

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.555/91

DATE OF DECISION : 16.07.93

1. G.Letchumi, UDC,
Office of the Regional
Provident Fund Commissioner,
Bhavishyanidhi Bhavan,
Pattom, Trivandrum-4.
2. K.Reghupathy, -do-
3. K.Gopalan, -do-
4. K.Mathew, -do-
5. K.Indira, -do- .. Applicants

Mr. Vellayani Sundara Raju .. Advocate for applicants

v/s

1. Regional Provident Fund
Commissioner, Pattom Palace,
Thiruvananthapuram-4.
2. Central Provident Fund Commissioner,
9th Floor Mayur Bhavan,
Connaught Circus,
New Delhi-1.
3. Secretary to Ministry of
Labour, Govt. of India,
New Delhi.
4. C.R.Kallayana Raman,
Head Clerk,
O/o Regional Provident Fund
Commissioner, Pattom,
Trivandrum- 4.
5. P.Susheela, -do- .. Respondents

Mr. George C.P.Tharakan .. Adv. for Respondents 1-3.

Mr. P.M.Padmanabhan .. Adv. for Respondent No.4.

CORAM :

The Hon'ble Mr.N.Dharmadan, Judicial Member

The Hon'ble Mr.R.Rangarajan, Administrative Member

JUDGEMENT

MR.N.DHARMADAN, JUDICIAL MEMBER

Applicants are Upper Division Clerks in the Office
of Regional Provident Fund Commissioner. They belong to

Scheduled Caste/Scheduled Tribe Community. They are aggrieved by the denial of promotion as Head Clerks in the backlog seven vacancies of SC/ST reserved for them on the basis of the roster.

2. The first applicant entered service on 4.7.1977. She was promoted as Upper Division Clerk on 24.7.80. Other applicants joined as Lower Division Clerks in the office of the 1st respondent on 8.7.1969, 21.6.1978, 15.10.1977 and 6.10.1977 respectively. They were also later promoted as UDCs. The Regional office of the Provident Fund Commissioner in Kerala is sub-divided into Trivandrum, Kozhikode and Ernakulam Sub-Regions. The first respondent is the appointing authority upto Class-IV & III categories. According to the staff strength annexure published in March 1990 by the first respondent there are 78 persons working as Head Clerks in the three sub-regions. As per the existing rules for promotion from UDC to Head Clerk, when three persons are promoted as per seniority-cum-fitness, one will be promoted in the examination quota. Departmental competitive examination be held regularly for giving opportunity to UDCs to get promotion as the ratio is 3 : 1. Even though there are 39 persons working as Head Clerks under the first respondent, only two persons belong to SC. They are Mr.T.N.Parameswaran, Serial No.7 and Shri S.Govindan, Serial No.24. They were appointed as Head Clerks on 20.6.1975 and 27.4.85 respectively. They were promoted in the examination quota when they were successful in the departmental examination conducted by the first respondent. Since the Regional Provident Fund Commissioner office is a Central Government Department, the reservation policies and the 40 point roster would apply in the matter of promotion. According to the applicants, out of 39 persons working in the examination quota, nine posts would have been earmarked for SC/ST candidates. But the first

respondent ignored the rights of SC/ST candidates and made appointments without following the 40 point roster. Even for making ad-hoc appointments for longer duration, the claim of SC/ST candidates was not considered by the first respondent. His indifference to the cause of SC/ST employees is clear from the fact that he has not taken timely steps for conducting examination for filling up these vacant posts reserved for SC/ST candidates. There are 120 Head Clerks working under the first respondent in the seniority-cum-fitness quota. Even though, according to the 40 point roster, 18 SC and 9 ST candidates should have been appointed, the 1st respondent has given appointment only to 14 SC and 5 ST candidates. Various Government orders laying down guidelines for encouraging SC/ST candidates were not being followed by the 1st respondent in the matter of filling up regular and ad-hoc vacancies under him. In the year 1968 the 1st respondent made six ad-hoc promotions to the post of Head Clerk under the D.P. quota but he did not consider even a single SC/ST candidate for ad-hoc promotion. Hence, the applicants submitted that the 1st respondent deliberately discriminated the SC/ST employees in the Regional Provident Fund Commissioner's office while resorting to ad-hoc promotions to Head Clerk. They submit that the appointments are irregular. By Annexure-A5 circular dated 25.7.1989 the 1st respondent invited applications for conducting departmental examination to give promotion to the post of Head Clerk. But the 2nd respondent directed the 1st respondent not to conduct any departmental examination for promotion to the post of Head Clerk as indicated in Annexure-A5 for general candidates for a limited departmental examination should be conducted for SC/ST candidates alone. Accordingly, 1st respondent issued a Circular, Annexure-A6 dated 8.8.89. However, the

2nd respondent gave a telex message to 1st respondent to cancel the limited departmental examination for SC/ST as indicated in Annexure-A6. Accordingly, 1st respondent issued another circular fixing the date and time of the examination, Annexure-A7. However, the 1st respondent issued Annexure-A8 circular on 3.4.90 for conducting departmental examination during the year 1990 exclusively for SC/ST candidates with the object of filling up the carry forward vacancies of SC/ST in examination quota. The relevant portion of the circular is extracted below:-

" Since a large number of examination qualified hands are awaiting promotions to the cadre of UDC and Head Clerk/ Assistant it has been decided not to conduct the above examinations in Kerala Region. However, limited departmental examination for SC/ST will be held in view of carry forward vacancies of SC/ST in examination quota.

The departmental examination for promotions to the post of EO/AAO/Supdt. will also be held in this Region as per the schedule which is given below:-

1. LDC	3rd & 4th May 90 (already notified).
2. UDC	26th to 28th June 1990.
3. EO/AAO/Supdt.	28th to 30th August 1990.
4. Head Clerk (1400-2300)	29th to 31st October 1990.

Detailed programme of each examination will be notified in due course."

The applicants appeared in the examination as scheduled in Annexure-A8 and all of them were successful. Their rank number is shown in Annexure-A10 circular dated 27.2.91, the relevant portion of which is extracted below:-

" The list of candidates (arranged in the order of merit) who have been declared successful in the limited departmental examination for promotion to the post of Head Clerk/Assistant held in December 90 is given below for information:-

RESERVED CATEGORY ONLY

<u>Sl.No.</u>	<u>Roll No.</u>	<u>Name</u>	<u>Rank</u>
1.	2	Smt. G.Letchumi (SC)	1
2.	3	Smt. K.Raghupathy (SC)	2
3.	5	Sri. K.Gopalan (SC)	3
4.	1	Smt. K.Indira (ST)	4
5.	6	Sri K.Mathew (ST)	5

(Authority:- CPFC's letter No.Exam-3(3)90 dated 21.2.91). "

The first applicant got first rank in the said examination. After issuance of Annexure-A5 circular, the 1st respondent had promoted several non-SC/ST persons to the post of Head Clerk in the examination quota without considering any of the SC/ST candidates fully eligible for appointment as Head Clerk on ad-hoc basis. It is clear from Annexure-A6 circular that there are deficiency of SC/ST persons in the cadre of Head Clerk in the examination quota in the office of 1st respondent and the 1st respondent has decided to initiate steps for filling up those vacancies by conducting departmental examination. But it was delayed without any justification. If the 1st respondent followed the 40 point roster in the matter of filling up the post of Head Clerk, the applicants would have got earlier promotions. Even after issuance of Annexure-A8 circular, the 1st respondent made eight appointments to the post of Head Clerk in the examination quota. He did not consider even a single SC/ST candidate for inclusion in that list. The 8th person was appointed even after the publication of Annexure-A10 list by the 1st respondent. According to the applicants, these appointments were made by the 1st respondent with the ulterior motive of deliberately denying the rights of SC/ST candidates for promotion. He contravened the Government of India circulars issued with the

object of encouraging and enlarging the promotional prospects of candidates belonging to SC/ST. In the light of the Government circulars, the 1st respondent is obliged to make appointment of SC/ST candidates even in relaxation of standard. After issuance of Annexure-A6 circular the 1st respondent promoted Smt. Premavally as Head Clerk on ad-hoc basis from D.P. quota vide Annexure-A11 order dated 1.9.89. Prior to the promotion of Smt. Premavally, Smt. K.Santhamma was promoted as Head Clerk on regular basis on D.P. quota by Annexure-A12 order dated 7.8.90. As per another order Annexure-A13 dated 6.7.90, the 1st respondent regularised 13 persons as Head Clerk on D.P. quota without considering any of the SC/ST candidates for promotion. On 6th July 1990, by another office order, Annexure-A14, four more posts of Head Clerk were filled up in D.P. quota on regular basis. Among the four ^{there was} /none belong to SC/ST. Again, on 6.7.90, Annexure-A15 order was issued by the 1st respondent filling up four more regular posts of Head Clerk against examination quota. There ^{was} no SC/ST persons in the list. Annexure-A16 is another office order issued by the 1st respondent on 27.3.90 regularising 18 persons as Head Clerk in the D.P. quota. Out of the 18 persons only three SCs were included for regularisation. Annexures-A17 & A18 are also similar orders produced by the applicants to show that the 1st respondent neglected the legitimate rights of the SC/ST candidates for promotion in the SC/ST quota. After publication of Annexure-A10 rank list applicants 1, 2 and 5 preferred Annexure-A19 seeking promotion as Head Clerk in the carried forward vacancies with retrospective effect. Similar representations were submitted by applicants 3 & 4 and they are produced as Annexures-20 and 20(a). The president of the Federation of

Central Government Scheduled Castes and Scheduled Tribes Employees (Kerala) also preferred Annexure-A21 representation. These representations have not been disposed of. According to the applicants, the 1st respondent is duty bound to promote all applicants in the backlog vacancies of Head Clerk in the examination quota of Head Clerk posts duly observing the 40 point roster particularly when vacancies in the examination quota have remained unfilled due to the failure to follow the reservation rules by the 1st respondent. Under the above circumstances, the applicants have filed this application for a direction to 1st respondent to promote the applicants as Head Clerks against the carried forward backlog vacancies for SC/ST under examination quota in the Regional Provident Fund Commissioner's Office with retrospective effect and other consequential benefits.

3. Respondents 1 to 3 and the 4th respondent have filed reply, additional reply and affidavit denying all the averments and allegations in the O.A. The applicant also filed rejoinder and additional rejoinder in answer to the contentions of the respondents.

4. We have also heard the counsel on both sides. The applicants have produced a number of Government circulars issued from time to time for giving additional benefits to the employees belonging to SC/ST communities for their encouragement even by granting relaxation of rules. Respondents 1 & 2 are bound to follow them strictly for giving more promotional avenues and opportunities to the members belonging to SC/ST communities. Even though a number of ad-hoc appointments have been made to the post of

Head Clerk in the examination quota, the respondents 1 & 2 appear to have not considered the claims of members belonging to SC/ST to get promotion. Nevertheless, they have stated in their reply that they have followed the Government orders in the matter of appointment/promotion. As per the 40 point roster maintained by the Department exclusively for the examination quota candidates the total number would come to only 38. The last person to be promoted on 2.4.91 was one K.Indira, a ST candidate, 4th rank holder and the 5th applicant. They further stated that the Department has been conducting examinations for promotion to the post of Head Clerk often but no SC/ST candidates have come out successful in any of the examinations. The 1st respondent took earnest steps to give opportunity to reservation¹ candidates to appear and compete in the examinations. They have also stated that the constant change in the policy of reservation according to passage of time has to be viewed from that perspective. ²

According to the respondents³ a particular rule which was in force years back might have become obsolete in the present time. Hence, ad-hoc promotions were not offered to SC/ST candidates. There has not been any deliberate attempt by the 1st respondent to thwart the interest of any of the staff members. When the deficiency of examination qualified candidates from SC/ST was felt by the Department, efforts were made to conduct departmental limited examination and fill up those vacancies. After the declaration of results of the limited departmental examination in December 1990, four of the applicants have already been promoted and the 3rd applicant has also been decided to be promoted. The details as given in the reply are extracted below indicating the dates of promotions of the applicants:-

"Applicant No.1. G.Letchumi	8.8.91.
2. K.Reghupathi	2.12.91.
3. K.Gopalan	Decided to be promoted by the DPC.
4. K.Mathew	12.11.91.
5. K.Indira	2.4.91. "

Prior to the declaration of the result of the limited departmental examination conducted for SC/ST candidates, the applicants were not eligible to be promoted on the basis of seniority since they were holding only lowest ranks in the seniority list.

5. Regarding the backlog vacancies of Head Clerk the case of the respondents is that they carried forward the reserved vacancies for three subsequent recruitment years as per rules of reservation and as such they have complied with the procedural formalities for filling up reserved vacancies by appointing non-SC/ST candidates. When the reservation lapsed due to nonavailability of SC/ST candidates such vacancies have been filled up with other general category candidates and the eight promotions referred to in the original application have been made in implementation of the direction of this Tribunal in OA 623/88. The relevant portion of the direction is extracted below:-

"5. In the facts and circumstances we allow the application with the direction to the respondents 1 to 3 that the applicants should be promoted on a regular basis as Head Clerks with effect from the dates on which every fourth vacancy to which they are entitled in the examination quota on the basis of their rank, occurred subsequent to their qualifying in the 1983 examination. In other words, the 12th, 20th, 28th, 32nd and 36th vacancies materialising in the cadre of Head Clerks after the applicants qualified, should be made available to the applicants who ranked as 3rd, 5th, 7th, 8th and 9th in the departmental examination. The promotions should be made with retrospective effect from the date of occurrence of these vacancies with all consequential benefits of pay, allowances and seniority. Action on the above lines should be completed within a period of three months from the date of communication of this order."

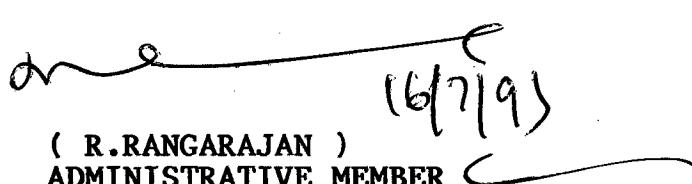
With these averments the respondents submitted that the applicants have no case for earlier promotion.

6. From the details furnished by the applicants in the O.A., in the examination quota nine posts of Head Clerk out of the total 39 posts were to be earmarked for SC/ST candidates, if the 1st respondent had strictly followed the reservation principle and the roster. Even if he had followed the principle of carried forward on account of the non-availability of qualified candidates in the said categories, taking into consideration the guidelines for relaxation, he could have considered the candidates belonging to SC/ST working in the Region for at least ad-hoc appointments after granting relaxation in terms of the policy statement of the Government of India. In ~~none~~ of the appointments to the higher post of Head Clerk the 1st respondent has considered the case of any of the SC/ST candidates even when vacancies are filled by making ad-hoc promotions.

7. When Annexure-A6 was issued on 8.8.89, there was an indication that limited departmental examination would be conducted for SC/ST candidates as per the schedule of examination circulated vide circular dated 26.7.89 exclusively for SC/ST candidates. Further order Annexure-A8 makes it clear beyond doubt that there were existing carried forward vacancies earmarked for SC/ST candidates. The respondents have not produced any documents to show that they have followed the procedure for dereservation of the carried forward vacancies so as to enable them to fill up the same with non-SC/ST candidates. In the examination conducted pursuant to Annexure-A8 circular, all the applicants became successful and they were enlisted in Annexure-A10 circular dated 27.2.91. Had the 1st respondent

applied his mind to the relevant principle applicable for filling up the posts with SC/ST candidates, the applicants would have got promotion in the carried forward vacancies earmarked for SC/ST candidates with effect from the date of issue of Annexure-A8. Since they have already been successful in the examination conducted before December 1990, the respondents' contention that they have filled up the backlog vacancies after keeping them alive for four years with other general category candidates in the examination quota due to non-availability of eligible candidates from SC/ST communities cannot be appreciated in view of the fact that they have not produced sufficient material to satisfy us that proper procedure for dereservation had been followed at the appropriate stage before filling up the vacancies. However, at this stage we cannot set aside all those irregular appointments since all the affected parties are not in the party array. But, respondents 4 & 5 have been impleaded by the applicants. Failure of the 1st respondent to consider SC/ST candidates even after Annexure-A6 can only be treated as a lapse on his part considering the examination conducted for filling up seven backlog vacancies of Head Clerk, as pointed by the applicants.

8. In the result, having regard to the facts and circumstances of the case, we are inclined to allow the application declaring that the applicants are eligible to be appointed as Head Clerks against the carried forward backlog vacancies of Head Clerk reserved for SC/ST under the examination quota from the date of Annexure-A8 on notional basis with all consequential benefits legally eligible to them. There will be no order as to costs.


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER


(N. DHARMADAN)
JUDICIAL MEMBER

LIST OF ANNEXURES:

1. Annexure-A1 .. Staff strength of March 1990
2. Annexure-A5 .. Circular dated 25.7.89 from Regional Provident Fund Commissioner, Trivandrum.
3. Annexure-A6 .. Copy of Circular dt. 8.7.89 from RPFC, Trivandrum.
4. Annexure-A7 .. Copy of Circular dt. 31.10.89 from RPFC, Trivandrum.
5. Annexure-A8 .. Copy of circular dt. 3.4.90 from RPFC, Trivandrum.
6. Annexure-A10 .. Copy of Circular dt. 27.2.91 from Assistant Provident Fund Commissioner, Trivandrum
7. Annexure-A11 .. Copy of order dt. 1.9.89.
8. Annexure-A12 .. Copy of Order dt. 7.8.90
9. Annexure-A13 .. Copy of order dt. 6.7.90.
10. Annexure-A14 .. Copy of order dt. 6.7.90.
11. Annexure-A15 .. Copy of order dt. 6.7.90.
12. Annexure-A16 .. Copy of order dt. 27.3.90
13. Annexure-A17 .. Copy of order dt. 19.3.91.
14. Annexure-A18 .. Copy of order dt. 7.1.91.
15. Annexure-A19 .. Copy of representation dated 20.3.91.
14. Annexures-20 & 20(a) .. Representations dt. 6.3.91.
15. Annexure-A21 .. Copy of representation from Federation of Central Govt. SC/ST Employees dt. 5.3.91.

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

R.A.No.100/93 IN OA No.555/91.

DATE OF DECISION :

27-8-1993

1. The Regional Provident Fund Commissioner, Pattom Palace, Trivandrum-4.
2. The Central Provident Fund Commissioner, 9th Floor, Mayur Bhavan, Connaught Circus, New Delhi-1.
3. The Secretary to Min. of Labour, Govt. of India, New Delhi. .. Review Applicants

Mr.N.N.Sugunapalan .. Adv. for applicants

V/s

1. G.Letchumi, O/o Regional Provident Fund Commissioner, Bhavishyanidhi Bhavan, Pattom, Trivandrum-4.
2. K.Raghupathy, -do-
3. K.Gopalan, -do-
4. K.Mathew -do-
5. K.Indira, -do-
6. C.R.Kallyana Raman, -do-
7. P.Susheela -do- .. Review Respondents

CORAM:

The Hon'ble Shri N.Dharmadan, Judicial Member

The Hon'ble Shri R.Rangarajan, Administrative Member

JUDGEMENT

MR.N.DHARMADAN, JUDICIAL MEMBER

This R.A. filed by the respondents in the O.A. can be disposed of by circulation.

2. The respondents submit that there are errors apparent on the face of the record. They also state that the directions in the judgment are materially incorrect and opposed to facts. According to them the decision would upset the seniority affecting a lot of employees.

3. No specific errors in the judgment are pointed out in the grounds of R.A. except the statement that the Tribunal failed to appreciate that as per rules reservation shall automatically lapse in case SC/ST candidates do not become available to fill up such vacancies. The respondents have not stated the rule by which an automatic cancellation of reservation. However, we have only observed in the judgment that filling up of vacancies reserved for SC/ST with general candidates after keeping the vacancies alive for four years without following dereservation procedure provided in Brochure is illegal and denial of opportunity to SC/ST candidates, who became successful in the limited departmental examination held for SC/ST candidates alone. But we did not set aside all those irregular appointments made without following correct procedure. After discussing all the contentions raised by the parties we only declared that the applicants are eligible to be appointed as Head Clerks against the carried forward backlog vacancies reserved for SC/ST under the examination quota.

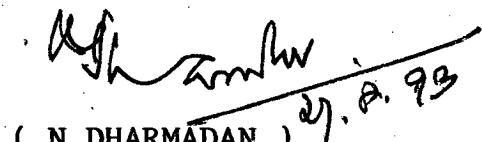
4. We do not see any error apparent on the face of the record in the judgment. According to us, the implementation of the directions would not upset the seniority affecting a large number of employees as alleged by the review applicants. The decision as stated in the judgment is only to implement the directions on a notional basis. Even if it may affect others, they can be notified before passing final orders in order to avoid inconvenience or adverse effect on them.

5. The effect of the Government order dated 25.4.89 which was not brought to our notice at the time of hearing, cannot be examined now in R.A. and the judgment cannot be reopened for examining that question or relevancy and application of the order.

6. We have carefully gone through all grounds and reasons in R.A. But we are satisfied that there is no substance in the R.A. and if it is entertained it may only delay the implementation of the judgment and perpetuate injustice to the original applicants.

7. Under these circumstances, we dismiss the same. No order as to costs.


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER


(N. DHARMADAN)
JUDICIAL MEMBER
29.2.89

v/-