

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8298 OF 2023

Mr. Krishna Tukaram Thorave

...Petitioner

V/s.

1. The Union of India, through
the Secretary, Ministry of Labour,

**2. The Chairman, Central Board of
Trustees**, Employees Provident Fund,

3. The Central Provident Fund Commissioner ...Respondents

...

Ms. Annie Nadar a/w. Ms. Linet Jadhav, Advocate for Petitioner.

Ms. Ranjana Todankar, Advocate for Respondents.

...

**CORAM : DHIRAJ SINGH THAKUR AND
SANDEEP V. MARNE, JJ.**

DATED : 10 JULY 2023.

P.C. :

1. Petitioner has filed this petition challenging judgment and order dated March 1, 2023 passed by the Central Administrative Tribunal (CAT) dismissing his Original Application No. 208/2015.

Petitioner's grievance before the Tribunal was about denial of promotion to Non-Functional Selection Grade (**NFSG**) post w.e.f. May 21, 2009.

2. Petitioner was appointed as Assistant Provident Fund Commissioner in March 1999. He was further promoted to the post of Regional Provident Fund Commissioner, Grade-II in October, 1991 and as Regional Provident Fund Commissioner, Grade-I w.e.f. May 21, 2009.

3. By Office Memorandum dated August 14, 1987 Department of Personnel & Training (**DoPT**) introduced the scheme for identification of 15% of the senior duty posts in Group 'A' Central Services for grant of Selection Grade without increasing the overall strength of the cadre. Thus, under the O.M. dated August 14, 1987, 15% of the posts in Group 'A' Central Services were to be granted Non-Functional upgradation to Selection Grade (**NFSG**) resulting in grant of higher pay scale while performing the same duties and functions.

4. The provisions of the DoPT O.M. dated August 14, 1987 were immediately not adopted by the Employees Provident Fund Organisation (**EPFO**). The Board of Trustees of the EPFO took a decision in its' meeting dated August 13, 1999 adopting the scheme of grant of NFSG to 15% of senior duty posts. The decision of the Board of Trustees was referred to the Government of India, which finally granted permission to EPFO to implement the scheme on

January 30, 2006.

5. In the meantime, the DoPT increased the ceiling of 15% for grant of NFSG to 30% vide O.M. dated 6 June 2000. There was again delay in adopting the increased ceiling for grant of NFSG on the part of Board of Trustees of EPFO. The scheme was ultimately adopted by EPFO w.e.f. July 14, 2011. Though Petitioner became eligible for grant of NFSG in the increased ceiling of 30%, he unfortunately retired from service on 30 June 2009 and could not be granted NFSG. After some correspondence, he approached the Tribunal by filing O.A. No. 208/2015 for grant of NFSG w.e.f. May 21, 2009. By judgment and order dated March 1, 2023 challenged in the present petition, the Tribunal has proceeded to dismiss the O.A.

6. We have heard Ms. Nadar, the learned counsel appearing for Petitioner and Ms. Todankar, the learned counsel appearing for the Respondents.

7. After having heard the learned counsels appearing for the parties and after perusal of the records of the case, it is seen that EPFO is a statutory organisation established under the provisions of Employees Provident Fund & Miscellaneous Provisions Act, 1952. The Board of Trustees constituted under the Act is a body corporate capable of suing and being sued. Section 5C of the Act provides thus:

“5C. Board of Trustees to body corporate.— Every Board of Trustees constituted under section 5A or section 5B shall be a body corporate un-

der the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued.”

8. The method of recruitment, salary and allowances, discipline and other conditions of service of various officers of EPFO are to be determined by the Central Board of Trustees. Thus, the administrative instructions issued by the DoPT which are usually applicable to the Central Government employees, are not *ipso-facto* applicable to the officials of EPFO. It was not mandatory on the part of Central Board of Trustees in EPFO to apply the scheme of grant of NFSG to the officials of EPFO. Nonetheless, the Central Board of Trustees has adopted the scheme for grant of NFSG initially with ceiling of 15% and subsequently with ceiling of 30%, *albeit* from different dates than the one decided by DoPT.

9. It was not possible for the Tribunal to issue a mandate to the Central Board of Trustees of EPFO to make the scheme of NFSG applicable from a particular date. This is a matter of policy decision, in which the Tribunal could not have interfered. The Tribunal has therefore rightly rejected the O.A. of Petitioner. We do not find any error in the impugned judgment and order of the Tribunal. The Writ Petition, being devoid of merits, is dismissed without any orders as to costs.

NEETA
SHAILESH
SAWANT

(SANDEEP V. MARNE, J.)

(DHIRAJ SINGH THAKUR, J.)