

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.24/97

Date of order: 24/3/2000

S.K.Bhargava, Asstt.P.F.Commissioner, Bhavishya Niichi Bhawan, Town Centre, CIDCO, New Aurangabad-431 003.

...Applicant.

Vs.

1. Central Provident Fund Commissioner, 25, Business Park, Shivaji Marg, Nizafgarh Road, New Delhi-110 015.
2. Union of India, through Secretary, Ministry of Labour, Shram Shakti Bhawan, New Delhi.
3. Union Public Service Commission, Shahjahan Road, New Delhi.
4. Shri T.C.Jain, R.P.F.C-II
5. Shri A.K.Jain, R.P.F.C-II
6. Shri A.M.C.Pasha, R.P.F.C-II
7. R.Subhash, APFC
8. Shri C.E.Varma, APFC
9. Shri S.R.Gupta, APFC
10. Shri V.G.Divaharan, RPFC-II
11. Shri M.S.Raghvendra, RPFC-II
12. Shri S.Deb, RPFC-II
13. Shri T.N.Adiga, APFC
14. Shri K.Rajgopalan, APFC
15. Shri K.C.Roy, APFC

S.No.4 to 15 through the Central Provident Fund Commissioner, 25, Business Park, Shivaji Marg, New Delhi.

...Respondents.

Mr.P.N.Jati - Counsel for the applicant

Mr.N.K.Jain - Counsel for respondents.

CORAM:

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

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

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

This O.A has come up before this Tribunal for disposal by way of transfer from Bombay Bench of the Tribunal.

2. In this O.A under Sec.19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs:

- (a) a direction from this Hon'ble Tribunal to the respondents to workout consideration zones for the vacancies of Assistant Provident Fund Commissioner(Gr.I) from the year 1982 onwards and to hold a Review DPC for the year 1983 and 1986 and further to retrospectively promote the applicant as APFC(Gr.I);
- (b) to direct the respondents to recast the seniority list of

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APFC(Gr.I) from the year 1983 placing the applicant in proper place;

(c) to direct promotion of applicant as Regional Provident Fund Commissioner (Gr.II) as per recast seniority.

3. In brief facts of the case as stated by the applicant was that he was initially appointed as Provident Fund Inspector Gr.I after selection by the Union Public Service Commission in September 1979. Thereafter he was promoted on ad hoc basis as Assistant Provident Fund Commissioner Gr.I w.e.f. 14.1.85. The applicant remained suspended w.e.f. 2.3.87 to 30.4.89 and he was again suspended from 19.1.90 to 23.1.90. A departmental enquiry was initiated against the applicant and ultimately he was exonerated vide order dated 30.6.94. It is stated that the applicant was eligible for promotion as Asstt. Provident Fund Commissioner Gr.I after completion of 3 years service and thereby he was eligible for promotion as per the provisions of Employees' Provident Fund Organisation (Commissioners) Recruitment Rules, 1966. It is further stated that the applicant filed representations but the same were not replied. The applicant had not earned any adverse entry and there were vacancies to be filled in for the period 1981 to 1986 but the department did not fill-up the vacancies. It is also stated that O.A No.300/88 was filed by one Shri A.S.Ishi and in pursuance of the order passed in that O.A, a review DPC was held but only 58 vacancies were filled-up against 60 vacancies and the department had furnished wrong and irrelevant record with a view to deprive certain officers from promotion. It is also stated that the applicant was promoted on the post of Asstt. Provident Fund Commissioner Gr.I on regular basis w.e.f. 29.1.91 vide order dated 19.8.94 whereas the applicant was due for regular promotion against the vacancies of 1984. It is also stated that Shri A.K.Jain, who was junior to the applicant was considered for promotion against the vacancies of the year 1986 who was also promoted as Regional Provident Fund Commissioner-Gr.II on regular basis vide order dated 16.2.95. The applicant also filed representation dated 24.4.95 which was replied by the respondents vide letter dated 5.9.95. The applicant has, therefore, requested that a review DPC be held for considering his promotion on the post of Asstt. Commissioner Provident Fund Gr.I for the year 1984, 1986 and 1989 after taking into consideration the total vacancies for the years 1983 to 1989 and to promote the applicant and pass order accordingly with all consequential benefits.

4. Reply was filed. It is stated in the reply that the applicant did not come in the zone of consideration against

vacancies of 1983 as per his seniority when the DPC met on 6.6.84. It is also stated that the DPC again met on 21/22.8.86 for filling up the vacancies of the year 1983-84, the applicant was considered for promotion to the post of Asstt. Provident Fund Commissioner Gr.I but the DPC did not consider the applicant as better graded officers from feeder cadre were available. A review DPC was again held on 8.7.94 and the said DPC also considered the name of the applicant for promotion but did not recommend the applicant. Another DPC was held in June 1989 but at that time the applicant was subjected to departmental proceedings, therefore, sealed cover procedure was adopted and on exoneration of the charges, the sealed cover was opened and found that the DPC did not recommend the applicant for promotion. Again DPC was held on 14.1.91 but the applicant was subjected to departmental proceedings, therefore, sealed cover procedure was adopted and on exoneration in the year 1994, the sealed cover was opened and the applicant found to have been recommended for promotion on the post of Asstt. Provident Fund Commissioner Gr.I and accordingly he was promoted w.e.f. 29.1.91. In this way, it is stated, that the applicant was always considered by the DPC when the applicant has come within the zone of consideration. It is stated that all the vacancies available with the respondents between the year 1981 to 1986 were reported to the UPSC and the UPSC convened DPC and recommended suitable panel for promotion. It is also stated that all the relevant records were furnished to the DPC and there is no flaw in convening the meeting of the DPC. Moreover, the findings of the DPC are not subject to judicial review, therefore, this O.A having no merits is liable to be dismissed.

4. Rejoinder was also filed, reiterating the fact stated in the O.A which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. According to the applicant, mainly the grievance of the applicant has been that he was eligible for regular promotion on the post of Asstt. Provident Fund Commissioner Gr.I against the vacancies for the year 1982 and onwards but he was not considered in the selection held in the year 1982, 1984, 1986 and 1989 and he was only regularised on the post of Asstt. Provident Fund Commissioner Gr.I, w.e.f. 21.1.1991.

7. The post of Asstt. Provident Fund Commissioner Gr.I, is a selection post which is filled-up as per declaration of a duly constituted DPC as per the recruitment rules. In the process of selection so made, the persons of better merit superseded those

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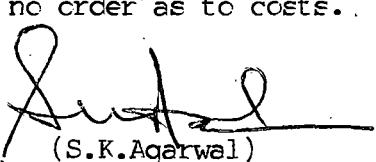
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having less merit among the eligible candidates. On perusal of the pleadings of the parties, it is abundantly clear that the applicant was not considered by the DPC held on 6.6.84 for promotion on the post of Asstt. Provident Fund Commissioner Gr.I against the vacancies of 1983 as the applicant did not come within the zone of consideration. DPC was again held on 21/22.8.86 for filling-up the vacancies of the year 1983 and 1984 but the applicant was not considered by the DPC for promotion as better graded officers were available. DPC was again met in June 1989 for the vacancies of 1985 - 1989 for promotion to the post of Asstt. Provident Fund Commissioner Gr.I but the applicant was subjected to departmental proceedings, therefore the DPC adopted sealed cover procedure. On exonerating, the sealed cover was opened but it was found that the DPC did not recommend the applicant for promotion. DPC again met on 14.1.91 but the departmental enquiry was pending against the applicant, therefore, again sealed cover procedure was adopted and on exoneration in the year 1994, the sealed cover was opened and the applicant was found to have been recommended for promotion to the post of Asstt. Provident Fund Commissioner Gr.I, accordingly, the applicant was promoted w.e.f. 29.1.91 vide order dated 19.8.94. In this way, it becomes abundantly clear that as soon as the applicant has come within the zone of consideration for promotion to the post of Asstt. Provident Fund Commissioner Gr.I, the applicant's case was considered by the DPC as per rules and there was no discrimination against the applicant. Moreover, the findings of the DPC are not subjected to judicial review and no malafide and arbitrariness on the part of the respondents could be established by the applicant. The applicant also failed to establish the fact that on 6.6.1984, when the DPC met to consider the promotion against vacancies of the year 1983, the applicant was within the zone of consideration whereas there is a specific averment of the respondents that on 6.6.84, when the DPC met to consider the promotion on the post of Asstt. Provident Fund Commissioner Gr.I against the vacancies of 1983, the applicant was not within the zone of consideration, therefore, he was not considered. In view of the above action of the respondents to regularise the applicant on the post of Asstt. Provident Fund Commissioner Gr.I w.e.f. 29.1.91 vide order dated 19.8.94 is perfectly legal and in order and this O.A having no merits is liable to be dismissed.

8. We, therefore, dismiss this O.A with no order as to costs.

  
(N.P. Nawani)

Member (A).

  
(S.K. Agarwal)

Member (J).