

Date of order: 12.11.1999

OA No.140/94

1. Mangal Chand Verma S/o Shri Suraj Mal holding the post of UDC in the office of Regional Provident Fund Commissioner, Jaipur.
2. Om Prakash Bairwa Son of Shri Ram Narain, at present holding the post of UDC in the office of Regional Provident Fund Commissioner, Jaipur.

.. Applicants

Versus

1. Secretary, Central Board of Trustees, Employees Provident Fund, New Delhi.
2. Central Provident Fund Commissioner, 9th Floor, Mayur Bhawan, Cannaught Circus, New Delhi.
3. Regional Provident Fund Commissioner, Jyoti Nagar, Jaipur
4. Shri Gulab Chand, Head Cleark, Sub-Regional Office, Malick House, Kota.
5. Shri Pramash Samtani, Head Clerk, Sub-Regional office, Kota.
6. Shri J.N.Daulani, Head Clerk through Asstt. Provident Fund Commissioner, Kota.
7. Shri Y.D.Sharma, Head Clerk, through Asstt. Provident Fund Commissioner, Kota.
8. Shri D.P.Mathur, Head Clerk through Asstt. Provident Fund Commissioner, Udaipur.
9. Shri Pawan Kumar Sharma, Head Clerk through Asstt. Provident Fund Commissioner, Udaipur.

.. Respondents

Mr. Shiv Kumar, Proxy of Mr. J.K.Kaushik, counsel for the applicants  
Mr. Gaurav Jain, Proxy of Mr.N.K.Jain, counsel for the respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed that the impugned order dated

12.5.1993 (Ann.A1) ordering the promotion of respondents Nos. 4 and 5 and the order dated 10.9.1993 (Ann.A2) regarding conduct of fresh examination may be declared illegal and quashed. The respondents may be further directed to promote the applicants to the vacant post of Head Clerk from the date the unqualified persons (respondents Nos. 4 and 5) were promoted and the applicant be allowed all consequential benefits.

2. The case in a nutshell is that the applicants were declared successful in the examination for promotion to the post of Head Clerk vide order dated 25.11.1991 (Ann.A5). The applicants Nos. 1 and 2 obtained rank No.5 and 4 respectively. As per the policy letter dated 19.12.1989 issued by the Central Provident Fund Commissioner (Ann.A6) w.e.f. 9.12.1989, the provision regarding promotions against examination quota as per para 4(ii) stood as under:

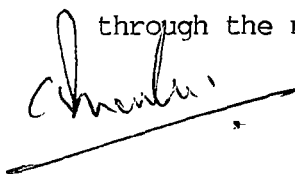
"Promotions against Examination Quota:

The inter-se seniority of the persons promoted to various grades on the basis of the departmental examination limited to the employees of the Board shall be determined by the order of merit/rank assigned to them in the said examination, the persons qualified in an earlier examination being seniors to those qualified in subsequent examination."

The contention of the applicants is that in view of the above mentioned clear-cut provision, the respondents could not have ignored them for promotion and instead promoted vide order dated 12.5.1993 (Ann.A1) S/Shri Gulab Chand and Prakash Santani, respondents Nos. 4 and 5, to the post of Section Supervisor which has since been re-designated as Head Clerk, on purely temporary and ad hoc basis against examination quota. The respondents could also not have decided to conduct a fresh examination as per order dated 10.9.1993 without first promoting those who had been already declared successful in the promotion examination on 25.11.1991, such action on the part of respondents were illegal, arbitrary and violative of Article 14 of the Constitution of India.

3. The respondents in their brief reply have only stated that they had already promoted both the applicants on the post of Head Clerk vide order dated 5.10.1994 (Ann.R1) and they would be provided all the benefits which they were entitled as per rules.

4. We have heard the learned counsel for the parties and have gone through the records of the case carefully.

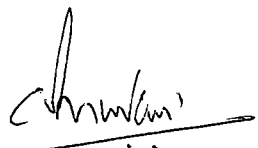


18

5. We do not find any explanation at all in the reply of the respondents as to why they have promoted the applicants on 5.10.1994 when they had cleared the promotion examination on 25.11.1991. Not only that, the respondents, in the meantime vide the impugned order dated 12.5.1993 (Ann.A1), promoted on purely temporary and ad hoc basis respondents Nos. 4 and 5 against the examination quota. This action of the respondents does not appear to be in tune with their policy circular dated 19.12.1989 (Ann.A6) which lays down that "persons qualified in an earlier examination will be senior to those qualified in subsequent examinations".

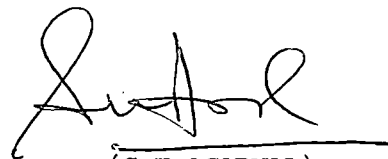
6. We, therefore, direct the respondents to reconsider the issue of date from which the applicants should be given promotion to the post of Head Clerk keeping in view the availability of vacancies between 25.11.1991 when the applicants were declared successful in the departmental examination for promotion to the post of Head Clerk and 5.10.1994 when orders were issued for their promotion (Ann.R1) and if such vacancies were available, give them promotions from whichever earliest date(s) are available with all consequential benefits.

7. The application is accordingly disposed of with no order as to costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member