

\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 26.11.2019

+ W.P.(C) 10717/2019 & CM APPL. No. 44327/2019 (stay)
EMPLOYEES PROVIDENT FUND ORGANISATION &
ANR. Petitioners

Through: Mr. Sanjay K. Shandilya, Adv.

versus

RAJ KUMAR Respondent

Through: Ms. Rashmi Chopra &
Ms. Asiya, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S. SISTANI, J. (ORAL)

The present writ petition has been filed by the petitioners being aggrieved by decision rendered by the Central Administrative Tribunal ('Tribunal') dated 25.04.2019 and the order passed in review application dated 19.08.2019.

2. The petitioners are aggrieved by a direction issued by the Tribunal to count nine months of *ad-hoc* service of the respondent to enable him to complete four years of regular service in the post of Assistant Provident Fund Commissioner ('APFC'), which in turn would enable the respondent to receive the Senior Time Scale.

3. Some facts required to be noticed and which led to the filing of the OA before the Tribunal are that the respondent joined the services

of petitioner No. 1 as Lower Division Clerk (LDC) and was promoted as Section Officer in the year 1997. The qualifying service for promotion to the post of APFC from feeder posts of Enforcement Officer/Accounts Officer is seven years ; and from feeder posts of Section Officer and Private Secretary is five years.

4. According to the petitioners, as per the Recruitment Rules 1991, APFCs are appointed against two categories i.e. Departmental Quota (DP) and Direct Recruitment Quota (DR) in the ratio of 50:50. Admittedly, during the relevant period, the respondent was working as Section Officer. On 07.06.2007, the respondent was appointed to the post of APFC on temporary and *ad-hoc* basis against the direct recruitment quota vacancy.

5. It is also the stand of the petitioners that in the offer of appointment, it was clearly mentioned that the appointment was a stop-gap arrangement to meet administrative exigencies. The appointment on *ad-hoc* basis was initially for a period of one year from the date of assumption of charge or till the posts were filled-up on regular basis or until further orders, whichever was earlier.

6. The respondent thereafter made a representation to petitioner No. 1 on 01.09.2008 seeking regularization in the cadre of APFC. According to the petitioners, the respondent has made a misleading statement that he was promoted to the post of APFC on *ad-hoc* basis against the DP quota, whereas according to petitioner No. 1, it was on *ad-hoc* basis against the DR quota. A reply dated 30.09.2009 was issued to the respondent and it was made clear that as per the existing

rule, the length of service rendered on *ad-hoc* basis is not taken into consideration for deciding seniority in the APFC cadre.

7. It was further clarified that as far as the DR quota of APFCs is concerned, APFCs are granted seniority *w.e.f* the date of joining the cadre ; and further that the decision would be taken only after the outcome of OA No. 26/MR/2009 pending before the Chandigarh Bench of the Tribunal. Admittedly, the respondent was promoted to the post of APFC on 24.08.2011 against his own vacancy under the seniority quota in the panel year 2009-10. As per the recommendation of the Departmental Promotion Committee (DPC) held on 24.08.2011, it is the case of the petitioners that the respondent was regularized to the post of APFC *w.e.f* 24.08.2011 i.e. the date on which DPC was held.

8. Learned counsel for the petitioners has also submitted that prior to 24.08.2011, DPC was held on 05.01.2004 to consider officials for regular promotion to the post of APFC. The DPC considered promotion from the combined seniority list of EO/AAO/Superintendent as on 03.03.1990 and almost all officers were considered. Two OAs were filed and an order to convene review DPC was passed. This also led to the delay in holding of the DPC. In this case, the respondent superannuated on 30.11.2014 from the services of EPFO and retired as APFC. He could not be promoted to the post of RPFC (Grade-II) as he had not completed four years of regular service in the cadre of APFC. He was appointed on *ad-hoc* basis on 07.06.2007 and regularized on 24.08.2011.

9. Post retirement, on 06.02.2015, a representation was made by the respondent claiming various reliefs. He also mentioned in his representation that he could not be promoted to the post of RPFC (Grade-II) and could not avail the benefit of Senior Time Scale due to short fall of nine months of regular service in the APFC cadre. A reply sent on 17.03.2015 by the petitioners was not favourable and led to another representation being filed by the respondent on 23.03.2015 ; and thereafter an OA was filed in the year 2015.

10. Learned counsel for the petitioners submits that admittedly the respondent did not complete four years' of regular service and thus he would not be entitled to the relief granted by the Tribunal. He points-out that the Tribunal has exceeded its jurisdiction by directing the petitioners to grant relaxation of nine months service which was rendered on *ad-hoc* basis. He submits that the promotion to the post of APFC was purely a stop-gap arrangement and this fact was made abundantly clear to the respondent at the time of his appointment. He further submits that the respondent was to be considered for promotion based on the panel year 2009-10 and not earlier, as incorrectly claimed by the respondent.

11. Counsel for the respondent *per contra* has submitted that the *ad-hoc* promotion was with respect to the regular post as the respondent could not have continued on the basis of an *ad-hoc* post from 2007-11. The respondent worked as an APFC for four years on *ad-hoc* basis and thereafter from 2011-2014, on regular basis.

12. Ms. Chopra, learned counsel for the respondent contends that the respondent could not have been deprived fruits of his hardwork and dedication for fault on the part of the petitioners in not conducting a DPC within the prescribed time-frame. He submits that even petitioner No.1 had recognized the merit in the representation of the respondent. He further submits that persons junior to the respondent were put in the panel year 2008-09, while this benefit was taken away from the respondent, without any justifiable reason or explanation.

13. Reliance is placed on a communication dated 28.10.2014 addressed to the Secretary (L&E), Govt. of India, Ministry of Labour & Employment wherein a chart of officers under consideration for promotion to the post of RPFC (Grade-II) on *ad-hoc* basis is placed. This document is relied upon in support of the respondent's contention that Shri Ganesh Kumar Jani and S. Murugesan, whose dates of *ad-hoc* appointments as APFC are 02.07.2009, have been placed in the panel year 2008-09, whereas the respondent whose date of *ad-hoc* appointment as APFC is 07.06.2007, has been placed in the panel year 2009-10. While the explanation rendered by counsel for the petitioners is that Ganesh Kumar Jani and S. Murugesan were not appointed in the DR quota but in the DP quota, the contention is disputed by the respondent.

14. We are unable to understand as to how a person can be appointed on *ad-hoc* basis in a direct recruitment post, which has to be in the form of lateral entry. Be that as it may, this officer served on *ad-hoc* basis in place of a regular vacancy for four long years, and

thereafter, till he superannuated he served on the regular post of APFC from 24.08.2011 till 30.11.2014 only to be deprived of his promotion to the post of RPFC (Grade-II) as he was placed in the panel year 2009-10 and not 2008-09 where his juniors were placed. The organisational and procedural delays have definitely caused great injustice to the respondent and even otherwise the communication of 28.10.2014 shows that persons who joined later than the respondent have been placed in the panel year 2008-09 and have been granted benefit of relaxation upto the panel year 2008-09. The communication by Employees' Provident Fund Organisation, Ministry of Labour & Employment, Govt. of India *vide* letter dated 17.03.2015 is reproduced below :

"Kindly refer to above cited subject. In this regard, it is informed that a proposal for relaxation in qualifying service for promotion to the post of RPFC-II was sent to MOL&E vide letter dated 12.02.2013. MOL&E vide letter dated 25.03.2013 conveyed that "as these APFCs have been regularized on 24.08.2011 and as such they are even not having half the qualifying service, the relaxation in qualifying service can not be granted". However, they agreed for promotion on adhoc basis for the post of RPFC-II for 15 APFCs and later on vide letter dated 07.06.2013 further agreed for promotion to the post of RPFC-II on adhoc basis for 13 more APFCs keeping in view functional requirement. Again a letter dated 03.12.2014 was sent to MOL&E for relaxation in qualifying service for adhoc promotion. However, MOL&E vide letter dated 11.02.2015 agreed for relaxation for regular promotion upto panel year up to 2008-2009 only."

15. In this backdrop although the Tribunal has not gone into the issue whether the respondent should have been placed in the panel year 2008-09 or 2009-10, it has rightly decided to give benefit of 9 months relaxation to the respondent since similarly situated persons Ganesh Kumar Jani and S. Murugesan who were junior to the respondent had been placed in the earlier panel year 2008-09 ; and also that the respondent had worked on *ad-hoc* basis for 4 long years against the regular vacancy.

16. In these circumstances, we see no reason why the relaxation should not be granted to the respondent. Resultantly, we find no grounds to interfere in the Tribunal's order. The writ petition and the pending application are accordingly dismissed.

17. However, we clarify that the grant of Senior Time Scale to the respondent would be in the peculiar facts and circumstances of this case alone.

18. The order of the Tribunal be complied with, within a period of two months.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 26, 2019/uj