

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

ORDER NO.8, DATED 15-03-2000.

Heard Mr.K.C.Kanungo, learned counsel for the applicant and Mr.Ashok Mohanty, learned special counsel appearing for the Respondents and have also perused the records .

In this Original Application, the applicant has claimed refixation of his seniority above Respondent No.3 and also his promotion to the post of Assistant Provident^{Fund}/Commissioner from the date Respondent No.3, his junior was so promoted alongwith all consequential service and financial benefits.As we are going to allow the petition on the basis of the averments made by the Respondents in their counter, the averments made by the petitioner in his Original Application are not being referred to.

Respondents in their counter have stated that as per the Recruitment Rules,1966,an employee having eight years of regular service in the grade of EO/AAO/Supdt. in the scale of Rs.1640-2900/- (pre revised) and in the revised scale of Rs.5500-9000/- ^{is} eligible for consideration for promotion to the post of Assistant Provident Fund Commissioner against 50% of the vacancies in the promotional quota. Respondents have further stated that the name of applicant was omitted due to oversight from the draft seniority list of EO/AAO/Supdt. circulated on 23.1.1997 and as such inadvertently his name could not be considered for promotion to the post of Assistant Provident Fund Commissioner .However, subsequently, the mistake having been detected, the same has been corrected and the applicant's name has been included in the final seniority list at Sl.No.532-A

and steps are being taken for considering his case for promotion to the post of Assistant Provident Fund Commissioner on adhoc basis from the date, on which his immediate junior was promoted to the said post. It is submitted by learned counsel for the applicant that even though the mistake was detected and in the final seniority list the name of applicant was included against Sl.No.532-A and which was circulated on 24.4.93, no promotion has been given to the applicant and the applicant is going to retire in the month of August, 2000. It is also stated by learned counsel for the applicant that the Respondents have stated in their counter that he should be considered for notional promotion and that too, on adhoc basis. It is submitted that as the applicant has been denied promotion for no fault of him, his promotion should not be made notionally and he is entitled to get all benefits from the date when Respondent No.3 was promoted to the said post.

J. Som.

We note that the Respondents have admitted that the mistake for omitting the case of applicant for promotion to the post of Assistant Provident Fund Commissioner due to the fact that his name was omitted in the seniority list circulated in January, 1997, on the basis of which promotion was given to the post of Assistant Provident Fund Commr. The seniority list was corrected and the applicant's name was put in the rightful place and the final seniority list was circulated on 24.4.1993. Thereafter, almost two years have passed and the Respondents should have given promotion to the applicant but this has not been done. It has been held by the Hon'ble Supreme Court in the case of K.V. Jankiraman vrs. UOI

and others reported in AIR 1991 SC 2010 that where an employee/Govt. servant is prevented from working in higher post because of no fault of him, the emoluments of the higher post can not be denied to him. In view of this, we direct that the respondents should consider the case of applicant and pass orders promoting the applicant to the post of Assistant Provident Fund Commissioner within a period of 30 days from the date of receipt of a copy of this order. Learned Senior Special Counsel wants that 60 days time should be allowed for this purpose but we are not inclined to grant this, in view of the fact that already two years have been taken by the Respondents to give promotion to the applicant. We also direct that the promotion shall be given to the applicant not on notional basis but on the same terms as was given to the Respondent No. 3. Applicant is also entitled to all service and financial benefits arising from such promotion from the date when Respondent No. 3 was given promotion to the post of Assistant Provident Fund Commissioner.

With the above observations and directions, the Original Application is allowed.
No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

(SOMNATH SOM)
VICE-CHAIRMAN

Free copy of
order dt. 15.3.2000
given to both
counsel.

16/3

16.3.2000

Q. O.