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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2243/2001

This the 19th day of February, 2003.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

1. Vinod Kumar Grover
2. Harish Chander Makhija
3. Virender Kumar Makhija
4. Dinesh Kumar Mishra
5. Gajanand
6. Sunil Kumar Khanna
7. Ashok Kumar Bhatt
8. Anand Kumar
9. Smt. Paramjit Kaur
10. Smt. Mohinder Kaur
11. Smt. Sunita Rani
(working as Stenographers in
the office of Employees' Provident
Fund Organisation, Bhavishya Nidhi
Bhawan, 14 Bhikaji Cama Place,
New Delhi-110066.)

... Applicants

(By Shri V.P.Uppal, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Labour
and Chairman, Executive Committee,
Central Board of Trustees,
Employees' Provident Fund,
Shram Shakti Bhawan, New Delhi.
2. Central Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi-110066.

... Respondents

(By Shri S. C.Chopra, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicants, 11 in number, are Stenographers in the pay scale of Rs.4000-6000 under respondent No.2, the Central Provident Fund Commissioner, Employees' Provident Fund Organisation (EPFO). They are stated to have been appointed as such between 14.10.1985 and 30.12.1991.

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EPFO is one of the subordinate offices under the Ministry of Labour, Government of India, respondent No.1 herein. Departmental of Personnel & Training issued a scheme vide O.M. dated 1.11.1993 (Annexure A-5) for restructuring of the Central Secretariat Stenographers' Service in order to improve promotional prospects for Stenographers in the Central Secretariat. In accordance with the restructured cadre of Stenographers who were earlier in the grades 'A', 'B', 'C' and 'D', grades 'A' and 'B' were merged and grades 'D', 'C' and the merged grades of 'A' and 'B' were to be restructured in the ratio of 40:40:20. As per this scheme, the vacancies arising out of the restructuring were to be filled up only from amongst Stenographers who fulfil the eligibility criteria laid down in the recruitment rules for the post and further that subsequent to 1.11.1993 the new posts other than Principal Private Secretary (PPS) were to be created in grade 'D' initially. Applicants have averred that these posts were to be filled in accordance with the scheme Annexure A-5 as approved by the Executive Committee in its meeting held on 14.7.1997. However, instead of doing so, respondents by an agenda item No.7 dated 29.6.1998 (Annexure A-8) proposed recruitment rules for restructured posts of Private Secretary, Personal Assistant and Stenographers. The Executive Committee approved the proposal in its 27th Meeting. In pursuance of the decisions taken at this meeting, respondent No.2 notified the recruitment rules, namely, Employees' Provident Fund Organisation Stenographers Service Rules, 1998, which were published on 2.1.1999 (Annexure A-1).

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The provision contained in rule 7(d) of these rules together with its two provisos reads as follows :

"Any person holding the post of Stenographer (Grade II) on regular basis shall be deemed to be appointed as Personal Assistant from the date of publication of this Notification in the Official Gazette.

Provided that such person has completed a minimum of five years of regular service in the post of Stenographer (Grade II).

Provided further that Stenographer (Grade II), who are not eligible for appointment to the post of Personal Assistant in terms of the above proviso shall be appointed as Personal Assistant on completion of five years of regular service in the post of Stenographer (Grade II)."

It is alleged by applicants that these provisos imposing conditions for appointment to the post of Personal Assistant have been incorporated without obtaining the approval of the Executive Committee. Applicants claim that the new rules came into effect from the date of the notification dated 2.1.1999 and that applicants are entitled for appointment to the post of Personal Assistant w.e.f. 14.7.1997 in terms of the decision contained in the 23rd meeting of the Executive Committee of the Central Board of Trustees. Applicants have also pointed out that in the same Organisation a different policy has been adopted for promotion and re-designation of the post of Vigilance Officer as Assistant Director (Vigilance) vide order dated 10.7.2000 without any revision in the recruitment rules (Annexures A-10, A-11 and A-12).

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2. Applicants have also alleged that whereas respondents were bound to implement the decision of the Executive Committee held in its 23rd meeting on 14.7.1997 for restructuring of the cadre of Stenographers, any deviation therefrom necessarily required prior approval of the Central Government. While provisos to rule 7(d) imposing certain conditions for appointment of Personal Assistants had not been approved by the Executive Committee, they were incorporated by way of provisos without obtaining approval of the Central Government which omission makes them illegal and void. Applicants have sought declaration of Annexure A-1 as illegal and ultra vires. They have further sought implementation of the resolution of the Executive Committee dated 14.7.1997 leading to applicants' appointment as Personal Assistants in the pay scale of Rs.5500-9000 w.e.f. 14.7.1997 with consequential benefits.

3. Respondents, on the other hand, have stated that it was only after administrative approval of the Executive Committee that the department started framing of the recruitment rules for the Stenographers' cadre which were notified on 2.1.1999 and that the posts could be filled only after notification of the recruitment rules.

4. We have heard the learned counsel of both sides. We find that provisos to rule 7(d) were not part of the agenda item put before the Executive Committee for approval in its 23rd meeting. Section 5(D) of the Employees' Provident Fund and Miscellaneous Provisions

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Act, 1952 makes it obligatory that while the method of recruitment, salary, allowances, discipline and other conditions of service of various officers and employees other than the Central Provident Fund Commissioner and Financial Adviser & Chief Accounts Officer shall be such as may be specified by the Central Government in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay, however, where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders, it shall obtain the prior approval of the Central Government. Admittedly, respondents have notified provisos imposing conditions of minimum of five years of regular service in the post of Stenographer (Grade II) etc. for appointment as Personal Assistant without approval of the Executive Committee of the Central Board of Trustees as also the prior approval of the Central Government. The learned counsel of respondents admitted that though the Executive Committee of the Central Board of Trustees as well as the Central Government had not approved of these provisos prior to notification of the new recruitment rules, there has been no deviation from the rules. This contention of the learned counsel of respondents is absolutely baseless as neither the Executive Committee of the Board of Trustees nor the Central Government approved of these provisos, nor are these provisos in consonance with the previous recruitment rules. Respondents have failed to show us any recruitment rules prior to rules of 1998 which contained the content of the aforesaid provisos.

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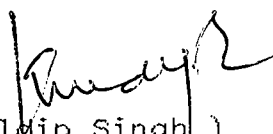
5. The learned counsel of applicants has also brought to our notice order dated 14.3.2001 in OA No.2472/1999 : **B.P.Jain & Ors. v Employees' Provident Fund Organisation & Ors.**, which dealt with a similar issue in relation to the Enforcement Officer/Assistant Accounts Officer in the EPFO. It was held therein that rules are applicable with reference to the vacancies arising after the constitution of the cadre and the notification of the recruitment rules and not before, and the cases of those officials who were holding the posts either on re-designation or promotion prior to that date would not fall within the purview of the rules. Further, the contention of applicants that respondents had followed a different policy in the matter of Vigilance Officers in the same Organisation while re-designating them as Assistant Director (Vigilance) without any revision in the existing recruitment rules, has not been denied by respondents. For prospective application of the rules, reliance can also be placed on **Y.V.Rangaiah v J. Srinivas Rao & Ors.**, AIR 1983 SC 82 in which it was held that vacancies which occurred prior to the amended rules have to be governed by the old rules and not by the new rules. In any case, in the matter of Stenographers, respondents have by a notification dated 25.1.2002 accorded relaxation in rule 7(b) by providing :

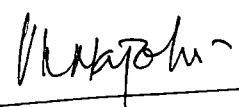
"(v) Personal Assistants as well as Stenographers {earstwhile Stenographer-III and Stenographer-II (Adhoc)} who have rendered regular service of 10 years or more as Stenographer shall be eligible to appear in the test in relaxation of recruitment rules. On qualifying the test they will be promoted enbloc in order of seniority-cum-selection basis."



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6. Having regard to the above discussion, the application succeeds and is accordingly allowed. Annexure A-1 is declared illegal and ultra vires as regards its applicability to applicants. Respondents are further directed to consider appointing applicants as Personal Assistants in the pay scale of Rs.5500-9000 in terms of the resolution of the Executive Committee dated 14.7.1997 notionally w.e.f. 14.7.1997, with monetary benefits w.e.f. 26.9.2000 when applicants made a representation to respondents. No costs.


(Kuldeep Singh)
Member (J)


(V. K. Majotra)
Member (A)

/as/