed 26 years of service on 29.07.2004. The applicant in OA No.174/2006, D.P.Sharma-II, was granted higher pay scale of BCR w.e.f. 1.1.2006 whereas he has completed 26 years of service on 14.10.2005. However, the respondents in the reply have stated that the applicant has completed 26 years of service on 01.11.2005 and not on 14.10.2005. The applicant in OA No. 239/2006, S.D.Gaur, was granted higher pay scale of BCR w.e.f. 1.7.97 whereas according to the applicant he has completed 26 years of service on 15.2.97. According to the respondents, the applicant has completed 26 years of service on 20.2.1997 instead of 15.02.1997. Similarly, the applicant in OA No.284/2006, Sita Ram Garg was granted higher pay scale of BCR w.e.f. 1.1.1993, whereas according to the applicant, he has completed 26 years of service on 27.08.92. According to the respondents, the applicant has completed 26 years of service on 28.08.1992.

3. Notices of these applications were given to the respondents. The stand taken by the respondents in these cases is that as per Director General (Posts) New Delhi letter No.22-1/89 PE 1 dated 11.10.91

whereby the scheme of BCR was introduced w.e.f. 1.10.91, the officials who have completed 26 years of service between 1st January to 30th June of the year were to be placed to the next higher scale of pay w.e.f. 1st July and officials who have completed 26 years of service between 1st July to 31st December were to be placed to the next higher scale of pay w.e.f. 1st January of the next year. Accordingly, the benefit of higher pay scale was given to the applicants in terms of the aforesaid scheme. The respondents have also taken the plea that these OAs are time barred. The respondents have further admitted that the matter is covered by the judgment rendered by this Tribunal as affirmed by the Hon'ble High Court but it has also been stated that the judgment rendered by this Tribunal vide order dated 9.8.2001 in OA No. 80/2001, Sua Lal vs. Union of India and ors. (Ann.A3) on which reliance has been placed by the applicants was challenged before the Hon'ble High Court in DB Civil Writ Petition No.5574/2001 which was dismissed by the Hon'ble High Court vide order dated 19.4.2005 and the said judgment has been challenged before the Hon'ble Supreme Court in Special Leave of Appeal (Civil) No. 3210/2006. It is further stated that the Hon'ble Supreme Court has issued notices to the respondents which were delivered to the respondents on 5.6.2006. As such, the matter is sub-judice and pending before the Hon'ble Supreme Court of India and the respondent

Department will decide the case of the applicants after the decision of the Appeal pending before the Hon'ble Supreme Court.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. We are of the view that the applicants are entitled to the relief. It may be stated that the Hon'ble Supreme Court has not stayed operation of the judgment rendered by the Hon'ble High Court, as such, it will cause undue hardship to the applicants, in case they are not extended the benefit rendered by this Tribunal in different cases as affirmed by the Hon'ble High Court. However, the matter on this point 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:-

> "Whether the benefits under BCR Scheme dated 11.10.91 are to be granted from the date one completes 26 years of satisfactory service.
>
> OR
>
> From the crucial dates of 1st January or 1sr July as the case may be, which is based on the Biennial Cadre Review of posts to be placed *against such identified for upgradation from these crucial dates each* year as per subsequent clarifications."

The question was answered as follows:-

> "The benefit under the Biennial Cadre Review Scheme dated 11.10.91 has to be granted from the date one completes 26 years of satisfactory service."

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 applicants when they complete 26 years of service. 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, Chandigrah 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 in OA No.167/2006 is entitled to grant of higher pay scale under BCR scheme on completion of 26 years of service w.e.f. 30.07.2004, the applicant in OA No.174/2006 is entitled to grant of higher pay scale under BCR w.e.f. 2.11.2005, the applicant in OA No. 239/2006 is entitled to grant of higher pay scale w.e.f. 21.2.97 and applicant in OA No. 284/2006 is *entitled for higher pay scale under BCR scheme w.e.f.* 29.8.1992. Since there is delay on the part of the applicants to approach this Tribunal except the

applicant in OA No.174/2006, as such, the said benefit shall be granted to the applicants notionally from the aforesaid dates. However, the consequential benefits of higher pay scale shall be granted to the applicants from the date of submission of representations to the higher authorities. However, in the case of applicant in OA No.174/2006, he was granted higher pay scale vide order dt 5-4-06 and immediately thereafter he has also filed representation which was rejected, as such, there is no delay in his case. Accordingly, he shall be entitled to the consequential benefits of higher pay scale under BCR w.e.f. 2.11.2005 instead of 1.1.2006.

6. With these observations, the OAs are allowed with no order as to costs.

(J.P.SHUKLA)
Administrative Member

(M.L.CHAUHAN)
Judicial Member

R/