

**Central Administrative Tribunal
Principal Bench**

OA No.3623/2011

New Delhi, this the 15th day of May, 2019

**Hon'ble Sh. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

1. Karan Singh,
R/o H.No. 217, Khera Khurd,
Delhi-110082.
2. Rakesh Kumar Singh,
R/o H.No.63, B.N. Enclave,
Sec-29, Faridabad,
Haryana-121008.

...Applicants

(By Advocate : Shri M.K. Bhardwaj)

Versus

1. Union of India,
Through its Secretary,
Ministry of Labour & Employment,
Govt. of India, Shram Shakti Bhawan,
New Delhi.
2. The Central Provident Fund Commissioner,
EPFO, Ministry of Labour & Employment,
Govt. of India, Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi.
3. Sh. R.S. Kameshwaran,
Serving as Assistant
4. Sh. Makhan Lal,
Serving as Assistant
5. Sh. Dharshan Kumar Tanwar,
Serving as Assistant
6. Smt. Kanta Devi,
Serving as Assistant

7. Sh. Rameshwar,
Serving as Assistant
8. Sh. Sohan Lal,
Serving as Assistant
9. Sh. Babu Ram,
Serving as Assistant

(The Respondent No.3 to 9 are served through
Respondent No.2)

10. All India (EPF SC/ST),
Staff Federation

...Respondents

(By Advocate : Ms. Rumi Chandra
Shri S.N. Sharma)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicants were working as Social Security Assistants (for short, SSA) in the Employees Provident Fund Organization (for short, EPFO), 2nd respondent herein, under the Ministry of Labour and Employment, Govt. of India, 1st respondent herein. The cadres in the same office were reorganised in the year 2008, and in the year 2009, the applicants were moved to the post of Assistants. A draft seniority list was published on 20.07.2010 and final seniority list was published on 08.09.2010.

2. Through an order dated 23.08.2011, the respondents effected promotions to the post of Assistant on regular basis, stating to be in terms of OM dated 10.08.2010. In this, the names of the applicants were also included and the seniority, as reflected in the list dated 08.09.2010 was totally disturbed. The applicants challenge the Office Order dated 23.08.2011. It is stated that their movement from the post of SSA to Assistant was in fact, in the process of restructuring, and that no element of selection was involved. It is also stated that when representations were made by various organisations and individuals, stating that the process was one of promotion and accordingly, reservations in favour of SC/ST should have been implemented, a detailed reply was issued by the respondents on 23.06.2011, clearly mentioning that no element of promotion is involved and accordingly, the reservation of SC/ST was not applied, but within two months thereafter, a diametrically opposite view was taken.

3. The official respondents, on the one hand, and the private respondents, on the other, filed separate counter affidavits opposing the OA. According to them, though

restructuring has taken place, the movement of an employee from feeder category to a higher post was by way of promotion, in accordance with rules and reservations in promotion were implemented.

4. The OA was allowed through a detailed judgment dated 22.04.2014. Most of the adjudication and discussion was on the touchstone of the judgment of Hon'ble Supreme Court in ***M.Nagaraj & Others vs Union Of India & Others*** (2006) 8 SCC 212. Some of the contesting respondents filed WP(C) Nos.3359 and 3996/2014 before the Hon'ble Delhi High Court. In its order dated 28.02.2017, the High Court has taken the view that there was no occasion to apply the principle laid down in ***M.Nagraj's*** case (supra), and that the OAs ought to have been decided only on the question, whether the movement of the employees to the post of Assistant was by way of upgradation consequent on restructuring or whether there existed any element of promotion; and accordingly remanded the matter to the Tribunal, for fresh adjudication.

5. After the remand, we heard the arguments of Shri M.K. Bhardwaj, learned counsel for applicant and Ms. Rumi Chandra and Shri S.N. Sharma, learned counsel for respondents, in detail.

6. The applicants were upgraded to the post of Assistant, through order dated 26.12.2008. The issue involved in this OA, in the ultimate analysis, boils down to the one of seniority. The applicants as well as the contesting respondents were promoted to the post of Assistants. In case the reservation is to be followed, the contesting respondents would gain same seniority over the applicant. If on the one hand, reservation in the case of SC/ST is not applied, they have to take their places in the seniority, depending on their place in the feeder category.

7. The establishment in the EPFO at Head Office, before and after restructuring, made in the year 2008, is evident from the following table :

Name of the post	No. of posts before re-structuring	No. of posts after re-structuring
Section Officer	57	86
Assistant	73	147

SSA	166	NIL
UDC	NIL	16
LDC	08	24
Total	304	273

From this, it is evident that there was no post of UDC at all, and highest number of posts existed in SSA before the restructuring. Substantial change made wherein 16 posts of UDC were provided and the entire category of SSA was disbanded. The number of posts of Assistants, which was 73 before restructuring, was doubled. It is not necessary to refer to the other posts.

8. Through order dated 26.12.2008, as many as 138 employees, who were working as SSA were made Assistants. The dispute is as to whether the appointment as Assistants, is by way of upgradation or through promotion. If one goes by the language employed in the Office Order, an impression is gained that it was by promotion. It reads as under :-

“OFFICE ORDER

Consequent on the recommendation of the Department Promotion Committee and on approval by the Competent Authority, the following SSAs are promoted to the post of Assistant on long term regular basis in the pay band of Rs.9300-34800 with Grade Pay Rs.4200.”

9. However, the fact of the matter is that every employee who was holding the post of SSA, was made Assistant.

10. The involvement of DPC is another fact which becomes relevant here and is suggestive of an element of selection, and thereby, of promotion. This very issue became the subject matter of a detailed examination, in the light of the representation made by the officials belonging to SC/ST category. Dealing with the same, a detailed order was passed by the EPFO on 23.06.2011. After referring to the mode of restructuring of the department, the EPFO observed as under :-

“(c) **Regarding Point (ii)**, RPFC (ASD) has stated that in the restructuring of Group B and C cadres in EPFO Head Office, promotions were made in relaxation of all the conditions of recruitment rules and, hence, no selection procedure was followed and the existing incumbents were placed in the higher grade without subjecting them to the rigor of selection. **Therefore, the condition given in point (ii) is also satisfied. Hence, reservation policy is not applicable.**

In addition to that, the issue was directly answered by a reference to the judgment of Hon'ble Supreme Court in ***Bharat Sanchar Nigam Ltd. Vs. R. Santhakumari Velusamy & Ors.*** Civil Appeal No.5286-87 of 2005, and their view was summed up as under :-

“13. In short, the conclusion of this judgment of Hon'ble Supreme Court appears to be that :

(a) the reservation policy for SC/ST has to be applied when :

- (i) it results in creation of additional posts in the most of the cadres covered by the policy.
- (ii) the additional posts are filled up by promotion from amongst eligible and suitable employees and the procedure for making promotion against such additional posts is not different from the one prescribed for normal promotion; and
- (iii) the promotees were burdened with duties and responsibilities of greater importance.

(b) the reservation policy for SC/ST will not be applicable when :

- (i) upgradation of large number of posts was involved;
- (ii) these posts could be filled by the existing incumbents in the higher grade without subjecting them to the process of selection; and
- (iii) the restructuring exercise did not result in creation of new posts/additional posts which could be filled by promotion by following the procedure of selection.

14. In the circumstances explained and analyzed above, it is observed that the cadre restructuring in the EPFO in the three different cadres viz, (1) Group B & C cadres of Head Quarters; (2) Stenographer cadre; and (3) IS cadre (DPA etc.) respectively, fulfilled all the three parameters mentioned at serial no.(i), (ii) and (iii) of para 13(b) above. **Hence, it can be concluded that reservation policy for SC/ST employees is not applicable in any of the aforesaid restructuring done in the EPFO.**

15. Incidentally, it may be mentioned that next date for meeting with the National Commission for Scheduled Castes is fixed as 11.07.2011. It is requested that Ministry may kindly examine the matter further and give suitable direction in the matter to enable this office to finalize the matter and send a final report to the National Commission for Scheduled Castes before the next date.”

11. This view of the EPFO was affirmed by the Ministry of Labour and Employment, through a communication dated 01.07.2011. The relevant portion thereof, reads as under:-

“Subject : Reservation for SC/ST officials in the case of cadre restructuring in Stenographers’ cadres, Group B & C posts in Head Office, IS Division posts etc. – Representation of All India EPF SC/ST Federation before National Commission for Schedules Castes.

Sir,

I am directed to refer to your letter No. HRD/1(2)2011/SC-ST/484 dated 23rd June, 2011 on the above mentioned subject and to state that the report submitted by EPFO in the light of the judgement of the Hon'ble Supreme Court of India has been examined in this Ministry and the same has been found to be in order.

It is therefore, requested that reply on the same line may be sent to the National Commission for Scheduled Castes before the next date of hearing i.e. 11-07-2011 under intimation to this Ministry. It may be pertinent to mention that the Hon'ble Chairman of the Commission had desired the presence of CPFC, EPFO in the last meeting held on 06-06-2011 in his chamber."

12. From the above, it becomes clear that though the Recruitment Rules provided for selection process for appointment to the post of Assistant, the same were relaxed and all the SSAs were en bloc upgraded to or placed in, the post of Assistant. There is nothing on record to disclose that the Selection Committee has undertaken any process of evaluation. We do not, however, propose to say the last word in this behalf. This much, can be said that the EPFO has taken the view, after thorough discussion, that there was no activity of promotion in making all the SSAs as Assistants and the requirement as to the selection, under the Recruitment Rules, was relaxed for this purpose. All this led to a

conclusion by them that the reservation does not apply in view of the judgment of the Hon'ble Supreme Court, referred to above. The Ministry has also conformed with that.

13. Once the highest authority in the Ministry has taken a particular view, any deviation from it can be only on the basis of an exercise recognised in law or in compliance with the directions issued by a Court of Law. Nothing of that sort has taken place, after the Ministry has taken their view in communication dated 01.07.2011. However, months thereafter, the EPFO has issued an Office Order dated 23.08.2011. It reads as under :-

“OFFICE ORDER

The Ministry of Labour & Employment vide their letter No.14014/ 1/2011-SS-I dated 9.8.2011 has directed that reservation roster would be applicable while filling up the posts/vacancies created on restructuring of Group “B” and “C” cadre in the 2008. The Ministry has further directed that the instructions issued by the DOP&T vide O.M. No.36012/45/2005-Estt.(Res.) dated 10th August, 2010 may be strictly followed to adjust SC/ST candidates appointed by promotion on their own

merit and seniority against unreserved points of reservation roster.

2. In pursuance of the above directions, fresh reservation roster was prepared in the cadre of Assistant and the DPC held on 26.12.2008 was reviewed on 16.8.2011.

3. Consequent on the recommendations of the Review Departmental Promotion Committee and on approval by the competent Authority, the following officials are promoted to the post of Assistant on regular basis in the pay band of Rs.9300-34800 with grade pay of Rs.4600.

(Table indicating the particulars of employees)

xxx	xxx	xxx	xxx”
-----	-----	-----	------

14. From this, it becomes clear that no fresh exercise as such was undertaken, except that the candidates already appointed/promoted were readjusted. Reference was made to the OM dated 10.08.2010. A perusal of that OM discloses that it was with reference to the protection of the rights of the SC/ST employees, who got promoted on their own merit. Beyond that, it has no other purpose to serve. The appointments through Office Order dated 23.08.2011, were made on the basis of a review DPC. An exercise to be undertaken by review DPC becomes

tenable only when the one, undertaken by the regular DPC is found fault with by the competent authority. That having not taken place, the very convening of the review DPC was untenable.

15. The second important aspect is that after the appointments were made to the post of Assistant, through an Order dated 26.12.2008, provisional seniority list and thereafter final seniority list were published. That can be changed only through an exercise recognised in law. What is prohibited to be done directly, cannot be permitted to be done indirectly. By issuing the impugned order, the respondents have annulled the final seniority list. That too, after they have taken a clear and definite view that no element of promotion was involved and the appointment as Assistant was only by way of upgradation. Since no exercise recognised by law has ensued to annul that, the process undertaken through the impugned order dated 23.08.2011 cannot be sustained.

16. We are of the view that the communication dated 01.07.2011, by the Ministry shall be treated as the basis.

If the respondents are of the view that any different exercise is to be undertaken, it shall be open to them to do so, in accordance with law. If the exercise becomes permissible, the affected parties need to be put on notice. Further, all the SSAs have been appointed as Assistants, and the only issue would be about seniority. By way of precaution, we also direct that annulment of the impugned order shall not result in any reversion.

16. We, therefore, allow the OA and set aside the impugned order, subject to the observations made in the preceding paragraph. We direct that the same shall not result in reversion of the employees.

There shall be no orders as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

‘rk’