

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
JABALPUR**

T.A. No.14 of 2010  
(in W.P. No.2253/2008)

Jabalpur, this Wednesday, the 21<sup>st</sup> day of November, 2012

**HON'BLE SHRI JUSTICE DHIRENDRA MISHRA, JUDICIAL MEMBER  
HON'BLE SHRI G.P.SINGHAL, ADMINISTRATIVE MEMBER**

1. S.K. Dubey, S/o Shri R.D. Dubey,  
Date of Birth – 30.7.1966, R/o D-9,  
Saamdariya Complex, Old Shila Talkies  
South Civil Lines, Jabalpur

- Applicants

2. N.L. Singh, S/o Shri BN Singh  
Date of Birth 1.3.1970, R/o 4/36,  
TTC Colony, Ridge Road, Jabalpur

3. Smt. Shikha Pandey, W/o Shri  
A.K. Pandey, Date of Birth 30.6.1966  
R/o 270, Anand Nagar, Adhartal,  
Jabalpur

4. J.K. Verma, S/o Shri B.P. Verma,  
Aged about 38 years, R/o 927,  
Sanjeevani Nagar, Jabalpur

5. Shahsi Bhushan Choudhary,  
S/o Shri Shiv Kumar Choudhary,  
Aged about 35 years, R/o House  
No.147, SRG, New Fort Extension  
Barkheda Pathani, Kali Bari Road,  
Bhopal

6. Gaya Prasad Patel, S/o Shri  
BL Patel, aged about 40 years,  
R/o B-291A, Minal Residency,  
JK Road, Bhopal

(By Advocate: Shri Vijay Tripathi)

**Versus**

1. Union of India, Through its Chairman,  
Telecom Commission, Sanchar Bhawan,  
New-Delhi

-Respondents

2. Bharat Sanchar Nigam Ltd., Through  
Its Chairman-cum-Managing Director,  
Sanchar Bhawan, New Delhi

3. The Chief General Manager,  
Department of Telecommunication  
Bhim Rao Ambedkar, I.T.T.,  
Civil Lines, Jabalpur



Deleted  
as per order  
at para-6  
of order  
Dt. 21.11.12  
in TA 14/2010

*[Signature]*  
23.11.12  
Jt Registrar



4. The Chief General Manager,  
Bharat Sanchar Nigam Ltd.,  
M.P. Telecom Circle,  
Hoshangabad Road, Bhopal (MP)

(By Advocate – Shri R.D. Agrawal, Sr. Advocate  
with Ms. Anjali Banerjee and Shri Pawan Kumar,  
Advocates for respondents No. 2 to 4.)

### ORDER

**BY DHIRENDRA MISHRA, JM.-**

1. The applicants, while working as Junior Telecom Officer (JTO), participated in the Limited Departmental Competitive Examination (for short 'LDCE') for promotion on the post of Sub Divisional Engineer (for short 'SDE') against 25% quota to be filled in through LDCE for the vacancies of the year 1996-97, 1997-98, 1998-99, 1999-2000 and 2000-01, which was held on 1.12.2002. Result of the examination was declared on 15.12.2003. Accordingly, they were declared qualified for promotion for the post of SDE against the vacancies mentioned in the result of Annexure-P/1.
2. Learned counsel for the applicants would submit that the applicants' promotion on the post of SDEs against the vacancies mentioned in the document of Annexure-P/2 is in accordance with the result of Annexure-P/1 and, therefore, for all practical purposes, upgradation of the seniority of the applicants for the performance and further promotion, notional fixation, arrears etc. should have been decided on the basis of their promotion against the vacancies of the respective years, however, their pay fixation was done with effect from 16.6.2004 in case of applicant No.1 and on 5.7.2004 in case of other applicants vide Annexure-P/4. The department vide circular dated 29.9.1995 (Annexure-P/5) notified that JTOs who got promotion on the post of TES Group-B Officers from a deemed date will get the benefit of





been further dismissed by the Hon'ble Supreme Court vide order dated 21.4.2011 vide Annexure-IA/2 and thus the judgment of the Hon'ble Karnataka High Court has attained finality. Review Petition filed by the applicants has also been dismissed by the Hon'ble Karnataka High Court. The order passed by the Hon'ble High Court of Karnataka has been duly intimated to the respondent department who have issued order dated 21<sup>st</sup> October, 2011 and 31<sup>st</sup> October, 2008 which has been filed by the applicants as Annexure-P/8 along with additional statement under Rule 3 (vii) of the CAT Rules of Practice, 1993.

As per settled service jurisprudence, similarly situated persons should be treated similarly and only because one person has approached the Court would not mean that persons similarly situated should be treated differently. Reliance is placed on a judgment of the Hon'ble Supreme Court in the matter of **State of Karnataka Vs. C. Lalitha**<sup>3</sup>. The issue involved in this O.A. relating to the same selection process has been decided by the Hyderabad Bench of this Tribunal (Annexure-IA/3) and the Hyderabad Tribunal has followed the judgment of the Bangalore Bench passed in O.A. No.181/2009. Since the issue has already been decided by Bangalore Bench of this Tribunal and the same has attained finality, therefore, this O.A. can also be disposed of in terms of the judgment delivered by Bangalore Bench of this Tribunal. Reliance is also placed on a judgment of the Hon'ble Supreme Court in the matter of **Himachal Pradesh Public Service Commission Vs. Mukesh Thakur**<sup>4</sup>.

Reliance of the respondents on a judgment delivered by Hon'ble Delhi High Court in the matter of **UOI & Ors. Vs. Vijender Singh &**

<sup>3</sup> (2006) 2 SCC 747

<sup>4</sup> (2010) 6 SCC 759





protection of pay to be fixed notionally from the due date of promotion and actual monetary benefits from the date he actually works in TES Group-B. In view of the above circular, the applicants were also entitled to receive benefit of pay fixation from the year against which the applicants were granted seniority to the post of SDE. The applicants submitted their representations for fixation of pay scale and for fixing their seniority for further time bound promotion cumulatively filed as Annexure-P/6, however, the respondents declined to extend the aforesaid benefit to the applicants vide Annexure-P/7 dated 5<sup>th</sup> July, 2007. The selection of SDE was conducted at All India Level on the basis of common seniority of the JTOs. Similarly situated employees filed O.A. No.181/2009 before the Bangalore Bench of this Tribunal. Allowing their O.A., the Tribunal directed the respondents to grant consequential benefits such as counting of experience for further promotion, annual increment with effect from 23<sup>rd</sup> January 2002 though the applicants therein were held to be not entitled for any arrears of pay from the date of such notional fixation and they were held entitled for arrears with effect from 1<sup>st</sup> April, 2008, as the O.A. was filed on 2.4.2009.

The writ petition filed by the respondents against the order of the Tribunal has been further dismissed by the Hon'ble Karnataka High Court vide Annexure-IA/1 by placing reliance on judgments of the Hon'ble Supreme Court in the matters of **Union of India and another Vs. J. Santhanakrishnan and others**<sup>1</sup>, and **Balwant Singh Narwala and others Vs. State of Haryana**<sup>2</sup>. Special Leave Petition filed by the respondents against the order of the Hon'ble Karnataka High Court has

<sup>1</sup> (2007) 15 SCC 694

<sup>2</sup> (2008) 7 SCC 728





Ors.<sup>5</sup> is not applicable to the facts of the present case, as controversy involved in that case is related to employees of the CPWD, whereas the respondents have already implemented the decision of the Bangalore Bench of the Tribunal, which has been subsequently affirmed by the Hon'ble High Court and which is in relation to the same selection process.

Similarly, reliance of the respondents on a decision of the Hon'ble Kerala High Court in the matter of **Bharat Sanchar Nigam Limited & others Vs. Thomas Zacharia, Munjattu Karingattil, Perissery PO, Chengannur & others**<sup>6</sup>, has also no application in the present controversy, as the controversy before the Kerala High Court was about the dispute of inter se seniority of the persons selected against 75% and 25% quota and the provisional seniority of SDE was also under challenge. However, in the instant case, there is no challenge to the seniority list and the controversy of the present case pertains to the date of pay fixation after promotion in the cadre of SDE.

It is settled law that the judgment which is directly connected with the facts of the case is to be relied upon. Reliance is placed on a decision of the Hon'ble Supreme Court in the matter of **Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. and others**<sup>7</sup>. The respondents have deliberately delayed the selection of SDE against 25% quota in LDCE whereas as per the office memorandum dated 13<sup>th</sup> May, 1991, frequency of the meeting of the DPC is to be held at annual interval.





3. On the other hand, learned counsel for the respondents would argue that it is settled law that promotion of an officer who is promoted on the basis of LDCE takes effect from the date such promotions are granted and the officers cannot be granted promotion from any notional dating, as anti dating of the promotion is not permissible. Reliance is placed on a decision of the Hon'ble Supreme Court in the matter of **UOI and others Vs. K.K. Vadera and others**<sup>8</sup>. There is no rule entitling an employee to claim service benefits from the date of arising vacancy. Service benefit can be claimed only from the date of joining duty. In the matter of **J. Santhanakrishnan** (Supra), the issue before the Hon'ble Supreme Court was as to whether the view taken by Madras Bench of the Tribunal whereby notional promotion was granted 6 months from the date of holding of competitive examination contrary to the view taken by the Chandigarh Bench in this regard was correct and the Hon'ble Supreme Court preferred the view of Madras Bench by discarding the contrary view of the Chandigarh Bench. However, in O.A. No.181/2009, Bangalore Bench of this Tribunal has granted notional promotion from a date 6 months from the date of announcement of the examination the date on which even examinations were not held. The aforesaid view which has been subsequently affirmed by the Hon'ble Karnataka High Court is violative of the law declared by the Hon'ble Supreme Court in **J. Santhanakrishnan** case. The aforesaid view is also erroneous, as the Bangalore Bench decided the O.A. under impression that competitive examinations were required to be held annually which is factually incorrect.





Whereas **J. Santhanakrishnan** case was governed by the Telegraph Engineering Service (Group 'B' Posts) Recruitment Rules, 1981 (for short 'the Rules, 1981') which provides for holding of competitive examination annually while the present case is admittedly governed by the Telecommunications Engineering Service (Group "B" posts) Recruitment Rules, 1996, (for short 'the Rules, 1996') which did not provide any periodicity for holding such examination. The observations of Bangalore Bench of this Tribunal, which have been subsequently reiterated by the Hon'ble Karnataka High Court, which have been made in the premises that the relevant rules mandated holding of examination annually is contrary to the Rules, 1996 and as such, per incuriam and the matter is required to be decided as per statutory rules in terms of the law declared by the Hon'ble Supreme Court in **S.B. Bhattacharjee Vs. S.D.Majumdar and others**<sup>9</sup>.

The instant matter can also not be decided on the ground of parity as benefit of a wrong judgment even if it has become final and has been implemented cannot be claimed by others as a right. Reliance is placed on a decision of the Hon'ble Supreme Court in **Haryana State Electricity Board and another Vs. Gulshan Lal and others**<sup>10</sup>. The decision of Bangalore Bench being affirmed by the Hon'ble High Court of Karnataka has not attained finality, as SLP filed by the answering respondents was dismissed by the Hon'ble Supreme Court *in limine* without exercising its appellate jurisdiction.

The applicants in their T.A. have claimed relief of setting aside the order dated 5.7.2007 (Annexure-P/7) by which their claim for consideration of the Hon'ble Supreme Court's judgment in the case of

<sup>9</sup> (2007) 10 Supreme Court Cases 513

<sup>10</sup> (2009) 12 Supreme Court Cases 231



J. Santhanakrishnan (Supra) was rejected and they also claimed seniority. However, the applicants have not exhausted their departmental remedies by way of filing representation and as such, their application cannot be entertained for the relief of seniority in view of the provisions of Section 20 of the Administrative Tribunal's Act, 1985. Reliance is placed on a judgment of the Hon'ble Supreme Court in the matter of Union of India Vs. Ibrahim Uddin & Anr.<sup>11</sup>.

The applicants at best can claim benefit of ratio of J. Santhanakrishnan case (Supra), which is also not permissible due to reason of doing away with periodicity mandate in the Rules, 1996 with which present case is covered.

The applicants had challenged the order dated 16.1.2004 rendered by the respondents by way of filing writ petition in the year 2008 with the lapse of more than 4 years without any explanation for delay and as such, it was grossly time barred. The Hon'ble High Court would refuse to exercise its jurisdiction under Article 226 of the Constitution only on the ground of delay and laches. Reliance is placed on decisions in the matters of Noharlal Verma Vs. District Cooperative Central Bank Limited, Jagdalpur<sup>12</sup> and Delhi Administration and others Vs. Kaushilya Thakur and another<sup>13</sup>.

4. Heard learned counsel for the parties, perused the pleadings of the respective parties and documents annexed therewith.
5. The Union of India, respondent No.1, in its counter affidavit has stated that the applicants of the present TA have already been absorbed in BSNL on permanent basis w.e.f. 1.10.2000 and as such, they ceased

<sup>11</sup> (2012) 8 Supreme Court Cases 148

<sup>12</sup> (2008) 14 Supreme Court Cases 445

<sup>13</sup> (2012) 5 Supreme Court Cases 412





to be Government employees, as grievance of the applicants is to be dealt with by the public sector undertaking and respondent No.1 is in no way concerned with the present case and its name deserves to be deleted.

6. The above fact is not disputed by any of the parties. In these circumstances, we direct the applicants to delete the name of respondent No.1 from the array of respondents.

7. The respondent BSNL has contested the claim of the applicants on the ground of limitation also apart from other grounds.

8. The applicants in the instant application have prayed for setting aside the order dated 5.7.2007 (Annexure-P/7) whereby their representation for notional fixation of their salary as per the judgment of the Hon'ble Supreme Court in Civil Appeal No.1655/1997 dated 27.2.2003 and consequential benefits, has been rejected with an observation that the judgment relates to particular cases and is not generalized.

9. It has been argued on behalf of the respondents that the applicants have challenged the order dated 16.1.2004 by filing writ petition in the year 2008 with a lapse of more than 4 years without any explanation for delay and, therefore, the same is grossly time barred.

10. From perusal of their counter reply, we find that the respondents have not raised any objection that the T.A. is barred by limitation, though in their additional affidavit filed on 28<sup>th</sup> June, 2012, a ground has been taken that the applicants are not entitled to relief on the ground of delay and laches. The applicants have been held to be qualified for promotion to the post of SDE on the basis of TES Gr. B examination. As per the result of the examination for TES Gr. B, vide order dated





16.1.2004 (Annexure-P/1) for the vacancies of the years mentioned against therein, the applicants represented before the respondent authorities for extending notional increments and counting of service for further promotion with effect from after 6 months after the date of competitive examination in terms of the judgment of the Hon'ble Supreme Court in the matter of J. Santhanakrishnan (Supra). However, when the respondents declined their representation vide order dated 5.7.2007, the writ petition was filed on 19.2.2008. That apart, the instant matter is pending since 2008. The controversy regarding the same selection process was subject matter of O.A. No.181/09, which has been decided by the Bangalore Bench of the Tribunal during the pendency of this petition on 26.4.2010 and the same has been subsequently affirmed by the Hon'ble High Court of Karnataka. Therefore, we are of the opinion that this TA cannot be dismissed as barred by limitation at this stage and the law laid down by the Hon'ble Supreme Court in the matters of Noharlal Verma and Kaushilya Thakur (supra) has no application to the facts of the present case, as the former decision relates to time barred appeal under the Cooperative Societies Act under Section 55 of the Cooperative Societies Act which specifically prohibits the Registrar from entertaining the dispute unless such dispute is registered within the prescribed period of limitation. Whereas in the matter of Kaushilya Thakur (supra), writ petition was filed after almost 4 years of rejection of application for allotment of a plot in lieu of acquisition without any explanation for delay.

11. However, in the instant case, the applicants' claim for notional fixation of pay scale was based on the ground of judgment of the Hon'ble





Supreme Court, which was rejected by the respondents on the ground that the same was for the particular applicants and not generalized and the aforesaid order gives the applicants cause of action to file writ petition.

12. It is not in dispute that identical issue has been adjudicated upon by the Bangalore Bench of the Tribunal in the matter of **Sri K.S. Premakumar & others Vs. Union of India & others** {O.A. No.181/2009, decided on 26<sup>th</sup> April, 2010}. Writ petition filed by the respondents has been further dismissed by the Hon'ble High Court of Karnataka vide order dated 21<sup>st</sup> April, 2011 filed as Annexure-IA/1 by the respondents and the respondents' review petition No.315/2011 for reviewing the aforesaid order has also been dismissed on 2<sup>nd</sup> March, 2012 and the respondents' Special Leave to Appeal No.22720/2011 has been dismissed by the Hon'ble Supreme Court vide its order dated 25.8.2011 (Annexure-IA/2).

13. Relying upon decision of the Hon'ble Supreme Court in the matter of **K.K. Vadera** (supra), which has been subsequently followed by the Hon'ble Delhi High Court in the matter of **Vijender Singh** (supra), It has been vehemently argued on behalf of the respondents that promotion of an officer who is promoted on the basis of LDCE takes effect from the date such promotions are granted and officers cannot be granted promotion from any notional date, as anti dating promotion is not permissible.

14. There is no quarrel on the proposition of law laid down by the Hon'ble Supreme Court in **K.K. Vadera** (supra), wherein it has been held that promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant, which has been





subsequently followed in numerous other judgments as also in the judgment of the Hon'ble Delhi High Court in the matter of **Vijender Singh** (supra), wherein it has been held that service jurisprudence does not recognize jurisprudential concept of deemed retrospective promotion. No person can claim a right to be promoted from the date when vacancy accrued and he must take promotion with its benefits from date of actual promotion.

15. In **Thomas Zacharia** (supra), the respondents filed O.A. before the Ernakulam Bench of the Tribunal and prayed for quashing of provisional seniority list which was prepared after the result of the LDCE for promotion from the post of JTOs to the post of SDEs. The O.A. was allowed and the respondent BSNL was directed to recast the seniority list. Similar prayer was also allowed by the Chandigarh Bench of the Tribunal and the BSNL was directed to recast the seniority list on the basis of their decision. The review petition filed by some of the Sub Divisional Engineers as per the directions of the Hon'ble High Court of Kerala was again dismissed by the Tribunal.

In the aforesaid matter, the issue before the Hon'ble High Court of Kerala was as to whether the SDEs, who are successful under the departmental competitive examination subsequent to the promotion of the candidates who were promoted on the basis of seniority and fitness towards 75% promotion quota, are entitled to seniority over them. The Hon'ble High Court, after referring to catena of judgments on the issue, held that there is no rule entitling an employee of the respondents to claim service benefits from the date of arising vacancy. Service benefits can be claimed only from the date of joining duty. When appointments are made from different streams one after another, those





who are subsequently appointed are not entitled to seniority over those who are appointed earlier so long as no such condition is stated in the earlier appointment order. Resultantly, the candidates who were promoted earlier on the basis of fitness and seniority against 75% quota shall have their seniority settled in pursuance of the promotion order and others who were later appointed towards 25% quota under the LDCE are not entitled to have their seniority fixed with retrospective effect over others.

16. In **J. Santhanakrishnan** (Supra), the controversy centered around delay in holding examination relating to 33-1/3% quota towards LDCE under Rule 2(iii) of the relevant rules in the same selection process and the declaration of results after selection. The Madras Bench of the Tribunal considering that examination for promotion for other category pertaining to 66-2/3% was held on time as scheduled and results were declared and vacancies were filled on 11.5.1981 whereas LDCE proceeding were delayed due to intervention of the Court proceedings and results of the examination came to be declared and finally result after assessment of ACRs came to have been published in May 1985 and actual promotions were effected in June, 1985, chose to adopt a device of giving due leverage for completing the process of examination which was held in March, 1982 and processing of the ACRs, of six months' time and fixed their notional date of promotion as 12.9.1982, whereas the Chandigarh Bench of the Tribunal chose to assign the notional date of promotion as 11.5.1981 at par with the date of promotion effected in respect of the other category falling within 66-2/3% of candidates selected for promotion. The Hon'ble Supreme Court, keeping in view the peculiar facts obtaining in that case,





applicants w.e.f. 23.1.2002, i.e. six months from 23.7.2001, the date on which the examination was announced to be held.

18. As already observed, the aforesaid decision of the Tribunal has been further affirmed by the Hon'ble Karnataka High Court and Special Leave Petition of the respondents against the order of the Hon'ble Karnataka High Court has been further dismissed and the respondents have been directed to comply with the orders.

19. It is also not in dispute that the respondents have already complied with the orders passed by the Tribunal viz. a viz. the applicants of O.A. No.181/09. It further transpires that T.A. No.93/2010 filed by similarly placed applicants in Hyderabad Bench of the Tribunal has been allowed in terms of the order passed in O.A. No.181/2009 by the Bangalore Bench of the Tribunal, subject to the result of the pending Review Petition R.P. No.3151/2011 in W.P. No.37322/2010 before the Hon'ble High Court of Karnataka. It is also not in dispute that the review application of the respondents has since been dismissed by the Hon'ble Karnataka High Court.

20. Learned counsel for the respondents has vehemently argued that the decision of the Bangalore Bench of this Tribunal as well as its affirmation by the Hon'ble High Court of Karnataka is *per incuriam*, as J. Santhanakrishnan case was governed by the Telegraph Engineering Service (Group B) Recruitment Rules, 1981, which provided for holding of the competitive examination annually, while the present case is admittedly governed by the Recruitment Rules, 1996, which came into force vide notification dated 22<sup>nd</sup> July, 1996 and which did not provide any periodicity for holding such examination.





21. We are unable to accept the aforesaid arguments advanced by learned counsel for the respondents, as the same is not borne out from the facts. From perusal of the order of promotion of the applicants, it is manifestly clear that a Limited Departmental Competitive Examination was held in the year 2002 for the vacancies of TES Gr.-B arising from 1996 to 2000-2001 and the candidates have been declared to be qualified for the vacancies against the respective years in the above mentioned examination. The Bangalore Bench of the Tribunal has directed the respondents to give notional seniority to the applicants with effect from 23.1.2002 i.e. 6 months from 23.7.2001, the date on which examination was about to be held, as their promotion was delayed on account of pendency of the Court proceedings whereas, the other candidates were promoted against 75% quota on 16.5.2000 and 28.12.2001, whereas ordinarily the recruitment under both the streams i.e. promotion under 75% quota on the basis of seniority cum fitness and examination under 25% quota of vacancies under LDCE should have been made simultaneously.

22. The judgment of the Hon'ble Kerala High Court in the matter of Thomas Zacharia (Supra) is in relation to inter se seniority of the candidates, who have been promoted under 2 streams and it has been held that when appointments are made from different streams one after another, those who are subsequently appointed are not entitled to seniority over those who are appointed earlier so long as no such condition is stated in the earlier appointment order.

23. In the instant case also, the Tribunal has granted notional promotion to the applicant with effect from 23.1.2002 with consequential benefits such as counting of experience for further promotions, annual





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increments etc., however, they were not entitled for any arrears of pay from the date of such notional fixation on 23.1.2002 but were made entitled for arrears of pay from 1.4.2008. Thus, the law laid down by the Hon'ble Kerala High Court is entirely on different issue and the same is not applicable to the facts of the present case.

24. So far as arguments of learned counsel for the respondents that the applicants could not be granted notional promotion from 23.1.2002 as by that date even LDCE was not held, as the same was admittedly held on 1.12.2002 which is in variance of the law laid down by the Hon'ble Supreme Court in **J. Santhanakrishnan** case wherein notional promotion was granted 6 months from the date of holding of examination is concerned, the aforesaid aspect has also been dealt with by the Tribunal in length and the Tribunal, considering that in **J. Santhanakrishnan** case, declaration of result was delayed on account of the Court's order whereas in the present case, the examination itself was indefinitely postponed and held after about 1½ years after the original scheduled date because of the Court's order and there was delay in declaring result also which nearly took one year as against 2½ years in the earlier case, directed the respondents to give the applicants notional promotion with effect from 23.1.2002 i.e. 6 months from the date on which examination was originally scheduled to be held, which is strictly in accordance with the proposition of law laid down by the Hon'ble Supreme Court.

25. In **C. Lalitha** (Supra), the Hon'ble Supreme Court, while considering parity of employment and granting similar reliefs as per the service jurisprudence evolved by it, held thus:-





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“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well settled that the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that in the meantime she had also been promoted as Assistant Commissioner which was a Category I post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.”

26. The above issue has again been considered by the Hon'ble Supreme Court in *Mukesh Thakur* (Supra) in which it has been held thus:-

“22. Such a direction has been passed apparently in view of the fact that fresh selection proceedings had commenced for the subsequent year. Thus, in such circumstances, it could be possible for the Court to reject the same on the ground of delay and laches rather than issuing a direction that no such petition shall be filed, particularly, in view of the fact that the candidates having Roll Nos. 1096 and 1476 had also secured 89 marks in the said paper. The candidate having Roll No. 1096 had secured 462 marks i.e. more than 50% in aggregate. Therefore, depriving him only on the ground that he could not approach the Court cannot be justified, particularly in view of the fact that the Court has competence to grant equitable relief to persons even if they are not before the Court. More so, the Court also has power to mould the relief in a particular fact situation.”

27. Admittedly, in the instant case, similarly placed candidates have been granted notional promotion from 23.1.2002 by the Bangalore Bench of





the Tribunal as also by Hyderabad Bench of the Tribunal and, therefore, the applicants herein cannot be denied the reliefs which have already been granted to their counterparts.

28. On the basis of aforesaid discussion, we allow this T.A. in terms of the decision of the Bangalore Bench of the Tribunal in O.A. No.181/2009, which has been subsequently followed by the Hyderabad Bench of the Tribunal in TA No.93/2010, and we direct the respondents to assign the notional date of promotion as SDEs to the applicants with effect from 23.1.2002 with consequential benefits such as counting of experience for further promotions, annual increments etc. with effect from 23.1.2002. However, the applicants shall not be entitled to any arrears of pay from the date of such notional fixation on 23.1.2002, but shall be entitled to arrears from 1.4.2008.

29. Certified copy after the amendment is made.

Sd/-

(G.P. Singhal)  
Administrative Member

Sd/-

(Dhirendra Mishra)  
Judicial Member

Barve

के.प्र.अ. प्रक्रिया नियमावली के नियम  
22 के अंतर्गत निःशुल्क प्रतिलिपि

6707  
पृष्ठांकन सं ओ/न्या. जवलपुर, दि. 23-11-12  
प्रतिलिपि अर्जित:-

- (1) सचिव, उच्च न्यायालय का कार्यालय, जवलपुर
- (2) आवेदक श्री/श्रीमती/श्रीमती के कार्यालय
- (3) प्रत्यर्थी श्री/श्रीमती/श्रीमती के कार्यालय
- (4) कोर्टपाल, के.प्र.अ., जवलपुर न्यायापीठ  
सूचना एवं आवश्यक कार्यवाही हेतु

उप सचिव

Shri Vijay Tripathi,  
Advocate.

TRUE COPY

Section Officer  
Central Administrative Tribunal  
Jabalpur Bench, Jabalpur.