

Central Administrative Tribunal
Jabalpur Bench

OA No.381/05

Wednesday this the 14th day of April, 2006.

C O R A M

Hon'ble Mr.M.A.Khan, Vice Chairman

Hon'ble Dr.G.C.Srivastava, Vice Chairman

1. Mrs.Kiran W/o Amit Palawat
2. Ku.Charu Chinchulikar, D/o A.M.Chinchulikar
3. Mrs.Jolly Biju,D/o C.M.George
4. Sharad Namdeo, S/o Shri B.L.Namdeo
5. Amit Khatri, S/o Shri M.S.Khhatri
6. Sri Ram Bhagat, S/o H.L.Bhagat
7. Pankaj Tehenguria, S/o Shri S.R.Tehenguria
8. Ram Narayan Upadhyay, S/o Dwarka Prasad Upadhyay
9. Inderjeet Patel, S/o Shri M.C.Patel
10. Kamlesh Kumar Sinha, S/o Shri Jitendra Kumar Mohanlal
11. Rajesh Garhewal, S/o Shri P.L.Garhewal

(All the applicants are working as LDC in the office of
Provident Fund Commissioner, Divisional Office,
Vijay Nagar, Jabalpur). Applicants

(By advocate Mr.Vishal Dhagat)

Versus

1. The Ministry of Labour
Govt. of India through
Principal Secretary
Headquarters Bhavisya Nidhi Bhawan
14, Bhikaji Cama Place
New Delhi.
2. The Central Board
Employees Provident Fund Organization
Head Office Bhavisya Nidhi Bhawan
14, Bhikaji Cama Place
New Delhi.
3. The Regional Provident Fund Commissioner
7, Race Course Road
Indore.

M. G. S.

4. The Regional Provident Fund Commissioner-II
S.R.O, Vijay Nagar
Jabalpur.

Respondents.

(By advocate Mr. Harshit Patel on behalf
of Shri S.C. Sharma)

ORDER

By M.A. Khan, Vice Chairman

Applicants, 11 in number, have filed the present OA for the following relief:

- (i) Quash the Employees Provident Fund Organization (Social Security Assistant) Recruitment Rules 2003 and order dated 17.3.2005.
- (ii) Quash the order dated 25.2.2004 (A-13) and 15.2.2005 (A-14) as discriminatory, contrary to the rules and arbitrary and 16 of the Constitution of India.

2. The applicants were appointed to the post of LDC on different dates in the Employees Provident Fund Organization (EPFO). Their grievance is that the EPFO constituted a cadre of Social Security Assistant (SSA) and issued Recruitment Rules in respect of that cadre vide Gazette Notification of 2004. The Rules, inter-alia, provided that 85% vacancies of the newly created post of SSA would be filled by direct recruitment by open competitive examination and the rest 15% by promotion through departmental qualifying examination/skill test from the cadre of LDC. All existing UDCs were re-designated as SSA. Those UDCs who were working on adhoc basis were also absorbed in the cadre of SSA. They were not subjected to computer skill test which was necessary for their absorption as per rules. A large number of LDC posts were also abolished to create the post of SSA. The applicants have prayed for grant of aforesaid relief on the ground that the applicants' right for consideration for promotion to the post of SSA has been prejudicially affected by the Recruitment Rules and the conditions of service have been changed to their disadvantage. The post of UDC was declared a dying cadre and the existing UDCs were re-designated as SSA. Before the new Recruitment Rules came into

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force, 100% posts of UDC were filled by promotion from the cadre of LDCs i.e. 50% by departmental competitive examination and 50% by promotion according to seniority of LDCs who had minimum qualifying service of 4 years. As per the new Recruitment Rules and the order of the respondents dated 17.3.2005 only those LDCs who had 5 years regular service to their credit would be able to compete in the departmental examination for appointment to the cadre of SSA. A number of LDCs would be deprived of the opportunity to compete in the departmental examination, as they had not been confirmed or regularized due to administrative lapses. In view of the order dated 17.3.2005, there is no time bound promotion to the cadre of UDC as it was earlier and those LDCs who failed to qualify the skill test would never get promotion. The Rules are also discriminatory since similarly situated persons would be able to compete in the departmental examination but the applicants would be ineligible. Earlier 50% of posts of UDC were filled up by the method of departmental examination but now 15% of the posts would be filled up by the departmental promotion quota because of which even those candidates who qualify the skill test will not be able to get the promotion though they fulfill the requirements of promotion as per the recruitment rules. It is also stated that the order dated 25.2.2004 by which all UDCs were redesignated as SSA and the order date 15.2.2005 whereby adhoc UDCs were appointed as SSA without qualifying the skill test are discriminatory and arbitrary and contrary to the recruitment rules. Granting relaxation to the Recruitment Rules to the existing UDCs was also contrary to the provisions of SSA Rules.

3. Respondents in their counter reply have refuted the claim of the applicants. They have contended that the Employees Provident Fund Organization is a statutory body functioning under the control of Central Board of Trustees, EPF and Ministry of Labour. Its power under Section 7 of the Employees Provident Fund Act is to provide the method of recruitment, salary and allowances, discipline and other conditions of service of officers and staff of EPFO. The post of SSA

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was created to fulfill the future requirement and efficient service of the organization. The modified recruitment rules as approved by the Central Government were notified in the Gazette of India in its edition-dated 3.1.2004. The Central Board of Trustees, EPF in its meeting held on 3.2.204 also granted one time relaxation for the redesignation of the all the persons working in the cadre of UDC as SSA. The Board of Trustees in its meeting on 3.3.2005 also decided that all LDCs including those having less than 5 years of service were eligible to appear in the computer skill test for their absorption in the cadre of Social Security Assistant as one time relaxation. Other allegations have also be been controverted.

4. In the rejoinder, the applicants have re-affirmed their contentions.

5. We have heard the learned counsel for the parties and perused the relevant records.

6. The applicants are under a misconception that the recruitment rules or the service conditions of a service, post or a category of post cannot be altered by the Employees Provident Fund Organization even to the disadvantage of its employees. Of course the benefit which has already been vested in the employees could not be taken away by way of amendment in the service conditions. The EPFO has full power to create posts, lay down method of recruitment, salary and allowances and frame other service conditions as well as discipline Rules by virtue of section 7 of the Employees Provident Fund Act. Faced by this situation, learned counsel for the applicant at the outset fairly submitted that the applicants are not challenging the vires, legality or the validity of the SSA Recruitment Rules. However, they are aggrieved firstly that the creation of the post of SSA and framing of the Rules regulating the conditions of recruitment of the SSA post have a detrimental effect on the chances of LDC in their progression in career. It is submitted that earlier promotion to the post of UDC was 50% by limited departmental examination and remaining 50% by seniority but both from the cadre of LDC. To contra, the new

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recruitment rules for SSA has limited it to 15% by promotion from the cadre of LDC on qualifying skill test. Learned counsel for the applicant further submitted that the applicants are also aggrieved because in relaxation of the rules all UDCs who were in position have been en-block absorbed on the post of SSA without fulfilling the requirement of qualifying the skill test etc. Similarly qualifying skill test has also been dispensed with for the adhoc UDCs who have been absorbed on the post of SSA. On the other hand, LDCs would be required to qualify the skill test.

7. The SSA Recruitment Rules, copy of which has been annexed as A-12 has provided a method of recruitment. Schedule 11 of the Rules reads as under:

“85% direct recruitment by open competitive examination by EPFO through an Agency or Agencies approved by the CBT/Transfer failing which by deputation; 15% by promotion through departmental qualifying examination/skill test.”

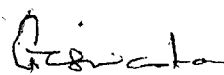
Initial Constitution Clause at Schedule 11 states as follows:

- (i) Persons holding post of UDC on regular basis shall have the option on the commencement of the Rules to switch over to the post of SSA by qualifying a computer skill test conducted by the appointing authority.
- (ii) Those who do not opt for SSA or do not pass the computer skill test shall remain in the cadre of UDC, which has been declared as a dying cadre.
- (iii) The Upper Division Clerks shall on passing the qualifying skill test be placed en-block senior and their inter-se placement shall be fixed in accordance with the date of regular appointment to the respective grade subject to the condition that their inter-se placement shall not be disturbed provided they qualify in skill test within one year from the date of notification of these rules.
- (iv) If any UDC pass skill test after the stipulated period of two years they shall be placed below all those already holding the post of SA on the said date.

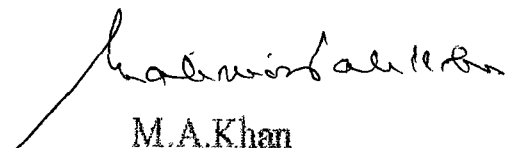
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8. Rule 5 of the SSA Recruitment Rules has empowered the Central Board of the organization to relax any of the provisions of the Rules in respect of a class or category of persons. The Central Board of Trustees of EPF Board has exercised its power under the aforesaid rules and has relaxed the conditions of qualifying computer skill test for appointment of UDC to the post of SSA. Similar relaxation has been accorded in the case of adhoc UDCs. In fact, the Central Board has relaxed the rules in the case of LDCs also and all the LDCs including those who have completed 5 years of service were allowed to appear in the computer skill test for promotion to the post of SSA. These relaxations were granted vide letters dated 25.2.2004, 15.2.2005 & 17.3.2005 which have been filed by the applicant along with the OA as Annexures A-13, A16 and A14 respectively, which in fact the applicant is impugning in the present OA. If the Board of Trustees has granted the relaxation in exercise of its power vested by the Recruitment Rules itself, the relaxation is perfectly legal and cannot be called in question by the LDCs who, in fact, are the beneficiaries of such relaxation. As regards regular UDCs and adhoc UDCs who have been absorbed in SSA cadre, the applicants could hardly have grievance against it. Those UDCs form a separate and distinct class and the EPFO could grant relaxation to them as they thought it appropriate in relaxing power vested in it by the Recruitment Rules wherever has provided the method of recruitment to the newly created SSA posts. Such a course is not open to challenge in view of the provisions of the Recruitment Rules itself.

9. For the reasons stated above, we do not find that the applicants have any case on merit. We accordingly dismiss the OA. Parties to bear their costs.



Dr. G.C. Srivastava
Vice Chairman



M.A. Khan
Vice Chairman

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पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अर्जित:-

- (1) सचिव, उच्च न्यायालय एवं एडवोकेटजन, जबलपुर
- (2) आवेदन सं/विभागी/कु.....के कार्यालय
- (3) प्रत्यक्षी सं/विभागी/कु.....के कार्यालय
- (4) कंधामल, जोगाडा, जबलपुर जिलाधीन
सूचना एवं आवश्यक कार्यवाही हेतु

Vishal Dhegat
DN 238
S.C. Sharma
R. DN 238

FC 8/10
24.4.06

रजिस्ट्रार