

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.71/2000 & 72/2000

Monday this the 18th day of November, 2002

C O R A M

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

O.A 71/2000:

M.Sreekumar
Section Supervisor
Employees' Provident Fund Regional Office
Thiruvananthapuram Regional Office
Thiruvananthapuram

Applicant

[By Advocate Mr.Pirappancode V.S.Sudheer]

Vs.

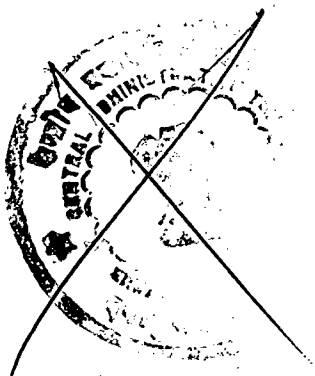
1. The Central Provident Fund Commissioner
8th Floor, Mayoor Bhawan,
Cannaught Circus,
New Delhi - 1
 2. The Regional Provident Fund Commissioner
Bhavishyanidhi Bhawan, Pattom,
Thiruvananthapuram - 4
 - 3.. The Union of India represented by
the Secretary,
Ministry of Labour, New Delhi.
 4. M.P.Sivasankara Pillai
Section Supervisor,
Office of the Regional Provident Fund Commissioner,
Sub-Regional Office,
Kaloor, Kochi - 17
Residing at :
Ashtapadi, PRA No.64, Puthuppally Lane,
Medical College, P.O.
Thiruvananthapuram
- Respondents

[By Advocate Mr.N.N.Sugunapalan, (R 1 & 2)
Mr.S.K.Balachandran, (R 3)
Mr.V.R.Ramachandran Nair, (R 4)]

O.A.72/2002 :

1. N.A.Sebastian,
Section Supervisor,
Employees' Provident Fund Regional Office,
Thiruvananthapuram Regional Office,
Thiruvananthapuram.

..2/-



2. K.T.Thomas,
Entry Data Processing Supervisor
Employees' Provident Fund Regional Office,
Thiruvananthapuram Regional Office,
Thiruvananthapuram. Applicants

[By Advocate Mr.Pirappancode V.S.Sudheer]

Vs.

1. The Central Provident Fund Commissioner
8th Floor, Mayoor Bhawan,
Cannaught Circus,
New Delhi - 1
2. The Regional Provident Fund Commissioner
Bhavishyanidhi Bhawan, Pattom,
Thiruvananthapuram - 4
- 3.. The Union of India represented by
the Secretary,
Ministry of Labour, New Delhi.
4. M.P.Sivasankara Pillai
Section Supervisor,
Office of the Regional Provident Fund Commissioner,
Sub-Regional Office,
Kaloor, Kochi - 17
Residing at :
Ashtapadi, PRA No.64, Puthuppally Lane,
Medical College, P.O.
Thiruvananthapuram Respondents

[By Advocate Mr.N.N.Sugunapalan,(R 1 & 2)
Mrs.Rajeswari,A (R 3)
Mr.V.R.Ramachandran Nair, (R 4)]

The application having been heard on 5.07.2002, the
Tribunal on 18.11.2002 delivered the following:

O R D E R

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

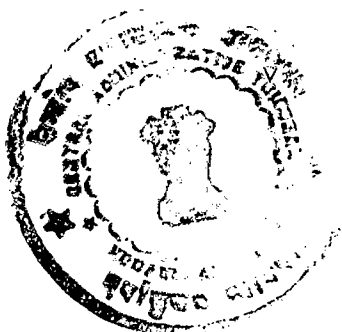
These two cases have been heard together and applicants in both these cases are similarly situated employees seeking relief for their promotion at the appropriate time and issues involved are one and the same and therefore these applications are disposed of by a common order.

OA 71/2000:

2. The applicant entered into service as Lower Division Clerks in 1977 and was promoted as Upper Division Clerk in 1980 and further promoted as Head Clerk/Section Supervisor in 1995. The applicant is now working as Section Supervisor in the Regional Provident Fund Commissioner's Office, Trivandrum. The promotion post of Section Supervisor is Enforcement Officer/Assistant Accounts Officer, (for short EO/AAO). As per the Employees Provident Fund Organisation EO/AAO, Recruitment Rules, 1990, 50% of the posts of EO/AAO are to be filled up by promotion of Section Supervisors, 25% by promotion on the basis of the Departmental Examination, failing which by direct recruitment and 25% by direct recruitment. The applicant claims that he is entitled to be promoted as EO/AAO based on his rank in 1994 & 1995 and when the respondents has faulted the same, he has filed this Original Application under section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:-

- i, Call for the records leading to the issuance of Annexure A-13 and quash the same.
- ii, Direct the respondents to re-fix the number of vacancies for promotion to the post of EO/AAO in the Examination Quota and fill up the said vacancies, otherwise than those already filled up, by the applicant, for the years 1994 and 1995.
- iii, Direct the respondents to promote the applicant with retrospective effect with all consequential benefits based on his rank and marks secured by him in the Departmental Examination he appeared in 1994 and 1995.
- iv, Declare that there existed more number of vacancies in the post of EO/AAO, in E.Q than notified, in the years 1994 and 1995.
Grant such other reliefs as this Hon'ble Tribunal deems fit and proper in the circumstances of the case including the costs of this Original Application.

..4/-



3. Annexure A-1 is the Recruitment Rules. Originally Departmental Examination for candidates in the examination quota to the post of EO/AAO was conducted as per the Employees Provident Fund Service Examination Scheme notified on 3.3.90. With effect from 17.6.92 the above Scheme was superceded and replaced by the EO/AAO and Superintendent Examination Scheme 1992 vide Annexure A-2. As per Clause 3 of Annexure A-2, vacancies in the cadre of EO/AAO in each region and the cadre of Superintendent in Central Office to be filled in a year shall be declared while notifying the conduct of EO/AAO and Superintendent Examination and in case of variation of vacancies that shall be notified before the declaration of the result. The applicant being qualified in 1990 itself is eligible for promotion and appeared in the departmental examination conducted in 1994 & 1995 and taken a plea that there existed large number of vacancies in the Exam quota more than what was assessed and notified by the respondents in each of the above respective years. The applicants had appeared for the examination. The applicant was successful in 1994-95 as against Annexure A-3 and A-4 mark list and submitted that if the respondents had properly and fairly assessed the number of vacancies, the applicants would have definitely got promotion. The department had notified only three candidates as successful which correspond to the number of vacancies notified as per Clause 7 of Annexure A-2. Now it is revealed that that there are more number of vacancies than were notified. Therefore, the applicant is to be promoted from 1994 or 1995. In 1994, three vacancies were filled against four vacancies, in the examination quota. There were 18 vacancies for examination quota candidates and only 13 were filled and thereby there was

a clear shortage of 5 vacancies in the examination quota and the applicant missed his chance of promotion only because of the incorrect assessment of the vacancies at the relevant point of time. Respondents are bound to promote the applicant with effect from 1994 or 95 on the basis of marks secured by him. The 2nd respondent issued circular Annexure A-5 dated 23.4.99 admitting the mistake in assessing the vacancies and there were discrepancies in the draft seniority list published earlier from 1.1.90 to 31.3.99. The true copy of the said circular is Annexure A-6. Annexure A-6 will show that many persons were promoted from the post of Section Supervisor to EO/AAO thereby substantiating the claim of the applicant that there existed large number of vacancies in the post of EO/AAO for different years commencing from 1990 and that the respondents had not taken into account these vacancies or reported before the notifications were published inviting applications from among those who were working in the cadre of Section Supervisors in the examination quota. The 2nd respondent issued circular notifying the vacancies vide Annexure A-7 and A-8 proposing to recommend to the Central Provident Fund Commissioner the regular promotion to the cadre of EO/AAO against the vacancies that had arisen from 1990-1991 to 31.3.99. It is evident from Annexure A-7 that for 10 years the respondents had not finalised the seniority list nor made any attempt to assess the actual number of vacancies. Therefore, respondents are bound to assess and locate the precise number of vacancies that were in existence in the years 1994 & 1995 respectively and promote the applicant on the basis of his performance in the examination. Applicant was not aware of the gross

irregularities until Annexure A-7 and respondents are bound to set right the mistake and grant relief to the applicant accordingly. The details of vacancies mentioned vide Annexure A-10 is not correct and there existed more vacancies than notified. As per Annexure A-8 the vacancy position is as follows :-

Year	Total No. of vacancy	Number of vacancy in the seniority quota	Number of vacancy in the Exam quota	Number of vacancy in the Direct Recruitment quota
1990	14	7	4	3
1991	8	4	2	2
1992	21	11	5	5
1993	12	6	3	3
1994	15	7	4	4
1995	13	7	3	3

4. The applicant who was successful in the written test were available in the examination quota for promotion. Respondents cannot carry forward the vacancies to the subsequent years or fill up by direct recruitment. The respondents had no other option but to promote the applicant with retrospective effect, based on the rank in the examination conducted in 1994 & 1995. Respondents had promoted more than 100 persons in the seniority quota from among the persons working in the feeder category and nobody was reverted thereby substantiating the claim of the applicant that there were more number of vacancies in the post of EO/AAO in the years 1990 to 1995 in examination quota, than notified.

5. Applicant vide Annexure A-8 representation pointed out the irregularities in the filling up of EO/AAO that more than 89 Section Supervisors were provided for seniority quota and 25 vacancies were earmarked for Examination quota. Instead of filling up 41 vacancies from the examination quota, department had promoted only 21 persons to the post of EO/AAO and respondents are bound to make good this short-coming by promoting the candidates who came out successful in the written examination. Applicant had specifically made the following request in Annexure A-9 representation dated 22.12.98.

- a, Exact number of vacancy in respect of EO/AAO under different category for each calender year from 3.3.90 on R.R of EO/AAO came into effect, may please be published for the sake of clearing doubt and transparency in assessment of vacancy.
- b, If there is any mistake in assessing the correct number of vacancy under E.Q. It may please be rectified. While re-assessing the vacancy position if there are vacancies under general category it may be notified and exams for general category may also be conducted in 1998.
- c, If there is any mistake in the assessment of vacancies, pertaining to the previous years, it may be set right and I may be accommodated against vacancies later found out.
- d, Equal treatment may be given to E.Q hand like me as given to the S.Q hand in the sphere of promotion to EO/AAO. The undue promotion given to the S.Q hand may not adversely affect the E.Q hand like me.

6. Another representation Annexure A-10 dated 7.7.99 was made before the 2nd respondents. Apart from the vacancy position applicant pointed out the infirmities occurred in filling up the direct recruitment quota and three vacancies were not reflected in the list. This discrimination and short-falls were pointed out in Annexure A-10 representation dated 7.7.99. Applicant filed O.A.No.373/99 before this Tribunal and vide

order dated 1.4.99 this Tribunal directed the 2nd respondent to dispose of the representation, the true copy of the order is Annexure A-11. The representation is Annexure A-12 and the reply was given vide Annexure A-13 stating that the vacancy position was correct. The applicant disputed Annexure A-13 order and the respondents are bound to make correct assessment and incidently the applicant again pointed out that no examination was conducted in 1991 and 1992 for promotion to EO/AAO under examination quota.

7. Respondents 1,2 & 4 had filed a separate reply statement. The applicant filed a rejoinder to the reply filed by R 1 & 2. R 1 & 2 filed additional reply statement. Applicant filed rejoinder for the same and again additional statement was filed by R 1 & 2 and additional rejoinder was filed by the applicant to that statement.

OA 72/2000:

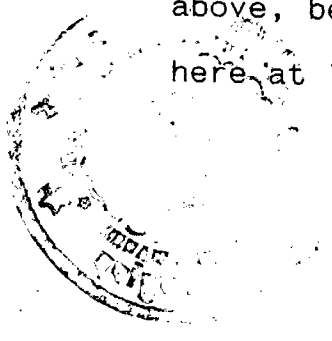
8. There are two applicants and the respondents are one and the same in this O.A. They were entered into service as Lower Division Clerks in 1977 and 1982 respectively in the Office of the 2nd respondent. They were promoted as Upper Division Clerk in 1980 and 1984 and further promoted as Head Clerk/Section Supervisor in 1994. The first applicant is now working as Section Supervisor and the 2nd applicant as Entry Data Processing Supervisor in the Regional Provident Fund Commissioner's Office, Trivandrum. They also submitted that the promotion post of Section Supervisor is Enforcement

Officer/Assistant Accounts Officer, (for short EO/AAO). As per the Employees Provident Fund Organisation EO/AAO, Recruitment Rules, 1990, 50% of the posts of EO/AAO are to be filled up by promotion of Section Supervisors, 25% by promotion on the basis of the Departmental Examination, failing which by direct recruitment and 25% by direct recruitment. Aggrieved by their non-inclusion, they have filed this Original Application seeking the following reliefs:-

- i, Direct the respondents to re-fix the number of vacancies for promotion to the post of EO/AAO in the Examination Quota and fill up the said vacancies, otherwise than those already filled up, by the applicants, for the years 1990, 1993, 1994 or 1995.
- ii, Direct the respondents to promote the applicant with retrospective effect with all consequential benefits based on their rank and marks secured by them in the Departmental Examination they appeared in 1990, 1993, 1994 or 1995.
- iii, Declare that there existed more number of vacancies in the post of EO/AAO, in E.Q than notified, in the years 1990, 1993, 1994 and 1995.
- iv, Grant such other reliefs as this Hon'ble Tribunal deems fit and proper in the circumstances of the case including the costs of this Original Application.

9. The case of the applicants in this case are exactly the same as that of the applicant in OA.71/2000. They have made representations Annexures A-11 and A-12 for which no order till date has been passed. Aggrieved by the denial of promotion as EO/AAO in 1990, 1993, 1994 and 1995 this Original Application is filed. These applicants have also taken a similar plea as in that of OA 71/2000 seeking their promotion in appropriate stage. Pleadings are one and the same and the documents relied on are also the same. Since the pleadings narrated in OA 71/2000 above, being one and the same which is not elaborately discussed here at length.

..10/-



10. In this case, the respondents are the same as that of OA 71/2000. Respondents 1,2 & 4 had filed separate reply statement. Respondents 1 & 2 also filed an additional reply statement and the applicants filed rejoinder to the additional reply statement. The contention taken by the respondents in both these cases are one and the same. It is discussed commonly below:-

11. Respondents 1 and 2 has taken a specific plea that number of vacancies assessed and notified as exactly as possible based on the information available at the relevant point of time and notified as such before conducting the examinations. Had the notified vacancies were wrong the applicants could very well have pointed out the same immediately on the notification of the number of vacancies without waiting for a number of years to do so. Just by securing the prescribed minimum marks for empanelment will not render a candidate successful in a competitive examination unless the candidate finds a place in the list within the available number of vacancies certified, he cannot be held successful. Due to pendency of various Courts and C.A.T cases, regular appointment to the cadre are not being made against the seniority quota vacancies, whereas, examination quota and direct recruitment candidates were promoted/appointed on regular basis. Replacement of the old scheme was necessitated consequent to certain court rulings finding certain lacuna in that scheme. Because of the pendency of the court cases no examination was conducted during 1991 and 1992. As per the new scheme, the first examination was conducted in January, 1993. Applicants appeared in the examination in September, 94

and October, 95 for the vacancies that arose for the years 94-95, 95-96 & 96-97. They are non-SC/ST general category and hence are eligible for promotion against vacancies falling under the general category only. Examinations were conducted on 5 occasions which is notified as under :-

Year	Date of Exam	No.of vacancies notified				No.of candidates declared passed			
		GL	SC	ST	TOTAL	GL	SC	ST	TOTAL
	Part I. 12/90 Part II 4/92								
1990		2	1	1	4	3	-	-	3
1991 1992	Jan & Feb 93	4	2	1	7	4	-	-	4
1993	Sept.93	3	1	1	5	3	-	-	3
1994 1995	Sept.94	2	3	1	6	2	1	-	3
1995 1996	Sept.95	4	3	2	9	4	-	-	4
		--				--			
		15				16			
		===				===			

12. From the above, it could be seen that the number of general category candidates declared passed for the exams conducted for the years 1990 to 1996 were exactly equivalent or more than to the number of general category vacancies notified. The examination held in 1990, three general candidates were declared successful against two general vacancies and 1 SC vacancy in the Region in the result which was declared on All India basis taking the total number of vacancies for all the regions together as per the then prevailing EO/AAO Examination Scheme. The applicants have not secured enough marks to be declared as having passed the competitive examinations held in 1993, 1994 or even in 1995 to promote them within the number of

vacancies available for general category candidates. General category candidates in 1994 and 1995 were 2 and 4 respectively and the number of candidates declared to have passed is 2 and 4 and applicants were not entitled to be declared as passed as the other vacancies were earmarked for SC/ST as per the vacancies notified. The true copy of the notifications are Annexures R-2(a) and R-2(b). No general category vacancies were carried forward from the previous year. The vacancies to general categories were assessed at the relevant point of time. There was no wilful suppression of facts at any point of time. Annexures A-7 and A-8 were not finalised. They are of rough and preliminary nature published to maintain transparency to all the concerned staff to point out omissions if any, thereon for rectification before finalisation of the regularisation process. The representations were received and they are under process and the final decision has not been taken yet. The exact number of vacancies could be assessed after the decision taken thereon. Only such time relying of Annexure A-7 will be preemptive and premature. Right from 1986, litigations on the subject were in existence and only after the Civil Appeal No. 4556-59/92 by the Hon'ble Supreme Court, the seniority in the lower feeder category could be finalised in time. Annexure A-7 will prove that 2nd respondent has been making sincere and effective attempts for regularisation of the promotion to the EO/AAO cadre which is the primary requirement for the finalisation of the seniority list. The delay, if any, continues because it is almost 10 years old, and hence volumes of records are required to be verified to get all the relevant factors.

13. The facts of the O.A is based on assumptions and imaginations. The number of vacancies under Examination quota from 90 to 96 including the share due to SC/STs, the classification of which are as under :-

Year	No.of vacancies		Share due to each category		
			Gen	SC	ST
1990	4		2	1	1
1991	2		2	-	-
1992	5		4	1	-
1993	3		2	1	-
1994	4		3	-	1
1995					
1995	3	3		-	-
1996					
	21		16	3	2

14. Seniority list of the feeder cadre of EO/AAO has not been finalised due to long litigation and further promotions are made against seniority quota on adhoc basis which is for meeting the administrative exigencies. The respondents had not followed the ratio 2:1:1 that exists between seniority quota, examination quota and direct recruitment quota. What has been fixed in the Recruitment Rules is the percentage of appointment to different categories. No senior hands have been promoted against the examination quota. Respondents were not in a position to regularise the seniority quota promotion and thereby to ascertain the exact number of vacancies at the time of submission of Annexure A-9 representation. The adhoc promotion were given only against the examination quota and Direct

Recruitment quota but against seniority quota for want of feeder cadre.

15. The 4th respondent submitted that the principle adopted in filling up the vacancies is based on the increase/reduction in the authorised establishments. The contention of the applicants that the department carried forward vacancies to be filled in the examination quota is absolutely false on account of the Annexure A-2 Recruitment Rules. The vacancies were corrected in accordance with the Recruitment Rules. The denial of promotion to the applicants during 1990 to 1994 does not arise at all as the correct percentage have been fixed and the percentage earmarked for the examination quota has already been filled based on the ranking. The percentage of marks obtained in the competitive examination will not confer any right for the candidates to be promoted in the absence of notified vacancies. The vacancies could not be held for the incumbents to be qualified and to be filled. The vacancy position cannot be acted upon unless and until the seniority position and the number of vacancies for each category during each recruitment period are finally settled. No senior hand has been promoted against the examination quota.

16. In the rejoinder, the applicants have submitted that it is the responsibility of Respondents 1 & 2 and there was no justification to cast the burden on the applicants. What has been shown in the table of the respondents statement is the names of persons holding the post and those already resigned etc. were conveniently omitted. Arbitrariness is wirt large.

Respondents have not assessed the number of vacancies properly and instead of correcting the same they are still sticking on their wrong stand. Respondents are bound to review and assess the vacancies following strictly Annexure A-1 Recruitment Rules. Till Annexure A-7 and A-8 was published, the applicants were not aware of the position.

17. Respondents in their additional reply statement submitted that in para 7 of the reply the table shown is bifurcation in examination quota under different categories. To say that the vacancies mentioned in Annexure A-8 does not remove the mis-concept brought out by the applicant. The post based roster system as per Government of India O.M.NO.36012/2/96-Estt(Res) dated 2.7.97 was introduced in the year 2000 with effect from 2.7.97. After introduction of post based roster system the vacancies/posts earmarked for examination quota is only 20 whereas 25 candidates are in position. As directed in this O.M, this excess will be absorbed and regularised in future appointment/recruitment.

18. Learned counsel, Shri Pirappancode V.S Sudheer had appeared for the applicants and Learned counsel, Shri N.N.Sugunapalan for Respondents 1 & 2, Mrs.Rajeswari,A for R-3 and Mr.V.R.Ramachandran Nair for R-4 argued the matter reiterating and emphasizing the respective pleas in the O.A and reply statement. Respective learned counsel advanced their arguments more or less in the same line in tune with the pleadings.



19. We have carefully gone through the pleadings, documents, materials placed on record and also the arguments advanced by the learned counsel.

20. Learned counsel for applicants submitted that respondents are bound to scrupulously follow Annexure A-1 Recruitment Rules where 255 posts are earmarked for examination quota. But contrary to the above, indiscriminate promotions are being made to the vacancies under examination quota on the basis of seniority. Since the respondents had gone wrong in assessing the vacancies, the applicants failed to get promotion. The very admission that there were discrepancy in the assessment of vacancies, it is prayed that the Tribunal may be pleased to direct the respondents to promote the applicants with retrospective effect based on their rank in the examination in which they appeared with all benefits.

21. Learned counsel for respondents submitted that the OA is premature since action is pending before the respondents to finalise the seniority list and Annexures A-7 and A-8 will be premature. Only on finalisation of seniority list, which is the preliminary requirement/effective attempts for regularisation and promotion could be considered for EO/AAO. Since applicants were in long service over decades, their statement that they were not aware of any of the facts mentioned in the reply statement until issuance of Annexures A-7 & A-8, is not correct.

22. The grievance of the applicants in both the O.As that the vacancies for promotion to the post of EO/AAO in the examination

quota has not been fixed, according to the ratio for years and prayed for a retrospective promotion with effect from the date of eligibility and availability of vacancies on the basis of marks secured by them in the Departmental Examination which they appeared in 1990, 1993, 1994 & 1995 and for a declaration that there existed more number of vacancies in the post of EQ/AAO in examination quota than notified, in 1994-95.

23. We find that the applicants in these two OAs are basing their claims for the reliefs sought for on the basis of A5 circular dated 23.4.99 in O.A. 71/2000 (which is Annexure A7 in O.A. No. 72/2000). We find that their plea is that A5 circular indicated that there were discrepancies in the draft seniority list published earlier in respect of seniority of Section Supervisors from 1.1.90 to 31.3.99. According to the respondents A5 did not speak anything conclusively and it was only preliminary enquiry to locate mistakes if any and the same could not be a cause of action as claimed by the applicants and therefore the O.A. was premature.

24. We find considerable force in the respondents' stand. A5 circular reads as under:-

EMPLOYEES PROVIDENT FUND ORGANISATION
REGIONAL OFFICE
BHAVISHYANIDHI BHAVAN
PATTOM, THIRUVANANTHAPURAM -695 004

No.KR/Adm.I(5)/99 Datedd 23.4.1999.

CIRCULAR

Sub:- Preparation of seniority list of SSS-notification
of vacancy -reg.

..18/-

On attempting to draw the seniority list of Section Supervisors for the period from 1.1.1993 onwards it was observed that the number of vacancies assessed for the years from 1990 to 1992 while the drawing the seniority list published on 20.1.94 and 21.4.97 was not correct. Exact number of vacancies available for the said three years, with the number of vacancies assessed while preparing the seniority list published earlier in bracket, as well as the vacancies for the years 1993 to 1998-99 (upto 31.3.99) are given below:-

1990-91	11 (15)	1994-95 (1.1.94 to 31.3.95)	14
1991-	07 (13)	1994-96	06
1992-	22 (27)	1996-97	09
1993	11	1997-98	07
		1998-99	01

Complete details of how the vacancies arose in the SS cadre from 1.1.90 to 31.3.99 as well as the date of occurrence of the vacancies are furnished in the annexure hereto.

In view of the above said serious discrepancy in the draft seniority list published earlier (which is under revision) a fresh draft seniority list of SSS for the period from 1.1.90 to 31.3.99 is proposed to be drawn to the extent of vacancies notified as above.

To the extent of difference in the number of vacancies noticed in every year from 1990 to 1992 in the SSS cadre, the number of vacancies in the UDC cadre, the seniority list of which has been published on 20.1.94 and revised draft published on 21.4.97 will also be reduced.

All concerned may please take note of the above vacancy position and bring to the notice of the undersigned within 15 days of publication of this circular, omissions or errors, if any, with complete details thereof.

Sd/- P. Sudhakar Babu
LRegional P.f. Commissioner-I

To

All Officers in Regional Office & SROs ,etc.

From the above we find that the applicant's averments in the O.A. that there would be discrepancy in the vacancies for the period from 1990 to 1999 is not at all factual. A5 circular only referred to discrepancy for the three years from 1990 to 92 and the discrepancies had also been indicated therein as follows:

Year	Exact number of vacancies available	Vacancies assessed prior to seniority list attached earlier.
1990	11	15
1991	7	13
1992	22	27

25. It is obvious from the above circular that from 1993 onwards there was no discrepancy indicated in the number of vacancies assessed have been indicated. We also find that the number of vacancies assessed earlier while preparing the seniority list published on 20.1.96 and 21.4.97 were on the higher side and the same were not correct. In the Annexure to A5 the details of vacancies in Section Supervisor cadre had been indicated for the different years from 1990 onwards. We also note from A5 that the said circular had been issued so that the intention was that the decision of the authorities is brought to the notice of all concerned so as to enable them to bring to the notice of the authorities within 15 days of publication of the circular, omissions or errors if any and the complete details thereof. We find that as a follow up to this circular, respondents had issued A7 circular dated 15.6.99 in O.A.No. 71/2000 (A-9 in O.A. No. 72/2000). This circular reads as under:

EMPLOYEES' PROVIDENT FUND ORGANISATION
REGIONAL OFFICE BHAVISHYA NIDHI BHAVAN
THIRUVANANTHAPURAM -4

No.KR/Adm.I(5)/99

Dated 15.6.1999.

CIRCULAR

Sub: Regular promotion to the cadre of
EO/AAO Notification of vacancies-reg.

..20/-

Due to non-finalisation of seniority list of section Supervisors, promotion to the cadre of EO/AAo in this Region are made from 1990-91 on adhoc. The seniority list of the SS cadre has since been finalised and notified vide circular No. KR/Adm. I(95)/99 dated 23.4.99. It is therefore proposed to recommend to CPFC the regular promotion to the cadre of EO/AAo against the vacancies arisen from 1990-99 to 31.3.99. Before doing so, it is considered appropriate to notify the vacancies that had arisen in the EO/AAo cadre in this region from 1.1.90 to 31.3.99. Accordingly, these are furnished in the annexured here to and circulated for information of all concerned.

Omissions or errors, if any, noticed in arriving the vacancies may please be brought to the attention of the administration section in the Regional Office before 10.7.99.

Enough copies of this Circular is forwarded to the Officer-in-Charge of SROs for circulating among the Officers and staff in their offices. Response to this Circular received by them shall be forwarded to Regional Office before 15.7.99.

Sd/- P. Sudhakar Babu
Regional Provident Fund Commissioner

To

All Officers etc.

Here again the respondents had specifically circulated amongst officers and staff and soliciting omissions and errors if any in assessing the vacancies. We find that the applicants own response to this circular were by A-10 note dated 7.7.99 in O.A. 71/2000 and by A-11 and A-12 representations dated 9.9.99 and 30.6.99 respectively in O.A. NO. 72/2000. Thus we find that there is force in the submissions of the respondents that these O.As are premature because even before the respondents had taken a decision in the matter after taking into account the objections which had been specifically called for, the applicants have approached this Tribunal.

26. Apart from the above, the respondents have specifically brought out in the reply statement the number of vacancies notified for the different examinations right from 1990 to

1995-96 along with the dates of examinations and the number of candidates who had been declared as passed. The said statement is as follows:

Year	Date of Exam	No. of vacancies				No of candidates declared passed			
Prt-I12/90 Part II 4/92		Gen	SC	.ST	.Total	Gen	SC	ST	.Total
1990		2	1	1	4	3	-	-	3
1991}	Jan.&								
1992}	Feb.'93	4	2	1	7	4	-	-	4
1993	Sept.1993	3	1	1	15	3	-	-	3
1994}	Sept.1994	2	3	1	6	2	1	-	3
1995}									
1995}	Sept.1995	4	3	2	9	4	-	-	4
1996}									
		15				16			

The applicants in the O.As had not disputed the number of candidates who had been declared as passed. A scrutiny of A8 also indicate that the respondents have clearly indicated the vacancies which have been taken into account for each of the years for the purpose of preparation of seniority list. Applicants throughout the O.A. have not indicated as to how the said A8 list is wrong in anyway.

The applicant is relying on clause 3 of A2 in support of his claim. The said clause 3 reads as under:

The vacancies in the cadre of Enforcement officer/Assistant Accounts Officer in each Region and in the cadre of Superintendent in Central Office that may be filled in a year shall be declared while notifying the conduct of the Enforcement Officer/Assistant Accounts Officer and Superintendent Examination. The vacancies may vary in case of increase/reduction in the authorised establishments. All cases of variation shall, however, be notified before the declaration of the result of the examination. The examination shall however be conducted only in such Regions/Central Office where the vacancies are notified in any year against the examination quota.

The cadre of enforcement Officer/Assistant Accounts Officer in Regions and Superintendent in Central Office are regional and central Office cadres respectively.

..22/-



27. We find from the above that the vacancies in the cadre of Enforcement Officer/Assistant Accounts Officer in each region had to be declared while notifying the conduct of Enforcement Officer/Assistant Accounts Officer Examination. The only contingency in which the vacancies could be varied is in case of increase /reduction in the establishment ie. creation or surrender of posts. In our view the rules do not provide for varying the number of vacancies declared at the time of notification of the examination for any other reason except in the case of increase/decrease in the strength of Enforcement Officers/Accounts Officers. Thus even if the applicants are able to establish that there were further vacancies which had been missed by the Department at the appropriate time the same could not be taken at this stage on the basis of the rules governing the conduct of the examination.

28. Another plea putforth by the applicants is that the respondents had not followed the ratio of 2:1:1 that existed between seniority quota, examination quota and direct recruitment quota. The respondents' case is that due to existence of court cases the seniority of Section Supervisors was not decided and hence Section Supervisors were working on adhoc basis. The Enforcement Officers/Accounts Officers were also promoted on adhoc basis. As the Section Supervisors' seniority dispute has been decided and their seniority list has been published the respondents were attempting to finalise the seniority list of Enforcement officers/Accounts Officers for which the draft seniority list was published and comments were solicited. It has also been submitted that due to delay in



direct recruitment the said direct recruitment quota vacancies had been filled on adhoc basis subject to suitability from the seniormost Section supervisors. Their specific case is examination quota and direct recruitment vacancies were filled up on adhoc basis and only until such time that the respective candidate became available. Their further case is that all general quota vacancies earmarked and notified for being filled up by examination quota had been filled up. It is the case of the 4th respondent in O.A.71/00 that employees like him who were promoted on adhoc basis as Section Supervisor/Enforcement Officer on seniority basis had challenged the seniority list prepared by filing different OAs in this Tribunal viz. RA 1/2000 in O.A. 300/96, 1324/98 and 1579/98

29. Apart from above, it is also not disputed that out of the total cadre of 80 Enforcement Offices/Accounts Officers 41 are working on seniority quota, 26 were working on examination quota and 7 were direct recruits and 4 posts were vacant. This would indicate that the examination quota employees have got more than their share as per Recruitment Rules.

30. However, we are taking the respondents into confidence on their averments in the additional reply statement that " the final seniority list is being published the DPC was convened on 14.3.2000 and the recommendations thereof was sent to the Chief Provident Fund Commissioner, New Delhi seeking approval of the CPFC, who is the appointment authority to the said cadre of EO/AAO and as per the orders of the Commissioner, the incumbent who were continuing in those positions on adhoc basis, fresh

promotions were ordered for two individuals". We hope and trust that the above process will be completed and list be published by Respondents as expeditiously as possible in any case within three months from the date of receipt of this order.

31. Keeping all the above in our view we have no hesitation in holding that the applicants in these O.A. are not entitled for any of the reliefs sought for since the cases are premature and the two OAs are liable to be dismissed. We do so accordingly.

In the circumstances, we direct the parties to bear their own costs.

Dated the 18th November, 2002

Sd/-

K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-

G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

