

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.77/02

Wednesday this the 11th day of August 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

(By Advocate Mr.Vellayani Sundara Raju)

Versus

1. Union of India represented by the Secretary to Government, Ministry of Labour, New Delhi.
2. The Central Provident Fund Commissioner, 8th Floor, Mayur Bhavan, Cannaught Circus, New Delhi-1.
3. The Regional Provident Fund Commissioner, Bhavishyanidhi Bhavan, Pattom, Trivandrum - 04.
4. M.Jayaseelan, Upper Division Clerk (Senior Grade), O/o. the Regional Provident Fund Commissioner, Sub Regional Office, Calicut.
5. P.S.Chandrika Devi, Upper Division Clerk (Senior Grade), O/o. the Regional Provident Fund Commissioner, Bhavishyanidhi Bhavan, Pattom, Trivandrum - 04.
6. B.Pankajakshyamma, Upper Division Clerk (Senior Grade), O/o. the Regional Provident Fund Commissioner, Bhavishyanidhi Bhavan, PAttom, Trivandrum - 04.
7. V.Raveendranatha Prabhu, Upper Division Clerk, O/o. the Regional Provident Fund Commissioner, Sub Regional Office, Kaloor, Kochi-17.

(By Advocate Mr.C.Rajendran, SCGSC [R1], Mr.N.N.Sugunapalan [R2-3] & Mr.Harippad KRC Pillai [R4-7])

This application having been heard on 11th August 2004 the Tribunal on the same day delivered the following :

O R D E R

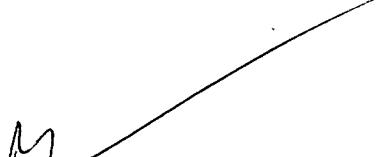
HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant Section Supervisor in the office of the Regional Provident Fund Commissioner, Sub Regional Office, Kaloor has filed this application challenging the order dated 6/9.11.2001 (Annexure A-14) by which in reply to his representation dated 22.10.1998 and in obedience to the directions contained in the order of the Tribunal in O.A.1579/98 he was told that he had been given the due position in the final seniority list of Section Superintendents published on 23.4.1999, that his case also was considered for promotion to the cadre of EO/AAO in the year 2000-2001 in the DPC which was held on 9th April 2001 against the vacancies which had arisen in the year 2000-2001 and that the recommendation of the DPC is kept under sealed cover as a disciplinary proceedings against him was pending and that all the 41 posts in the grade earmarked for seniority quota are being occupied by incumbent on seniority quota i.e.. 39 on regular basis and 2 on adhoc basis and therefore there is no excess promotion under EQ quota as contended by him. The applicant has alleged in the application that official respondents have promoted respondents 4-7 in the year 1998 in excess of their quota (EQ) and that while the respondents have no option but to consider the applicant for promotion against the vacancies of the year 1997 the action on the part of the respondents in not considering the applicant for promotion accordingly is illegal and unjustified and that as there was no disciplinary proceedings pending against the applicant in the year 1997 the action on the part of the respondents in resorting to the sealed cover procedure in his case is unwarranted and therefore unjustified. With these

allegations the applicant has sought the following reliefs :-

1. to call for the records leading upto Annexure A-14 and quash the same.
2. to declare that the promotion of the respondents 4 to 7 against the existing vacancies as on their promotion in 1998 which are not against their quota as illegal.
3. to declare that the applicant is eligible to be promoted as EO/AAO against one of the vacancies existed on and from 2.7.1997.
4. to direct the 2nd and 3rd respondents to promote the applicant as EO/AAO against the vacancies existed as on 2.7.1997 which is earmarked to be filled up by seniority quota hands and to grant all consequential benefits.
5. to issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. Respondents 1-3 in their reply statement have contended that no junior of the applicant has been promoted as EO/AAO overlooking the applicant's seniority and merit, that respondents 4-7 were promoted on their being successful in the examination and for promoting them no vacancy belonging to seniority quota has been utilised, that there has been shortfall in the direct recruitment quota and that though the applicant was considered by the DPC which met on 9.4.2001 against the vacancies accrued from 2.7.1997 onwards in his turn as a disciplinary proceedings against the applicant was pending the recommendation of the DPC has been placed in the sealed cover and that the seniors of the applicant who have been officiating on adhoc basis as EO/AAO have been regularised. Since the seniority of the applicant has not been overlooked and as the applicant was considered by the DPC in his due turn, the respondents contend that the applicant has no valid cause of action.

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3. The applicant has filed a rejoinder reiterating that the disciplinary proceedings had not been commenced in the year 1997 and therefore in his case the sealed cover procedure should not have been resorted to.

4. We have carefully gone through the pleadings and material placed on record. The claim of the applicant is that he was eligible to be considered for promotion in the seniority quota against the vacancies which arose in the year 1997 onwards and that his case has not been considered in his turn. The applicant has also challenged the promotion of respondents 4-7 in the year 1998 in the examination quota on the ground that those promotions were in excess of that quota. The respondents had contended that in promoting the respondents 4-7 no vacancy in seniority quota has been utilised, that promotion quota had been utilised for making regular and adhoc promotion in that quota and that shortfall in direct recruitment quota alone was utilised if at all in promoting respondents 4-7. The applicant has not been able to establish that any vacancy in seniority quota has been utilised for promoting the respondents 4-7. Hence the challenge to their promotion has no merit. The official respondents have very clearly stated in the reply statement that the seniority of the applicant has not been overlooked, that against vacancies arising after 2.7.1997 onwards the applicant was in his turn considered along with the seniors as also juniors by the DPC which was held on 9.4.2001 and the recommendation of the DPC in his case has been kept in the sealed cover. The argument of the applicant that in 1997 or immediately thereafter there was no disciplinary proceedings pending against the applicant and that for the reason that disciplinary proceedings was pending on the

date of holding the DPC meeting the respondents were not justified in adopting the sealed cover procedure is also untenable. First of all the applicant has not been able to state on what date he became eligible to be considered for promotion. He has not been able to show that his seniority has ever been overlooked, further irrespective of the date of occurrence of vacancy in his turn if disciplinary proceedings are pending when the DPC met the respondents are bound to adopt the sealed cover procedure. Therefore since the applicant's case has been considered in his turn for promotion, but the recommendations of the DPC are placed in the sealed cover we find that no injustice has been done to the applicant.

5. In the result, in the light of what is stated above we find that the applicant is not entitled to any of the reliefs sought in the application and therefore while declining to grant the reliefs sought we dispose of this application directing the respondents that on culmination of the disciplinary proceedings pending against the applicant further action regarding "the sealed cover" in the case of the applicant shall be taken by the respondents in accordance with law. No order as to costs.

(Dated the 11th day of August 2004)

R. P. DAS

H.P.DAS
ADMINISTRATIVE MEMBER

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A.V.HARIDASAN
VICE CHAIRMAN