

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2228/2015

Anil Shrinivas Takalkar & others.
...Petitioners..

Versus

The Central Provident Fund
Commissioner, New Delhi & others.
...Respondents...

.....
Shri Pradip R. Patil, Advocate for petitioners.
Shri K.B. Choudhary, Advocate for respondent nos.1 to 3.
.....

**CORAM: S.V. GANGAPURWALA &
V.K. JADHAV, JJ.**

DATE: 14.08.2015

ORDER :

1] Learned counsel for the petitioners submits that the departmental promotional examination was conducted for filling in 58 promotional posts from general category. The petitioner no.1 was at Sr.No.58 in the said list. However, the respondents filled in only 54 posts. According to the learned counsel, the letters dated 16.9.2010 and 12.11.2010 written by the Regional Provident Fund Commissioner to the Central Provident Fund

- 2 -

Commissioner were not considered by the Tribunal wherein it is specifically requested to consider the proposal and convey approval of the competent authority for promotion of 60 candidates to the post of Enforcement Officer / Accounts Officer as recommended by the Departmental Promotion Committee in its meeting held on 3.9.2010 and 9.9.2010. Learned counsel submits that the petitioners were competent and eligible to be promoted to the said post. When the vacancies exist, there was no reason not to promote the petitioners, more particularly when the petitioners were found eligible as per the departmental promotional committee. Learned counsel further submits that only on the ground that the name in the select list would not give a right to the post, the Tribunal has rejected the claim of the petitioners, however, it has not considered the availability of the vacancies. Even it was suggested by the Regional Provident Fund Commissioner that 60 officials recommended by the DPC can be adjusted, excess four candidates can be adjusted as against the reserved seats and subsequently as and when the reserved candidates would be available from the reserved categories, they can be accommodated on the said

- 3 -

seats. This aspect has not been considered by the Tribunal. Learned counsel submits that even a request was made to consider the successful candidates by creating supernumerary posts or by de-reserving the vacancies for SC / ST.

2] Learned counsel for the respondent nos.1 to 3 submits that it is only the Central Provident Fund Commissioner who can declare the vacancies. The Central Provident Fund Commissioner never declared 60 vacancies. According to the learned counsel, mere name in the select list would not give right to the petitioners to claim promotion.

3] It is trite that promotion is not a fundamental right but to be considered for promotion is a right. The petitioners are considered for promotion. The petitioner no.1's name appeared at Sr.No.58 in the select list. It was demonstrated that the vacancies were only 54. As such only first 54 candidates were promoted. The petitioner no.1 was at Sr.No.58 and as such could not be accommodated. The Regional Provident Fund Commissioner had recommended to the Central Provident Fund Commissioner to de-reserve some posts and/or to appoint

- 4 -

the petitioners on reserved posts. The petitioners are from general category. The said course was not accepted by the Central Provident Fund Commissioner. The Tribunal has discussed the aspect of right of a person only because his name appears in the select list. No error is committed by the Tribunal in that regard.

4] Considering the aforesaid aspect of the matter, the writ petition is dismissed. No order as to costs.

(V.K. JADHAV, J.)

(S.V. GANGAPURWALA, J.)