

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NOs. 281/2005 & 341/2005

TUESDAY, THIS THE 28th DAY OF FEBRUARY, 2006

COURT

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

O.A. NO. 281/05

- 1 Meena Ch. Andrasekhara Rao
LDC, Employees Provident fund
Sub Regional Office
Cochin-682017
- 2 S. Raja Lakshmi
LDC, Employees Provident Fund
Sub Regional Office
Cochin-682017
- 3 Anik Kumar Gaglekar
LDC, Employees Provident Fund
Sub Regional Office
Cochin-682017
- 4 S. Mini
LDC, Employees Provident Fund
Sub Regional Office
Cochin-682017

By Advocate Mr. Vellayani SundaraRaju

Vs.

- 1 Union of India represented by
the Secretary to Government
Ministry of Labour
New Delhi.
- 2 Central Board of Trustees of
Employees Provident Fund Organisation
represented by Regional Provident Fund
Commissioner (HRD)
14 Bhikaji Cama Place,
New Delhi-66
- 3 The Central Provident Fund Commissioner
Employees Provident Fund Organisation
Bhikaji Cama Place,
New Delhi.

4 The Regional Provident Fund Commissioner (I)
 Employees Provident Fund Organisation
 Regional Office, Kerala,
 Thiruvananthapuram-695 004

Respondents

:By advocate Mr. George Joseph, ACGSC

O.A. No. 341/2005

1 V. Retnakaran
 LDC, Employees Provident Fund
 Sub Regional Office
 Kannur

2 Janardhanan P.V
 LDC, Employees Provident Fund
 Sub Regional Office
 Kannur

3 K. Rajanish
 LDC, Employees Provident Fund
 Sub Regional Office
 Kannur

4 Jose Mathew
 LDC, Employees Provident Fund
 Sub Regional Office
 Kannur

5 P. Vinod
 LDC, Employees Provident Fund
 Sub Regional Office
 Kannur

6 C.M. Balakrishnan
 LDC, Employees Provident Fund
 Sub Regional Office
 Kannur.

Applicants

By Advocate Mr. Vellayani SundaraRaju

Vs

1 Union of India represented by
 the Secretary to Government
 Ministry of Labour
 New Delhi.

2 Central Board of Trustees of
 Employees Provident Fund Organisation
 represented by Regional Provident Fund
 Commissioner (HRD)
 14 Bhikaji Cama Place,
 New Delhi-66

3 The Central Provident Fund Commissioner
 Employees Provident Fund Organisation

Bhikaji Cama Place,
New Delhi.

4 The Regional Provident Fund Commissioner (I)
Employees Provident Fund Organisation
Regional Office, Kerala,
Thiruvananthapuram-695 004

Respondents

:By advocate Mr. George Joseph, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

Since the facts and the prayers of the applicants in both the OAs are identical, they are being heard together and disposed of by this common order.

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2 The applicants 1 to 3 are inter-departmentally transferred LDCs and the fourth applicant is an inter-regionally transferred candidate. At the time of their transfer the 3rd and 4th applicants were holding the post of UDC on passing departmental examination. The 4th applicant passed the departmental examination in 1991 and got promoted as UDC in 1993. On transfer to Kerala Region her pay was protected and posted as LDC with the assurance that she would be promoted to the post of UDC immediately.

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3 The applicants 2 & 4 were promoted as UDC on 17.11.1997 on passing the departmental examination for promotion in the examination quota. They were subsequently transferred inter-regionally to Kerala Region to the post of LDC. The 5th applicant passed the departmental examination in 1997. Before getting promotion as UDC he was transferred from Mysore Sub Regional office to Kerala Region.

4 The applicants are LDCs working under the 4th respondent. They are eligible and entitled to get promotion to the post of UDC. As per

Annexure A1 Recruitment Rules to the post of UDC, 50% vacancies are to be filled up by seniority rejecting the unfit and 50% through passing a departmental examination. There are 460 sanctioned posts of UDC under 4th respondent. In January 1999, Departmental Examination was held for promotion to examination quota vacancies which were available under 4th respondent and were reported by him to the competent authority. There were altogether 27 Exam Quota vacancies available under 4th respondent in 1999. All the applicants appeared for the examination and passed. But the 4th respondent has illegally and deliberately not promoted the applicants. Even in 1999 October, 46 vacancies allegedly arose on sanctioning of 10% vacancies of UDC to be upgraded as Assistants. Still no one from the rank list was promoted as UDC. The seniority list of UDCs published by 4th respondent shows 32 carry forward back long vacancies of UDC available in the exam quota. The 4th respondent is duty bound to maintain the prescribed quota meant under seniority as well as examination. In January, 2004 the 2nd respondent introduced a new category as SSA with the same pay scale like that of the UDC thereby reducing the promotional chances of LDCs like the applicants. Further without converting the entire LDCs as SSAs without any pre-condition, the respondents decided to conduct a skill test for LDCs for conversion to SSAs. No exemption was given to LDCs who have already passed the departmental examination for promotion as UDC, but not granted promotion on extraneous reasons. All the UDCs working under the 4th respondent were converted as SSA without any test. The applicants were to be promoted as UDCs prior to the issuance of the Recruitment Rules for SSA. The applicants seniority has to be fixed after promoting them as UDC and subsequently converting them as SSAs to meet the ends of

justice. The applicants have filed these OAs seeking the following directions:

- (a) to direct the 4th respondent to promote the applicants in any of the 27 carry forward back log vacancies of 1999, meant for the examination Quota candidates in the cadre of UDC strictly adhering to the quota rule mentioned in Annexure A5 and in accordance with the guide lines of Annexures A6 and A7 and to convert the applicant as SSAs and fix their seniority in that grade as per rules.
- (b) To declare that the applicants are eligible to get promotions to UDCs prior to the issuance of Annexure A-9 and none granting of promotions to the applicants as UDCs by 4th respondent against the examination quota vacancies in 1999 or immediately thereafter after publishing of Annexure A-4 is highly illegal and untenable and hence directed him to promote the applicants as UDCs by ascertaining the year wise vacancies.
- © To direct the 2nd and 3rd respondents to grant exemption to the applicants and similarly situated candidates who secured ranks in the departmental examination for promotions to UDCs from passing the proposed skill test for conversion of LDCs to SSAs.
- (d) To direct the 4th respondent to fill up all the 32 shortage of Examination quota vacancies in the UDC cadre as seen from Annexure A-13 series before converting the LDCs as SSAS and fix their seniority as per rules.
- (e) to issue any other further order or direction this Hon'ble Tribunal may deem fit on the facts and circumstances of the case.

5 The respondents have filed reply statements in which they have submitted that the departmental examination for promotion to the post of UDC was held in January, 1999 against carried forward vacancies of 20 SC and 13 ST and for drawing up of a panel of general candidates for future vacancies in General quota. The departmental examination for promotion to the post of UDC is only a qualifying examination. Twentyfive general category candidates including the applicants were declared successful in the examination. An earlier examination was also conducted in March, 1997 in which 32 general category candidates and 2 SC

candidates were declared successful. The General quota candidates who figured in the panel were given ad hoc promotion against the vacancies reserved for SC/ST and short term vacancies due to administrative exigencies and they were given regular promotions as and when regular vacancies arose. Out of the 25 candidates qualified in 1999 Examination the first three candidates were also given adhoc promotion against the vacancies reserved for SC/ST and short term vacancies due to administrative exigencies and they were given regular promotions as and when regular vacancies arose. Out of the 25 candidates qualified in 1999 examination, the first 3 candidates were given adhoc promotion on 12.11.1999 against the carry forward reserved vacancies of SC/ST. The UDC Examination was again held in January, 2000 and October, 2000 for SC/ST candidates only. Four SC candidates were qualified in the examination conducted in January, 2000 and 5 SC candidates were declared successful in the examination held in October, 2000. They were accommodated against the reserved vacancies. Hence no vacancies were available for promotion of the remaining 22 General Candidates on panel. In the meantime new cadre of Social Security Assistant (SSA) has come into existence w.e.f. 3.1.2004 in place of UDC cadre with the notification of Recruitment Rules for SSAs and the cadre of UDC has become non-existent. The officials who were holding the post of UDC were redesignated as SSA. The Recruitment Rules for SSA provide for 85% direct recruitment and 15% promotion from amongst the LDCs with 5 years regular service in the grade who have passed Matriculation or equivalent and have passed Computer skill test of 5000 key depressions per hour. In relaxation of the Recruitment Rules all existing LDCs including those having less than 5 year service were given chance to appear in the computer skill test for their absorption in the cadre of SSA as a one time

measure. All LDCs except the applicants appeared in the skill test conducted on 28.9.05 and 133 out of 149 LDCs were declared successful and were converted as SSAs w.e.f. 28.10.2005. The applicants having failed to attend the skill test disqualified themselves for being promoted to SSA. Hence the respondents have sought for dismissal of the OAs.

6 The crucial issues arising for consideration are (i) whether any vacancy existed under the 4th respondent in the year 1999 in the cadre of UDC under the examination quota to be filled by candidates like the applicants (ii) whether the applicants are eligible to be promoted as UDC in the examination quota in 1999 and (iii) whether the adhoc promotions granted to fill up the 34 examination quota in the cadre of UDC were from the list of examination passed candidates of the years 1997 and 1999 as contended by the respondents.

7 We have heard the learned counsel for both the parties extensively and have also perused the Rosters produced by the respondents and the judgments relied on by the applicants and argument notes submitted by both sides. In the light of the above materials and pleadings we proceed to examine the case of the applicants.

8 As regards the point No.(i) the case of the applicants is that there existed 34 vacancies in the year 1999 exclusively under the examination quota and according to the respondents they are only meant for reserved categories - SC -21 and ST -13 and general candidates like the applicants have no claim over these vacancies. The applicants have also disputed that these vacancies were backlog vacancies relying on the decision in Indira Sawhney's case(AIR 1993 SC 477) reservation in favour of SC, ST

and OBC is fixed at 50% and for the purpose of applying reservation, 50% should be taken on the basis of a unit and not the entire strength of the cadre. According to them only 31% of vacancies have been filled from the examination quota on 1.1.1997 to 1.7.1997 in which 5 vacancies were meant for SCs and 2 were meant for STs and the shortage is only two from SCs and one from ST. We have examined the position with reference to the post based Roster produced by the respondents according to which the sanctioned strength of UDC as on 2.7.1997 was 460 and as per the 50:50 quota allotted to seniority and examination quotas 230 is the sanctioned strength under the examination quota out of which 203 were in position as on 2.7.1997. For the shortage of 27 posts there was excess of 14 under General category and shortage of 26 under the SC quota and 15 under ST quota. The sanctioned strength of SCs being 34 and ST 17 the numbers in position were 8 and 2 only. This shortage has continued as on 31.3.98 and 31.3.99. The first examination was conducted in March, 1997 in which 32 general candidates and 2 ST candidates were declared successful. Against this, according to the Roster there were only 27 vacancies and all these vacancies were under SC and ST quota. The respondents issued Annexures A-22 and A-23 series orders giving adhoc promotion to 17 candidates in that list including 2 STs on 10.11.1997, to 8 candidates and on 9.2.1998 and another 8 candidates on 19.2.98 thereby covering all those who had passed the examination held in March, 1997. As on 31.3.1998 the number of vacancies had gone upto 43. Therefore it can be seen that the respondents have utilised all the 217 vacancies as on 31.3.1997 and also some of the vacancies which arose next year upto 31.3.1998 for giving adhoc promotions to 1997 examination passed candidates. The departmental examination for promotion was held again in January, 1999. It is stated that it was conducted against carry forward

vacancies of 20 SCs and 13 STs for drawing up a panel of general candidates against the future vacancies in the general quota. It has been seen from the Roster as on 31.3.1999 that there was shortage of 28 SC and 16 ST candidates. The figures furnished by the respondents are in variance with the Roster. The total vacant posts of 46 as reported in the Roster does not take into account the position that adhoc promotion had been made. If the adhoc promotions as set out had been taken into account the vacancies remaining are only 13 and these are all reserved vacancies. Hence there was no need to conduct any examination in January, 1999 especially for filling up the shortfall as there was no vacancy in general category as on that date. In the examination, 25 general category candidates including the applicants were declared successful. Out of the 25 qualified in 1999 examination the first 3 candidates were given adhoc promotion on 12.11.1999. Obviously, all these adhoc promotions have been given against the carry forward reservation vacancies of SC and ST. The abstracts drawn up in the post based Roster produced by the respondents would make the above position very clear and is extracted below:

Abstract as on 31.3.1998

	<i>General</i>	<i>SC</i>	<i>ST</i>	<i>Total</i>
Sanctioned strength	187	35	18	240
In position	188	7	2	197
Excess/Short	1	(-28)	(-16)	(-43)

Abstract as on 31.3.1999

<i>Sanctioned Strength</i>	<i>187</i>	<i>35</i>	<i>18</i>	<i>240</i>
In position	185	7	2	194
Excess/Short	(-2)	(-28)	(-16)	(-46)

Abstract as on 31.3.2000

<i>Sanctioned strength</i>	<i>187</i>	<i>35</i>	<i>18</i>	<i>240</i>
In position	184	7	2	193
Excess /Short	(-3)	(-28)	(-16)	(-47)

Abstract as on 31.3.2001

<i>Sanctioned strength</i>	<i>187</i>	<i>35</i>	<i>18</i>	<i>240</i>
In position	183	5	2	190
Excess/Short	(-4)	(-30)	(-16)	(-50)

Abstract as on 31.3.2002

<i>Sanctioned strength</i>	<i>187</i>	<i>35</i>	<i>18</i>	<i>240</i>
position	176	5	2	183
Excess/Short	(-11)	(-30)	(-16)	(-57)

Abstract as on 31.3.2003

<i>Sanctioned strength</i>	<i>187</i>	<i>35</i>	<i>18</i>	<i>240</i>
In position	195	21	3	219
Excess/Short	(+8)	-14	(-15)	(-21)

Abstract as on 31.3.2004

<i>Sanctioned strength</i>	<i>187</i>	<i>35</i>	<i>18</i>	<i>240</i>
In position	179	21	2	202
Excess/Short	(-8)	-14	(-16)	(-38)

9 Therefore our answer to the first point raised is that as on 31.3.1999 there were 13 actual vacancies in the examination quota of which only two were available for general candidates and the rest of the vacancies were occupied by adhoc appointees. We do not find any relevance for the

arguments advanced by the applicants that the rule of 50% ceiling in favour of SC/ST candidates should not be applied to the entire strength of the cadre as in these case there is no such contention that reservation has exceeded 50%. In the post based Roster the points for SC and STs are allotted with reference to the reservation points earmarked for them and the shortage is calculated against the number taking the cadre of UDC as a whole. For this purpose we have examined the Roster pertaining to seniority quota also to assess whether there was an over all excess taking cadre as a whole. We do not find that there is any excess in the reserved category in the seniority quota. Therefore the shortages are found to have been carried forward from the earlier years 1997 onwards and it is only in the year 2003 after recruitment for the years 2000 and 2002 were conducted exclusively for reserved quota candidates that this shortage has been somewhat rectified.

10 Regarding point No. 2, the applicant relied on the declaration of the examination results of the year 1999 and they have argued that that is sufficient proof of their eligibility. The Departmental examination for promotion to the post of UDC is a qualifying examination. It is true that the applicants were successful in the examinations. These were successful candidates who had passed the examination in March 1997 and SC candidates who passed in January, 2000. Mere passing the examination does not confer on them any legal right for appointment. Appointments can be only made against vacancies. As observed earlier, going strictly by the vacancy position there was no need for the respondents to conduct examination in 1999 for general candidates for the vacancies which were back log vacancies of SCs and STs. It is the settled legal position that those who have passed in the earlier examination will be enblock senior to

those who have passed in later years and it is also supported by judgments referred by the applicants themselves in 1991(1)KLT 337 and 1981 KLT 458. Both the above judgments affirm the ratio that it is the occurrence of the vacancies which is relevant for determining the reservation. Since the vacancies in question were finally meant for SCs and STs general candidates like the applicants who have qualified in the examination are not automatically entitled to these vacancies. The DOPT's instructions on the above points are also very clear that generally vacancies reserved for SC and ST falling under promotion quota have to be filled up by those categories only. However, in DOPT OM No.AV/14017/30/81-Estt. RR dated 10.7.90, it has been clarified that where separate quotas for promotion and direct recruitment are prescribed in the Recruitment Rules, back log vacancies which cannot be filled due to non-availability of reserved persons belonging to SC and ST in the feeder cadre may be automatically diverted to direct recruitment quota and in subsequent years when reserved vacancies in direct recruitment become available they may be diverted to direct recruitment quota and to make up for the earlier diversions. In the instant case, there is no direct recruitment under the Rules and only promotion is provided by selection and by examination. Therefore these instructions can not be made applicable in this case. Hence as admitted by the applicants themselves, in the absence of eligible SCs and STs to fill up the posts in the promotion quota, the only alternative to be resorted to was de-reserving the vacancies complying with the prescribed procedures for the purpose and then filling up those vacancies with qualified general candidates and carrying forward the reservation to the subsequent years. The respondents however have not resorted to the procedure of de-reserving the vacancies. So to the point whether the applicants became eligible to these vacancies, our

answer is in the negative.

11 The third point raised for our consideration is whether the adhoc promotion made by the respondents were from the 1997 and 1999 examinations. We find from the Annexure A-23 series that the adhoc promotions made are from the 1997 examination passed candidates and the adhoc promotion made in Annexure A-24 dated 12.11.1999 are from the first three candidates of the 1999 examination passed list. The applicants have contended that promotions have been granted from the seniority list of 1999 as could be seen from the list furnished along with the affidavit by the respondents. The list consists of both seniority quota and examination quota - 4 promotions in Seniority quota and 12 in Examination quota. The names shown under Sl. No. 4 to 12 are candidates who appeared in the subsequent examination and passed under the SC quota and therefore they are not figuring in the 1997 or 1999 list. Hence we reject the argument of the applicants that these adhoc promotions were made from the seniority quota against the vacancies for Examination quota.

12 The above being the factual position of the case, the actual grievance of the applicants has arisen due to the action taken by the respondents in regularising the adhoc appointments made due to administrative exigency w.e.f. 22.3.2005 as a one time measure regardless of category-wise vacancy position. According to the respondents this action has been taken on account of the changed scenario resulting from the notification of the new recruitment rules forming a new cadre of Social Security Assistant in place of the UDC cadre w.e.f. 3.1.2004. According to the new Recruitment Rules all the existing UDCs

were re-designated as SSAs w.e.f. the date of notification of the Recruitment Rules. The posts of SSAs were to be filled up, 85% by open competition examination and 15% by promotion from among the LDCs with five years regular experience in the grade and who have passed SSLC and pass the skill test of at least 5000 words key depression per hour. The applicants who are aggrieved by the creation of this new cadre, are now seeking conversion to the post of SSA in relaxation of the Recruitment Rules on the ground that they have already passed the Departmental Examination for promotion to the post of UDC. With the promulgation of the above rules the action of the respondents in regularising the adhoc appointment of UDCs as a one time measure irrespective of the category of the vacancies has given rise to the demand by the present applicants that they have been discriminated against. As has already been pointed out the adhoc appointments made by the respondents from the examination passed candidates of 1997 and the three candidates of 1999 were clearly against the reserved vacancies. As long as they remained adhoc appointments they could be justified in terms of administrative exigency. But their conversion into regular appointments irrespective of category-wise reservation without following the de-reservation procedure was certainly not in accordance with the rules. By granting them the benefit of regularisation they have also been given the double benefit of automatically being re-designated as SSA w.e.f. 3.1.2004. This has really given rise to the grievance of the applicants that they should also have been given promotion in similar manner as there were vacancies under reservation quota during the period from 1999 to 2004 against which they could also have been accommodated. We find that there is some force in this contention on the ground of discrimination and invidious distinction. The abstract of the Roster as reproduced above

will indicate that as on 31.3.1999 after adjusting the examination passed candidates of 1997 and the 3 candidates of 1999 list, there were still 10 vacancies - one vacancy was added in the year 2000, another 3 in 2001 and 7 in 2002. Even after regularisation and adjustments in 2003 as on 31.3.2004 immediately after the new Recruitment Rules of 2003 there were 21 vacancies as on 31.3.2003 and 28 vacancies as on 31.3.2004 of which 8 vacancies were for general candidates. After adjusting 3 candidates from the 1999 list there remained only 22 candidates who could be accommodated against the back log vacancies. We are aware that this is not strictly in conformity with the instructions relating to filling up of SC and ST vacancies on promotion. But the special circumstances of this case viz. i) that this cadre of UDCs have become non-existent from the year 2004 onwards and a new cadre of SSA has come into force and ii) that the respondents themselves have granted the benefit to some of the candidates, it would be justified to consider the remaining candidates also for a one time regularisation. The back log vacancies of SC/ST had remained instead of efforts made by the respondents every year to conduct the examination and none from these categories qualified and all those SC candidates who did qualify in 1997, 2000 and 2001 have been appointed. Hence there could not be any grievance for the reserved category candidates that the vacancies meant for them have been utilised for the general category. More over such an action would also set right the grievance of those who have passed the examination and have been waiting for promotion and finding that only some among them would get conversion into the new post of SSA while others have to compete for a meagre 15% quota by undergoing skill test. The respondents also having taken a decision to regularise the adhoc appointment once and for all without taking into account the category of reservation it would be only

appropriate to extend the benefits to all similarly placed employees.

13 In the result, considering the special circumstances that the cadre of UDC in this Department is a vanishing cadre and the one time measure adopted by the Department to regularise all the adhoc promotions, we are inclined to allow the prayer of the applicants for considering them against the backlog of vacancies in the UDC cadre during the period 31.3.1998 to 31.3.2004 and to extend to them the same benefits of regularisation them against these vacancies irrespective of the category of the vacancies. Accordingly we direct the respondents to determine the year-wise vacancies during the period and to consider the applicants according to their seniority as at Annexure A-4 and promote them as UDCs against those vacancies in the examination quota and to give them all consequential benefits. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. The OA is allowed as above. No costs.

Dated 28.2.2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

Kmn