IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(6)

Registration Nos. (1) OA 981/91
(2) OA 2917 to 2924/91
(3) OA 2925 to 2943/91
(4) OA 2285/91
(5) OA 2297/91

Date of decision: 3-1-1992

(1) OA 981/91 (Principal Bench)

R.K.Kohli and Ors. ..... Applicants

Vs.

Central Provident Fund
Commissioner & anr. ..... Respondents

(2) OA 2917 to 2924/91(Principal Bench)
(OA 255 to 262/91-Bangalore Bench)

Shekara Poojari & 7 ors..... Applicants.

Vs.

The Central Provident
Fund Commissioner & Anr..... Respondents

(3) OA 2925 to 2943/91 (Principal Bench)
(OA 283 to 292/91-Bangalore Bench)

Gururaja .M.& 9 ors. .... Applicants

Vs.

Central Provident
Commissioner & Anr. .... Respondents

(4) OA 2285/91 (Principal Bench)
(OA 668/91-Ernakulam Bench)

P.Jayaraja and ors. .... Applicants

Vs.

Central Provident Fund
Commissioner & Anr. .... Respondents

(5) OA 2297/91(Principal Bench)
(OA 456/91-Hyderabad Bench)

V.Venkataramana & Ors..... Applicants

Vs.

Central Board of Trustees,
Employees Provident Fund
rep.by its Secretary,
New Delhi .... Respondents

For the Applicants in 1 .... Shri D.R.Gupta,Counsel

For the Applicants in 2&3 .... Shri Alok Aggarwal,
Counsel.

For the Applicants in 4	....	Shri M.P.Vinod, Counsel.
For the Applicants in 5	....	Shri Alok Aggarwal, Counsel.
For the Respondents in 1 to 5....		Shri K.C.Sharma, Counsel.

CORAM:THE HON'BLE MR.JUSTICE V.S.MALIMATH,CHAIRMAN
THE HON'BLE MR. D.K.CHAKRAVORTY,MEMBER(A)

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MR. D.K.CHAKRAVORTY, MEMBER)

OA 981/91 was filed in the Principal Bench. The applicants posted at places coming under the jurisdiction of the Bangalore, Hyderabad and Ernakulam Benches of the Tribunal, who are similarly circumstanced, had also filed OAs in their respective Benches. On Misc.Petitions filed on behalf of the respondents under Section 25 of the Administrative Tribunals Act, 1985, permission was granted for the transfer of 18 cases from the Bangalore Bench and one each from the Hyderabad and Ernakulam Benches for hearing along with OA 981/91 at the Principal Bench.

2. The applicants in these applications are employed in the office of the Central Provident Fund Commissioner in its headquarters at New Delhi and in its regional offices at Bangalore, Mangalore, Hyderabad and Thiruvanathapuram in various capacities like Assistants, Junior Assistants, Upper Division

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Clerks, Head Clerks, Vigilence Officers and Vigilence Assistants. They are aggrieved by the declaration of results of Employees' Provident Fund Service Examination, Part-I held in December,1990 (Annexure A 1 in the paperbook of OA 981/91). The results have been declared regionwise and the names of the applicants do not figure in the list of successful candidates despite their having secured more than minimum marks prescribed both in the aggregate as well as in the individual papers. They have prayed that they should be declared successful in Part-I examination and the respondents be directed to permit the applicants to take up the Part-II examination. The applicants in OA 981/91 have further prayed that the respondents be directed to prepare the merit list of the candidates with reference to the marks obtained by them in both parts of the examination for the existing and anticipatory vacancies in the cadre of Superintendents, Enforcement Officers(E.O) and Assistant Accounts Officer(A.A.O) under examination quota on All India basis.

3. At the outset, it may be stated that while admitting these applications, the Bangalore and the Ernakulam Benches have passed interim orders permitting the applicants to take Part-II examination provisionally subject to the outcome of the applications. The Hyderabad Bench did not pass any interim order

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except issuing direction to dispose of the representations by 17.5.1991. At the Principal Bench the application has not been formally admitted and no interim order for appearing in the Part-II examination was passed on the assurance of the learned counsel of the Respondents that the said examination has been postponed sine die. However, on a Misc.Petition moved by the applicants, an interim order for keeping the vacancies existing prior to March,1991 intact was passed.

4. The applicants contend that the action of the respondents is not in accordance with the Employees' Provident Fund Service Examination Scheme which came into effect from 3.3.1990. The examination is open to Head Clerks, Assistants, Machine Operators, Stenographers Grade II, Junior Technical Assistants, Legal Assistants, Hindi Translators (Grade II) with 3 years regular service in the scale of Rs.1400-2300 and Upper Division Clerks and Stenographers(Grade III) with 5 years regular service in the scale of Rs.1200-2040 serving in the Headquarter's and Regional offices. Relevant portions of the Scheme are extracted below:-

> "4. The examination shall consist of two parts as detailed in the Schedule appended. Part I of the examination shall be a <u>competitive one</u> and Part II of the examination a <u>qualifying one.</u> Only such of the employees who have

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passed in Part I of the examination will be eligible to appear in Part II of the examination. On passing both the parts of the examination, the candidates will be declared to have qualified in the Employees' Provident Fund Service Examination and eligible for consideration for promotion to the post of Assistants Accounts Oficer/Enforcement Officer/ Superintendent subject to the provisions of rules 3 and 6 of the scheme.....

6. The fact of passing in both Part-I and Part-II of the examination will not confer on any employee the right to claim promotion to the post of Assistant Accounts Officer/ Enforcement Officer/Superintendent. Such of the officials as have passed in both parts of the examination will be considered for promotion to the post of Assistant Accounts Officer/Enforcement Officer/ Superintendent on the basis of the merit list prepared with reference to the marks obtained by them in both the examination and subject to availability of vacancies under the examination quota.

8(a) Minimum marks for passing Part-I of the examination.

To be declared successful a candidate must obtain atleast 40% marks in each paper and 45% marks in the aggregate provided that in the case of Scheduled Caste/Scheduled Tribe candidates the marks will be 35% in each paper and 40% in the aggregate.

(b)Part-II of the examination

To be declared qualified, a candidate must obtain atleast 40% marks in each paper and 45% in the aggregate. Candidates belonging to Scheduled Caste/Scheduled Tribe communities must obtain 35% marks in each paper and 40% in the aggregate."

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5. The applicants contend that as they have secured more than the minimum prescribed marks, they must be declared as successful and all to appear in the Part II examinations. In declaring them unsuccessful and thus making them ineligible for taking up the Part II examination is arbitrary, illegal and discriminatory. Further, they were surprised to find that some of their colleagues in U.P and other regions, who have secured less marks than that of the applicants have been declared successful. For example, Shri Satyapal Singh and Smt. Aruna Srivastav from U.P.region, who secured 46% and 47% marks respectively have been declared successful while the marks obtained by the applicants from the Headquarter office in New Delhi range between 50% to 56%. The applicants have averred that the cadre of E.O, AAO and Superintendent is a feeder cadre for promotion to the posts included in Group A for which they have to be grouped in one stream and their inter-se seniority has to be on All India basis. Further, preparation of list of successful candidates regionwise and not on All India basis, as has been the practice all through in the past, runs counter to the approved scheme of the examination. This also makes the scheme unworkable as no merit list can be prepared on the basis of Part I results alone since qualifying Part II is also compulsory.

6. The applicants in OA 981/91 have ventilated another grievance arising from promulgation of the new recruitment rules for the posts of E.O, AAO and Superintendent with effect from 3.3.1990. It is contended that vacancies in existence prior to the commencement of the new recruitment rules should be filled up in accordance with the old recruitment rules which provided for filling up of 50% of the vacancies by promotion on the basis of the examination as against the reduced figure of 25% under the rules dated 3.3.1990 and the balance on the basis of seniority. Accordingly, since 14 posts of Superintendent in Headquarters office were filled up by promotion on the basis of seniority, an equal number of vacancies in the cadre are required to be filled up under the examination quota. Taking into consideration anticipated vacancies of 5 to 7, they envisage that about 20 vacancies would be required to be filled on the basis of the examination. In the back drop of this grievance, the applicants in this OA have sought for a direction to the respondents to compute the correct number of existing and anticipatory vacancies in the cadre of E.O, AAO and Superintendent and to prepare the merit list of the candidates on All India basis for the existing and anticipatory vacancies.

7. The applications have been contested by the respondents. According to them, the applicants have

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no locus standi in the case as they have failed to come in the merit list in their own region. The Employees' Provident Fund organisation is a statutory body which is functionally divided into several regions headed by the Regional Provident Fund Commissioners. Under the relevant rules, recruitment and promotion of LDC/UDC/HC and the cadre of EO/AAO is confined to a region and the cadres are regional cadres to ensure that there are adequate promotional avenues upto this level and to relieve the employees from frequent transfers all over the country. Similarly in the Headquarters office, the staff upto the level of Superintendent is confined to that office only for purposes of promotion and postings. However, officers in Group A belong to All India cadre and are controlled by the Central Provident Fund Commissioner. The recruitment rules for the Superintendent in the Headquarters office provide for promotion to this grade from amongst Assistants working in the Headquaraters only and similarly the promotion to the level of E.O/AAO is confined to the staff of that particular region only where the vacancy occurs. Thus, promotion/recruitment to the grade of E.O/AAO being confined to the vacancies within a region, the staff of that region alone are eligible for such promotion.

8. With a view to rationalising the organisational structure, posts of E.O & AAO were created in the

region and of Superintendents in Headquarters in 1982 and no recruitment rules were in existence for these posts till 3.3.1990. The persons appointed to these posts have been regularised in terms of the provision for initial constitution given in column 12 to the schedules to the recruitment rules as amended with effect from 14.9.1991.

9. We have heard at considerable length the learned counsel for the applicants and the respondents. We have also carefully gone through the records of the case.

10. From the pleadings and the detailed submissions made by the counsel of both sides, the following issues emerge for consideration in this batch of cases:-

(a) whether the old recruitment rules held the field in respect of the posts of EO/AAO after revision of the scales in 1982 till the promulgation of the new recruitment rules from 3.3.90;

(b) whether the notifications amending the initial constitution clause under column 12 of the schedules to the recruitment rules dated 3.3.90are invalid;

(c) whether the posts of EO/AAO belong to All India cadre or regional cadre;

(d) whether the declaration of the results

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of Part I examination regionwise is in conformity with the scheme of the examination approved by the Board of Trustees; and

(e) whether the candidates appearing in the examination from the Headquarters or a regional office are eligible for promotion in vacancies arising in other regional offices/Headquarters and if so, whether they may be asked to exercise option before appearing in Part II of the examination.

11. These issues are discussed below ad seriatim.

(a)&(b) In these OAs, the applicants have neither challenged the recruitment rules dated 3.3.90 nor the amendments thereto dated 14.9.91. The applicants in OA 981/91 moved MP No.4099/91 challenging the validity of the amendment to the new recruitment rules. This MP was rejected on the short ground of delay as it was moved only after the case was heard on 12.12.91 for almost a day. Silmilarly MP No.4094/91 in OA 2285/91 filed on 11.12.91 was also rejected on the same ground. Thus the new recruitment rules and amendments thereto having remained unchallenged, these issues are answered

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in the negative.

(c) The question relating to All India & regional cadre has been argued at length by both the parties. The words 'All India cadres' or 'regional cadre' have not been mentioned either in the recruitment rules or in the scheme framed for the examination. The learned counsel for the applicants vehemently argued that these posts have always been filled up on All India basis and since nothing to the contrary has been stated in the rules, these must be deemed to be All India cadres. The learned counsel for the respondents,equally strongly, advocated the opposite view. Schedules to the recruitment rules show that for the posts of Superintendent in the Headquarters, the DPC is headed by the Central Provident Fund Commissioner whereas in respect of EO/AAO, the DPC is headed by the Regional Provident Fund Commissioner. This would indicate that the cadres are perhaps regionalised. On the other hand, column 12 of the schedule to Superintendent Recruitment Rules, unambiguously lays down that for promotion through limited departmental examination against 25% quota, the eligible feeder cadre comprise staff"serving in the Head Quarter and Regional Office ". Similar is the position for promotion to Enforcement Officer and Assistant Accounts Officer. Thus even if the cadres are decentralised, mobility between Headquarters office

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and Regional offices is built into the recruitment rules. Accordingly, for the purpose of adjudication of these applications it is not necessary to give a finding on whether these cadres are centralised or regionalised and we refrain from doing so. In our view the results of the competitive exam should be treated as on All India basis.

(d) In view of the position discussed above, we are of the view that declaration of the results of Part I examination regionwise is not valid under the approved scheme of the examination. This is also against the specific provisions in the recruitment rules. The Part I of the examination being competitive, the results have to be declared on the basis of marks obtained by the candidates irrespective of whether they belong to the Central Office or Regional Offices. It also follows/that in this competitive examination all candidates who have obtained more than the prescribed minimum marks in each paper and in the aggregate need not be declared as successful and allowed to appear in the Part II examination. The number of candidates to be declared as successful has to be determined by the respondents with reference to the number of vacancies available. Only those who are declared successful- based on merit irrespective of regions-will be eligible to take the Part II examination. Those who qualify in the Part II examination have to be placed in the final merit

list, arranged according to their overall rank on the basis of marks obtained in Part I & Part II exams.

(e) As already determined in (d) above, the candidates are eligible for promotion in Headquarters Office as also in regional offices depending on where the vacancies are available. Naturally, the successful candidates would first be adjusted in their own regions to the extent vacancies are available and depending on their position in the merit list and subject to their willingness, they may be given promotion against vacancies in other regions or Headquarters. During the arguments at Bar, the learned counsel for the Respondents fairly agreed that the candidates who are successful in Part I of the examination, may be asked to give their option for serving in other specified regional offices or Headquarters, before they appear in the Part II examination. The respondents propose to work out the detailed procedure in this regard before holding the Part II examination.

12. In the conspectus of the facts and circumstances of the case, we dispose of these applications with the following orders and directions:-

(i) The respondents are directed to declare the results of the Part I examination on All India basis ranking the candidates in the order of marks secured by them;

(ii) All the candidates declared successful in the Part I examination in the light of the above directions, shall be allowed to appear in the Part II examination;

(iii) Before appearing in the Part II examination successful candidates shall be asked to exercise their option for being considered for promotion against vacancies in offices in the Headquarters or other regions. The respondents shall draw up the detailed procedure for obtaining such options;

(iv) The combined merit list of successful candidates shall be arranged according to the marks obtained by them in Part I and Part II of the examination on All India basis; and

(v) The respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

There will be no order as to costs.

Let a copy of this order be placed in all the case files.

(D.K.CHAKRAVORATY)
MEMBER(A)

(V.S.MALIMATH)
CHAIRMAN

SNS