

(A)

Cabinet have conveyed their approval to appointment of Shri Ajai Singh as Central Provident Fund Commissioner for a normal period of five years from the date of assumption of charge. In view of this position it appears that the present O.A. has become infructuous. Shri Joseph, learned counsel for the applicant, has, however, contended that a decision to the question raised regarding the appointment of Respondent No.3 to hold the current charge of the post of Chief Central Provident Fund Commissioner is necessary as not only the applicant has been denied opportunity to do work in the higher post even on current duty basis but also because on the expiry of a period of three months he would have been entitled to the benefit of additional remuneration on account of holding the additional charge of higher post.

4. Shri Joseph, learned counsel firstly drew our attention to the letter dated 6.9.83, copy at Annexure A-3, which is addressed to the Central Provident Fund Commissioner on the subject of creation of additional posts of Additional Central Provident Fund Commissioner (Finance). It seems the proposal to create such a post was not agreed to and it was observed in the letter that "in the absence of Central Provident Fund Commissioner on long leave, deputation abroad, etc. his work will be looked after by Additional Central Provident Fund Commissioner." The learned counsel argued that even though there is no specific indication that this arrangement will also prevail in the event of the post of Central Provident Fund Commissioner falling vacant, the principle would apply as the situation will be the same when the officer is on long leave. We do not, however, agree with this argument. The letter in question has been issued by the Ministry of

The

Labour and Rehabilitation and the impugned order of appointment is also issued by the Ministry of Labour. We consider that in matters of administrative instruction, it is open to the authority to vary its decision in the interest of work. No statutory rules or regulation has been shown to us which would require that the current duty charge must be given to the Additional Central Provident Fund Commissioners only.

5. The second argument advanced by the learned counsel relates to the Govt. of India Ministry of Finance O.M. dated 9.4.1994 regarding the holding of additional charge by the Financial Advisers. He drew our attention to para 3 in which it is mentioned that Financial Advisers should not hold charge of an additional post of a Ministry or Department to which he/she is accredited and whenever such arrangement exist the same should be terminated. We are in complete agreement with the learned counsel that as a matter of policy such should be the procedure. The Financial Advisers are by the nature of their duties required to render assistance in financial matters and to ensure that proper care and prudence is exercised by the executive and administrative officers incharge of the Ministry. However, this is in the nature of an advice and not a mandatory requirement. In any case even if this appointment had been made contrary to the advice given by the Ministry of Finance, in the event it is now coming to an end in view of the orders passed by the Appointments Committee of the Cabinet.

6. The third point raised by the learned counsel relates to the financial powers exercised by the Additional Central Provident Fund Commissioner. We are in agreement

Dr

10

with Shri Sachdeva that whenever somebody is asked to look after the work of the Chief Central Provident Fund Commissioner the question of delegated powers if any because of the absence of the Chief Central Provident Fund Commissioner would not arise.

7. We do not wish to comment on the eligibility of the applicant for holding the post of Chief Central Provident Fund Commissioner only because the Appointments Committee of the Cabinet has decided to fill up the post by some other officer on a continuous and regular basis for five years. However, we do not for reasons adduced above, consider that any interference is called for in this matter. The OA is accordingly disposed off. It is however open to the applicant to challenge the order dated 8.10.1999 if so advised. There shall be no order as to costs.

Aheoja
(R.K. Aheoja)

Member (A)

sc*

Lakshmi Swaminathan
Smt. Lakshmi Swaminathan
Member (J)