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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ERNAKULAM

O.A.NOS. 1005/2001 AND 250/2002

THURSDAY.....THIS THE 29th DAY OF APRIL, 2004

CORAM

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

OA 1005/01:

R.Venkitaraman,
Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation
Bhavishyanidhi Bhavan,
Pattom, Thiruvananthapuram.

....Applicant

(By Advocate Mr. Vinod Chandran)

v.

1. Central Board of Trustees Employees' Provident Funds, Bhavishyanidhi Bhavan, 14, Bikaji Cama Place, New Delhi-110 066 represented by its Secretary.
2. The Central Provident Fund Commissioner, Employees Provident Fund Organisation, Bhavishyanidhi Bhavan, 14, Bikaji Cama Place, New Delhi-110 066.
3. The Regional Provident Fund Organisation, Bhavishyanidhi Bhavan, Pattom, Thiruvananthapuram.
4. Shri Chandramouli Chakraborty, Assistant PF Commissioner, EPF Organisation, Head Office, Bhavishyanidhi Bhavan, 14, Bhikaji Cama place, New Delhi.110 066.

....Respondents

(By Advocate Mr.N.N.Sugunapalan (for R.1to3)

OA 250/02:

1. N.Satheesan,
Assistant Provident Fund Comm issioner,
Employees' Provident Fund Organisation
Bhavishyanidhi Bhavan,
Pattom,
Thiruvananthapuram.

2. V.R.Subr
Assistant Commissioner
Employee Fund Organisation
Bhavishyanidhi Bhavan, Pattom,
Thiruvananthapuram.Applicants

(By Advocate Mr.K.Vinod Chandran)
V.

1. Central Board of Trustees Employees' Provident Funds, Bhavishyanidhi Bhavan, 14, Bikaji Cama Place, New Delhi-110 066 represented by its Secretary.
2. The Central Provident Fund Commissioner, Employees Provident Fund Organisation Bhavishyanidhi Bhavan, 14, Bikaji Cama Place New Delhi-110 066.
3. The Regional Provident Fund Organisation, Bhavishyanidhi Bhavan, Pattom, Thiruvananthapuram-695004.
4. Shri Narayana Kamma,
Assistant PF Comissioner,
EPF Organisation,
Sub Regional Office, Shyamsundar
Theatre Complex, No.12.
Lokranjan Mahal Road, Mysore.10.
5. Smt.Abraham Kavitha,
Assistant PF Commissioner
EPF Organisation,
Regional Office,
Bhavishyanidhi Bhavan,
20, Royapettah High Road,
Chennai.14.Respondents

(By Advocate Mr.N.N.Sugunapalan (for R 1 to 3)

These applications having been heard on 29.1.2004, the Tribunal on 29.4.2004 delivered the following:

O R D E R

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

The issue involved in both these cases being identical these two cases were jointly heard and are being disposed of by this common order. The historical backdrop and factual matrix being closely interlinked to avoid

repetition the material facts and the averments in both these applications are conjointly stated as hereunder.

2. Shri R.Venkataraman, the applicant in OA 1005/01 and Shri N.Satheesan and Shri V.R.Subramnian the applicants in OA 250/02 are working as Assistant Provident Fund Commissioners (APFCs for short) in the Employees Provident Fund Organisation. The applicant in OA 1005/01 was promoted as APFC on 8.12.93 on adhoc basis and has been continuing in the post without interruption. Shri Satheesan and Shri V.R.Subramanian, the applicants in OA 250/02 were promoted to the post of APFC on adhoc basis on 20.10.94 and 22.10.94 respectively and were continuing so without interruption. However, the promotions of these applicants were regularised only by order dated 27.9.99 (A1). The applicant in OA 1005/01 was regularised against vacancies existing in 1993-94 and applicants in OA 250/02 were regularised against the vacancies of the year 1994-95. No seniority list of APFCs was circulated and issued earlier. In the year 2000 a draft seniority list of APFCs was circulated vide letter dated 14.01.2000 (A2). The applicant in OA 1005/01 was placed at Sl.No.117 and the applicants in OA 250/02 were placed at Sl.No.139 and 131 respectively. It was mentioned in Annexure.A2 seniority list that the seniority of officers upto Sl.No.100 stood finalised vide order dated 5/7.4.1999 but no draft seniority list of officers upto Sl.No.100 was ever circulated and notified to the applicants for the reason that the applicants' appointment as APFCs have not been regularised by then. Although the applicants in these

cases were continuously officiating as APFCs from the year 1993-94 onwards and have been regularised by Annexure.1 order against the vacancies of 1993-94 and 1994-95 the official respondents placed the direct recruits appointed after the appointments of the applicants on adhoc basis enbloc upto Sl.No.100 above the applicants which according to the applicants is contrary to the seniority rules called "The Employees Provident Fund Staff (Fixation of Seniority) Regulation 1989" which provide that if sufficient number of departmental promotees or direct recruits are not available such vacancies have to be carried forward to subsequent years and should be filled up with candidates actually available. The benefit of bunching in seniority was given to direct recruits probably on the ground that no regularised departmental promotees were available on the date of finalisation of seniority list. The applicants submitted representations seeking placement in the seniority list at appropriate places since they have been regularised against the vacancies of 1993-94 and 1994-95 and have been officiating as Assistant Provident Fund Commissioners from 1993-94 onwards and were subsequently regularised without any interruption in service. These representations did not receive any response. According to the circular issued by the second respondent ^{on} 23.5.2001 the seniority of the officers are to be regularised reckoning yearwise vacancies. But finding that the exercise was restricted only upto the level of Section Officers, the applicants have filed these applications for a direction to the respondents to revise the seniority list of Assistant Provident Fund Commissioners

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in respect of the candidates appointed/promoted from 1993-94 onwards based on the guidelines in EPF Staff (Fixation of Seniority) Regulations, 1989 and for a direction to the second respondent to grant the applicants seniority in the cadre of APFCs with effect from the dates of their appointment namely 8.12.1993 in the case of the applicant in OA 1005/01 and 20.10.94 and 22.10.94 in the case of the applicants in OA 250/02 and not to carry out any promotion to the cadre of Regional Provident Commissioner Grade II till the revision of seniority list in the cadre of Assistant Provident Fund Commissioner is carried out in accordance with law.

3. The applicant in OA 1005/01 has impleaded one Shri Chandamouli Chakaborthy, Assistant Provident Fund Commissioner as Respondent No.4 and the applicants in OA 250/02 have impleaded Shri Narayana Kamma and Smt. Abraham Kavitha, Assistant Provident Fund Commissioners directly recruited as Respondents 4&5. The 4th respondent in OA 1005/01 and Respondents 4&5 in OA 250/02 though served with notice did not appear to contest.

4. The official respondents 1 to 3 in OA 1005/01 have filed a reply statement and the applicant had filed a rejoinder. However the official respondents in OA 250/02 did not file any reply statement. At the time of hearing the learned counsel for official respondents submitted that the contentions in both the cases being similar arguments would be advanced on the basis of the pleadings in OA 1005/01.

5. The material contentions in the reply statement filed by Respondents 1 to 3 in OA 1005/01 are as follows. The exercise of filling up of vacancies of APFCs against DR and DP (Direct Recruitment and Departmental Promotion) quota to the extent available was taken up by the Organisation from time to time as per rules. The vacancies upto 1992-93 against DP quota were filled up based on the recommendation of the Departmental Promotion Committee. Pursuant to the decision of the Bangalore Bench of the CAT in OA 544/94 a review DPC was convened giving the applicant Shri Sampathkumar promotion against the quota for the year 1992-93. The organisation sent a requisition to the UPSC in February, 1992 for selecting and providing suitable candidates for appointment to 33 posts of APFCs against DR quota. These vacancies pertain to the year 1990-91. The UPSC on 25.2.1994 forwarded a list of 33 candidates selected through open advertisement recommending their appointment to the post of APFCs. The list included the name of 4th respondent in OA 1005/01. These persons joined in the department as APFCs between 6.7.94 and 10.4.95. Shri Chandramouli Chakraborty joined on 24.8.94. Thereafter, 170 APFCs were further appointed by direct recruitment in two batches. The applicants were appointed as APFCs on adhoc basis as alleged in the applications. The DPC meeting for making promotion at regular intervals could not be held owing to administrative reasons, firstly because UPSC had sent back the proposal once and secondly because amendment to the Recruitment Rules were contemplated. Since at the

time of finalisation of Annexure.A2 seniority list the applicants in these cases were not regularised the seniority of the direct recruits who were placed upto Sl.No.100 in the seniority list were settled. The applicants in these cases and others similarly situated were considered by the Departmental Promotion Committee convened on 23rd and 24th of September, 1999 and they were appointed as APFCs on regular basis with effect from 24.9.1999 the applicant was regularised against 93-94 vacancies. The applicant has been given seniority in the APFC cadre from the date of regular appointment to the post and as per rules he is not entitled to seniority for his adhoc service as the adhoc appointment was made against direct recruitment vacancies as a stop gap arrangement. It is not correct to say that draft seniority list was not issued. Seniority list of APFCs were issued on 1.1.1993 and subsequently. Since, Annexure.A2 seniority list has been finalised in terms of the directions contained in the judgment of the Hyderabad Bench of the Central Administrative Tribunal in OA 635/95, the impugned seniority list cannot be further revised. Since the applicant has been given seniority from the date of his regular appointment the application which is devoid of merit is liable to be dismissed.

6. The applicant in OA 1005/01 in his rejoinder has stated that the decision of the Tribunal in OA 544/94 or OA 635/95 have absolutely no bearing to the issues involved in his case and that as the applicant has been continuously officiating from 1993 onwards and has been subsequently

regularised against vacancies of the year 1993 he is entitled to be placed above the direct recruits who joined later in terms of the regulation regarding seniority.

7. We have carefully gone through the pleadings and have heard the arguments of Shri Vinod Chandran, the learned counsel for the applicants and Shri N.N.Sugunapalan, the learned counsel for the Employees Provident Fund Organisation. Shri Vinod Chandran, the learned counsel of the applicants taking us through the averment in OA 1005/01 as also OA 250/02 and the reply statement filed in OA 1005/01 stated that the applicant in OA 1005/01 was promoted on adhoc basis as Assistant Provident Fund Commissioner with effect from 8.12.93 when he was eligible for such promotion and the two applicants in OA 250/02 were similarly promoted on adhoc basis with effect from 20.10.94 and 22.10.94 respectively; that by order dated 27.9.99 (A.1) their promotions have been regularized, the promotion of the applicant in OA 1005/01 against 93-94 vacancy and that of the applicants in OA 250/02 against 94-95 vacancies and this is the admitted position because these averments have not been disputed. He further pointed out that Directly Recruited Assistant Provident Fund Commissioners including Chandramouli Chakroborthy placed at Sl.No.29 in the Seniority List having been appointed after the applicant in OA 1005/01 was promoted on adhoc basis and as the said applicant has been regularised as Assistant Provident Fund Commissioner against vacancy of the year 1993-94 he is entitled to be treated senior to Chandramouli Chakroborthy

and for placement in the seniority above Chandramouli Chakraborty. He added that the applicants in OA 250/02 Shri Satheesan and Shri Subramanian having been promoted on adhoc basis with effect from 20.10.94 and 22.10.94 being eligible for such appointment by promotion and having had continuously officiated till their promotions were regularised by Annexure. Al order against the vacancies of the year 1994-95 they should have been placed in the seniority list above the respondents 4 and 5 who were appointed long after the promotion of the applicants on adhoc basis. In support of this argument, the learned counsel relied on the observations of the Constitution Bench of the Hon'ble Supreme Court of India in Direct Recruit Class II Engineering Officers Association and others v. State of Maharashtra and others, AIR 1990 SC 1607 paragraph 44 of which reads as follows:

"To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

7. The learned counsel argued that the adhoc promotion of the applicants in these cases in the year 1993 and 1994 having been made though not following the procedure

prescribed in the rules against vacancies in the promotion quota and as the applicants have continued uninterruptedly till they are regularised in accordance with rules, the applicants are entitled to count their service from the dates of their adhoc service in terms of the principle laid down in Clause B in paragraph 44 of the judgment of the Apex Court.

8. The learned counsel of the official respondents Shri NN Sugunapalan on the other hand argued that the promotion of the applicants on adhoc basis were not against vacancy in their quota but only in exigencies of service against direct recruitment quota and therefore irrespective of number of years of service they have had on adhoc basis the case is covered by the corollary to Clause A in paragraph 44 of the judgment of the Apex Court in Direct Recruit Class II Engg.Officers Association case (supra). The learned counsel of the official respondents relied on Annexures.R(6)(a) to (d) orders which show that the promotion of the applicants in these cases were made as stop-gap arrangements against direct recruitment vacancies. If really the promotion of these applicants on adhoc basis were made against direct recruitment vacancies and not in their quota for promotion then as argued by the learned counsel of the respondents the corollary mentioned in Clause A would apply. But is it true to say that the promotion of the applicants were really made as stop gap arrangements in excess of their quota for promotion and against direct recruitment vacancies? A careful analysis of the facts and the circumstances of the

case would show that although it was stated in Annexures.R(6)(a) to (d) orders that promotion of the applicants in these two cases on adhoc basis as Assistant Provident Fund Commissioners made during the years 1993 and 1994 were against direct recruitment quota as stop gap arrangements it was really not so and that the promotions were made against Departmental Promotion Quota vacancies. We have reached this conclusion because it is evident from the order dated 27.9.99 (A1) that the applicant in OA 1005/01 was regularly promoted as Assistant Provident Fund Commissioner against a vacancy of the year 1993-94 and the applicants in OA 250/02 were promoted against the vacancies of the year 1994-95 in their quota. The applicant in OA 1005/01 was promoted on adhoc basis on 8.12.1993. Since his promotion has been regularised against a vacancy of 1993-94 it is obvious that in December, 1993 there was a vacancy in promotion quota to promote him. In the reply statement the respondents had stated that vacancies in the D.P.quota upto 1992-93 had been filled. Obviously the vacancies of 1993-94 in D.P. Quota had not been filled. So also the applicants in OA 250/02 were promoted on adhoc basis on 20.10.94 and 22.10.94. Their promotions have been regularised against D.P.Quota of 1994-95. Obviously there had been vacancies in the quota for promotion when they were promoted on adhoc basis. The only reason to contend that they were not regularly promoted in 1993 and 1994 is that D.P.C. had not met before they were promoted. Even though they were promoted without being considered by D.P.C. since they have continued without interruption till regularisation in the

post of APFC in accordance with the directions in the Direct Recruit Class II Engineers case they are entitled to count their service with effect from the date of their adhoc promotion.

9. The learned counsel of the respondents with considerable vehemence argued that since the promotion of the applicants had not been regularised till the time when the seniority of Sl.Nos. upto 100 in the Annexure.A2 seniority list were finalised, the applicants have been rightly given seniority from the date of their regular promotion in terms of the Employees Provident Fund Staff (Fixation of seniority) Regulation, 1989 (Annexure.A3). Regulation 5 of Employees Provident Fund Staff (Fixation of Seniority) Regulation, 1989 read as follows:

5. Relative Seniority of direct recruits, promottes against examination quota and promotees against seniority quota.

The relative seniority of direct recruits, promtees against examination quota and promotees against seniority quota shall be determined according to the rotation of vacancies among them, which shall be based on the quotas of vacancies reserved for each in the Recruitment Rules.

Provided that if adequate number of direct recruits, promotees against examination quota or promotees against seniority quota do not become available in any particular year, rotation of quotas would take place only to the extent of the availability of direct recruits, promotees against examination quotas and promotees against seniority quota. To the extent the rotation of quotas is not possible, the direct recruits, promotees against examination quota and promotees against seniority quota, as the case may be, will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority as per rotation of quotas. The unfilled post, in any of the categories would, however, be carried forward

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and added to the vacancies of corresponding quota of the next year (and to subsequent years where necessary). Additional recruits selected against such additional vacancies as are carried forward from the previous year shall be placed enbloc below the last persons directly recruited or as the case may be, promoted against seniority quota or examination quota in the seniority list based on the rotation of vacancies for the year in which such selection is made." (emphasis added)

10. Therefore, in this case since the applicants had been promoted in the year 1993 and 1994 on adhoc basis against the vacancies available in their quota for promotion and were regularised subsequently without interruption, the applicants should be deemed to have been regularly promoted with effect from the dates of their promotion on adhoc basis and their adhoc service counted for seniority. Therefore, while preparing the seniority List (Annexure.A2) the official respondents were duty bound to give the applicants proper placement in the seniority list in their turn according to the EPF Staff (Fixation of Seniority) Regulation (A3). Even though the recruitment to the vacancies of the year 1991-92 were in the process and the recruitment could be made only after the appointment of the applicants the vacancies should have been carried forward to the subsequent year and the direct recruits should have been given seniority only with effect from the date they were appointed as direct recruits. There is no provision either in the Recruitment Rule or in the Regulations to reserve a berth for the direct recruits to be appointed in future on the other hand the Regulation provides for carrying forward of the vacancies to subsequent recruitment years. The applicants in these cases having been entitled to reckon

their service for the purpose of seniority with effect from the date of their commencement of continuous officiation on adhoc basis the action on the part of the respondents in placing even those recruited and appointed ^{even} in the year 1998 enbloc above the applicants is wholly unjustified and opposed to the provisions of the EPF Staff (Fixation of Seniority) Regulation as also the dictum of the Apex Court in Direct Recruit Class II Engg.Officers Association's case (supra). When the applicant in OA 1005/01 was promoted direct recruits including Chandramouli Chakraborty were not available. Similarly when the applicants in OA 250/02 were promoted initially on adhoc basis respondents 4 and 5 in that case were not available for appointment. Therefore, according to the above quoted provisions in the Regulation they could have been placed only below the applicants in seniority.

11. The contention of the respondents that the applicants were regularly promoted only in the year 1999 as DPC could not be held till then on account of administrative reason and therefore, the applicants would be treated as regular promotees only prospectively is wholly unjustified. As there had been vacancies in the promotion quota in the year 1993-94 and there being no case that the applicants were not eligible for promotion at that time, the mere inaction on the part of the respondents which resulted in not holding the DPC meetings at regular intervals should not be allowed to jeopardize the promotional chances of the

applicants. That there has been a direction in the judgment of the Bangalore Bench of C.A.T. in OA 544/94 to hold a review DPC and that there had been a proposal to amend the Recruitment Rules were not at all valid reason for putting off the convening of the DPC meetings for consideration of the applicants for promotion as Assistant Provident Fund Commissioners against the promotion quota despite availability of the vacancies in the years 1993 and 1994. ^{and 1995} The fact that the Seniority List Annexure.A2 has been finalised in terms of the direction contained in the judgment of the Hyderabad Bench of the Central Administrative Tribunal in OA 635/95 has also no force because the judgment in that case and the direction contained therein had no bearing in the promotion and fixation of seniority of the applicants.

12. In the result, in the light of what is stated above, we find that the applicants in these two cases are entitled to succeed.

13 OA 1005/01 is allowed. The second respondent is directed to revise the seniority list of Assistant Provident Fund Commissioners in respect of candidates appointed/promoted from 1993-94 onwards based on the guidelines contained in Employees Provident Fund Staff (Fixation of Seniority) Regulations, 1989 and the guidelines contained in the HQ circular dated 23.5.01, and to grant the applicant seniority in the cadre of Assistant Provident Fund

Commissioner with effect from 8.12.93. We also direct the official respondents to consider the applicant for further promotion on the basis of his placement in the revised seniority list. The direction should be complied with in four months from this date.

14. OA 250/02 is allowed setting aside the Annexures.A2 Seniority List and Annexure.A4 to the extent seniority given to the applicants only with effect from the year 1999. We direct the second respondent to revise the seniority list of Assistant Provident Fund Commissioners appointed from 1993-94 in accordance with the guidelines contained in Employees Provident Fund Staff (Fixation of Seniority) Regulations, 1989 and guidelines contained in the HQ circular dated 23.5.01 and to grant the applicants seniority in the cadre of Assistant Provident Fund Commissioners with effect from the respective dates of promotion namely 20.10.94 and 22.10.94. We also direct the respondents to consider the applicants for further promotion on the basis of their placement in the revised seniority list. The above direction shall be complied with in four months from this date. No costs.

Dated the 29th day of April, 2004

Sd/-

H.P. DAS
ADMINISTRATIVE MEMBER

Sd/-

A.V. HARIDASAN
VICE CHAIRMAN

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