

K. Pandaiah and ors. Vs. the Central Provident Fund

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Court : Central Administrative Tribunal CAT Hyderabad

Decided On : Feb-18-1999

Judge : R A R., B J Parameshwar

Appellant : K. Pandaiah and ors.

Respondent : The Central Provident Fund

Judgement :

1. None on either side. Head Mr. Siva for Mr. Rama Mohan Rao today i.e.

18.2.99.

2. There are 16 Applicants in this OA. All the Applicants were recruited directly as LDCs except Applicants 2 and 3 who were promoted as LDCs against the Departmental Promotion Quota of 35% reserved for departmental staff. The Applicants 2 and 3 were holding the posts of Electrician and Peon respectively before their promotion as LDC. The Applicant No. 15 was not recruited through the Employment Exchange but appointed directly on compassionate grounds. All the other applicants except those mentioned above were recruited as LDCs on being sponsored by the employment exchange and having come out successful in the selection. As per the Employees Provident Fund Organisation "Upper Division Clerks Recruitment Rules, 1992, the promotions to the post of UDC are to be effected to the extent of 50% by promotion on the basis of the seniority subject to rejection of unfit and the rest of the 50% also by promotion on the basis of the departmental examination. The minimum educational qualification for both modes

of promotion is Matriculation or equivalent and have completed 2 years of service in the cadre." The above 1992 rules are enclosed at page 19 as Annexure to the respondents' reply. The applicants submit that they have completed two years of service in the grade of LDC in the year 1994 as they were appointed in the year 1992.

3. The above recruitment rules were amended by the Notification No. P.IV/14 (1) 01, dated 22.3.94 enclosed at page 1 of the reply statement.

All the conditions in this notification remain the same as the Revised Recruitment Rules of 1992 but the service eligibility condition is changed to 4 years as LDC for both modes of promotion. That was challenged and the Supreme Court in Civil Appeal No. 9817/96 dated 15.7.96 (Page 3 to the reply) had reduced it once again to two years on the ground that "prior approval was not obtained for increasing the service eligibility condition and the ex-post facto approval was obtained but in the teeth of the language of the proviso the ex-post facto approval is not an approval in the eye of law." Hence the service eligibility condition was once again reduced to 2 years from years.

4. The details of the UDC posts kept reserved for the departmental examination quota are given at page 5 of the reply. It is seen from the details that the departmental examination quota brought forward from 1992 was 63, vacancies from 1.1.93 to 31.12.93 were calculated as 81, vacancies filled from 1.1.93 to 31.12.93 were 17, thus the carry forward vacancies as on 31.12.93 were 127. The vacancies that had occurred thereafter were 9 and the vacancies filled were 25. In the year 1994, the carried forward vacancies were 111 and vacancies occurred were 35 thereby totalling 146 vacancies. No vacancy was filled in that year. Thereafter five vacancies had occurred thereby total number of vacancies assessed as 151. In the year 1996, two vacancies were filled leaving the balance of vacancies to the extent of 149. The vacancies brought forward in 1996 were 149 and two vacancies had occurred in the meantime thereby totalling the number of vacancies to 151. In the year 1997, 104 vacancies were filled thus a balance of 47 vacancies were left as on 1.1.98.

5. The respondents deny the fact that the Steno Typists, Telex Operators and Telephone Operators are eligible for promotion as UDC as these posts are not in existence at the time of filing the reply.

However, it is not a point for consideration in this OA.6. The respondents further submit in the reply that the applicants were not eligible for consideration in 1993 as LDCs who had put in the service of two years as on 1.10.93 only are eligible. Further subsequent examinations were conducted in October, 1994, August, 1995, March, 1997 and December, 1997. The eligibility for appearing UDC departmental examination was LDCs with four years of service for the examination held in October, 1994 and August, 1995 and two years as LDC for departmental examination held in March 1997 and December, 1997. The applicants thus became ineligible for 1994 and 1995 examination whereas they became eligible for 1997 examination. No candidate was found successful who appeared for the examination held in the year 1994 and August 1995. In the results of the examination held in December 1997, 40 candidates had passed including one Shri K. Pandiah, the 1st applicant herein and the remaining applicants had failed in the examination.

7. In view of the vacancies available in the post of UDCs against the departmental promotion quota, the applicants 1 to 14 were promoted on ad hoc basis by the order dated 4.7.97, 15th applicant by the order dated 11.12.96 and 16th applicant by the order dated 21.8.97 clearly indicating therein to the effect that they are liable for reversion as and when LDC candidates qualified in the departmental examination are available. The ad hoc promotion orders handed over to the applicants are enclosed at pages 7, 9 and 11 to the reply. In all these promotion orders, the promotions were stated to be purely temporary and those were promoted only temporarily on ad hoc basis against the vacancies reserved for the examination quota and that ad hoc promotion will not confer on them any right to claim seniority in the event of their promotion to the post of UDC on regular basis and they are also liable for reversion at any time without notice as and when vacancies for the examination qualified quota are filled by the eligible candidates. As the vacancies had come down due to various departmental examinations held, the applicants were reverted as LDC to make way for the qualified candidates by

the impugned order dated 28.8.97 (Page 18 to the reply).

8. This OA is filed to set aside the impugned order No. AP/Adm. II/UDC (Promotion)/ Ad hoc/1330, dated 28.8.97 whereby the applicants were reverted to the post of LDC from the post of UDC which they were holding on ad hoc basis by holding the same as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and for consequential declaration that they are entitled to hold the post of UDC on regular basis with effect from the date of their initial promotion as such with all consequential benefits that flow out of such declaration.

9. An interim order was passed in this OA on 18.9.97 whereby it was directed that "any promotion made in the post from which the applicants are reverted is subject to outcome of this OA".

10. The applicants at the outset contend that the vacancies earmarked for the examination quota cannot be carried forward as is being done in the case of the posts reserved for SC/ ST due to the constitutional provision.

11. No rule or extant instruction of Govt. of India for the above contention has been produced by the applicants. The recruitment rule also does not prohibit the respondents to carry forward the unfilled vacancies. The Department of Personnel and Training in the quota rota rule notification of 1959 which was amended on 7.2.86 had permitted for carry forward the vacancies earmarked for direct recruits and also for promotional quota, if the same cannot be filled during the relevant year. Because of the carry forward of the vacancies, a number of seniority disputes had arisen which are being adjudicated every now and then. In the present case, there is no rota rule. But there is quota for seniority-cum-merit promotion and the promotion on the basis of the examination on passing of the examination. The present case of promotion is similar to the promotion under the quota rota rule except that there is no rota rule. Comparison with the above rule leads us to decide that the carry forward of the vacancies under the examination quota is in no way prohibited and also do not prejudice the case of the applicants. The applicants are not prohibited to sit for the examination at any time either initially or at the carry forward stage if they fulfil the requisite conditions for appearing for the examination. Hence this contention of the applicants has no

basis and hence has to be rejected.

12. The other main contentions of the applicants in this OA are as follows:- (i) The Recruitment Rules cannot be interpreted as to provide separate quota for promotion by merit-cum-seniority and seniority-cum-suitability as on the basis of the qualifying examination, promotion is to the same cadre of UDC. However, the applicants accept that the system of examination quota has been introduced by the respondents only with a view to provide an opportunity to the juniors to complete and get accelerated promotion. The main purpose behind such rule was to encourage and strengthen the cadre by young and meritorious persons. In spite of that they submit that the rule cannot be interpreted as to provide separate quota for promotion; (ii) The applicants were reverted on the premise that they are holding the post meant for the examination quota and that the reversion cannot be sustained for the same reason that there is no provision for carry forward vacancies meant for the examination quota. In the absence of specific provision providing for carry forward vacancies in respect of any quota the respondents cannot carry forward the vacancies if the vacancies are filled up by senior eligible employees. The carry forward of vacancies is available only to constitutional reservations like that of Scheduled Castes and Scheduled Tribes and no other case it can be carried forward; and (iii) None had qualified in the examination conducted in the years 1994-95 and 1995-96. Hence those vacancies ought to have been filled by the available senior LDCs subject to rejection of unfit. The applicants had been rightly promoted against those vacancies as they were found fit. In view of the fact that there cannot be two quotas for the promotion to the same post of UDCs. Seniors who were eligible to hold the post ought to have been promoted regularly and promotions of the applicants who were senior and eligible on ad hoc basis against the examination quota itself is not in accordance with the rules and hence they are not liable to be reverted.

13. The first contention of the applicants in this OA is that the promotion is to the post of UDC and hence two modes of selection for filling up the post one by seniority-cum-suitability and the other through the examination from the lower category of LDC is not in order.

If there are no fit employees for promotion against the LDCE quota then those senior most suitable person should be promoted and their promotion should be deemed to be regular and not ad hoc. Hence their reversion itself is arbitrary.

14. The applicants themselves admit that 50% promotion quota through the examination is to encourage the juniors to compete and to get accelerated promotion and this is to further strengthen the opportunities to the meritorious persons. If that be the case, the question of promotion of seniors on the basis of seniority-cum-suitability does not arise in the vacancies earmarked for examination quota. If the examination quota is also filled by seniority-cum-merit basis, the cadre cannot be strengthened by young meritorious persons. Thus filling up the LDCE quota on the basis of seniority-cum-suitability will only defeat the purpose of recruitment rule. In almost all the Departments, filling up the post in the higher grade through LDCE is a common feature. The department in which the applicants are working is no exception to that rule. Hence when the recruitment rule stipulates that 50% vacancies in the UDCs have to be filled by meritorious candidates on the basis of the examination, such stipulation cannot be treated as arbitrary or illegal. Those vacancies can be filled only as per the recruitment rule. If enough number of candidates are not available to fill up the LDCE quota, in order to tide over the exigencies of service due to vacancy position ad hoc promotions can be resorted to. But such ad hoc promotions will not give any right to the ad hoc promotees for regular promotion and also right to continue them without reversion when the qualified candidates on the basis of the examination are made available subsequently.

15. In view of what is stated above, the applicants cannot claim regular absorption as UDC from the date of their ad hoc promotion nor they can agitate against their reversion when suitable candidates qualified in the examination are available. In view of what is stated above, the impugned reversion order dated 28.8.97 which is challenged in this OA is not tenable.

16. It is seen from the reply that all the applicants had appeared for the competitive examination but were found to be unsuccessful in the examination. After having submitted themselves to the examination and declared unsuccessful

in the examination, they cannot question the system of the examination. If at all they are aggrieved in the holding of the examination they should have challenged that examination itself without appearing. Even if they want to appear for the examination they should obtain necessary orders from this Tribunal by filing OA challenging the examination and appear for the examination subject to the outcome in the OA. But such course of action was also not taken by the applicants herein. The Apex Court repeatedly observes that unsuccessful candidates cannot question the result of the examination and this reversion after posting of the successful candidates if they had submitted to the examination without murmur. That observation will hold good squarely in this case. The applicants having been found unsuccessful in the examination cannot question the conduct of the examination and also have no right to question the reversion when the successful candidates were posted vice them. 17. The ad hoc promotion orders issued to the applicants clearly stipulates that they are liable for reversion at any time without notice as and when vacancies against the examination qualified quota are filled by the eligible candidates.

If they are aggrieved by this stipulation then they should have challenged that particular stipulation and get it deleted when they were posted as ad hoc promotees to the post of UDC. The applicants did not take that course of action also. Hence challenging the reversion order now is unwarranted. When such a stipulation is already there in the ad hoc promotion order they have to obey that order without any reservation.

18. The applicants may now contend that the service eligibility condition of 4 years for appearing for examination quota had been struck down by the Apex Court and hence they should be allowed to sit for the examination held in the years 1994 and 1995 by conducting a review selection for them for that year and if are found successful, then they should be deemed to have been promoted against those vacancies occurred in the years for which examination was conducted in the years 1994 and 1995.

19. The above contention though not found in the OA is presumed so that the whole issue can be solved without repeatedly approaching the Tribunal. The

above view can be upheld if they have not written the examination held in the year 1997 had passed the subsequent examination in the first attempt if they had appeared for the subsequent examination in later years. "The pre-dated promotion is permissible only if an employee passes the examination held subsequently in the first attempt" is the considered view of this Tribunal in a number of earlier cases. In the present case the applicants, except the applicant No. 1, had failed in the examination held in the year 1997 which is the subsequent examination after 1994 and 1995 when they were eligible for appearing for the examination due to striking down of the amended recruitment rule by the Apex Court. Hence this presumption also will not come to the rescue of the applicants except applicant No. 1.

20. The applicants as stated above cannot ask for regularisation of their services. In this present case there is only a quota rule and no rota rule. Hence the seniority of the selected candidates to the post of UDC either on the basis of seniority-cum-merit or on the basis of the examination had to be decided on the basis of the existing rules.

The only question that may arise is as to how, the seniority of those promoted against the examination quota for the vacancies that had arisen year after year which were not filled earlier has to be fixed.

The seniority position though not a point for consideration in this OA, the respondents are cautioned to avoid any seniority disputes later.

The respondents have to fix the seniority in accordance with law so as to avoid any dispute later. This observation is also necessary in view of the fact that the first applicant had passed the examination held in the year 1997 in the first attempt.

21. The above view of ours is also strengthened by the observation of the Apex Court in the reported case 1999(1) SCC 278, U.P. Secretariat U.D.A. Association v. State of U.P., wherein it is observed that "it is not in dispute that appointments have been made in officiating capacity against the vacancies reserved for direct recruitment though no recruitment had taken place. They are not according to the

rules and within the quota. Direct recruitment is to be treated from the date on which a candidate actually joined the service, though vacancies did exist prior to that. As a consequence, the promotees are also required to be fitted into the service from the date when they are entitled to fitment in accordance with the quota and rota prescribed under the rules." 22. From the above citation, it is clear that the recruitment rule is sacred. No deviation from the rule is permissible. If some one is promoted in contravention of the recruitment rules, the same has to be treated as not in tune with the recruitment rules. Such a posting cannot give him any right for continuing in that promoted post regularly. EmpJoyees posted as per the recruitment rules even if delayed or posted later after following the rules by carrying forward the unfilled vacancies, is to be treated as being posted regularly. If that posting requires reversion of the ad hoc appointees posted against that quota that is an inevitable incidence and such reversion cannot be challenged.

23. In view of the foregoing, we find no merit in this OA and the OA is liable only to be dismissed and accordingly it is dismissed. No order as to costs.

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