

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 4061/2011

New Delhi, this the 2nd day of September, 2016.

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)**

1. Brij Pal Singh Dagar (CL No.3213),
S/o Late Shri Ram Chander,
R/o C-31, Gali No.1, C-Block,
Khajoori Colony, Delhi-110094.
2. Hoshiar Singh (CL No.3291),
S/o Shri Ami Lal,
R/o Ami Lal ki Dhani,
Near HSEB Pataudi,
Gurgaon, Haryana.
3. Sushma Rani (CL No.3326),
W/o Shri Ashok Kumar,
R/o 21-B, Nav Yug Adarsh Apptt.,
Vikas Puri, New Delhi-110018.
4. Suresh Kumar Chaudhary (CL No.3242),
S/o Late Shri Arjun Ram,
R/o WZ-288, Street No.8,
Sadh Nagar, Palam Colony,
New Delhi-110045.
5. Smt. Kavita Sabti (CL No.3264),
W/o Shri Ashok Sabti,
R/o F-3/17, Ground Floor,
Sector-11, Rohini, Delhi-110085.
6. Smt. Vaswani (CL No.3305),
D/o Shri Narain Dass,
R/o MU-36-D, LIG Flats,
Pitampura, Delhi-110034.

7. Yogesh Bajaj (CL No. 3368),
S/o Late Shri O.P. Bajaj,
R/o C-2/120-C, Lawrence Road,
New Delhi.
8. Rajinder Singh Rana (CL No. 3330),
S/o Shri Jeet Rana,
R/o C-2/14, Bhagwati Garden Extn.,
Near Dwarka Mall Metro Station,
Delhi.
9. Sangeeta Rani Kakkar (CL No.3383),
D/o Shri Amir Chand,
R/o CC-55C, Shalimar Bagh,
Delhi-110088.
10. Chander Mohan Dua (CL No. 03267),
S/o Shri Jamna Dua,
R/o C-9/80, Yamuna Vihar,
Delhi-110053.
11. Rajesh Gupta (CL No. 3606),
S/o Shri K.L. Gupta,
R/o 21, Jaina Building,
Roshnara Road, Delhi-110007.
12. Suresh Kumar (CL No.3292),
S/o Shri Budh Singh,
R/o C-46, Street No.6, Jyoti Colony,
Shahdara, Delhi-110032.
13. Shyam Lal (CL No.3272),
S/o Shri Bhagwan Dass,
R/o 186, Street No.15,
Bhola Nath Nagar,
Shahdara, Delhi-110032.
14. Suraj Parkash (CL No.3243),
S/o Shri Tej Bhan,
R/o B-226, Indra Nagar, Delhi-110033.

15. Charan Dev Arora (CL No.3653),
S/o Shri Nabh Raj,
R/o B-7/189, Sector-4,
Rohini, Delhi-110085.
16. Sunil Sawhney (CL No.3658),
S/o Shri M.L. Sawhney,
R/o Flat No.26A, Plot No.40,
Jhang CGHS, Sector-13, Rohini,
Delhi-110085.
17. Mrs. Prem Lata (CL No.3367),
W/o Shri Harans Lal,
C-11, Hazara Park,
Shiv Puri, Delhi-110051.
18. Sanyogita (CL No.2938),
W/o Shri V.K. Sardana,
R/o Q-71, Sector-12, Noida, U.P.
19. Neelam Sharma (CL No.3225),
D/o Shri T.R. Sharma,
R/o C-6/171, Yamuna Vihar, Delhi.
20. Dilip Bhagat (CL No.4345),
S/o Shri Kahru Bhagat,
Flat No.402, 85/4,
Ashiyana Apartment,
Mehrauli, New Delhi-110030.
21. Santosh Kumar (CL No.3505),
S/o Shri Ram Murti,
R/o 1220, Chah Rahat,
Dariba, Delhi-110006.
22. Lalit Chinda (CL No.3661),
W/o Shri Suraj Chindra,
R/o 27/59, 2nd Floor,
Old Rajinder Nagar,
New Delhi-110060.
23. Mrs. Rajinder Tuli (CL No.3409),
W/o S. Trilochan Singh,

R/o N-26, First Floor,
Malka Ganj, Delhi-110007.

24. Smt. Manju Bala (CL No.3656),
W/o Shri R.L. Dhall,
R/o B-1/22, New Moti Nagar,
New Delhi-110015.
25. Smt. Surinder Kaur (CL No.3496),
W/o Late Shri Man Mohan Singh,
R/o 33/5, Ashok Nagar,
New Delhi-110018.
26. Smt. Shanta Marwah (CL No.3381),
W/o Shri Mohinder Kumar Marwah,
R/o 72, Antriksh Apartments,
Vikaspuri, New Delhi-110018.
27. Ravinderjit Singh (CL No.03241),
S/o Late Shri Jaidv Singh,
R/o WZ-195, A/63, Hari Nagar,
New Delhi-110064.
28. Sugan Chand (CL No.3603),
S/o Mani Ram,
R/o 60, Twala Heri,
New Delhi-110063.
29. Smt. Sudesh Sabharwal (CL No.3595),
W/o Shri P.P. Sabharwal,
R/o 22/36A, 1st Floor,
Tilak Nagar, New Delhi-18.
30. Raj Kumar (CL No.03548),
S/o Shri Gurdita Ram,
R/o 68/10, Ashok Nagar,
New Delhi-110018.
31. Chatter Singh Nirwal (CL No.03386),
S/o Late Shri Bhim Singh,
R/o QZ-701/3, Naraina Village,
New Delhi-110028.
32. Smt. Rani Israni (CL No.3249),
W/o Shri Srichand Israni,
R/o JG-III/75C, Vikaspuri,
New Delhi-110018.

33. R.K. Seth (CL No.3608),
S/o Late Shri L.R. Sethi,
R/o B-8/2, Double Storey,
Ramesh Nagar, New Delhi-110015.
34. Mrs. Kamal Kanta Sharma (CL No.03232),
W/o Shri Hira Lal,
R/o 5A/10, Tilak Nagar,
New Delhi-110018.
35. Ashok Kumar Chopra (CL No.03294),
S/o Late Shri O.P. Chopra,
R/o 62/14, 1st Floor, Ashok Nagar,
Tilak Nagar, New Delhi-110018.
36. Babu Lal (CL No.3965),
S/o Shri Sheo Chand,
R/o H.No. RZ-39/2, Indira Park,
New Delhi-110045.
37. Vinod Kumar Ahuja (CL No.3650),
S/o Late Shri Dina Nath Ahuja,
R/o 57, Vidhi Apartments,
Plot No.116, Patparganj,
Delhi-110092.
38. D.N. Sharma (CL No.3377),
S/o Shri Doonger Mal,
R/o C-6/457, Yamuna Vihar,
Delhi-110053.
39. Charan Singh (CL No.3374),
S/o Late Shri Deep Chand,
R/o 43-C, Gali No.5,
Bank Colony, Delhi-110053.
40. Shiv Nath Singh (CL No.3685),
S/o Late Shri Mam Chand,
R/o Village Basant Pur Saintly,
P.O. Murad Nagar,
Distt. Ghaziabad, U.P.
41. Rama Kant Sharma (CL No.3614),
S/o Shri Hira Lal Sharma,
R/o D-11, Gali No.8, Ashok Mohalla,
Maujpur, Delhi-110053.

42. Gagan Behari (CL No.3547),
S/o Shri Ragher Dayal,
R/o 51/5, Shiv Mandir Gali,
Moujpur, Delhi-110053.
43. Smt. Saroj Sekhri (CL No.2974),
W/o Shri Rajendra Pal,
R/o 816-B, Radhika Apartments-II,
Shalimar Garden Extn.-I,
Shahibabad, Ghaziabad, U.P.
44. Smt. Sunita Rani (CL No.3665),
W/o Shri R.K. Panchal,
R/o 5-D, DDA MIG Flats,
B-Block, Vivek Vihar, Phase-II,
Delhi-110095.
45. Smt. Maina Kapoor (CL No.3684),
W/o Shri Radha Krishan Kapoor,
R/o House No.218, Gali No.10,
Gurudwara Road,
West Guru Angad Nagar,
Delhi-110092.
46. Smt. Shanti Rawat (CL No.3584),
W/o Shri Puran Singh Rawat,
R/o D-315, West Vinod Nagar,
Delhi-110092.
47. Narinder Kumar Bhatia (CL No.3607),
S/o Late Shri H.G. Bhatia,
R/o WZ-2053, Rani Bagh,
Delhi-110034.
48. Mahesh Chand (CL No.03544),
S/o Shri J.R. Sharma,
R/o 1853, D-1/10,
Govindpuri Extn.,
Kalkaji, New Delhi-110019.
49. V.P. Bhardwaj (CL No.03441 Old),
S/o Shri J.L. Sharma (GO-89875 New),
R/o A-49, Welcome Apartment,
Sector-9, Rohini, Delhi-110085.

50. Kuljit Kaur Bakshi (CL No.03320),
S/o Shri G.S. Mokha,
R/o H.No. 338D, Pocket-J&K,
Dilshad Garden, Delhi-110095.
51. M.D. Joshi (CL No.3035),
S/o Shri D.N. Joshi,
R/o Flat No.70D, Pocket-B,
Dilshad Garden, Delhi-110095.
52. Pushp Lata (CL No.03151),
D/o Late Shri Hotu Ram,
R/o X-1219, Rajgarh Colony,
Satsang Marg, Gandhi Nagar,
Delhi-110031.
53. Smt. Dinesh Kumar (CL No.3134),
W/o Shri V.K. Bhatnagar,
R/o 20/201-202, Opp. DDA Janta Flats,
J.J. Colony, Dakshin Puri,
New Delhi-110062.
54. Neelam Kumar Ahuja (CL No.03230),
S/o Late Shri Kishan Lal,
R/o H.P.T.-118, Sarojini Nagar,
New Delhi-110023.
55. Rekha Bhargava (CL No.2748),
D/o Late Shri R.C. Bhargava,
R/o M-353, Sarojini Nagar,
New Delhi-110023.
56. Davinder Kumar (CL No.3060),
S/o Late Shri H.R. Vaish,
R/o 32, Antarkisha Apartments,
H-3 Block, Vikas Puri,
New Delhi-110018.
57. Archanan Saini (CL No.3271),
D/o Late Shri Babu Ram,
R/o C-235, Hari Nagar,
Clock Tower, New Delhi.
58. Narender Kumar Giri (CL No.03529),
S/o Late Shri B.P. Giri,
R/o 87-G, Pocket-IV,
Mayur Vihar, Delhi-110091.

59. Partap Singh (CL No.3200),
S/o Late Shri Bhagwan Singh,
R/o A-7/2, Peshwa Road Apartments,
Gole Market, New Delhi-110001.
60. Narender Singh (CL No.3620),
S/o Late Shr Chohal Singh,
R/o RZ-C-93, Dabri Extn. East,
New Delhi-110045.
61. Jai Kishan (CL No.3307),
S/o Late Shri S.L. Sharma,
R/o House No.19, Pocket-3,
Sector-11, Dwarka,
New Delhi-110075.
62. M.D. Vats (CL No.3448),
S/o Late Shri R.D. Sharma,
R/ E-178-179, Pandav Nagar,
Delhi-110091.
63. Mrs. Parveen Madaan (CL No.3256),
W/o Shri M.L. Madaan,
R/o 74A, Indra Park, Chander Nagar,
Krishna Nagar, Delhi-110051.
64. Smt. Shashi Bala Rakheja (CL No.03323),
D/o Shri P.L. Bhasin,
R/o 38-D, Navyug Adarsh Group Housing Society,
Vikaspuri, New Delhi-110018.
65. Anil Kumar Sharma (CL No.3317),
S/o Late Shri M.G. Shama,
R/o H.No.106, J-Extn.,
Laxmi Nagar, Delhi-110092.
66. Mrs. Parween Madan (CL No.3110),
D/o Late Shri Amar Nath Kohli,
R/o C-2/172, Janakpuri,
Near Central School,
New Delhi-110058.
67. Kamlesh Mendiratta (CL No.3304),
S/o Shri Dharam Chand Wadhwa,
R/o H-31B, 1st Floor,
Kalkaji, New Delhi-110019.

68. Meena Kumari Sharma (CL No.3662),
D/o Late Shri Lachhamn Dass,
R/o 1-3669, Ram Nagar,
P.O. Wali Gali, Shahdara,
Delhi-110032.
69. Anita Rani Chopra (CL No.2975),
D/o Late Shri O.P. Kapoor,
R/o 36-D, Navyug Apartment,
F-Block, Vikaspuri,
New Delhi-110018.
70. Rajiv Kumar Saigal (CL No.3382),
S/o Late Shri Radhey Shyam Saigal,
R/o J-1/323, Kalkaji, DDA Flats,
New Delhi-110019.
71. Smt. Vidusha Gupta CSS (CL No.2908),
W/o Shri Pardeep Kumar Gupta,
R/o B-17, Shanker Garden,
Vikaspuri, New Delhi-110018.
72. Vijay Kumar (CL No.3142),
S/o Late Shri G.R. Sardana,
R/o Q-71, Sector-12,
Noida (U.P.)-201301.
73. Pushpa Girdhar (CL No.3430),
S/o Late Shri Kishan Chand Chaudhary,
R/o 132, Gagan Vihar Main,
Delhi-110051.
74. Ravinder Kumar Sharma (CL No.3349),
S/o Shri Bishan Dass,
R/o A-89, Mawa Ram Park,
Uttam Nagar, New Delhi-59.
75. Suresh Kumar Mudgal (CL No.3210),
S/o Late Shri Sunder Lal,
R/o H-2/69, 2nd Floor,
Sector-16, Rohini, Delhi-110085.
76. Smt. Bimla Thirwani (CL No.3336),
W/o Shri P.K. Thirwani,
R/o 348E, Pocket-II,
Mayur Vihar-I, Delhi-110091.

77. Ms. C. Rakha Sharma (CL No.2964),
W/o Shri Rakesh Kumar Sharma,
R/o 339, Mandakini Enclave,
Alaknanda, New Delhi-110019.

78. Ms. Shashi Bala (CL No.7605),
W/o Shri Ramesh Kumar,
R/o Flat No.231, Great Indra Apptt.,
Sector-6, Plot No.15, Dwarka,
New Delhi-110075.

79. Ms. Padamawati Verma (CL No.3138),
D/o Late Shri Kanno Lal,
R/o H.No.27/4, 1st Floor,
Ward No.1, Mahrauli,
New Delhi-110030.

80. Ms. Raj Kumari (CL No.3124),
D/o Late Shri Mam Raj Singh,
R/o G-209, Sector-2,
Noida, Gautam Budh Nagar (U.P.). .. Applicants

(By Advocate : Shri Soumo Palit for
Shri Venkita Subhramaniam T.R.)

Versus

1. Union of India,
Through its Secretary,
Ministry of Communication & Information Technology,
Government of India,
Sanchar Bhawan,
New Delhi-110001.

2. The Chairman and Managing Director,
Mahanagar Telephone Nigam Limited,
12th Floor, Jeevan Bharati Building,
New Delhi-110001.

3. The Executive Director,
Mahanagar Telephone Nigam Limited,
2nd Floor, Khurshid Lal Bhawan,
New Delhi-1. .. Respondents

(By Advocate : Shri Vaibhav Kalra with Shri Jasbir Bidhuri
for M/s Sikri & Co. for R-2 & 3)

ORDER (ORAL)**By Hon'ble Mr. P.K. Basu**

First of all, learned counsel for the respondents states that they need an adjournment as the arguing counsel is not available today. This matter pertains to 2011 and has been getting postponed on one pretext or the other. We cannot postpone this matter any further and, therefore, the matter was heard.

2. The applicant states that in the cadre of LDCs/UDCs etc. in the respondents' organisation, the applicants were promoted to Grade-II from Grade-I on the basis of promotion by seniority-cum-fitness basis. As per the Recruitment Rules (RRs) of 1979, 66.67% of Grade-II posts were to be filled up through promotion by seniority-cum-fitness basis and 33.3% posts were to be filled up through departmental examination.
3. In 1983, the respondents introduced One Time Bound Promotion (OTBP) Scheme by which promotion into Grade-II was granted to those who were not already in Grade-I and had continued 16 years of regular service. Applicants being already in Grade-II, OTBP Scheme was not applicable to them.
4. In 1990, a new scheme was introduced called Biennial Cadre Review (BCR) Scheme and those who had put in 26 years of service

as on 01.01.1990 were granted the next grade, viz. Grade-III. The trouble starts here as, though the applicants were senior to many of the employees who were promoted to Grade-III under BCR Scheme, they were not promoted due to condition of 26 years of service.

5. The BCR Scheme was challenged before the Tribunal by the Departmental Examinees before the Bangalore Bench and the Tribunal passed the following order:

"In the light of the above, we allow this application with the following directions to Respondents 1 to 3:

- (i) In implementing the BCR Scheme, the case of the applicants who are senior in Grade II by virtue of their promotion against 1/3rd merit quota, compared to the other officials like R-4 to R-73, promoted to Grade II under OTBP Scheme, should be considered for promotion to Grade III in scale of Rs 1600-2660 in their turn as per their seniority whenever their erstwhile juniors in Grade II are considered for promotion to Grade III by virtue of their having completed 26 years of service in the basic grade, without insisting on the applicants completing the minimum prescribed years of service in the basic grade. All other conditions of BCR Scheme except the length of service will, however, be applicable while considering their promotion to Grade III.
- (ii) Consequently in case the applicants are found suitable for such promotion, they shall be promoted to Grade III with effect from the date their erstwhile juniors were promoted from Grade II to Grade III with all consequential benefits including seniority and arrears of pay and allowances from such dates. They should also be put on supervisory duties depending on their seniority.
- (iii) The BCR Scheme should be modified suitably to protect the interest of the officials like the applicants for their promotion from Grade II to Grade III.
- (iv) The above directions shall be complied within a period of 4 months from the date of receipt of a copy of this order.

(v) In the conspectus and circumstances of the case the request of the applicants for grant of the interest of the arrears of payments as due as cost of application is rejected."

6. This matter along with similar order by the Madras Bench of the Tribunal, came up before the Hon'ble Supreme Court and the Hon'ble Supreme Court upheld the order of the Tribunal. The ratio decided by the Hon'ble Supreme Court in **Union of India and Others Vs. Leelamma Jacob and Others**, (2003) 12 SCC 280, is summarised in para 17 of their order, which is quoted below:

"Incidentally clarifications have been issued from time to time by the appellants in 1992 and in 1994 by which it appears to us that the appellants have compounded the confusion. The clarifications purport to state that the seniority of those who were in Grade II by reason of their merit would be maintained in Grade II although they would not be entitled to the scales of pay which their juniors were getting in Grade III. It has also been "clarified" that the promotion of such officials, namely, merit-based Grade II employees to Grade IV, that is, in the pay scale of Rs.3200 would be governed by their seniority quite overlooking the fact that if the contesting respondents remained in Grade II they would not be in a position to be considered for promotion to Grade IV at all. The "clarification" cannot take away the rights of the contesting respondents for promotion on the basis of the seniority in Grade II as obtained in 1983. Nor can they be denied any benefit to which any of their juniors may be entitled by virtue of either of the OTBP Scheme or the BCR Scheme."

7. It is the case of the learned counsel for the applicant that the Hon'ble Supreme Court had allowed the similarly placed persons as interveners as recorded in para 10 of their order, which reads as follows:

"10. The decision of the Bangalore Bench of the Tribunal was followed by the Central Administrative Tribunal, Madras Bench. Being aggrieved by the decisions of the Tribunals special leave

petitions were filed by the administration and an interim order was passed by this Court on 17-11-1995 directing that status quo be maintained with regard to the promotion of Respondents 1 to 6 to Grade III. After leave was granted applications for impleadment have been filed by persons supporting the case of the contesting respondents and claiming to be similarly situated. These intervenors are from Delhi and Calcutta. Their intervention applications are allowed.”

It is his contention that the intervenors were those employees who belong to promotion by seniority-cum-fitness quota and thus both categories of employees, viz. Promotion by seniority-cum-fitness quota as well as departmental examination quota, were represented before the Hon’ble Supreme Court. It is his contention that decision of the Hon’ble Supreme Court in **Leelamma Jacob**’s case applies to both categories, i.e. to the applicants as well as to the departmental examinees.

8. However, the respondents while implementing the order of the Hon’ble Supreme Court vide order dated 18.09.2004 (Annexure P/1) overlooked all the applicants who came in through promotion by seniority-cum-fitness quota and people who were junior to them in seniority were granted the benefit of Grade-III as well as Grade-IV. In this regard, it is pointed out that in the provisional gradation list in the cadre of Clerks, applicant No.1, Shri Brij Pal Singh Dagar is at seniority No.553, whereas Shri Jitender Kumar is at seniority No.1205 (departmental examinee quota) : yet Shri Jitender Kumar got promoted whereas applicant No.1 was not.

9. In their reply, the respondent No.2 has stated that the decision of the Hon'ble Supreme Court in **Leelamma Jacob**'s case is not applicable to the applicants in this O.A. and as such they are not entitled to the relief claimed on the basis of judgment in **Leelamma Jacob**'s case.

10. First of all, learned counsel for the respondents raised the issue of limitation stating that the judgment of the Hon'ble Supreme Court in **Leelamma Jacob** came on 9th October, 2002. The order of the respondents implementing the judgment of the Hon'ble Supreme Court was issued in 2004 and the applicant approached this Tribunal in October, 2011. It is also argued that the original applicants before the Tribunal, which was later on decided by the Hon'ble Supreme Court in October, 2002, were the employees who were promoted under the Departmental Examination and the applicants were not before the Tribunal or before the Hon'ble Supreme Court. According to the learned counsel, this should be clear from para 15 of the judgment, wherein it is stated as follows:

“15. In addition to the fact that the Scheme is in contravention of the existing Rules, by virtue of the BCR Scheme the contesting respondents' seniority in Grade II was taken away. Those who had not been able to pass the examinations for promotion from Grade I to Grade II and who had continued to serve in Grade I were allowed to leapfrog over the contesting respondents by the BCR Scheme by being granted scales of pay in respect of posts in Grade III. As a result not only were the contesting respondents superseded without being considered for promotion to Grade III at all when their juniors were considered, but their chances of being further promoted to Grade IV were effectively forestalled as promotion from Grade III to Grade IV would be strictly on the basis of seniority presumably in the

grade below. Since the contesting respondents having not at all being promoted to Grade III they would not be in a position to be considered for promotions to Grade IV whereas the beneficiaries of the BCR Scheme would, by virtue of the Scheme be in a position to be considered for further promotion to Grade IV. Indeed according to the contesting respondents the BCR Scheme has resulted in some of its beneficiaries getting Grade IV of pay already. There is also substance in the submission of learned counsel for the respondents that the Recruitment Rules as well as the BCR Scheme provide for consideration of suitability and fitness as criteria for advancement. Necessarily the consideration for promotion to the next grade should be from the grade immediately below. As a result of the BCR Scheme however the beneficiaries have been promoted from Grade I to Grade III and possibly Grade IV without any consideration of their suitability in terms of the Rules or Scheme. Nevertheless the contesting respondents do not seek the withdrawal of any benefits which may have already been granted under the BCR Scheme to these employees. What they only want is that they should be granted at least a parity with those who in Grade II were junior to them. **It has to be recorded that the system of promotion by examination from Grade I to Grade II has since been abolished in 1983 therefore, the contesting respondents represent a class of employees who had been promoted on the basis of departmental examinations successfully taken by them prior to that date.”**

11. The learned counsel for the respondents, therefore, contends that this application is time barred and should be dismissed as being not maintainable for having been filed beyond the limitation period as stipulated under Section 21 of the Administrative Tribunals Act, 1985.

12. Learned counsel for the applicant drew our attention to order of the Hon'ble Supreme Court dated 08.07.2011 in which the Hon'ble Supreme Court has ordered as follows:

“We are not inclined to entertain this application filed directly before the court. It is, accordingly, dismissed.

It will, however, open to the petitioners to agitate their grievance before the Central Administrative Tribunal, in accordance with law.”

It is stated that it is because of this direction of the Hon'ble Supreme Court that the applicants had approached this Tribunal and, therefore, limitation did not apply.

13. We have gone through the order of the Hon'ble Supreme Court dated 09.10.2002 as well as order dated 08.07.2011. Para 10 of the order of the Hon'ble Supreme Court dated 09.10.2002 does not specifically mention that the similarly situated persons includes those who have come through promotion on seniority-cum-fitness quota. In fact, *prima facie*, similarly placed persons were considered to be those employees who are similarly situated to the applicants in that case i.e. those who have come through Departmental Examination. Moreover, as pointed out by the learned counsel for the respondents, from reading of para 15 of the same order (quoted above), it is abundantly clear that those before the Hon'ble Supreme Court were the departmental examinee candidates. Moreover, the Hon'ble Supreme Court vide its order dated 08.07.2011 while giving liberty to the applicants to agitate their grievance before this Tribunal had specifically said 'in accordance with law'. The Hon'ble Supreme Court had not passed any order regarding waiver of limitation. Therefore, we reject the contention of the applicants that based on the Hon'ble Supreme Court's order, limitation cannot be gone into.

14. Clearly in this matter, the applicants would have approached this Tribunal long ago when they were aggrieved in 2004 by the order of the respondents while implementing the judgment of the Hon'ble Supreme Court in **Leelamma Jacob**'s (supra) case and the applicants were left out and their juniors were given the benefit. They failed to do so.

15. We are, therefore, of the opinion that this O.A. is clearly hit by limitation and is not maintainable on that ground. The O.A. is, therefore, dismissed on the ground of limitation.

16. Though we have dismissed this O.A. on the ground of limitation, we would have to observe that the Tribunal in **Leelamma Jacob**'s case had basically laid down the ratio that those who are senior cannot be superseded through the application of the BCR Scheme, i.e. through the condition of 26 years of service in the basic grade for getting a promotion and, therefore, the Tribunal directed amendment of this condition of completion of 26 years of service in the basic grade, further directing that the applicants (departmental examinee quota) shall be promoted to Grade-III from the date from which their erstwhile juniors were promoted from Grade-II to Grade-III with all consequential benefits i.e. seniority and arrears of pay and allowances. The Hon'ble Supreme Court in para 17, already quoted above, has confirmed this ratio that the rights of the contesting respondents for promotion on the basis of

seniority cannot be taken away nor can they be denied any benefit to which their juniors are entitled by virtue of either of the OTBP Scheme or the BCR Scheme. The respondents, in our view, have taken an extremely technical view that the order of the Hon'ble Supreme Court has been implemented only for those who were contesting respondents before the Hon'ble Supreme Court, but missed the ratio that was laid down by the Hon'ble Supreme Court. In the interest of substantive justice, we feel the respondents should examine the case of the applicants in the light of our above observations and a careful reading of the judgment of the Hon'ble Supreme Court in **Leelamma Joseph**'s case. While doing so, they will, however, examine the case of each applicant separately whether they were actually senior to the persons promoted to Grade III under the BCR Scheme. No order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/Jyoti/