

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO.1056/2002

New Delhi this the 8th day of June, 2007

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Mrs. Neena Ranjan, Member (A)

Shri H.D. Sharma,
S/o Shri R.S. Sharma
R/o Flat No.3, Bhavishya Nidhi Enclave,
Malviya Nagar, New Delhi-110 017.

-Applicant

(By Advocate: Shri L.R. Khatana)

Versus

1. Union of India through
Secretary, Ministry of Labour &
Employment, Govt. of India,
Shram Shakti Bhavan, New Delhi.
2. Chairman,
Central Board of Trustees,
Employees' Provident Fund,
Shram Shakti Bhavan,
Rafi Marg, New Delhi-110 001.
3. Central Provident Fund Commissioner,
14, Bhikaji Cama Place, New Delhi-110 066.
4. Shri M.L. Meena,
Addl. Central Provident Fund Commissioner,
Bhavishya Nidhi Bhavan,
14, Bhikaji Cama Place, New Delhi-110 066.
5. Shri S.K. Khanna,
Addl. Central Provident Fund Commissioner (Headquarter)
14, Bhikaji Cama Place,
New Delhi-110 066.
6. Shri R.K. Mahajan,
Addl. Central Provident Fund Commissioner,
Head Quarters
14, Bhikaji Cama Place, New Delhi-110 066.
7. Dr. (Mrs) Satbir Silas,
Director,
National Academy for Training &
Research in Social Security, 30-31, Institutional Area,
Janakpuri, New Delhi-110 058.

-Respondents

(By Advocate: Shri R.K. Shukla for Shri N.S. Mehta,
Shri Prem Kumar and Shri Nilesh Sawhney for R-2&3)

ORDER

Hon'ble Mrs. Neena Ranjan, Member (A)

By virtue of this OA, applicant has sought the following reliefs:-

- a) Call for the records of the case and modify the order dated 22.08.2001 to include the name of the applicant as having been promoted to the rank of Additional Central Provident Fund Commissioner (APFC) from 22.08.2001.
- b) Call for the records of the case and quash/set aside orders dated 13.11.2001 (Annexure A), dated 25.09.2001 (Annexure B), 20.03.2002 (Annexure C) and 20.03.2001 (Annexure D) and after consideration of the said record.
- c) Direct the respondents to consider the case of the applicant for promotion to the post of APFC w.e.f. 6.4.2000 when the applicant became eligible and due for promotion and further grant all consequential benefits from the said date.

2. Applicant had preferred this OA, which was heard and dismissed on 25.07.2003 against which he preferred Civil Writ Petition NO.7048/2003 in Delhi High Court. When it came up for hearing before the Delhi High Court on 05.11.2003, permission was sought by applicant to withdraw the CWP with liberty to move a Review Application before this Tribunal. On filing review, the same was allowed by the Tribunal. Accordingly, the matter has been listed and counsel of both the parties have been heard.

3. The applicant, who became Regional Provident Fund Commissioner (RPFC) Grade-1 on 6.4.1995, rose to be the senior most in the cadre on 23.8.2001. In terms of the Recruitment Rules for the post of Additional Central Provident Fund Commissioner (APFC), those holding the post of RPFC Gr-I with five years regular service are eligible for consideration. The applicant became eligible on 6.4.2000. During November 2000, Respondent No.3 recommended the case of four persons, including the applicant, for promotion to the post of APFC against four clear vacancies namely, Shri Kalyan Chand, Shri A.N. Sharma, Shri H.D. Sharma and Shri M.L. Meena. Thereafter an office Memorandum dated 22.02.2001 was issued to applicant seeking to challenge some of his actions taken on earlier postings. Though he filed his reply on



55

7.12.2001 and 20.12.2001, Chairman CBT, EPF issued promotion orders only in respect of Shri Kalyan Chand and Shri A.N. Sharma, RPFC Grade-I, ignoring the claim of applicant.

4. An office Memorandum dated 21.08.2001 was served upon applicant making wild and nebulous allegations against him during his tenure as RPFC Maharashtra and Goa. On 23.08.2001, complaint was made to CBI, Mumbai by DD (Vig) West Zone on the basis of which a raid was conducted by CBI on the premises of applicant on 24.08.2001, which only resulted in the recovery of cash amount of Rs.60,000/- which had been received as gifts during social ceremonies. This action was clearly done with the mala fide intention to deny him promotion.

5. By office order dated 13.11.2001, Respondent No.2 appointed Mr. M.L. Meena, the respondent No.2, junior to the applicant, to the post of Addl. CPFC in pay scale of Rs.14300-18300/- on purely temporary and ad hoc basis and Shri R.K. Mahajan, Respondent No.6 was brought on deputation from Central Excise. This was followed by postings of Dr. (Mrs.) Satbir Silas, respondent No.7 as Addl. CPFC on deputation, again in total contravention of the recruitment rules and promotion of Shri S.K. Khanna, Respondent No.5 on 20.3.2002. Though the applicant was eligible and due for promotion to the post of Addl. CPFC (after completion of five years regular service on 6.4.2000), other persons were appointed.

6. Aggrieved by these circumstances, applicant made representations on 21.3.2002 28.03.2002 to respondent No.2, without any response.

7. Applicant has taken the grounds that he has a right to be considered for the post which has been wrongfully denied to him even though he was fully eligible and due for such appointment as Addl. CPFC w.e.f. 7.4.2000 or at least from time when his juniors (respondent Nos. 4 & 5) were so appointed/promoted as Addl. CPFC. This is violative of Articles 14 and 16 of the Constitution of India. It is well settled that if the appointments are being made on temporary/ad hoc basis, all eligible officers have a right to be

218



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considered. In the present case, respondents have not considered the claim of applicant. Learned counsel for applicant Shri L.R. Khatana, to support his contention, has relied upon a decision of the Principal Bench of the Tribunal in OA No.2309/2005 – **Satbir Singh v. Union of India & others**. He has also heavily relied upon **Union of India Vs. K.V. Jankiraman**, 1991 (2) SCALE SC 423. In para 6 it has been observed as under:-

"6. Where the acquittal by Court is on technical grounds, if the Government does not propose to go in appeal to a higher Court or to take further departmental action, action should be taken in the same manner as if the officer had been acquitted by the Court on merits".

8. On the other hand Shri R.K. Shukla, learned counsel for official respondents (proxy counsel for Shri N.S. Mehta), at the outset, made preliminary submissions stating that applicant is linking up other issues with his non-promotion and by citing the same as a single action is assailing each one of them together and as such this action needs to be curtailed by the Tribunal. Respondents have pointed out that contrary to applicant's assertions regarding non-consideration for promotion, he was duly considered when two of his seniors and two of his juniors were promoted on ad hoc basis. However, on all the three occasions he could not be promoted on the basis of overall assessment of his service record and vigilance cases/CBI investigation. It is submitted by respondents that there is no indefensible right to promotion for an employee by virtue of his seniority. He only has a right of consideration when his name falls in the zone of consideration. It appears that the applicant is oblivious to the fact that promotion is not a matter of right as otherwise his assertion that he should be promoted from the date on which he completed the minimum stipulated service for consideration to the post of Addl. APFC, would not have been made. The right to promotion does not accrue merely by attaining eligibility but is dependent on many other factors like the availability of vacancies and the requirement of the employer to fill up the vacancies. Respondents have cited various judgments in support of their claim namely,

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Shankarsan Dash Vs. Union of India Vs. Union of India 1991 (2) JT 380; **Union of India Vs. Maji Jangammaya** 1977 (1) SLR 614, wherein it was held that no employee has any right to have a vacancy in the higher post filled as soon as the vacancy occurs. Govt. has a right to keep any vacancy unfilled as long as it chooses. Therefore, the contention of the applicant that he deserves to be promoted w.e.f. 07.04.2000 has no merit.

9. The respondents further submit that the applicant had made a number of unwarranted and uncalled for observations on the action of the appointing authority with regard to his non-promotion as Addl. CPFC. The action of respondent No.1, who is admittedly the competent and disciplinary authority for appointment to the aforesaid post on a purely ad-hoc basis does not indicate any malice or caprice. Accordingly, a conscious decision after due consideration, was taken not to appoint the applicant.

10. It is to be noted that in the case of applicant there had been a CBI raid and complaints of serious allegations were under investigation at the instance of the Central Vigilance Commission, since he has committed grave irregularity in the matter of approving allotment of PF Code Number to 18 establishments. Investigations also revealed that all those proposals were processed by applicant without proper examination and were cleared in an improper manner. Anti-Corruption Bureau, CBI Mumbai has accordingly registered a case No. RC/BAI/2001/A0029 dated 23.9.2001 under Section 120-B read with 420 IPC and Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act as detailed in the counter:-

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"7. (a) A reference was received from Central Vigilance Commission calling for a report in the matter of shielding a corrupt official against whom there were serious charges of corruption and demand of bribe. A memorandum calling for the applicant's explanation was issued. Consequent to receipt of his reply, a report was submitted to the CVC for seeking their first stage advice on initiation of major penalty proceedings against the applicant. The CVC conveyed their concurrence to the above and after complying with the laid down procedure and with the approval of competent disciplinary authority i.e. Chairman, CBT, EPF a chargesheet has since been issued to the officer on 20.06.2002. Further, the vigilance inspection of the applicant's erstwhile charge (Regional Office, Mumbai),



revealed serious irregularities. The version of the officer was sought vide memorandum dated 21.08.2001. On receipt of reply, the matter has been referred to CVC seeking first stage advice for initiating major penalty proceedings.

(b) It is further submitted that despite sincere efforts of the organization to examine and process the ongoing vigilance matters relating to the applicant and bring them to a finality expeditiously, applicant deliberately and willfully prolonged the matter considerably, which caused further delay in taking a decision on the course of action to be taken. The Memorandum on one case was given to him on 22.02.2001 seeking his version in a 15 days time. He sought for extension of time on several occasions on one pretext or the other and in this process delayed submission of his version for 11 months. As a result the case could be processed one year after the issue of Memorandum. Similarly the 2nd Memorandum was issued to him on 21.08.2001 seeking his version in a 15 days time. His request for inspection of documents was also allowed. The applicant perused the documents on various days. His request for copies of certain documents was also acceded to. The applicant submitted his reply only on 30.03.2002 i.e. after more than 7 months. He has thus dragged the process unreasonably in the pretext of perusal of documents in giving his version, which resulted in delay in all pursuant action. The applicant did not seem to be serious in early finalisation of the matter and was adopting delaying tactics by seeking extension of time to an unreasonable length.

8. Though the aforesaid two cases were pending at the investigation stage at that time, decision not to grant ad-hoc promotion was taken on the basis of registering regular case by CBI. In the ibid case an FIR has been registered by the Anti Corruption Bureau, CBI as a regular case after the preliminary inquiry is over.

9. A regular case is registered by the CBI when a preliminary case is established. During the preliminary inquiry indicating the various sections of the IPC or the Prevention of Corruption Act and it is decided to conduct a detailed investigation into the charges. This is analogous to a departmental inquiry being held where a prima-facie case is established and it is decided to conduct a departmental inquiry into the alleged violation of departmental procedures and rules. The fact that there is prima-facie evidence for registering an FIR and a regular case by the CBI is a sufficient ground to show that there is enough material on record which is repugnant to an ad-hoc promotion as, on the lines of regular promotion, if subsequently the official is honorably exonerated then the official may have grounds for claiming the benefit lost by him".

11. Respondents further contend that the only issue before this Tribunal is whether the applicant can have any inviolable right for ad-hoc promotion in spite of prima facie case of serious irregularities and misdemeanor. The respondents in this regard have placed reliance on a decision of the Apex Court in **D.D.A. v.**

H.C.Khurana, 1993 (3) SCC 196, wherein the Apex Court held that decision to issue a chargesheet or register a FIR constitutes the effective date on which departmental/judicial proceedings deemed to have commenced. The said decision squarely covers the case of applicant. As the case of applicant was not approved by the competent authority, vacancies were filled by promotion (i.e. respondent No.4) and thereafter two persons of exceptional credentials were brought on deputation (respondents no. 6 & 7). This was necessary as the number of eligible persons in zone of consideration were inadequate. Sealed cover procedure was not followed for ad hoc promotion and the competent authority went by the criterion seniority-cum-fitness. The applicant's right was only for consideration of his case and respondents had done the same and this cannot be faulted as detailed in the order:-

"20. The respondents consider it relevant to bring it to the kind notice of this Hon'ble Tribunal that at the present juncture three major penalty proceedings are pending against the applicant. He was placed under suspension vide order dated 23.9.2002 which was later revoked on 20.11.2003. Besides the competent authority has also accorded sanction for prosecuting him in the court of law under the provisions of Prevention of Corruption Act, 1988 on 17.6.2003. A charge sheet has been filed in this regard in the court of Special Judge, CBI at Mumbai on 26.6.2003, and the learned Judge has taken cognizance of the same. The sanction for prosecution has been stayed by the High Court at Delhi. It shall be relevant to mention that the criminal trial in pursuance of the RC registered by CBI on 23.8.2001 has thus commenced and as per law the criminal trial shall be deemed to have commenced on 23.8.2001 i.e. the date of filing of RC. The respondents would also like to mention that even in the event of the applicant getting promoted on ad hoc basis alongwith his seniors on 22.8.2001, a hypothetical situation, he would have been reverted to the grade of RPFC-I as besides filing of the ibid RC by CBI, Disciplinary Proceedings under Rule 10 of the EPF Staff (CC&A) Rules, 1971 (Major Penalty Proceedings) commenced with effect from 20.6.2002 i.e. before completion of one year period. The Govt. of India instructions on the subject provide for the reversion of those officials, promoted on ad hoc basis, against whom Major Penalty Proceedings are initiated before completion of one year period".

12. In the rejoinder applicant has reiterated his pleas taken in the OA.

13. We have carefully considered the rival contentions of the parties and perused the material on record.

14. The main issue in this OA is whether the grievance of the applicant that he was repeatedly ignored for *ad hoc* promotion as APFC, beginning with

22.8.2001, is valid or not. The learned counsel for the applicant has advanced a number of arguments, most of which relate to regular promotion, such as holding a DPC or following the sealed cover procedure. Besides the applicant has invested a considerable amount of labour and time in imputing malice to the authorities to the extent of making out a case of his continued persecution. The respondents have insisted that the issue is about *ad hoc* promotion, which does not require a DPC or sealed cover procedure. Being an administrative action to fill vacancies, the satisfaction of the competent authority on whom to promote within the framework of seniority-cum-fitness is sufficient. Their counsel has maintained that an employee's individual grievance cannot be permitted to become a masquerade for a wide ranging review of the department's functioning nor is it in accordance with the Tribunal law to project multiple causes of action to seek relief.

15. We have carefully considered the applicant's contention, but are inclined to agree with the learned counsel for the respondents that we cannot get involved with a review of the department's personnel policies or the state of employee morale just because the applicant perceives adverse departmental decisions to be emanating from malice. As such our focus will be to examine the procedure adopted by the authorities to deny *ad hoc* promotion to the applicant, when his junior was promoted.

16. In regard to the procedure, we find that the applicant's counsel has not been able to controvert the respondents' differentiation of procedure between *ad hoc* and regular promotions. The only reference he makes in this regard is to a circular dated 14.9.1992 of the department of personnel and training, a copy of which has not been produced. We find the date of this circular doubtful as it refers to another circular of the same date, which does not normally happen. This circular, according to the applicant, lays down that sealed cover procedure may be followed in certain conditions even for *ad hoc* promotion. The applicant goes on to say that he was not covered by any of these conditions. So sealed cover procedure was not followed in his case.

17. The facts are quite clear. Every thing was going smoothly for the applicant, until a decision was taken by the Ministry to promote *ad hoc* only two of the four recommended candidates. These two were senior to the applicant, so he cannot have any grievance. The promotion orders for the two seniors were issued on 22.8.2001. In pursuance of a reference from the Central Vigilance Commissioner, on the previous day (21.8.2001) a memorandum was issued to the applicant seeking his explanation for certain charges of corruption and demand of bribe. There was a CBI raid and registration of a regular case by CBI. Major penalty proceedings were initiated against the applicant and a charge-sheet issued. Thus this issue, going through the prescribed procedure and taking its time, became an obstacle in the applicant getting *ad hoc* promotion in subsequent decision making by the competent authority, which happens to be the Minister of Labour. The applicant has gone to great lengths to show that this was malicious. The respondents state that the applicant is wrong in attributing motives to the authorities.

18. The learned counsel for the respondents also argued that objectivity demands that apart from the service record, the competent authority must also consider the reputation for integrity of the candidates. Once promoted, the accountability for the promotion rests with the competent authority. The Tribunal would not interfere as an appellate authority if no mala fide or arbitrariness is found.

19. The OA is accordingly dismissed as devoid of merit. No costs.

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(Mrs. Neena Ranjan)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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