

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 26.09.2003

OA No.186/2001

P.E.Pamble s/o Shri P.S.Kamble r/o 5, Midhi Nagar, Jyoti Nagar, Jaipur, presently working as Regional Provident Fund Commissioner at Employees Provident Fund Organisation, Jaipur.

.. Applicant

Versus

1. Union of India through the Central Provident Fund Commissioner, Central Board of Trustee, Employees Provident Fund Organisation, Ministry of Labour, Govt. of India, Headquarters, Bhavisya Midhi Bhawan, 14, Bhikaji Kama Palace, New Delhi.
2. The Regional Provident Fund Commissioner, Grade-I, Employees' Provident Fund Organisation, Ministry of Labour, Govt. of India, Headquarters, Bhavisya Midhi Bhawan, 14, Bhikaji Kama Palace, New Delhi.

.. Respondents

None present for the applicant

Mr. N.K.Jain, Counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.T.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN.

The applicant while working as Regional Provident Fund Commissioner was reverted to the post of Assistant Provident Commissioner vide order dated 20.4.2001 (Ann.1). By way of this OA, he has challenged the said order thereby praying that the impugned order dated 20.4.2001

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may kindly be quashed and set-aside so far as it passed an order of reversion against the applicant and at the same time the other order of the same date i.e. 20.4.2001 (Ann.A5) be modified inasmuch as the name of the applicant need be included therein for grant of promotion to the post of Regional Provident Fund Commissioner Grade-II on regular basis, with all consequential benefits.

2. When the matter was listed before this Tribunal on 1.5.2001, an ex-parte stay was granted to the applicant thereby staying the operation of the order dated 20.4.2001 till the next date. As can be seen from the aforesaid order, the stay was granted by this Tribunal on the basis of the contention raised by the counsel for the applicant that the applicant was promoted on ad-hoc basis by the duly constituted Promotion Committee after applying due process of selection and no chargesheet/disciplinary proceedings were initiated against him but even then he was reverted and his juniors stand promoted. The ex-parte stay was continued from time to time and is still operating.

3. The respondents in their reply have stated that the applicant was working as Regional Provident Fund Commission (RPFC) Gr.II on ad-hoc basis w.e.f. 20.11.99. The ad-hoc promotion was ordered on the basis of seniority only and not on the basis of recommendations of the DPC. However, as required under the rules, the case of the applicant alongwith 7 other ad-hoc RPFC Gr.II was considered for promotion to the post of RPFC Gr.II on regular basis by the DPC held on 6.2.2001. It is further stated that the post of RPFC Gr.II is a selection post and

the benchmark is 'good'. The DPC did not find the applicant fit for promotion to the post of EPFC Gr.II. The recommendation of the DPC was accepted by the competent authority. In these circumstances, ad-hoc promotion of the applicant was to be discontinued and he was required to be reverted to his substantive post of Assistant Provident Fund Commissioner. Accordingly, the order, promoting the applicant on the post of EPFC Gr.II, which was on ad-hoc basis, and reverting him to the post of Assistant Provident Fund Commissioner was issued by the Headquarters on 20.4.2001 with the approval of the competent authority. Thus, according to the respondents, the applicant is not entitled to any relief.

4. The applicant has filed rejoinder. The applicant has not controverted the fact that he was promoted as EPFC Gr.II on ad-hoc basis which was based on seniority. However, in the rejoinder what the applicant contended is that in case the applicant was not having the requisite benchmark, which was 'good' and the employee is not promoted on the ground that he was having an average or satisfactory service, then the same is nothing but an adversity or the adverse order against the applicant without giving any show-cause notice or any information to this effect. It is further pleaded that no employee can be denied benefit of promotion on the ground that he was having satisfactory remarks in the APAR if the same is not communicated to the employee. For that purpose, the applicant has relied on the case of Apex Court in UP Jal Nigam and ors. vs. Prabhat Chandra Jain and Ors., 1996 (1) SC SLJ 335.



5. The matter was listed for hearing from time to time and lastly listed on 17.9.2003. On that date, nobody put in appearance on behalf of the applicant. The learned counsel for the respondents insisted that since the stay is operating in the matter, the same be heard at an early date. On the basis of the arguments made by the learned counsel for the respondents, this Tribunal ordered that the matter may be listed for hearing on 24.9.2003. If none appears on behalf of the applicant on the date fixed, the matter will be decided on the basis of the material available on record. When the matter was listed on 24.9.2003, none has put in appearance on behalf of the applicant. However, arguments were addressed by the learned counsel for the respondents.

6. We have heard the submissions made by the learned counsel for the respondents and gone through the material placed on record.

6.1 It is not disputed that the applicant was promoted as RFEC Gr.II on ad-hoc basis purely on the basis of the seniority without holding a DFC. Subsequently, when the DFC was held for recommending the names of suitable persons for promotion to the post of RFEC Gr.II on regular basis, the case of the applicant alongwith other eligible persons was considered by the DFC. Since the applicant was not found fit by the DFC as the applicant has not obtained the requisite benchmark and, therefore, he was not recommended by the DFC for promotion to the said post. The recommendations of the DFC was duly considered by the competent authority and the persons who were recommended for promotion to the said post, were given appointment. As a consequence thereof, the ~~person~~^{applicant} who was not recommended by the DFC for the post of RFEC Gr.II was reverted vide order

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dated 20.4.2001 (Ann.A1). Thus, no infirmity can be found where the applicant was reverted as he was not found suitable for promotion to the said post by the DPC held on 6.2.2001.

6.2 It is legally settled that a person has a right of consideration for promotion to a higher posts but he has no indefeasible right to be promoted on the higher post in case he is not found suitable by the DPC. As already stated above, the case of the applicant was considered for the post of RFPC Gr.II by the DPC but he was not found fit. As such no infirmity can be found in the order dated 20.4.2001 (Ann.A1) whereby the applicant, who was earlier promoted as RFPC Gr.II purely on ad-hoc basis, was reverted to the substantive post of Assistant Provident Fund Commissioner.

6.3 Now let us consider the submissions of the applicant that in case the applicant was not having benchmark which in the instant case was 'good', the entries below such benchmark made in the APARs have to be communicated. We also see no force in this submission.

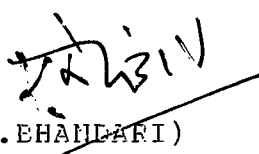
~~The matter is~~ The matter is squarely covered by the decision dated 23.7.2002 of the Full Bench, Mumbai of this Tribunal in the case of Manik Chand vs. Union of India, [2002 (3) ATJ 268] whereby the Full Bench after considering the judgment of the UP Jal Nigam (supra) has specifically held that the entry below benchmark need not be communicated to the official concerned.

7. In view of what has been stated above, the present OA is devoid of merit and is hereby dismissed. The interim stay granted vide order dated 1.5.2001 and


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subsequently continued shall stand vacated. No order as to costs.


(A.F. EHANDARI)

Member (A)


(M.L. CHAUHAN)

Member (J)