

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

**ORIGINAL APPLICATION NO. 060/00982/2017 &
M.A. NO. 060/1252/2018**

Chandigarh, this the 25th day of February, 2019

...

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &

Mangat Ram Sharma son of Sh. Mansa Ram, aged 68 years, resident of Village and Post Office Barsali, Tehsil Anandpur Sahib, District Ropar (Punjab) PIN 140117.

....APPLICANT

(By Advocate: Shri V.K. Sharma)

VERSUS

1. Union of India through Secretary, Ministry of Information Technology, Department of Posts, Dak Bhawan, New Delhi Pin No. 110011.
2. Chief Post Master General, Punjab Circle, Sector 17, Chandigarh PIN No. 160017
3. Senior Superintendent of Post Offices, Sector 17, Chandigarh Pin No. 160017.

....RESPONDENTS

(By Advocate: Shri Sanjay Goyal)

ORDER (oral)

SANJEEV KAUSHIK, MEMBER (J)

Learned counsel for the parties are in agreement that this O.A. can be disposed of in terms of the decision rendered by this Court in O.A. No. 063/00093/2016 titled **Ishwar Dass vs. Union of India & Ors.** decided on 21.02.2019.

2. I have gone through the facts of the present case and that of the Ishwar Dass (supra) with the able assistance of learned counsel for the parties. I find that the statement of the learned counsel for the parties is correct as the issue involved in the present case is identical to that of Ishwar Dass (supra), therefore, the present case is dismissed in the same terms.

The relevant paras thereof are reproduced herein below for ready reference.

“5. On earlier occasion, learned counsel for the parties had informed this Court that similar issue has been decided in favour of the applicants in O.A. No.60/171/2014 decided on 16.12.2014 titled **Nand Kishore vs. UOI & Ors.** and it was prayed that this O.A. may be disposed of in the same terms.

6. Earlier Sh. Ram Lal Gupta was appearing on behalf of the respondents, however, today, Sh. Sanjay Goyal, SCGC, puts in appearance on behalf of the respondents. He states that now he has the instructions to represent the respondents. He produced copy of an order dated 23.01.2019 passed by the Hon’ble High Court in a bunch matters titled **Senior Superintendent of Post offices vs. Nand Kishore and another** (CWP No.4829 of 2015), whereby order 16.12.2014 passed by this Court has been set aside holding that the respondents therein (applicants here) cannot be granted benefit of 3rd MACP by treating that they had already been given one promotion under Limited Departmental Competitive Examination, therefore, that has to be considered as promotion for the purpose of ACP.

7. We have heard learned counsel for the parties.

8. Both the counsel are in agreement that this petition deserves to be dismissed in terms of aforesaid judgment of the Hon’ble High Court in the case of **Nand Kishore** (supra). Relevant para of the same reads as under:-

“On revision of the pay scales w.e.f. 1.1.1996, the post of clerk was re-designated as Postal Assistant. Respondent No.1 was allowed financial upgradation under the Time Bound One Promotion Scheme (TBOP) in the pay scale of Rs.1400-2300 on completing 16 years of service as Postal Assistant vide order dated 10.12.1998 w.e.f. 1.7.1996. He was granted 2nd financial upgradation under Biennial Cadre Review (BCR) Scheme on completion of 26 years of service as Postal Assistant vide order dated 10.7.2007 w.e.f. 1.1.2007. He retired on 31.8.2012 on attaining the age of superannuation. After two months of retirement he served legal notice claiming the benefit of 3rd ACP in the Grade Pay of Rs.4600/-.

The case of the petitioners (respondents in the OA) was that the Department of Posts introduced the TBOP Scheme for all the officials belonging to basic grades in Group ‘C’ and Group ‘D’ who had completed 16 years service in that grade. This scheme had come into effect from 30.11.1983. Respondent No.1 was granted this benefit w.e.f. 01.07.1996 vide order dated 10.12.1998. As per the BCR Scheme which came into force w.e.f. 01.10.1991, incumbents of existing posts were entitled to draw pay in the higher scales on completion of 26 years of service. In accordance with this scheme respondent No. 1 was granted financial upgradation w.e.f. 01.01.2007 on completion of 26 years of service.

The Department of Posts circulated the Modified Assured Career Progression Scheme (MACP) on 18.09.2009 which came into effect from 01.09.2008. The TBOP and BCR Schemes were

withdrawn. As per this scheme, there shall be three financial upgradations counted from the Direct Entry Grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under this Scheme was to be admissible whenever a person has spent 10 years continuously in the same grade pay. This Scheme ensures three financial upgradations in the entire career of those who could not get regular promotion. It was contended that respondent No.1 had already been granted three financial upgradations/promotions. Therefore, he was not entitled for further upgradation.

The particulars thereof were as under:-

Appointed as Postman	11.7.1974
Promoted as (Clerk) Postal Assistant (First financial upgradation)	30.6.1980
Second financial upgradation under TBOP Scheme (R-2)	1.7.1996
Third financial upgradation under BCR Scheme (R-4)	1.1.2007
Date of retirement	31.8.2012

His appointment to the post of Postal Assistant on passing the Limited Departmental Competitive Examination was a promotion.

Learned Tribunal allowed the Original Application relying on its earlier order passed in OA No.607-PB-2012 'Kharaiti Lal and others vs. Union of India and others' decided on 14.12.2003, wherein, it was held that appointment as Postal Assistant after passing of limited departmental examination is to be treated as direct appointment. It was ordered that the benefit of financial upgradation due to respondent No.1 are to be considered treating him as a direct recruit Postal Assistant.

Learned counsel for the petitioners has conceded that there are some decisions of different High Courts namely Delhi High Court in Union of India and ors Vs. Shakeel Ahmed Burney, 2014(39)RCR(Civil) 572, the Madras High Court in CWP No.30629/2014 Union of India and ors Vs. D. Sivakumar and another decided on 4.02.2015, the Rajasthan High Court in CWP No. 11709 of 2013 Union of India and other Vs. Har Govind Sharma decided on 10.08.2015 and Karnataka High Court in Writ Petition No. 200807/2016 Union of India and ors Vs. Shri Basanna Nayak decided on 20.09.2016 which have affirmed the views of the respective Tribunals that appointment as Postal Assistant after passing limited departmental examination is not a case of promotion, but is one of direct recruitment. SLPs against such decisions have also been dismissed. He has however argued that in the said judgments the applicable Rules have not been considered. He argued that the issue has been considered in detail by a Division Bench of the Rajasthan High Court in Ramkaran Kumhar vs. Union of India and others (Rajasthan) (DB) 2016

SCC OnLine Raj 5751. In that case interpreting similar rules the High Court held that appointment to the post of 'Inspector of Posts' by way of limited departmental competitive examination from amongst various cadres/ posts namely Postal Assistants, Stenographers, LDC, Staff of Director of Postal Accounts was by way of promotion. Further reliance has been placed on another decision of the Rajasthan High Court in CWP No.18488 of 2016 titled "The Union of India and others vs. Dev Karan Mahala and others" decided on 10.5.2018 where Ramkaran Kumhar's case was followed.

Learned Counsel for the respondent No. 1 on the other hand relied on the decisions of the High Courts taking a contrary view.

We have heard learned counsel and are of the view that the writ petitions deserve to be allowed.

It is not disputed that appointment of Postal Assistants is governed by the 'Indian Posts and Telegraphs (Time Scale Clerks and Sorters) Recruitment Rules, 1971' (for short "1971 Rules"). [It has come on record that on revision of the pay scales w.e.f. 1.1.1996, the post of clerk was re-designated as Postal Assistant]. The same is as under:

- “1. Short Title and Commencement.- These Rules may be called the Indian Posts and Telegraphs (Time Scale Clerks and Sorters) Recruitment Rules, 1971.
2. Application.- These rules shall apply to the posts as specified in column 2 and 3 of the said Schedule.
3. Classification and Scale of Pay.- The classification of the said posts and the scales of pay attached thereto shall be as specified in columns 2 and 3 of the said Schedule.
4. Method of Recruitment, Age-limit and other qualifications.- The Method of Recruitment, Age-limit and other qualifications.- The method of recruitment to the said posts, age limit, qualifications and other matters relating to them shall be as specified in columns 4 to 12 of the Schedule aforesaid:

Provided that the upper age-limit prescribed for direct recruitment may be relaxed in the case of the Scheduled Castes and the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time.

5. Disqualifications.- No person, (a) who has entered into or contracted a marriage with a person having a spouse living, or (b) Who having a spouse living, has entered into or contracted a marriage with any person, shall be eligible for appointment to the said post. Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

6. Power to relax. Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

7. Saving.-Nothing in these rules shall affect the reservations and other concessions required to be provided for the Scheduled Castes and Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

SCHEDULE

Name of the posts	Classification	Scale of pay	Whether selection post or non-selection post.	Age limit for direct recruits	Educational qualifications and other qualifications for direct recruits.
1	2	3	4	5	6
Time scale clerks and sorters excluding the time scale clerks in Telecom munication Account s Branch).	General Central Service Class III, Non-gazetted Ministerial		Not applicable	Between 18 and 25 years on the 1st July of the year of recruitment	Matriculation or equivalent examination conducted by a University or Board of any State
Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotes	Period of Probation	Method of recruitment whether by direct recruitment or by promotion or transfer and percentage of vacancies to be filled by various methods	In the case of recruitment by promotion grades from which promotion to be made	If the DPS exists, what is its composition	Circumstances in which UPSC to be consulted in making recruitment
7 I	8	9	10	11	12

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It is evident from a bare perusal of these Rules that 50% posts

of clerks and sorters were to be filled by direct recruitment and 50% by way of promotion through a test from amongst permanent and quasi-permanent officials below the time-scale of Clerks and Sorters grade in accordance with the orders issued by the Posts and Telegraphs Board from time to time.

In Ramkaran Kumhar's case (Supra) the Court was considering the question whether appointment to the post of Inspector of Posts through a limited Departmental Competitive Test from amongst various cadres of Postal Assistants, Stenographers, LDC as per the 'Department of Posts Inspector of Posts Recruitment Rules, 2001'(for short "2001 Rules") was a case of promotion or of direct recruitment. The Court held it to be a case of promotion. It was noticed that as per the 2001 Rules the post of 'Inspector of Posts' was required to be filled in the ratio of 33.34% by direct recruitment through Staff Selection Commission and 66.66% by way of promotion through limited Departmental Competitive Examination. It was held that merely because the post of 'Inspector of Posts' by promotion is to be filled by way of limited Departmental Competitive Examination from amongst the employees holding the posts specified, it cannot be treated as direct entry. It was affirmed that where the Rules specifically provide for promotion quota, maybe to be filled in by way of limited Departmental Competitive Examination, the promotions made in such manner have to be considered as promotions for the purpose of ACP Scheme. The relevant observations are as under:

"8. Learned counsel appearing for the petitioner contended that the Postal Assistants do not have multiple channel of promotion, they have only one channel of promotion to the post of LSG and from LSG to HSG II. It is submitted that the promotion earned by competitive examination on the post of Inspector of Posts is open to all and sundry grades fulfilling the requisite eligibility condition and it cannot be construed in regular line/channel of promotion for Postal Assistants. Learned counsel submitted that the Inspector of Posts is not functional promotion post for the post of Postal Assistant and therefore, one who is holding the post of Postal Assistant cannot be granted financial upgradation in the scale meant for post of Inspector of Posts as per para 7 of conditions for grant of ACP benefits and thus, the Tribunal has apparently erred in treating the appointment of the petitioner to the post of Inspector of Posts as regular promotion so as to deny him the consideration for grant of first financial up-gradation on completion of 12 years of service on the post of Inspector of Posts. In support of the contention, learned counsel has relied upon a Bench decision of this court dated 10.8.15 rendered in "Union of India & Ors. v. Har Govind Sharma" (D.B. Civil Writ Petition No. 11709/13 and 22 others).

9. On the other hand, the counsel appearing for the respondents submitted that in the ACP Scheme, it is nowhere provided that promotion to the post of Inspector of Posts through limited Departmental

Competitive Examination shall be treated as direct entry. It is submitted that the case of the petitioner is covered by the clarification no.8 and 24 (a) issued by the Department of Personnel & Training vide Office Memorandum dated 10.2.2000, which clarifies that promotion through departmental examinations are to be treated as promotion for the purpose of financial upgradation under the ACP Scheme. It is submitted that the regular line of promotion of Postal Assistant is to LSG, HSG II and HSG I but they are also eligible to appear in the limited Departmental Competitive Examination for promotion to the post of Inspector of Posts and therefore, the same has to be treated as promotion for the purpose of financial upgradation under the ACP Scheme and the past services to be counted for granting ACP. Accordingly, it is submitted that the Tribunal has committed no error in holding that the appointment of the petitioner to the post of Inspector of Posts has to be treated as regular promotion in terms of ACP Scheme and thus, the petitioner having availed one promotion, is entitled for consideration for grant of benefits of second up gradation on completion of 24 years of service under the ACP Scheme.

10. We have considered the submissions of the learned counsels for the parties and perused the material on record.
11. Indisputably, the Inspector of Posts and Inspector of RMS were merged into a single cadre and thus, the new combined cadre of Inspector of Posts came into existence. As per the provisions of the Department of Posts Inspector of Posts Recruitment Rules, 2001 (for short "the Rules"), the posts of Inspector of Posts are required to be filled in, in the ratio of 33.34% by direct recruitment through Staff Selection Commission and 66.66% by way of promotion through limited Departmental Competitive Examination. It is true that the Inspector of Posts by way of promotion is not recruited from a single lower cadre/grade/scale of the Postal Assistant only but, from among various cadres/grade/scale like Stenographers, LDC, Staff of Director of Postal Account also, but then, on that account, the channel of promotion provided, may be by way of limited Departmental Competitive Examination, shall not cease to be a channel of promotion provided to the employees holding the posts specified. In other words, merely because, the post of Inspector of Posts by promotion is filled in by way of limited Departmental Competitive Examination from amongst the employees holding the posts specified, their promotion to the post cannot be treated as direct entry. A bare perusal of the ACP Scheme and the clarification issued by the Government of India, makes it abundantly clear that for grant of two financial up gradation under the ACP Scheme, the entire Government service of an employee shall be counted against regular promotion including the promotion through limited Departmental Competitive Examination availed from the grade in which an employee was appointed as direct recruit. We are of the considered opinion that where the rules specifically provides for promotion

quota, may be to be filled in by way of limited Departmental Competitive Examination, the promotions made by the method specified as aforesaid, has to be counted as promotion for the purpose of ACP Scheme. Thus, the petitioner herein, who has already availed one regular promotion shall be entitled for consideration of his case for the purpose of second financial up-gradation only on completion of 24 years of regular service under the ACP Scheme. In this view of the matter, the order impugned passed by the Tribunal does not suffer from any error so as to warrant interference by this court in exercise of its extra ordinary jurisdiction.”

SLP(C) No.21315 of 2016 titled 'Ramkaran Kumhar Vs. Union of India and others' against this judgment was dismissed by Hon'ble Supreme Court vide order dated 18.11.2016.

In Dev Karan Mahala's case (supra) the Union of India had challenged the orders of the Central Administrative Tribunal whereby the Original Applications filed by the respondents therein had been allowed relying on the decision in the case of Har Govind Sharma(supra) which had been followed by the Karnataka High Court, Madras and Delhi High Court. The Division Bench of the Rajasthan High Court referred to and considered all such judgments of the different High Courts which are being relied on by respondent No. 1. It also took note of the orders of the Hon'ble Supreme Court whereby SLPs against the decisions were dismissed. It affirmed and followed the decision in Ramkaran Kumhar case (supra). It was noticed that in Har Govind Sharma's case (supra) the relevant recruitment Rules namely the 'Indian Posts and Telegraphs (Postmen/ Mailguards) Recruitment Rules, 1969' where under the Original Applicants therein had been promoted from Group D to Postmen had not been considered. It was also noted that the judgment in Har Govind Sharma's case had been diluted by the subsequent decision of the Division Bench in Ramkaran Kumhar's case. Accordingly it was held that in view of the Rules the selection and appointment to the post of Postman of an employee holding a Group D post in the Postal Department was a promotion. The petitions were allowed and the orders of the Tribunals set aside.

It is also relevant to note that the Delhi High Court in W.P.(C) No.2806 of 2016 titled "Union of India and ors. vs. Shakeel Ahmad Burney" noticing the contention on behalf of the Union of India that the respondent therein was appointed as Postal Assistant under 50% quota for promotion through a test and could not be equated with direct recruits vide its order dated 01.04.2016 stayed the order of the Tribunal. The order is reproduced below:

"Learned counsel for the petitioners submits that the respondent was appointed as Postal Assistant under 50% quota for promotion through test. It is accordingly submitted that the respondent's case cannot be equated with the case of direct recruits, who had joined the said post

under a different recruitment process. Issue notice returnable on 27th July, 2016.

There will be stay of the impugned order till the next date of hearing. ”

The case is yet pending and the interim order has been continued.

We may also note two decisions of the Delhi High Court, WP(C) 2887/2012 Man Singh vs. Union of India and others decided on 21.12.2012 and Ajay Panday v. UOI 2014 (14) S.C.T. 250 where it has been held that filling up the promotional post from the feeder cadre by limited departmental competitive examination is a case of promotion.

In Man Singh's case (supra) the question was whether the appointment to the rank of Assistant Commandant in the Central Industrial Security Force (CISF) by Limited Departmental Competitive Examination tantamounts to appointment by promotion or is a direct recruitment appointment. The appointments to different posts in the CISF are effected either by direct recruitment or by promotion from the feeder posts in the CISF. Considering the increasing need for direct Assistant Commandants, 17% posts from the promotion quota of Feeder Cadre were diverted to cater for the vacancies to be filled up by conducting Assistant Commandant/Limited Departmental Competitive Examination which was open to departmental candidates only. The Limited Departmental Competitive Examination comprised of a written examination, a physical efficiency test, an interview and a medical examination. The Court held that appointment through the LDCE is a mode of promotion. Reliance was also placed on clarification issued by the Department of Personnel& Training Estt. that the LDCE is a mode of promotion.

The decision in Man Singh's case (supra) was followed in Ajay Panday's case and it was affirmed that the appointments through the LDCE would fall in the category of appointments by promotion being in a manner of speaking accelerated promotions effected departmentally though through competitive examinations.

We now refer to the decisions relied on by respondent No.1 where a contrary view has been taken.

The Jodhpur Bench of the Central Administrative Tribunal in O.A. No. 382/ 2011 and connected cases Bhanwar Lal Regar Vs. Union of India and ors was considering the question as to whether the selection and appointment of a Group-D employee of the Postal Department as a Postman and his further appointment as a Postal Assistant after successfully clearing the departmental examination was a case of promotion or not. The Tribunal held when Group-D employees after facing a process of selection were appointed as Postmen, such selection could not be termed as a promotion as it was not done in the course of natural progression through seniority. Any advancement in career, which is based on a process of selection especially undertaken for that purpose could not be called as

promotion. A promotion has to be in higher category in the same cadre or service or through a prescribed avenue of promotion but without an element of a process of selection through tests or examinations etc. Similarly with regard to selection and appointment to the posts of Postal Assistants, the Tribunal noted that before being so posted the applicants had faced the limited departmental competitive examination and qualified to become Postal Assistants. Their joining as such was not in the nature of promotion in their earlier existing cadre but was career advancement through a process of selection and could not be called a promotion.

A Division Bench of Rajasthan High Court dismissed the Writ Petitions filed by the Union of India challenging the aforesaid orders in Union of India and other Vs. Har Govind Sharma (supra) by observing as under:

“....In these petitions for writ the argument advanced on behalf of the writ petitioners is that the respondent applicants were recruited and appointed as Group-D employees and thereafter by way of promotion appointments were given to them as Postmen/Sorting Assistants. The date of appointment as such was the date on which they were appointed as Mail Guard/ Extra Departmental Agents/ Gram Dak Sewaks and thereafter promotion was accorded to them on the next higher post, as such their term of stagnation in one grade pay is required to be determined accordingly. No other contention except the above is addressed before us. Having considered the argument advanced we do not find any merit with the same. Learned counsel appearing on behalf of the appellant on asking again and again failed to point out any provision for promotion to the post of Postman/ Sorting Assistant. On the other hand, from perusal of the orders of appointment to the post of Postal Assistant/ Sorting Assistant, it is apparent that the respondent original applicants faced an examination, may that be a limited competitive examination, i.e. nothing but direct recruitment. Their joining as Postal Assistants was not at all in the nature of promotion, hence their services for the grant of benefits under modified assured career progression has to be counted only from the date they were appointed as Postal Assistants/ Sorting Assistants. The services rendered by them on earlier post prior to their appointment as Postal Assistants/ Sorting Assistants are absolutely inconsequential for the purpose of grant of modified assured career progression. At the cost of repetition it shall be appropriate to mention that the petitioners failed to point out any provision for appointment to the post of Postal Assistant/ Sorting Assistant by way of promotion and to point out any order of appointment making appointment of the original applicants on the post concerned by way of promotion.”

The writ petitions were dismissed by observing that the Counsel for the petitioners (Union of India and ors) had

failed to point out any provision for appointment to the post of Postal Assistant/Sorting Assistant from the Group D post by way of promotion and to point out from their order of appointments that their appointments as such was by way of promotion.

Review petitions being D.B. Writ Review Petition No.171/2016 Union of India and ors Vs. S.N. Singh Bhati and connected cases seeking review of this order were dismissed on 3.01.2018. The relevant observations are as under:

“6. Learned counsel for the respondents point out that similar is the view taken by the Division Bench of the Madras High Court in Civil Writ Petition No.30629/2014, Union of India &Ors. vs. D. Sivakumar & Anr. against which decision SLP(C) No.4848/2016, Union of India & Ors. vs. D. Sivakumar was dismissed by the Supreme Court on 16th August, 2016 after condoning the delay. Review sought of the order dated 16th August, 2016 vide Review Petition (C) No.1939/2017 was dismissed by the Supreme Court as recently as on 13th September, 2017. Learned counsel further submit that even a Division Bench of the High Court of Karnataka in Writ Petition 200807/2016, The Union of India & Ors. vs. Shri Basanna Nayak has taken a similar view. Learned counsel for the respondents point out that in the Madras Circle and Karnataka Circle the decisions have been implemented.

7. Learned counsel for the review petitioner does not dispute aforesaid facts pertaining to the decisions of the Madras High Court and Karnataka High Court having attained finality on the same issue. The decision passed by the Central Administrative Tribunal brings out that Group-D employees, irrespective of their seniority participated in a merit based selection and appointed to the higher post were never treated as a case of promotion. The examination was not a Limited Departmental Qualifying Examination but was a Limited Departmental Competitive Examination. Before the MACP Scheme was introduced the department had a TBOP/BCR Financial upgradation Scheme and under the said Scheme benefit was granted treating the appointment as one of direct recruitment and not by way of promotion.”

SLP (Civil) No. 23260/2018 titled as Union of India and ors Vs. Bhanwar Lal Regar was dismissed on 10.08.2018.

The Madras High Court in Union of India and ors Vs. D. Sivakumar and another (supra) affirmed the view of the Central Administrative Tribunal (Madras Bench) in OA No. 1088 of 2011 that appointment as Postal Assistant was in the nature of direct recruitment. The Tribunal had relied on the decision of the Jodhpur Bench of the Central Administrative Tribunal in O.A. No. 382/ 2011 and connected cases Bhanwar Lal Regar Vs. Union of India and ors. Significantly, the Madras High Court while dismissing the writ petitions also did not refer to the relevant rules.

The relevant part of the observations of the High Court is as under:

“9. What the Department had done is to adjust the appointment of the first respondent as the Postal Assistant on 12.11.1977, as the first financial upgradation under Modified Assured Career Progression-I. This is clearly erroneous in view of the fact that the appointment as Postal Assistant was not granted to the first respondent after mere completion of 10 years in the Cadre of Postman. From the Cadre of Postman, to which, the first respondent got appointed on 22.9.1973, he participated in a selection to the post of Postal Assistant and got appointed. Therefore, to adjust the said appointment against Modified Assured Career Progression-II, is clearly erroneous. Once that error is removed, it will be clear that the first respondent would be entitled to three modified assured career progressions for every ten years. Hence, we are of the opinion that the Tribunal was right in directing the Department not to take into account the appointment granted to the post of Postal Assistant and to adjust Modified Assured Career Progression-I.

10. Moreover, it is to be pointed out that even the second modified assured career progression was granted under the Modified Assured Career Progression Scheme only after 16 years and the third is said to have been granted after 26 years. If the first appointment is adjusted against Modified Assured Career Progression-I, this could not have actually happened. For doing so, the Department has counted the first appointment as 12.11.1977. Therefore, they cannot do so for the Modified Career Progression Scheme in a different manner.”

SLP (C) No.4848/2016 Union of India and Ors. vs. D. Shivakumar, against this judgment was dismissed on 16.8.2016. However the question of law was kept open.

The Delhi High Court in Union of India and ors Vs. Shakeel Ahmed Burney, 2014(39) RCR (Civil) 572 considered the Rules wherein the mode of recruitment in Rule 3 was as under:

*“3. Recruitment- Recruitment will be by a competitive examination which will be open to
 (a) Departmental Officials of all classes below the clerical cadre in the post offices hereafter called departmental candidates and
 (b) Outside candidates.”*

Analyzing Rule 3 the Court observed that it was apparent that the entry was through a competitive test which was open both to the departmental candidates as well as outside candidates. There was no defined feeder post for promotion. As the departmental candidates had to qualify in the competitive examination along with outside candidates, the order of the Central Administrative Tribunal holding that

the entry of departmental candidates to the post of Postal Assistant was by way of direct recruitment was affirmed.

The Karnataka High Court in the case of Shri Basanna Nayak (supra) relied on the decisions of the Rajasthan High Court in Har Govind Sharma (supra) and the Delhi High Court in Shakeel Ahmed Burney (supra) in holding that the appointment of the applicants-Postmen on the post of Postal Assistants through a limited departmental competitive test was a case of direct recruitment and not of promotion. In this case also the relevant Rules were not referred to.

Thus, it is apparent that the decisions relied on by respondent No.1 have been rendered without consideration of the 1971 Rules as per which 50% posts of clerks and sorters were to be filled by direct recruitment and 50% by way of promotion through a test from amongst permanent and quasi-permanent officials below the time-scale of Clerks and Sorters grade in accordance with the orders issued by the Posts and Telegraphs Board from time to time. It has also been held that an appointment made after holding a limited departmental competitive examination cannot be termed as a promotion but would be a case of direct recruitment.

These decisions have rightly been distinguished by the Rajasthan High Court in the recent case of Dev Karan Mahala. Har Govind Sharma's case was earlier distinguished in Ramkaran Kumhar's case and it was held that where rules specifically provide for a promotion quota which may be filled in by way of Limited Departmental Competitive Examination, the promotions so made have to be considered as promotions for the purpose of ACP. The Delhi High Court in the cases of Man Singh and Ajay Panday (supra) has also held that promotions made through a Limited Departmental Competitive Examination from amongst the departmental candidates falling in the feeder cadre are promotions and not direct recruitments. Ramkaran Kumhar has been affirmed and followed in Dev Karan Mahala's case (supra). We are in respectful agreement with the ratio of the judgments in Ramkaran Kumhar and Dev Karan Mahala's case (supra).

Accordingly, these writ petitions are allowed. The orders of the Central Administrative Tribunal are set aside. It is held that the selection and appointment of the Original Applicants as Postal Assistants after passing the departmental test is a promotion and not direct recruitment. Their entitlement to ACP/MACP be considered accordingly."

9. In the light of view taken by the Hon'ble High Court, in the case of **Nand Kishore** (supra), that the appointment of the incumbents as Postal Assistant, after passing the departmental test is a promotion and not direct recruitment, the very basis of filing of these cases loses its sheen and relied upon cases having been overruled, these O.As. are dismissed. All the pending MAs also stand disposed of accordingly. No costs."

3. Accordingly, this O.A. stands dismissed. Pending M.A. also stands disposed of. No costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated: 25.02.2019

‘SK’

