

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 20th day of May, 2009

CORAM:

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

ORIGINAL APPLICATION No.317/2008

Trilok Gupta
s/o Shri Babu Lal Gupta,
r/o H.No.410, Sastri Nagar,
Dadabadi, Kota,
presently working as UDC in the
Office of Sub Regional Provident
and Commissioner Grade-II,
Kota.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India through Central Commissioner,
Provident Fund, 14 Bikaji Cama Palace, HUDCO
Vishala, New Delhi.
2. Sub. Regional Provident Fund Commissioner, Grade-
II, Kota.
3. Regional Provident Fund Commissioner, Regional
Office, Jaipur.

... Respondent

(By Advocate: Shri Amit Mathur, proxy counsel for Mr.
R.B.Mathur)

ORIGINAL APPLICATION No.416/2008

Om Prakash Yadav,
 s/o Shri Laxmi Narain Yadav,
 r/o 71-72, Prakash Nagar,
 Near Kardhani, Jothwara, Jaipur,
 at present working as UDC now
 designated as SSA, Office of
 Regional Provident Fund Commissioner,
 Jaipur.

.. Applicant

(By Advocate: Shri Ashok Bansal)

Versus

1. Union of India through Central Provident Fund Commissioner, 14 Bikaji Cama Palace, HUDCO Vishala, New Delhi.
2. Regional Provident Fund Commissioner, Regional Office, Jaipur.

... Respondent

(By Advocate: Shri Amit Mathur, proxy counsel for Mr. R.B.Mathur)

O R D E R

Per M.L.Chauhan, Member (J)

By way of this common order, we propose to dispose of both these OAs as the applicants in both these OAs are aggrieved by the order dated 14.8.2008 (Ann.A/1) whereby consequent upon recommendations of the Review DPC promotion of the applicants and other persons to the post of UDC as made vide office order No.3(3)81/Vol.IV/Adm.I/245 dated 23.5.2007 were withdrawn. The applicants have prayed that this

impugned order dated 14.8.2008 (Ann.A/1) be quashed and set-aside. It may be stated that in OA No.317/2008, this Tribunal vide order dated 22.8.2008 has granted ex-parte stay order thereby staying operation of the impugned order dated 14.8.2008 so far it relates to the applicant, as the applicant approached this Tribunal within a period of eight days whereas no such stay was granted in the case of applicant in OA No.416/2008 who has approached this Tribunal after a lapse of two months after passing of the impugned order.

2. Briefly stated, facts of the case, so far relevant for disposal of these OAs, are that the applicants were initially appointed as Group 'D' employees in the office of respondents. Subsequently, the applicants were promoted on the post of LDC against non-matriculate quota. It is the case of the applicants that vide office order dated 23.5.2007, the applicants were promoted as UDC w.e.f. 31.10.1996 on the basis of the judgment rendered by the Hon'ble Kerala High Court in OP No.8849 of 2003 and pursuant to the directions issued from the Headquarter office vide letter No. HRM-III/1(4) 2000/KR/550 dated 11.4.2007 (Ann.A/5) in OA No.317/08 which promotion order has been withdrawn vide impugned order Ann.A/1. The grievance of the applicants is that once they have been promoted pursuant to the judgment of the High

Court and in view of the Headquarter office order, it was not permissible for the respondents to cancel the said promotion order without even giving show-cause notice or proper opportunity of hearing to the applicants.

3. Notices of these applications were given to the respondents. The respondents have filed reply. In the reply the respondents have categorically stated that the applicants are not entitled to any relief as they were wrongly promoted pursuant to the order No.3(3)81/Vol.IV adm.I/245/454 dated 23.5.2007 (Ann.A5) as the DPC did not consider the minimum qualification for the post of UDC/SSA. It is further stated that as per rules for promotion to the post of UDC/SSA, an employee is required to possess educational qualification of matriculation. The applicants were not matriculate and when the discrepancy came into knowledge, a meeting of the Review DPC was called and conducted on 27.9.2007 and it was found that for promotion to the post of UDC an employee is required to be matriculate. As the applicants and certain other employees were promoted to the post of UDC after coming into force the rules of 1992 and were not matriculate, the DPC recommended reversion of those employees to the post of LDC. The respondents have stated that the recruitment rules known as Employees Provident Fund Organization Upper

Division Clerks Recruitment Rules, 1992 were notified vide notification dated 18.7.1992. As per provisions contained in recruitment and promotion rules for appointment/promotion on the post of UDC, an employee is required to possess minimum qualification of matriculation or equivalent. Copy of the notification dated 18.7.1992 has been placed on record by the respondents as Ann.R/1. It is further stated that subsequently nomenclature of the post of UDC was changed and the same was renamed as Social Security Assistant (SSA). For SSA also rules were framed for promotion from the LDC where the candidate should be matriculate and possess computer skills. Regarding the judgment rendered by the Hon'ble High Court of Kerala in OP No.8849 of 2003 on the basis of which the applicants were initially promoted as UDC, it is stated that it was a case whereby the Central Administrative Tribunal, Ernakulam Bench has held that for appointment to the post of Assistant, no separate qualification is required and direction was issued to treat all the employees drawing special pay in the cadre of UDC at par and no separate qualification is required in the newly created post of Assistant. Copy of the judgment of the Kerala High Court has been placed on record as Ann.R2. Thus, according to the respondents, the applicants cannot draw any assistance from the judgment rendered by the Hon'ble High Court

of Kerala which was rendered in different factual context and the issue involved was also different.

4. The applicants have filed rejoinder thereby reiterating the submissions made in the OA. The applicant has also placed on record copy of the letter dated 11.4.2007 alongwith rejoinder in OA No.317/08. In the rejoinder filed by the applicant in OA No.416/08, it is stated that one Shri Kishan Lal Verma is still working as UDC pursuant to the judgment rendered by the Kerala High Court whereas the applicant has been reverted.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The sole question which requires our consideration is whether the applicants who were earlier promoted vide order dated 23.5.2007 (Ann.A/5), their promotion order could have been withdrawn vide office order dated 14.8.2008 (Ann.A/1) that too without giving any notice? As can be seen from the facts as stated above, the case set out by the applicants is that they were promoted from the post of LDC pursuant to the aforesaid order dated 23.5.2007 on the basis of judgment rendered by the Kerala High Court in OP No.8849 of 2003, as such, impugned order

dated 14.8.2008 could not have been passed. However, the case set up by the respondents in these OAs is that they were wrongly promoted vide order dated 23.5.2007 as they did not fulfill the requisite qualification of being matriculate as per the recruitment and promotion rules meant for the post of UDC, as such, their promotion was de-hors the rules and accordingly vide impugned order dated 14.8.2008 (Ann.A/1) was issued. It was further argued that judgment of the Kerala High Court was given in different factual context as such same could not have been formed basis for granting promotion to the applicants. We see considerable force in the submissions made by the respondents. The respondents have placed on record the recruitment and promotion rules known as Employees Provident Fund Upper Division Clerk Recruitment Rules, 1992 on record as Ann.R/1. As can be seen from Ann.R1, these rules came into force w.e.f. 18.7.1992. Alongwith this notification a Schedule has been appended. Column 12 of the Schedule is in the following terms:-

In the case of promotion/
deputation/transfer, grades from which
promotion/deputation transfer to be made-

- i) 50% by promotion of LDCs serving in the respective Regions/Offices who possess the minimum educational qualification of Matriculation or equivalent and have completed two years of service in the

cadre, on the basis of seniority subject to the rejection of unfit.

- ii) 50% by promotion of LDCs serving in the respective Regions/offices on the result of a departmental examination restricted to the existing LDCs of the respective Regions/offices who possess the minimum educational qualification of Matriculation or equivalent and have completed 2 years of service in the cadre of LDC on the 1st day of the month in which examination is held." (emphasis supplied to underline).

Thus, from the provisions as quoted above which came into effect w.e.f. 18th July, 1992, it is evident that the post of UDC has to be filled 50% by promotion on the basis of seniority and 50% by promotion on the basis of departmental examination and against both these quota only, those LDCs could have been promoted as UDC who possess minimum educational qualification of matriculation or equivalent. Admittedly, the applicants are not matriculate.

7. It may also be stated here that subsequently the post of UDC was re-designated as SSA. The respondents have also placed on record copy of the recruitment and promotion rules for the post of SSA as Ann.R/2. These rules were notified vide notification dated 23rd December, 2003 and has come into force from the date of publication of the rules in the official gazette which was published on January 3, 2004. Against column

12, it has been mentioned that promotion to the post of SSA has to be made- a) from amongst LDCs with 5 years regular service in the grade who have passed matriculation or equivalent examination; and b) have passed computer skill test of at least 5000 key depression per hour. Thus, on the face of these statutory provisions which came into force prior to promotion of the applicants to the post of UDC vide order dated 23.5.2007, can it be said that the applicants who does not possess essential qualification, their promotions are valid ? According to us, the said contention of the applicants cannot be accepted. It is settled position that any appointment made dehors the rules is illegal and no show cause notice is required in such cases while rectifying the mistake.

8. At this stage, it will be useful to notice some of the decisions of the Apex Court on the point in issue. In the case of Kendriya Vidyalaya Sangathan and Ors. vs. Ajay Kumar Das, JT 2002 (4) SC 467, it was held that where the appointment was made in violation of the rules, termination of service without issuing the show-cause notice cannot be said to be illegal as the appointment itself was illegal. That was a case where the advertisement for filling up 12 posts of LDC was issued and subsequently letter of appointment were also issued to the respondents before the Apex Court

by one Dr. K.C.Rakesh and respondents were duly appointed. Subsequently, enquiry was conducted into certain allegations of irregularity regarding recruitment to teaching and non-teaching posts made by Dr. R.C.Rakesh. The enquiry report clearly indicated that there were several irregularities in the matter of recruitment. Accordingly the service of the respondents were terminated. The order of termination was challenged before the Central Administrative Tribunal, Guwahati Bench on the ground that the order of termination has been passed in violation of the principles of natural justice. The Hon'ble High Court dismissed the appeal of the management. The matter was carried to the Apex Court. The Apex Court held that since the respondents were appointed by Dr. K.C.Rakesh after termination of his service, as such, orders are not valid and if such appointments are not valid, the question of principles of natural justice would not arise. Still in another decision which is squarely applicable in the facts and circumstance of this case i.e. Mohd. Sartaj and anr. Vs. State of U.P. and Ors., (2006) 2 SCC 315, the Apex Court has held that cancellation of appointment of the appellants as they were not possessing requisite qualification for appointment is valid, the challenge to cancellation of appointment on the ground of principles of natural justice is not sustainable. The Apex Court held that if a person who does not possess minimum qualification

as prescribed under the rules on the date of recruitment and possessing of the qualification subsequently will not entitle the appellant for appointment. If the ratio as laid down by the Apex Court in the case of Mohd. Sartaj (supra) is viewed in the light of the facts and circumstances of this case, we are of the view that present case cannot be said to be on better footing, inasmuch as, even till date the applicants have not acquired minimum qualification prescribed in the recruitment rules i.e. matriculation whereas in the case of Mohd. Sartaj (supra), the appellants have acquired the educational qualification subsequently but the Apex Court still upheld the termination of the appellants on the ground of not fulfilling the requisite qualification and held that eligibility has to be seen on the date of recruitment and not at later stage. The Apex Court has further held that no prejudice has been caused to the appellant before the order of cancellation was issued and principles of natural justice are not attracted in the facts and circumstances of this case.

In the case of Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and anr. (2007) 10 SCC 260, the Apex Court has held that eligibility has to be seen at the time of issue of notification or as specified in the rules. In para 20 it was held that a person in order to be considered for promotion to a ^{higher} post must possess the essential qualification.

If he does not do so, he cannot be considered therefore. Even the Selection Committee in the absence of any express power conferred upon it cannot relax such essential qualification. If the matter is viewed from the ratio as laid down by the Apex Court, admittedly, when the applicants were promoted vide order dated 23.5.2007, they were not fulfilling the essential qualification of being matriculate or its equivalent so as to become eligible for consideration to the post of UDC. Since promotion of the applicants were made by the DPC de-hors the rules, as such, it was invalid and we see no infirmity in the action of the respondents whereby this invalidity was reviewed vide impugned order dated 14.8.2008 and promotion wrongly granted were withdrawn.

9. Even otherwise also, the applicants have not made out any case on the basis of the judgment rendered by the Kerala High court in OP No.8849 of 2003 and instructions issued by the Head Office of the Employees Provident Fund Organisation, Ministry of Labour, Government of India dated 11.4.2007. The judgment of the Kerala High Court as well the instruction of the Head Office dated 11.4.2007 have been placed on record in OA No.317/2008 which formed basis for promotion of the applicants vide order dated 23.5.2007 (Ann.A5). We have perused the aforesaid judgment of the Kerala High Court. The issue involved

before the Kerala High court was entirely different. That was a case where the respondents before the High Court were already holding the post of UDC in the scale of Rs. 4000-6000 with special pay of Rs. 140/- and these UDCs were non-matric. On the recommendation of the 5th Pay Commission, pay scale of the UDC was revised to that of Rs. 5000-8000 and special pay was abolished. However, it was provided that 10% of the identical posts shall be designated as Assistant. However, the respondents before the High Court even though they were senior as UDC were not granted the scale of Assistant on account of re-designation/upgradation of 10% of the post of UDC as Assistant on the ground that they were non-matriculate UDC. It was in that context and relying upon the decision of the Apex Court in the case of District Registrar vs. M.B.Koyakutty [1979 (1) S.C. 1060] it was held that in the absence of any statutory provisions prescribing qualification for promotion to higher post, such benefit cannot be denied to a person more particularly when there is specific provisions in the rules that promotion has to be accorded with seniority subject to persons fitness for appointment. This is not a case of such nature. Here, the statutory rule for the post of UDC specifically stipulates that only those LDC can be promoted as UDC who possess matriculation or its equivalent qualification.

Further, as can be seen from the order dated 11.4.2007

which has been placed on record by the applicants, it is evident that the UDCs who were applicants before the Central Administrative Tribunal and respondents before the Kerala High Court, were promoted as UDC prior to coming into force the Employees Provident Fund Organisation Upper Division Clerk Recruitment Rules, 1992. As such, there was no statutory requirement prior to 1992 that a person can be promoted as UDC only if he possesses matriculation or its equivalent qualification and even non-matriculate LDCs could have been promoted. Thus, their appointment as UDC was not illegal. Further, from Para-2 of the order dated 11.4.2007, it is evident that they were promoted as UDC prior to the amendment of Employees Provident Fund Staff Condition of Service Regulations, 1992. We fail to understand how the applicants are entitled to the benefit of the judgment rendered by the Kerala High Court in OP No.8849/2003 and Headquarter Office letter dated 11.7.2007. However, the fact remains that the applicants were wrongly promoted relying upon the judgment of the Kerala High Court and instructions dated 11.4.2007 which were not attracted in the case of the applicants while granting promotion vide order dated 23.5.2007 and that too against the statutory rules. Thus, we see no infirmity in the action of the respondents whereby the promotion order in respect of employees including applicants who are non-matric was withdrawn as their promotions to

the post of UDC were illegal and in violation of the statutory provisions, as such invalid.

10. Accordingly, both the OAs are dismissed. The ex-parte interim order granted on 22.8.2008 in OA No.317/2008 and continued from time to time shall stand vacated. No costs.

(B. M. KHATRI)

Admv. Member

(M. L. CHAUHAN)

Judl. Member

R/