

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.326/2000

with

O.A. NO. 2330/99

M.A. NO. 2349/99

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New Delhi this the 15th day of January, 2001

HON'BLE MR. V.K. MAJOTRA, MEMBER(A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

OA No. 326/2000

1. Yogesh Kakkar
S/o Shri Kishan Lan Kakkar,
R/o E-19/302, Sector-3, Rohini,
Delhi-110085.
2. Sanjeev Prakash
S/o Late Shri Ram Prakash,
R/o B-9, Saket, New Delhi-110017.
3. Ram Singh
S/o Shri Bahadur Singh
R/o Sector-29/66, P.F. Colony,
Faridabad, Haryana.
4. Diwan Singh
S/o Shri Ram Singh,
R/o B-93, Tigri Extn,
New Delhi-110062.

-Applicants

Versus

1. Employees Provident Fund Organisation,
(Head Office), Bhavishya Nidi Bhawan,
14, Bhikaji Cama Place, New Delhi-110066.
2. The Regional Provident Fund Commissioner
5th-9th Floor, Mayur Bhawan,
Connaught Circus, New Delhi-110001.

-Respondents

OA-2330/99

1. Kamal Kumar Khurana
S/o Late M.L. Khurana
R/o C-6/42, Keshav Puram,
Delhi-110035.
2. Ashwani Kumar Chawla
S/o Shri Keser Chand Chawla
R/o 5A-30, NIT, Faridabad, Haryana
3. Raman Sharma
S/o Shri R.K. Sharma
R/o 1/24, Old Double Story
Lajpat Nagar, New Delhi-110024.

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4. Reena Arora
W/o Shri Rajesh Arora
R/o 982, GH 5 & 7 Paschim Vihar,
New Delhi-110087.
5. Suman Jawa
W/o Shri J.L. Jawa
R/o Pocket B7/3, Rohini,
Sector-3, Delhi-110087.
6. Kishan Lal
S/o Shri Har Sahai
R/o B2C/67-A, Janak Puri, New Delhi-110058.
7. Manoj Kumar
S/o Late Jaswant Singh
R/o WZ-1251, Nangal Raya,
New Delhi-110046.
8. Mangat Ram Rohilla
S/o Late Hoshiyar Singh
R/o 789, Vill & P.O. Bawana,
Delhi.

-Applicants

Versus

1. Employees Provident Fund Organisation,
(Head Office), Bhavishya Nidi Bhawan,
14, Bhikaji Cama Place, New Delhi-110066.
2. The Regional Provident Fund Commissioner
5th-9th Floor, Mayur Bhawan,
Connaught Circus, New Delhi-110001.

-Respondents

(By Advocate: Shri M.K. Bhardwaj, for the applicants
Shri V.S.R. Krishna, for the respondents)

ORDER (Oral)

Mr. V.K. Majotra, Member (A)

As the facts are identical and the issue involved in both the cases is common, they are being disposed of by this common order.

2. The applicants in these OAs are aggrieved by the act of the respondents in not offering them appointment for the post of Data Entry Operator (DEO) Grade-B and Grade-C for which they applied. They have been offered the post of DEO Grade-A. The applicants have averred that they have

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been working in EPFO in the grade of Rs. 1200-2040 for the last several years and now after selection for the post of DEO Grade B/Grade-C, they have been offered the post of DEO Grade A which is in the scale of Rs. 1150-1500. The applicants were initially appointed as LDC in the Employees' Provident Fund Organisation, subsequently promoted as UDC from different dates and they have been discharging the work of DEO since the dates of their joining in the organisation. Vide letter dated 20.5.98 as a matter of One Time Relaxation, the respondents invited applications from the Computer Staff of EPFO for the post of DEO. According to the applicants, they submitted their applications for the posts of DEO Grade-B & C only. According to them, these applications were duly accepted and they were called to appear in the selection for the post of DEO Grade-B & C. They appeared in the test conducted on 7.1.99. However, on their qualifying the Selection, they were offered the post of DEO Grade-A which is lower in scale than their present scale of UDC i.e. 1200-2040. Their representations against the offer of the post of DEO Grade-A have remained unreplied and the respondents have resorted to invite fresh applications for filling up the post of DEO. The applicants have maintained that having accepted their applications for the post of Grade-B&C DEO, the respondents are estopped from offering to them lower post of DEO Grade-A.

3, In their counter the respondents have stated that the Executive Committee in its 23rd meeting decided to give an opportunity as one time measure to the staff of the organisation hitherto working in the EDP Centres of the

various Regional and Sub-regional Offices for joining the newly created posts of DEO, Programmers, Supervisors in the EPFO. The post of DEO Grade-A as per the Recruitment Rules has to be filled by way of direct recruitment. DEO Grade-B and Grade-C posts have to be filled in by promotion from the lower grades i.e. DEO Grade-A and DEO Grade-B. According to the respondents, the applicants were asked to appear in the skill test for selection of DEO without any specific reference of grade but it meant that the staff already deployed on ad hoc basis in the post of DEO were to assume the post of DEO Grade-A which is the initial grade in the cadre of DEO and the selection/appointment of DEO Grade-B and DEO Grade-C is by promotion of the suitable candidates. As such at the stage of inception of the DEO cadre though there is a classification of grades viz, Grade, Grade-B and Grade-C, it is for future purpose and the applications of the petitioners could not be considered for the post of DEO Grade-B and DEO Grade-C for which they are not eligible. According to the respondents, the applicants on their selection in the skill test were offered appointment to the post of Data Entry Operator(DEO) Grade-A vide letter dated 31.3.99. The applicants failed to accept the offer within the stipulated period and, therefore, they are now estopped to make a grievance over this issue. The applicants have been working for a couple of years in the EDP Cell on payment of special pay @ Rs. 40/- per month in addition to their regular scale as LDC/UDC etc. for performing the duty in the EDP Cell. The respondents have maintained that the entire exercise of allowing the applicants to take the skill test has been undertaken as a one time measure to regularise the

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interested and eligible candidates among the ad hoc staff working against the DEO posts prior to the approval of the Recruitment Rules for DEO against the new posts of DEO Grade-A. The applicants have filed a rejoinder as well. 16

4. We have heard the learned counsel of both sides and considered the material available on record.

5. Shri M.K. Bhardwaj, learned counsel appearing on behalf of the applicants contended that one time relaxation has been accorded in the case of the applicants only to consider them for superior ^{grades} ~~than~~ ^{than} their existing ^{grade} ~~grade~~ ^{grade} i.e. only for DEO Grades-B & C. The applicants have applied for the post of DEO Grade B&C only. Their applications were accepted. They appeared in the test and qualified in the same. However, they were offered posts in DEO Grade-A which is a lower ^{grade} ~~grade~~ ^{grade} than their existing ^{grade} ~~grade~~ ^{grade}.

6. The learned counsel of the respondents Shri V.S.R. Krishna contended that as per the Recruitment Rules whereas for the post of DEO, there is a provision for direct recruitment ^{post of DEO Grade A and entry} ~~for the~~ to the post of DEO Grade-B&C are only through promotion. The Executive Committee of CBT, EPF vide their 23rd meeting held on 14.7.97 approving the Recruitment Rules for the posts of DEO and Programmers, Superiors decided in addition that the existing Computer staff working in the Employees' Provident Fund Organisation may be given opportunity to join the above posts as a one time measure through a scheme to be approved by the

Executive Committee separately. According to him, the applicants after their selection in the skill test held for the post of DEO were offered appointment to the post of DEO Grade-A (Annexure A-1). The applicants sought extension for 25 days, being "not in position to join or take decision for joining on above cited post because of some domestic problems". According to the learned counsel, applicants' cases are hit by promisory estoppel having accepted the offer of appointment and when they were seeking only some time to join against the same posts. He further stated that the applicants do not have a right for any particular post. They were considered for appointment against the post of DEO Grade-A and not for DEO Grade-B/Grade-C. Thus, they do not have any right for consideration for the posts of DEO Grade-B/Grade-C. The one time relaxation was accorded with a view to offer an opportunity to the staff who were already working in the EPFO for regularisation in the new cadre of DEOs. The learned counsel further stated that the applicants cannot be recruited against posts of DEO Grade-B&C de hors the rules.

7. Undoubtedly, the applicants have been working in the EPFO on ad hoc basis and discharging the duties of DEO since early 90s. They were also allowed a special pay of Rs.40/- for discharging their duties as DEO in EPFO. From the Recruitment Rules for the post of DEOs, we find that whereas recruitment to the post of DEO Grade-A is by direct recruitment, recruitment to the post of DEO Grade-B & Grade-C is by promotion, failing which by direct recruitment or transfer from Central Government

Departments/Statutory/Autonomous Bodies under the Central Government. Memo dated 20.5.90 referring to the decision taken in the 23rd meeting of the Executive Committee of CBT, EPF held on 14.7.97 invited applications from those working as Computer staff in the organisation who were to be given opportunity to join the posts of DEO and Programmers, Supervisor as a one time measure through a Scheme. Although it is not stated in this Memo that the applications were invited for the post of DEO Grade-A only ^{by} yet it cannot have any other meaning ^{by} excepting that the applications were invited only for the post of DEO Grade-A. The method of recruitment for the post of DEO Grade B&C is essentially promotion and not direct recruitment. Therefore, the staff already working in the organisation cannot be provided any opportunity of direct recruitment against the posts of DEO Grade B & Grade-C as they were to be filled only through promotion. At the time of initial constitution of the service of DEOs recruitment could be made only to Grade-A and later on under the Recruitment Rules Grade-B & Grade-C posts could be filled up by promotion after ^{incumbents in} DEO Grade-A became eligible for the same. The import and intention of the decision of the Executive Committee to provide one time relaxation of the staff already working in the organisation was only to make selection of the existing staff to man the posts of DEO Grade-A. Non-mention of Grade-A in the Memo inviting applications is immaterial. Even if the applicants stated that they were applying for the post of DEO Grade-B and Grade-C is again immaterial as in our view the selection was being held only to fill up the posts of DEO at the lowest rank by providing relaxation to the existing staff

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in order to regularise their services in the post of DEO Grade-A. We are in agreement with the learned counsel of the respondents that recruitment cannot be made dehors the rules. There is no provision in the rules for any lateral entry for the post of DEO Grade-B & Grade-C. Thus, the applicants though they have mentioned in their applications that they were applying for the post of DEO Grade-B & C were considered for selection for the post of DEO Grade-A. They were offered an appointment for the post of DEO Grade-A. They sought time to consider the question of joining against those posts. If they did not, it is their own peril. The learned counsel of the respondents informed that since lot of time has passed and certainly the time sought by the applicants to consider their decision has passed long ago, the respondents have resorted to initiate the process of fresh selection for the post of DEO Grade-A.

8. Having regard to the above facts and circumstances, we are dismissing the application being devoid of merit. However, in case the respondents have yet not finalised the fresh selection for the post of DEO Grade-A, they may consider to allow the applicants an opportunity to join against the offer of appointment which was under consideration in these OAs. No costs.

S. Raju

(Shanker Raju)
Member (J)

cc.

V.K. Majotra
(V.K. Majotra)
Member (A)

15.1.2001