

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/00019/2015

Dated this Monday, the 16th day of September, 2019

**CORAM : R.VIJAYKUMUMAR, MEMBER (A)
R.N.SINGH, MEMBER (J)**

S.Yadagiri, aged 60 yrs.,
Retired as Enforcement Officer,
Holding role of Assistant Provident Fund Commissioner
(Accounts), worked in Office of 341,
Bhavishy Nidhi Bhavan, Bandra (East), Mumbai 400 051,
Residing at M2/B201, Pratiksha Nagar, Sion-Koliwada,
Mumbai 400 022. - Applicant
(By Advocate Ms. Vaishali Agane)

Versus

1. Employees' Provident Fund Organization,
Through the Central Provident Fund Commissioner,
Ministry of Labour and Employment,
Government of India, Head Office,
Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place,
New Delhi 110 066.
2. Additional Central Provident Fund Commissioner
(Maharashtra & Chhattisgarh),
341, Bhavishya Nidhi Bhawan, Bandra (East),
Mumbai 400 051. - Respondents
(By Advocate Shri R.R.Shetty)

ORAL ORDER

Per : R.Vijaykumar, Member (A)

Heard Ms. Vaishali Agane, learned
counsel for the applicant and Shri
R.R.Shetty, learned counsel for the
respondents.

2. This application has been filed on
14.10.2014 under Section 19 of the
Administrative Tribunals Act, 1985 seeking

the following reliefs :-

"8(a). This Hon'ble Tribunal be pleased to grant the pay band 3 in the Pay Scale 15600-39100 GP Rs.5400 assigned to the post of Assistant Provident Fund Commissioner to the Applicant as he worked in the said post for 2 yrs. w.e.f. 25.07.2012 to 30.06.2014;

8(b). This Hon'ble Tribunal be pleased to direct the Respondent to fix the Applicant's pension and other retirement dues on the basis of last drawn payment fixed as per prayer (a) hereinabove.

8(c). Any other order as this Tribunal may deem fit and proper in the facts and circumstances of the case.

8.d). The cost of the application may be directed to pay."

3. The applicant commenced service with the respondents on 16.10.1978 as LDC and superannuated on 30.06.2014. He contends that his juniors were given adhoc promotion as Assistant Provident Fund Commissioner in orders dated 02.07.2009 and he was overlooked since he did not possess the qualification (graduate degree) which he subsequently obtained in November 2011 and reported to respondents for incorporation in his Service Book on 16.01.2012. On acquiring the said qualification and upon reporting the matter and requesting his office for adhoc promotion, the respondents informed him by a letter dated 11.05.2012 (Annexure A-2) that in view of the

information provided by him, he would be considered along with the next batch for regular promotion. However, he contends that this was not done and continuance of adhoc promotion was ordered for the incumbent adhoc promotees on 22.04.2013 (Annexure A-6), whereas he was not promoted although some of the juniors continued in the promoted position on adhoc basis. He filed another representation with the respondents on 12.09.2013 (Annexure A-7) and as the applicant could not get any reply to the representation dated 12.09.2013, he approached this Tribunal by way of OA No.268/2014 and the same was disposed of vide order/judgment dated 05.05.2014 (Annexure A-10) with a direction to the respondents to consider the applicant's representation dated 12.09.2013 and pass a reasoned and speaking order. In compliance of that order of this Tribunal, the respondents passed orders dated 11.06.2014 wherein the respondents rejected the claim of the applicant for regular promotion to the post of Assistant Provident Fund Commissioner on the ground that no juniors

were regularly promoted in the general category although some adhoc promotions has been made before the applicant became eligible for promotion to the post of Assistant Provident Fund Commissioner by acquiring requisite qualifications. While affirming this position, respondents concede in their reply that he was, therefore, eligible to be considered for adhoc promotion against DR quota pending direct recruitment for the vacancy year 2012 since he had not acquired the needed qualification for provision in the previous year by 30.08.2011.

4. However, it is the admitted fact of the parties that even after the applicant acquired a requisite qualification to the post of Assistant Provident Fund Commissioner as reported and recorded on 16.01.2012 and despite being eligible for vacancy year 2012 for adhoc promotion from 30.08.2012, the respondents continued some juniors in the General category to hold the posts of Assistant Provident Fund Commissioner on adhoc basis and did not consider the applicant for such adhoc

promotion on such post although they had informed him of their intentions to do so in 2012. In their reply to rejoinder, they now instead argue that no further adhoc promotions were made, indirectly acknowledging having retained his juniors on adhoc basis in the promoted category. In regard to regular promotion for which the applicant was admittedly found 'FIT' in panel year 2012-2013 (w.e.f. 01.01.2012), the respondents have specifically disputed the fact that any juniors of the applicant in General Category have ever been promoted to the higher post of Assistant Provident Fund Commissioner and that the case of Shri Ravi, an ST category employee, was altogether different.

5. In the circumstances, we are of the considered view that the applicant is not entitled for the arrears of pay in the post of Assistant Provident Fund Commissioner. However, keeping in view the admitted position, the applicant had been ignored for being considered for such post on adhoc basis in spite of registering his requisite qualification on 16.01.2012 and should have

been promoted on adhoc basis in 2012 in the place of his juniors who continued to be in the promoted post on adhoc basis, the action of the respondents is found to be illegal and arbitrary.

6. With regard to the relief sought in Paragraph No.8(a) by the applicant on treating his performance of duties of the Assistant Provident Fund Commissioner for upgradation of the accounts, these orders and performance of duties thereof cannot be said to have been done in consequence of a promotion nor can such entrustment be deemed to be promotions.

7. In the aforesaid facts and circumstances, the respondents are directed to fix the pay of the applicant treating him as having been promoted to the post of Assistant Provident Fund Commissioner with effect from 30.08.2012 on notional basis and after such revision of pay, continue him with entitled increments for 2013 and 2014 until his retirement with effect from 30.06.2014. Based on this revision, the respondents shall also revise the pension of the applicant and pensionary benefits and

disburse the same to the applicant from the date of his superannuation within a period of four months from the date of receipt of a certified copy of this order.

8. In view of the aforesaid, the OA is disposed of without any order as to costs.

(R.N.Singh)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

kmg*

JD
19/9/17

