

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 125 OF 2011

&

O.A. NO. 150 OF 2012

Tuesday, this the 3rd day of July, 2012

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. O.A. NO. 125 OF 2011

1. K.Padmakumar,
Senior Social Security Assistant
Employees Provident Fund Organization
Sub Regional Office, Kozhikode,
Residing at 'Chaithanya', Karuvissery PO
Kozhikode.

2. Jai Gopal S
Senior Social Security Assistant,
Employees Provident Fund Organisation,
Sub Regional Office, Kochi,
Residing at Jai Vihar,
Nayarambalam, Kochi-682 509

... Applicants

(By Advocate Mr.P.Ramakrishnan)

versus

1. Union of India, represented by the Secretary
Ministry of Labour and Employment
New Delhi – 110 011
2. The Central Provident Fund Commissioner
EPF Organization, Bhavishyanidhi Bhavan
14 Bhikaiji Cama Place
New Delhi.
3. The Regional Provident Fund Commissioner
EPF Organisation, Regional Office, Bhavishyanidhi Bhavan,
Pattam, Thiruvananthapuram.
4. Regional Provident Fund Commissioner(Exams)
EPF Organisation, Head Office, Bhavishyanidhi Bhavan,
14 Bhikaiji Cama Place
New Delhi.
5. M.M. Thomas
Social Security Assistant
EPF Organization, Sub Regional Office,
Chalakuzhi Buildings,
CMS College Road, Kottayam-01.

6. Suma Unnikrishnan
Social Security Assistant,
EPF Organization, Sub Regional Office,
Chalakuzhi Buildings,
CMS College Road, Kottayam-01.
7. Gopakumar M
Social Security Assistant
EPF Organization, Sub Regional Office
Old Municipal Office, Chinnakkada
Kollam – 691 001
8. Subash Chandra Das
Social Security Assistant,
EPF Organization, Sub Regional Office,
Old Municipal Office,
Chinnakkada, Kollam – 691 001 ... Respondents

(By Advocate Mr.N.N.Sugunapalan, Senior with Mr.S.Sujin (R1-4)
Advocate Mr.V.Gopakumar (R5-8)

2. O.A. NO. 150 OF 2012

Jagath Kumar G
Senior Social Security Assistant
Employees Provident Fund Organization
Sub Regional Office, Kozhikode,
Residing at Jagath Vihar. Near C.H.Colony,
Marikunnu Post, Calicut – 16 ... Applicant

(By Advocate Mr.Martin G Thottan)

versus

1. The Central Provident Fund Commissioner
EPF Organization, Bhavishyanidhi Bhavan
14 Bhikaiji Cama Place
New Delhi – 110 001
2. The Regional Provident Fund Commissioner
EPF Organisation, Regional Office, Bhavishyanidhi Bhavan,
Pattam, Thiruvananthapuram – 695 004
3. The Regional Provident Fund Commissioner(Exam)
EPF Organization, Head Office
EPF Organization, Bhavishyanidhi Bhavan
14 Bhikaiji Cama Place
New Delhi – 110 001 ... Respondents

(By Advocate Mr.N.N.Sugunapalan, Senior with Mr.S.Sujin)

The applications having been heard on 03.07.2012, the Tribunal
on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

Both these OA raise common question of facts and law and hence are disposed of by this common order.

2. The applicants in both these OAs are employees of Provident Fund Organization. They are working as Senior Social Security Assistants at Calicut or Ernakulam as the case may be. They aspire for promotion and selection to the post of Enforcement Officer based as per the Scheme governed by the Recruitment Rules. They participated in the examination and they were not included in the rank list. The number of vacancies notified for this category (with which we are concerned) was only seven.

3. Respondents 5 to 8 in OA 125/11 were included in the select list. The first contention raised in this case is that they don't have five years regular service in the concerned region in respect of which vacancies arose. There is yet another contention that the actual number of vacancies available is not notified and less number of vacancies have been notified. It is also contended that inclusion of respondents 5 to 8 in the select list are to be set aside and the number of vacancies be enlarged and based on the rank obtained by the applicants, they may be considered for appointment.

4. The party respondents 5 to 8 have not contested the matter by filing a reply statement. As a matter of fact in an earlier OA 723/2010 and 970/2010, their selection was under challenge to the limited extent of inclusion of the party respondents 5 to 8 which has been ultimately set aside by this Tribunal as per order of this Tribunal dated 19.07.2011 in OA Nos. 723/10 and 970/10. Subsequently the same has been upheld by the Hon'ble High Court and held that inclusion of respondents 5 to 8 as wrong and the selection list was set aside to



the extent they have been included in the select list and directed to draw a fresh rank list excluding them from consideration. In so far as the first contention is concerned, since it has already been covered by the decision of this Tribunal in OA Nos. 723/10 and 970/10, it has to be held that inclusion of respondents 5 to 8 in the select list when admittedly and undisputedly they do not have the requisite experience of five years in the region having been upheld by the Hon'ble High Court, the applicants are also given the same relief setting aside the selection of respondents 5 to 8 as was given in OA Nos. 723/10 and 970/10.

5. However, the learned counsel for respondents would contend that the actual number of vacancies are more than that has been notified. It was contended after referring to Annexure A-7 that the total number of unreserved vacancies is 24 out of which 16 are vacancies earmarked for in position vacancies and balance should be eight instead of seven as shown in Annexure A-7. Thus according to the counsel for applicant, in OA 125/11 at any rate, there is one more vacancy available to be notified in view of Annexure A-8. The official respondents contend that the actual number of vacancies is notified as 7 and have placed reliance on Annexure R-8. As per Recruitment Rules, relevant clause of the Scheme is as follows:

"The vacancies in the cadre of EO/AO in each region and in the cadre of Superintendent in Head Office that may be filled in a year shall be declared while notifying the conduct of the EO/AO and Superintendent examination. In case the vacancies vary, such variations shall be notified before the declaration of the results of the examination....."

6. From the above Scheme it can be seen that if there are more number of vacancies than the originally notified vacancies, the omission could be filled up before declaration of the examination. Since it is specifically stated that "before declaration of the examination," it will not be proper to direct the respondents to notify those vacancies as at present since the results have already been declared. To do so, is to violate the conditions of the scheme which a Court of

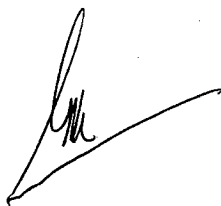
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law cannot do. Therefore the prayer that vacancy position may be enlarged cannot be granted at this stage. Further the applicants in OA 125/11 had on an earlier occasion approached this Tribunal in OA 691/09 inter-alia challenging the rejection of their applications. It was possible for them to raise the contention that the number of vacancies already notified are less in number in which event the question could have been considered in the said OA. At that time, only the notification was issued but the examination was yet to be conducted. Therefore, he cannot now come with a new contention after declaration of the examination. For the above reason the prayer for enlargement of vacancy position is declined.

7. In the result as already held by this Tribunal, respondents 5 to 8 do not satisfy the requisite number of five years service in the region and hence they are dis entitled to be included in the select list and be removed from the select list and rank list shall be revised determining the respective position of the applicants and make appointments depending upon their ranks.

8. OAs are **partly allowed** as above. No costs.

Dated, the 3rd July, 2012.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS