

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 2472/1999

New Delhi, this the 14th day of March, 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

1. B.P. Jain S/o Late Sh T.R. Jain
R/o 78, B.N. Enclave,
New Delhi - 17
2. Bishan Kumar S/o Sh. S.N. Aggarwal,
R/o 1209, Gali Shamshan,
Frash Khana, Delhi - 6
3. Smt. Ved Kumari W/o Shri Jaswant Rai,
R/o 11-C, Shalimar Bagh,
New Delhi - 52
4. Smt. Adarsh Bala W/o M.M. Kutria
R/o E-10-A, Mokhran Garden,
Tilak Nagar, New Delhi - 18
5. B.C. Ahuja S/o Sh. K.C. Ahuja,
R/o I-96, Lajpat Nagar-II,
New Delhi - 24
6. Smt. Balwant Kumar W/o Shri P.P. Singh
R/o EA/115, SFS Flats,
Maya Enclave, G-8 Area,
Ghantahgarh, Rajouri Garden, Delhi
7. P.P. Chadha S/o Sh. Khairati Ram Chadha
R/o F-369, B. Sudarshan Park,
New Delhi-15
8. Smt. Promila Kalra W/o Sh. Ved Prakash
R/o 31/18, Old Rajinder Nagar,
New Delhi
9. Devanand Mandal S/o Sh. Baldev Mandal
R/o 84, B.N. Enclave,
New Delhi APPLICANTS
(By Shri A.K. Bhardwaj, Advocate)

VERSUS

1. The Employees Provident Fund Organisation

Through -

The Central Provident Fund Commissioner,
Head Office, Bhavishya Nidhi Bhawan,
14 Bhikaji Cama Place,
New Delhi - 110 066

2. The Regional Provident Fund Commissioner,
Regional Office, Mayur Bhawan,
New Delhi - 110 001
3. Shri Hansraj Singh Nain,
R/o House No. 159, V&P.O. Jatkhore,
Delhi 39

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4. Shri Deepak Kant,
R/o B-9/209, 210, Sector 5
Rohini, Delhi:110 085

5. Shri Avinash,
R/o NP-160, Mourya Enclave,
Pitampura,
Delhi : 110 034 Respondents
(By Shri V.S.R. Krishna, Advocate)

O R D E R (ORAL)

Shri Govindan S. Tampi, Member (A) :

Heard the learned counsel for the applicants and respondents today.

2. The relief sought by the applicants in this OA are as follows:-

- a) to direct the respondents not to post more than 16 persons in Delhi Region as EO/AAO, against direct recruitment quota in all.
- b) to restrain the respondents from posting more than 7 more candidates/persons as EO/AAO in Delhi Region against direct recruitment quota.
- c) to mandate the respondents to apply the Recruitment Rules of 3.3.1990 only to such vacancies which occurred after 3.3.1990 & not to apply the said rules with retrospective effect.
- d) to direct the respondents not to earmark the vacancies w.e.f. 5.8.1982 as per the Recruitment Rules of 3.3.1990 & to earmark only such vacancies as per rules of 3.3.1990, which occurred after 3.3.1990.
- e) to allow the present OA with cost of the litigation.
- f) to pass such other & further orders which their lordships of this Hon'ble Tribunal deem fit & proper in the existing facts & circumstances of the case.

3. The applicants are presently working as Enforcement Officer(E.O)/Assistant Accounts Officer (A.A.O) in the Delhi Region of Employees Provident Fund Office (EPFO for short). In this OA they are assailing

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the move of the respondents to fill up the posts of E.Os in the Organisation through direct recruitment, which would disturb the ratio between the promotees and direct recruits in the cadre. According to Shri Bhardwaj, learned counsel for the applicant, that in terms of Employees Provident Fund Enforcement Officer/Assistant Accounts Officer Recruitment Rules, 1990, the method of recruitment to the post was 50% by promotion, 25% through departmental competitive examination failing which direct recruitment and 25% by direct recruitment. Six of the applicants, originally Head Clerks in the Delhi Region, have been promoted on 31.5.1995 on ad hoc basis as EO/AAO. The present move of the department, keeping in mind the total number of posts of EO/AAO for working out the quota will benefit the direct recruits in such a manner as they would have *got post* having far in excess of what they should be given in terms of the Recruitment Rules, for the rules provide not for filling up the posts, but the vacancies. Therefore, the direct recruitment could be undertaken only to fill up 25% of the vacancies which had arisen after the Recruitment Rules were framed and, therefore, it should be restricted only to 16 for the Delhi Region. As already 9 persons have been recruited as E.O/A.A.O, only 7 more persons should be so recruited. However, the respondents were attempting to get more direct recruits holding the total number to be 87, including those posts existing before 1990, which was incorrect pleads, Shri Bhardwaj. The learned counsel reiterates that it is settled law that the Recruitment Rule is only prospective in operation and, therefore, the quota or

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the percentage to be worked on the basis of the Rules should also be prospectively applied. The attempt to increase the extent of direct recruitment was improper and should be prevented, the learned counsel pleads.

4. Shri V.S.R. Krishna, learned counsel, appearing for the respondents states that the applicants do not have a genuine cause of action. No representation has been made by any of the individual applicants though a letter in this context has been filed by the Staff Association. With regard to the interpretation of the Recruitment Rules, Shri Krishna draws our special attention to note (1) relating to promotion under column (12) stating that notwithstanding anything contained in these rules, any person holding the post of Provident Fund Inspector in Gr.II on regular basis on 5.8.1982 shall be deemed to have been appointed as Enforcement Officer/Assistant Accounts Officer on a regular basis under these rules at the initial constitution from the said date, and his inter-se-seniority on absorption shall be assigned in accordance with his relative seniority in the cadre of Provident Fund Inspector (Gr.II). Similarly, under note 2, it is directed that person holding the post of E.O/A.A.O on ad hoc basis after 5.8.1982 before the notification of Recruitment Rules on 3.3.1990 shall also be deemed to have been so appointed to the said post regularly after assessing their suitability. It would mean, therefore, that the entire strength of the cadre has been taken together and those who were already promoted as E.O/A.A.O, at the time of the constitution

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would be deemed to have become adjusted in the 50% promotion quota as per the Recruitment Rules. The total number of posts have correctly been taken for arriving at the share of the direct recruits and, therefore, the plea made on behalf of the applicants that the same should be worked out differently restricting to subsequent vacancies was improper and should not be entertained. This was clearly against the scheme envisaged under the Recruitment Rules and the cadre strength. Even otherwise, the applicants have come to the Tribunal at a belated stage. If at all they had any grievance with the order of 31.5.1995, when they were promoted on a purely ad hoc basis as E.O/A.A.O, and in a stop gap arrangement, with the direction that the promotion was for six months or till the examination quota/direct recruitment quota candidates became available or till further orders whichever was earlier, they should have challenged the same then, instead of coming with this OA, when the selection process for direct recruitment was in the final stage and the orders are under issue. Shri Krishna, therefore, prays that the application does not merit acceptance.

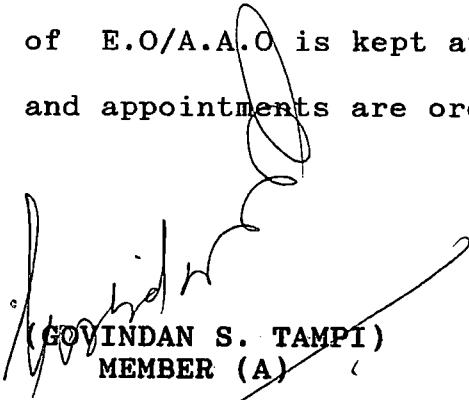
5. We have carefully considered the rival contentions. Point for determination of this OA revolves around the interpretation of the Employee' Provident Fund Organisation Enforcement Officer/Assistant Accounts Officer Recruitment Rules, 1990. The Schedule to the said Rules in column 11 refers to the method of recruitment and percentage of the vacancies to be filled by various methods i.e. 50%

by promotion failing which by direct recruitment, 25% by promotion through departmental examination and 25% by direct recruitment. Naturally, therefore, the Rules are applicable with reference to the vacancies arising after the constitution of the cadre and the notification of RRs and not before and the cases of those officials who are holding the posts either on redesignation or on promotion prior to that date, would not fall within the purview of the Rules for arriving at the quotas for promotion, direct recruitment etc. The plea by the respondents that the persons who were promoted earlier also constituted the 50% promotion quota does not appear to be borne out by fact as in Note under column 12 it is very clearly stated that any person holding the post shall be deemed to have been appointed at the time of the constitution of the RR. Obviously, the vacancies which have arisen on dates subsequent to the notification of Rules would be reckoned for being filled up in terms of the Rules. Thus the number of persons who were already holding the post either by redesignation or by promotion on earlier dates cannot be described as constituting the promotion quota. Promotion, departmental examination and direct recruitment quotas could have been worked out only with reference to vacancies arising after the Recruitment Rules and so worked out the vacancies falling in the quota for direct recruitment would be 16. As already 9 direct recruits have been appointed in Delhi Region, 7 more persons only could be appointed in that quota. Posting anyone more will go against the prescription under the Recruitment Rules. The fact that recruitment

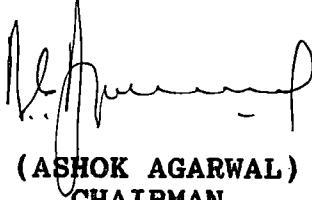
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process for direct recruitment has been initiated and those selected will be hit by this direction is not acceptable as there is no right for anyone to get appointed to any post, where a quota is fixed for different categories, ^{if} his or her number falls in excess of the relevant permissible quota. Even otherwise, the direct recruits seeking posting as E.O/A.A.O. are deemed to have been put on notice by the interim order dated 22.4.1999, to the effect that appointment of direct recruits was subject to the outcome of this OA.

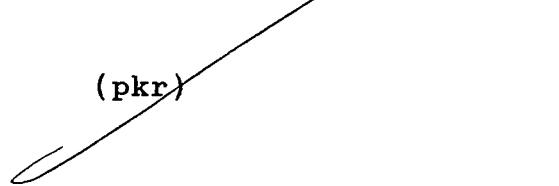
6. In the result the application succeeds and is accordingly allowed. Respondents are directed to ensure that the quota for direct recruitment to the post of E.O/A.A.O is kept at 16 and not more for the present and appointments are ordered accordingly. No costs.



(GOVINDAN S. TAMPI)
MEMBER (A)



(ASHOK AGARWAL)
CHAIRMAN



(pkr)