

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 20th day of May, 2011

ORIGINAL APPLICATION NO. 18/2008
WITH
MISC. APPLICATIONS NOS. 333/2010 & 137/2011

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

R.N. Saraswat son of Shri Jwala Prasad aged about 54 years, resident of 26, Arjun Nagar, Near Bhagat Pan Bhandar Wali Ki Gali, Jaipur and presently working as Enforcement Officer/Assistant Accounts Officer, Office of Employees Provident Fund Organisation, Regional Office, Rajasthan, Jaipur.

.....Applicant

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Labour, Shram Shakti Bhawan, New Delhi.
2. Central Provident Fund Commissioner, Employees Provident Fund Organisation, Bhavishya Nidhi Bhawan, 14, Bhikha Ji, Cama Palace, New Delhi.
3. Regional Provident Fund Commission, Rajasthan Regional Office, Employees Provident Fund Organisation, Nidhi Bhawan, Jyoti Nagar, Jaipur.

.....Respondents

(By Advocate: Mr. D.C. Sharma)

ORDER (ORAL)

By way of present OA, the applicant asked for the following reliefs:-

- "(i) That the respondents may be directed to give promotion to the applicant to the cadre of Assistant Provident Fund Commissioner scale Rs.8000-13500/- after completion of 7 years regular service on the post of Enforcement Officer/Assistant Accounts Officer i.e. 1996 with due benefits and seniority by following rule of 3% reservation to physically handicapped persons as made applicable in the case of applicant in



lower cadres by regularizing services of the applicant to the post of Enforcement Officer/Assistant Accounts Officer w.e.f. 24.07.1989 against reservation point available to Handicapped quota.

- (ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iii) That the cost of this application may be awarded."

2. Brief facts of the case are that the applicant is the substantive employee of the respondent department and was initially appointed as LDC vide letter dated 31.07.1973 and was promoted as UDC vide order dated 25.08.1976 and was further promoted to the post of Head-Clerk in the scale of Rs.425-700/-on ad hoc basis vide order dated 23.07.1986 (Annexure A/3).

3. The applicant is having 40% disability due to left leg since appointment. A certificate dated 18.08.2008 (Annexure A/4) issued by the SMS Hospital is placed on record.

4. Government of India considered reservation for the physically handicapped persons against the posts filled by promotion and to this effect Issued OM dated 20.11.1989 (Annexure A/5) providing 3% reservation i.e. 1% each for the category of visually handicapped, hearing handicapped and orthopaedically handicapped and applicant comes under orthopaedically handicapped as per certificate issued by the SMS Hospital.

5. The respondents' department issued recruitment rules in the year 1990 and prior to the circulation of the aforesaid rules, 3 years



service is required for promotion to the post of Enforcement Officer/ Assistant Accounts officer and respondents department after considering the instructions issued by the Government of India through Department of Personnel & Training issued orders vide letter dated 04.04.1991 (Annexure A/8) for implementation of reservation for the physically handicapped persons in the posts filled up by promotion.

6. The applicant while holding the post of Head clerk on ad hoc basis in the year 1986 was further considered for regular promotion and on the recommendation of Departmental Promotion Committee allowed regular promotion to the post of Head Clerk w.e.f. 04.03.1990 vide order dated 30.07.1992 instead of 1986 and the respondents also not considered promotion to the post of Head Clerk under reservation quota for handicapped persons inspite of fact that applicant is entitled for regular promotion prior to 1986.

7. The respondents department further considered the candidature of the applicant for promotion to the post of Enforcement Officer/Assistant Accounts officer on ad hoc basis and allowed promotion in the scale of Rs.1640-2900 vide order dated 29.11.1996 but respondents never considered the candidature of the applicant against reservation for physically handicapped persons against posts filled by promotion for which respondents department further circulate OM dated 24.07.1998 vide letter dated 11.11.1998 (Annexure A/10).

8. The services of the applicant were further regularized w.e.f. 03.05.2002 in the scale of Rs.5500-9000 to the post of Enforcement



Officer/ Assistant Accounts Officer against the vacancy for the year 2001-2002 ignoring the fact that the applicant is entitled to the post after completion of 3 years regular service i.e. in the year 1989.

9. Government of India vide OM dated 18.02.1997 laid down the procedure to be followed for reservation for the physical handicapped in cases of promotion and as per procedure separate register of 100 points has been prescribed and point No. 33, 67 and 100 will be reserved for physically handicapped and these points further modified to 1, 34 and 67 vide OM dated 04.07.1997.

10. As when the case of the applicant was not considered by the respondents, the applicant approach this Tribunal by filing OA No. 226/2005 and this Tribunal vide order dated 18.05.2005 disposed of the OA with the direction to the respondents to pass reasoned and speaking order within a period of three months on the representation and same has been rejected vide order dated 16.05.2005 prior to disposal of the OA.

11. The applicant against rejection of the request further approached this Hon'ble Tribunal by filing OA No. 84/2006 and during the pendency of the OA, the applicant further represented before respondent no. 3 vide request dated 8.1.2007 and thereafter respondent no. 3 passed the order dated 11.07.2007 by treating the applicant as regular promotee to the post of Head Clerk with effect from 24.07.1986 against seniority quota under point no. 1 of physically handicapped quota. Due to the changed circumstances and



by passing order dated 11.07.2007 (Annexure A/1), applicant withdraw OA vide order dated 20.08.2007.

12. As regards the controversy regarding applicability of 3% reservation to handicapped persons to the cadre of Group 'A' and 'B' has been resolved vide OM dated 18.02.1997 and further by the Delhi High court in the case of Union of India through General Manager, Northern Railway vs. Jag Mohan Singh decided on 07.12.2007 (Annexure A/27).

13. The present OA has been preferred by the applicant as the respondents have not provided promotion under 3% quota inspite of the fact that applicant is having 40% disability and rules also provide for promotion against reserve quota. The respondents, however, provide promotion to the post of Head Clerk with effect from 24.07.1986 against point No. 1 for physically handicapped persons. Thus the applicant prayed that he may be considered for promotion to the post of Assistant Provident Fund Commission in the scale of Rs.8000-13500/- as he had completed 7 years regular service on the post of Enforcement Officer/Assistant Accounts Officer i.e. with effect from 1986.

14. Having considered the rival submission of the respective parties and upon careful perusal of the provisions of handicapped persons filled through physically handicapped persons in Group 'A' and 'B' posts, looking to the circulars and OM issued by the Department from time to time and as the applicant had completed 7 years regular service on the post of Enforcement Officer since 1986 we are of the



view that the applicant is entitled for consideration for his further promotion to the post of Assistant Provident Fund Commission by following rule of 3% reservation to physically handicapped persons. Accordingly, in the facts & circumstances of the case, we deemed it proper to direct the respondents to consider the case of the applicant as he had completed 7 years service on the post of Enforcement Officer/Assistant Accounts Officer and providing him due benefit and seniority by following 3% reservation which is applicable in the case of the applicant.

15. With these observations, the OA stands disposed of with no order as to costs.

16. In view of disposal of the OA, there is no need to pass any order in the MA Nos. 333/2010 and 137/2011, which are also accordingly disposed of.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)
AHQ

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)