

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 466/2000

Thursday, this the 11th day of July, 2002.

C O R A M

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. M.Venkateswaran
S/o Late K.V.Sundaram Iyer
2. H.Signi
S/o B.Haris
3. A.Georgekutty
S/o Antony
4. S.Christudas
S/o Y.Samuel
5. Sunny Joseph
S/o J.Joseph
6. A.Lawrence
S/o C.Anandan
7. S.Lakshmanan Nadar
8. V.Sukumaran Nair
S/o K.Velyaudhan Pillai
9. N.Babu
S/o Narayani

Applicants

(All are Upper Division Clerks, Office of the Regional Provident Fund Commissioner, Pattom, P.O.Thiruvananthapuram.)

(By Advocate Mr. Sasidharan Chempazhanthiyil)

Versus

1. Regional Provident Fund Commissioner
Kerala Pattom PO.Thiruvananthapuram
2. Central Provident Fund Commissioner
Mayur Bhavan, Connaught Circus, New Delhi.
3. Union of India rep. by its
Secretary, Ministry of Labour
Government of India
New Delhi.
4. Executive Committee of Central
Board of Trustees rep. by
its Chairman Employees Provident Fund Organisation
14, Bhikaji Cama Place, New Delhi

5. Regional Provident Fund Commissioner (HRM)
Headquarters,
Employees Provident Fund Organisation
New Delhi. Respondents.

(By Advocate Mr. N. N. Sugunapalan (R1-5)

The application having been heard on 11th July, 2002, the Tribunal on the same day delivered the following:

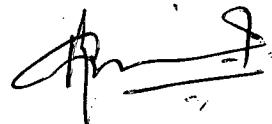
O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants, nine in number, have approached this Tribunal aggrieved by their non-inclusion in A10 office order dated 18.4.2000 issued by the first respondent and A-9 clarification dated 31.1.2000 issued by the 5th respondent to the extent it denies consideration for promotion of non-matriculate UDCs as Assistants. They sought the following reliefs through this OA:

- (a) Call for the records and quash A9 in as much as it denies a consideration for promotion as Assistants to the non-matriculate UDCs like the applicants.
- (b) Declare that A-10 is illegal in as much as the names of the applicants are not included in it and quash A10 to that extent.
- (c) Declare that classifying UDCs on the basis of educational qualification as two classes for purposes of promotion to the post of Assistant is illegal and direct the respondents to take action accordingly.
- (d) Direct the 1st respondent to finalize the seniority list of UDCs under him before issue of further promotion orders to the post of Assistants.
- (e) Direct the respondents to make selection to the post of Assistant strictly according to A7.
- (f) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice and
- (g) Award the cost of these proceedings.

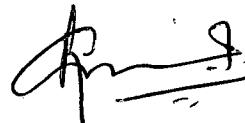
2. According to the averments of the applicants in the OA, they were working as Upper Division Clerks (UDCs) holding identified UDC special pay posts involving duties and responsibilities of a complex and arduous nature at the time of



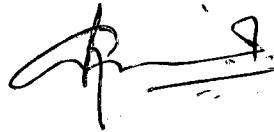
filing the OA. They were in the pay scale of Rs.4000-6000 and the rate of special pay was Rs. 140/-. By A-1 order dated 27.2.91 they were posted in specified posts identified as involving duties and responsibilities of complex nature requiring deep study and competence in compliance with the orders of this Tribunal in OA No.82/90 dated 27.2.91 and OA No.1792/91 dated 13.10.92 (A-1). Grant of special pay was governed by A-2 memo dated 5.5.79. By A-4, first respondent selected the applicants on seniority-cum-fitness basis and posted in those posts. As stated in A-4, the number of persons holding such identified posts of higher duties and responsibilities was more than 10% of the cadre strength and hence a selection was held for limiting the number of UDCs eligible for special pay to 10%. The applicants were selected for the special pay posts and were appointed by formal orders. A-5 is the copy of the order dated 10.11.92 issued by the first respondent sanctioning special pay to applicants 1 & 2 among others. Similar orders were issued to the other applicants also. Applicants started drawing special pay from the dates as shown against each of them as below:

1st applicant	10.11.92
2nd applicant	10.11.92
3rd applicant	27.5.98
4th applicant	4.2.99
5th applicant	4.2.99
6th applicant	4.2.99
7th applicant	27.5.98
8th applicant	29.6.98
9th applicant	29.6.98

3. According to the applicants, by A-7 order dated 2.9.99 the 4th respondent decided to implement the recommendations of the 5th Pay Commission by which the pay scale of Rs.4000-6000 of the



special pay UDC posts was replaced by the pay scale of Rs. 5000-8000. It was submitted that by A-7 a new cadre of Assistant in the scale of pay of Rs.5000-8000 was created in lieu of UDCs with special pay On creation of the posts of Assistants, they were to be filled up by UDCs and special pay UDC posts were to be abolished. According to the applicants, there were 46 UDC special pay posts under the first respondent and they were senior most among the UDCs holding special pay UDC posts. In A-8 seniority list published on 23.4.99 the applicants' names were within the consideration zone for the posts of Assistants. 5th respondent issued A-9 letter dated 31.1.2000 altering A-7 in material aspects by way of clarification. First respondent in compliance of A-9 promoted 21 UDCs with matriculation as Assistants by A-10 order dated 18.4.2000. According to the applicants, all the 21 UDCs promoted by A-10 were junior to the applicants. In A-8 seniority list, the 21 UDCs' names did not appear. This would indicate that they were recruited as UDCs after 1989. According to the applicants, A-10 would indicate not only the applicants but several other non-matriculate UDCs appearing in A-8 were not considered for promotion as Assistants. They submitted that there were 46 UDC Posts with special pay, out of which 21 UDC posts with special pay were going to be abolished with the assumption of office of the persons promoted by A-10 as Assistants and the remaining UDC posts with special pay were also going to be abolished with the next instalment of promotion of UDCs as Assistants in the manner as prescribed in A-9 without considering the non-matriculate UDCs like the applicants. It was submitted that they were getting special pay as holders of special pay UDC posts. When the posts were to be abolished by



upgrading them as Assistants, they would cease to be paid special pay and if such a situation arose, the same would cause substantial injury and loss to the applicants. Feeling aggrieved, the applicants filed A-11 representations dated 24.4.2000 to the 4th respondent. Apprehending that the respondents would implement A-9 without awaiting the outcome of the representations, they filed this OA seeking the above reliefs. According to the applicants, A-9 order denying the non-matriculate UDCs a consideration for promotion as Assistants was arbitrary, illegal and contrary to A-7 and violative of Article 14 of the Constitution of India. It was submitted that the 5th respondent without jurisdiction or power or specific authority had published the seniority list of UDCs as contemplated in A-9.

4. Respondents filed reply statement resisting the claim of the applicant. They relied on R1 notification dated 24.7.87 regarding amendment to the EPF (Staff & Conditions of Service) Regulations, 1962, prescribing the condition of passing of typewriting test for appointment as LDC and possessing of matriculation or equivalent qualification for further promotion published in the Gazette of India Part-III Section 4 on 30.5.97 for justifying the action taken by them in denying consideration to the applicants for promoting them as Assistants. It was submitted that the applicants were initially appointed as Group-D staff and subsequently promoted to the post of LDCs and UDCs before publication of R-1 notification. R-1 notification was brought to the notice of the staff including the applicants and if the applicants were anxious about their future career

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prospects they had ample opportunity to acquire the prescribed minimum education qualification of matriculation during the last 13 years and they could have acquired the same well in time. It was also submitted that during 1992 a Time Bound Promotion Scheme was introduced in the EPFO for the clerical staff by which all officials who continued in the clerical cadre after completing 17 years of service in the clerical cadre were being placed to the grade of UDC (Selection Grade) with the same higher scale of pay then prescribed for the post of Assistant. None of the applicants was able to acquire the prescribed minimum educational qualifications of matriculation for securing the Time Bound promotion though they were otherwise entitled for it for the past several years. They preferred to continue in the cadre of UDC than acquire the prescribed minimum educational qualification and thereby get promoted as UDC (SG) The special pay was given to the applicants only because of their seniority and the written willingness submitted by them to the effect that they were willing to be posted to the seats/tasks involving duties and responsibilities of a more complex and arduous nature. No formal order of posting to such task as specified in A-5 had been issued to the applicants by the 1st respondent so far. It was submitted that as none of the applicants possessed the prescribed minimum educational qualification of matriculation prescribed in the Recruitment Rules they had no right for further promotion to the post of Assistants. It was not because of any doubt in the placement of the applicants in A-8 seniority list of UDCs that they were not considered for promotion to the post of Assistant but it was because of the non-possession of the prescribed

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minimum educational qualification of matriculation as envisaged in the Recruitment Rules that the applicants were not considered for promotion to the post of Assistants. According to them the OA was liable to be dismissed.

5. Applicants filed rejoinder.

6. Heard the learned counsel for the parties. Learned counsel for the applicant Mr.Vishnu Chempazhanthiyil took us through the factual aspects and submitted that the respondents in the reply statement had practically admitted that the applicants were not considered for the post of Assistants. He referred to para 5.3 of A-7 and submitted that the post of Assistants which was created in lieu of UDC with special pay was to be filled up on the basis of seniority cum fitness. There is no mention in the said order that non-matriculates would not be considered for the post of Assistants. He also submitted that A-7 had been issued on the basis of the decision taken by the Executive Committee of Central Board of Trustees. When such is the case, the 5th respondent had no authority to issue the clarification as contained in Sl.No.3 of A-9 letter dated 31.1.2000 denying consideration for non-matriculates like the applicants for promotion to the post of Assistants. Learned counsel for the respondents fairly conceded that in A-9 there is no indication that the clarification had been issued as authorized by the Executive Committee. At the same time, he justified the issue of A-9 on the ground that it was consistent with A-7 and the R-1(2) notification dated 18th May, 1987. Learned counsel for the applicants also submitted that the seniority list of UDCs as

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contemplated in A-7 had not been prepared. It was submitted that the applicants who were holding identified posts of UDCs doing arduous nature of work with discernible duties were eligible to be considered for the post of Assistants when such posts had only been upgraded as a result of the recommendations of the 5th Pay Commission.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

8. In our view the only point to be considered in this OA is whether the non-consideration of the applicants for promotion to the post of Assistants for the reasons advanced by the respondents is legal or not on the basis of A-9 clarifications issued by the 5th respondent.

9. We find from A-7 letter dated 2.9.99 that UDC with special pay had been given a pay scale of Rs. 5000-8000 with effect from 1.1.96 without special pay. In para 5, for granting the benefit of revised pay scale for UDCs with special pay, the procedure to be followed had been stated as follows:

" (i) UDCs posted against 10% identified posts may initially be placed in the scale of Rs.4000-6000 and allowed special pay of Rs.140 per month with effect from 1.1.96.

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(ii) As recommended in para 46.17 of Vth Central Pay Commission Report and as per the enclosed instructions of Deptt. of Expenditure, a sanction need to be issued in respect of each Region to create additional posts with designation of Assistants in the scale of Rs.5000-8000 equal to 10% of existing identified posts of UDCs in each Region. The proposals for creation of additional post of Assistants to the extent of 10% of existing identified post of UDCs be forwarded to Head Office by 15.9.99.

(iii) Against the additional posts of Assistants so created, UDCs may be considered for promotion on the basis of seniority cum fitness. Their pay on promotion may be fixed in terms of FR 22(1)(a)(1). Further, wherever UDCs are carrying special pay of Rs.140, this may be taken into account in fixation of pay.

(iv) From the date, the additionally created posts of Assistants are filled up by promotion as mentioned in (iii) above, the posts of UDCs carrying special pay of Rs.140 per month (pre-revised Rs.70) may be abolished.

(v) If any UDC drawing a pay of Rs.140 (pre-revised Rs.70) does not get promotion to the post of Assistant in terms of (ii) above, he may be transferred and posted against an unidentified post of UDC not carrying special pay. From the date of transfer to the unidentified post the special pay of Rs.140 may be discontinued.

(vi) The Assistants so promoted/appointed will function under Section Supervisor similar to UDCs with special pay."

10. We find from the above that against the additional posts of Assistants created, UDCs were to be considered for promotion on the basis of "Seniority-cum-Fitness". A plain reading of the above procedure would indicate that all UDCs were to be considered for promotion to the post of Assistants created as a result of A-7 order in accordance with seniority. A senior would be passed over only if he was found not fit. In A-9 against a clarification sought as to whether non-matriculate UDCs who were getting special pay were to be considered for promotion as Assistant or not, it was clarified in the negative on the basis



of some Headquarters' instructions. It was also clarified on the basis of Headquarters' instructions that non-matriculate officials would not be promoted beyond UDC. This would presume that the new category of Assistants is superior to or is a promotion post of UDC. In this context, in our view the clarifications 6 & 9 would be relevant. They are as follows:

"06. Whether the post of Assistant shall be filled up only by UDCs drawing special pay.

x x x x

It is to be filled by promotion on seniority cum fitness basis from feeder cadre of UDC.

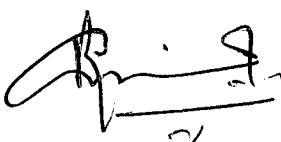
x x x

09. Whether separate seniority list has to be maintained for the post of Assistant.

No. As no separate recruitment rule for the post of Assistant has been framed for Regional Offices, they will hold the post of Assistant on adhoc basis but continue to be in the seniority list of UDC for the purpose of promotion to Supervisor.

11. From clarification No. 9, it is evident that there would be no separate seniority list for the incumbents of the posts of Assistant and the Assistants would be considered for promotion to the post of Section Supervisors along with UDCs. This gives an indication consistent with A-7 that the UDCs with special pay when replaced by Assistants are not put on higher pedestal.

12. In any case the clarification No.3 given by the 5th respondent attempting to make a distinction between the UDCs who had come up from Group-D and those who had come up directly and to treat the UDCs who had come from Group-D on the ground they were non matriculates is a classification on the basis of the



source of recruitment. Such a classification, in our view, is not justified and legal especially in view of the A-7 order wherein it had been clearly stated that UDCs had to be considered for promotion to the post of Assistants on the basis of seniority cum fitness.

13. In view of the above, we are unable to sustain clarification No.3 given by the 5th respondent in A-9. Accordingly we set aside and quash clarification No.3 reproduced below of A-9 and quash the same.

"03.Whether non-matric UDCs who are getting special pay may be considered for promotion as Assistant or not. No. As per Head Quarters instructions, no non-matriculate official is to be promoted beyond UDC.

14. As we have quashed clarification No.3 given in A-9, the non-consideration of the applicants for promotion to the posts of Assistant in lieu of UDC posts with special pay cannot be sustained. Respondents are directed to consider the applicants and other similarly situated UDCs drawing special pay against the newly created posts of Assistant on the basis of seniority cum fitness as laid down in A-7. The applicants if on the basis of such consideration are found suitable for the posts of Assistant, they shall be entitled for all consequential benefits including monetary ones in accordance with A-7.

15. The OA stand allowed to the above extent with no order as to costs.

Dated 11th July, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

aa.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the judgment of this Hon'ble Tribunal in OA No.82/1990 dated 27.2.1991.
2. A-2: True copy of the Office Memorandum No.F.7(52)-E-III dated 5.5.1979 issued by 3rd respondent.
3. A-3: True copy of letter No.Adm (R.III)/31(6) 79/WB dated 23.5.1980 sent by 2nd respondent to All Regional Provident Fund Commissioners.
4. A-4: True copy of Circular No.KR/Adm./E.1(5)/91 dated 26.3.1991 issued by 1st respondent.
5. A-5: True copy of Part II Office Order No.220/IV in file No.KR/Adm.E.1 (5)/92 dated 10.11.92 issued by 1st respondent.
6. A-6: True copy of letter No.Adm. (R.III)/31/(6)/79/WB dated 1.7.1980 sent by 2nd respondent to all Regional Provident Fund Commissioners.
7. A-7: True copy of letter No.P.IV/3(97) 97/5246 dated 2.9.1999 sent by 5th respondent.
8. A-8: True copy of Circular No.KR/Adm.1(5)/99 dated 23.4.1999 issued by 1st respondent (Seniority List) (relevant portion)
9. A-9: True copy of the letter No.HRM-II/39(5)99 dated 31.1.2000 sent by 5th respondent to all Regional Provident Fund Commissioners.
10. A-10: True copy of Office Order No.100/2000 in file No.KR/Adm.1 (3) Assistants/2000 dated 18.4.2000 issued by 1st respondent.
11. A-11: True copy of the representation dated 24.4.2000 sent by the 1st applicant to respondents 1,2 & 4.

Respondents' Annexures:

1. R-1: True copy of order No.P.IV/1(14)/84/A dated 24.7.87 issued by the 2nd respondent.
2. R-2: True copy of Employees Provident Fund Organisation Lower Division Clerks Recruitment Rules, 1992.
3. R-3: True copy of Final Seniority List of UDCs as on 31.12.89 issued by the Employees' Provident Fund Organisation, Thiruvananthapuram.
