

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.556/97

Wednesday, this the 17th day of November, 1999.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

T.K.Stephen,
Enforcement Officer,
Employees Provident Fund,
Office of the Regional Provident Fund Commissioner,
Sub Regional Office,
Kochi. - Applicant

By Advocate Mr KRB Kaimal

Vs

1. The Central Board of Trustees Employees Provident Fund,
represented by its Chairman,
New Delhi.
2. The Central Provident Fund Commissioner,
New Delhi.
3. Regional Provident Fund Commissioner,
Trivandrum. - Respondents

By Advocate Mr NN Sugunapalan for R.2&3

The application having been heard on 17.11.99, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

The applicant seeks to direct respondents 1&2 to promote him as Assistant Provident Fund Commissioner with effect from the date of promotion of his junior with all consequential benefits including arrears of salary.

2. The applicant who has since retired from service, was working in the cadre of Enforcement Officer/Assistant

Accounts Officer. The next promotion is to the post of Assistant Provident Fund Commissioner. A number of his juniors have been promoted as Assistant Provident Fund Commissioners in the year 1992. He was not promoted because of the disciplinary proceedings pending against him. Disciplinary proceedings were not completed even by the year 1994. The disciplinary authority passed an order finding him guilty and awarded the punishment of censure as per A-5. He preferred an appeal. Appeal is not disposed of. He submitted a representation A7. There was no response to it. He is entitled to be promoted as Assistant Provident Fund Commissioner with effect from the date of promotion of his junior in the cadre of Enforcement Officer/Assistant Accounts Officer with all consequential benefits. The punishment of censure is not a bar for considering him for promotion by the Departmental Promotion Committee(DPC for short).

3. Respondents say that the applicant will be considered as and when the next promotion to the cadre of Assistant Provident Fund Commissioner takesplace. At present there are no vacancies in the cadre of Assistant Provident Fund Commissioner falling under the promotion quota and as such, applicant's case could not be considered for promotion as Assistant Provident Fund Commissioner.

4. The learned counsel appearing for the respondents submitted that sealed cover procedure was adopted in the case of the applicant in the DPC held in September, 1993 and thereafter, only one DPC was met and it was on 24.9.99. At the time when the DPC met in September, 1993, the applicant was under cloud. As per A-5 dated 10.6.96, the

disciplinary proceedings against him concluded and he was awarded only a minor penalty of censure.

5. Though in the reply statement it is stated that there were no vacancies in the cadre of Assistant Provident Fund Commissioner falling under the DPC quota, the learned counsel appearing for the respondents submitted across the Bar that in 1993-94, 13 vacancies were available. In 1994-95, 89 vacancies were available, in 1995-96, 7 vacancies were available, in 1996-97, 4 vacancies were available, in 1997-98, 34 vacancies were available and in 1998-99, 2 vacancies were available. In spite of vacancies being available, DPC was not held. The applicant is not responsible for that and his case should have been considered after 10.6.96. It is not known whether after 10.6.96 whether anybody was promoted to the post of Assistant Provident Fund Commissioner on ad hoc basis. The applicant has got a right to get considered for the post of Assistant Provident Fund Commissioner after 10.6.96. As already stated, DPC was held only in September, 1999 which is after his retirement. He cannot be held responsible for that. There is no reason stated by the respondents for non-convening of the DPC till September, 1999. It is submitted by the learned counsel for the respondents that the applicant was not considered in the DPC held in September, 1999 for the reason that he retired on superannuation on 31.8.97. The fact that he retired on superannuation on 31.8.97 cannot be an answer for non-considering his eligibility for promotion in the DPC held in September, 1999. He should have been considered, but it has not been done and the same cannot be justified.

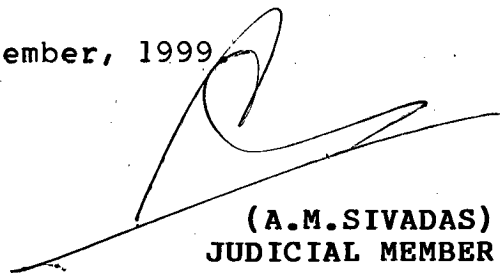
6. Accordingly, respondents 1&2 are directed to consider the applicant for promotion to the post of Assistant Provident Fund Commissioner, if any one junior to him was promoted on ad hoc basis after 10.6.96 and before the date of his retirement, i.e. 31.8.97. The necessary exercise shall be completed within three months from the date of receipt of a copy of this order.

7. O.A. is disposed of as above. No costs.

Dated, the 17th of November, 1999



(G. RAMAKRISHNAN)
ADMINISTRATIVE MEMBER



(A.M. SIVADAS)
JUDICIAL MEMBER

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List of Annexures referred to in the Order:

1. A-5: True copy of order No.KR/TKS/Adm/I/E1(5)/96 dated 10.6.96 issued by 3rd respondent.
2. A-7: True copy of representation dated 5.7.96 filed by applicant before the 1st respondent.