



BP Jain and Ors
8/3/2007

कर्मचारी भविष्य निधि संवतन

(भारत मंत्रालय, भारत सरकार)

Employees' Provident Fund Organisation

(Ministry of Labour, Govt. of India)

मुख्य कार्यालय/Head Office

भविष्य निधि, भवा, 14, भिकुजी कामा प्लेस, नई दिल्ली-110066

Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place. New Delhi-110066

No. HRM II/ 22(1)2005/EQ/DL/ BPJ

Date 08.03.2007

To

**All Additional Central Provident Fund Commissioners,
Zones.**

Subject : Implementation of the CAT order dated 05.12.2006 in respect of OA No. 2472/ 1999 & MA 1124/ 2005 & 1125/2005 filed by Sh B P Jain & Ors - regarding.

Sir,

Please find enclosed the order of Hon'ble CAT, Principle Bench, Delhi dated 14.03.2001 in the OA no. 2472/1999 and the comments filed by this department in pursuance of the MA filed by the applicants in the aforementioned OA and the order dated 05.12.2006 passed by the Hon'ble CAT, Principal Bench, Delhi.

In order to implement the decision taken by the department the following actions are required to be taken: -

- (1) The vacancies which are to be filled up after 03.03.1990 should be clearly tabulated as required in the vacancy register.
- (2) The vacancies should be distributed in the ratio of 2:1:1 for SQ:EQ:DR year wise up to the current year.
- (3) The reservation rules in force in the respective years may be used to ascertain the reservation position for filling up the vacancies.
- (4) The persons recruited / promoted against the three modes of recruitment year wise may be adjusted against the vacancies allotted to the three modes of recruitment.
- (5) In case of any excess in any of the three categories may be clearly listed out year-wise. In the event of excess recruitment in DR and EQ category due to miscalculation of vacancies for EQ and DR, the review DPC may be convened and the officials who should have been promoted against the SQ may be recommended for promotion from the respective year of vacancy as per their entitlement.

10/15/2007
M. J. (8/3/07)

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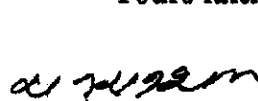
- (6) The recommendation of the review DPC may be forwarded to this office for approval of the competent authority and on the approval of the same the seniority of the SQ, DR and EQ officials will be adjusted.

Action on the above may be taken at the earliest since a compliance report has to be filed in CAT, Principle Bench, Delhi. Please acknowledge receipt.

Enclosures : As above.

(This issues with the approval of C.P.F.C.)

Yours faithfully

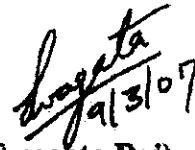


(N N Sharma)

Regional Provident Fund Commissioner (HR)

Copy To

- (1) RPFCDelhi (South) with the request to take necessary action within one week and forward the details so that the action taken report may be placed before Hon'ble CAT, Principle bench, Delhi as the matter / order pertains specifically to Delhi region.
- (2) RPFCDelhi (CAT) for information and necessary action with reference to the UO Note No. CAT/ 3(3)99/DI dated 12.2.2007.



(Swagata Rai)

Regional Provident Fund Commissioner -II (HRM II)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

MA No. 1124/05

OA. 2472/1999

Sh. B.P.Jain and ors.

Applicants

Vs.

UNION OF INDIA & ANR.

RESPONDENTS

**REPLY TO THE MISC. APPLICATION ON BEHALF OF THE
RESPONDENTS**

1. The Respondents have implemented the post based roster with effect from 02.07.1997 as per the D.O.P.T instructions for both the purposes i.e. for reservation as well as for method of recruitment for the vacancies / posts to be filled up by the three modes of recruitment in the cadre of EO/AAO in EPFO. the total cadre strength of EO/AAO cadre had been divided in the ratio of 50:25:25 and accordingly the roster for the three modes of recruitment were also prepared keeping in view the sanctioned number of posts of DR./SQ/EQ.
2. This action of the respondents was challenged by filing of OA No. 2472/1999 filed by Shri B.P.Jain. The contention of the applicants therein had been that the vacancies and not the posts should be filled up by the operation of the RRs. The learned Tribunal while allowing the application directed the respondents to restrict the number of DR candidates in Delhi to the number of vacancies allotted for them.
3. That subsequently the DR candidates in the Delhi region have filed a separate OA [Ajay Kumar Singh Vs Union of India] against the implementation of the orders passed in B.P.Jain's case. It may be

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1/4
28/11/06

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relevant to mention here that a similar case has been filed before the Chandigarh bench of the Tribunal-Tirath Ram & ors. challenging the action of the respondents in the implementation of the Central Board of Trustees decision.

4. That keeping in view the various cases pending before the various benches of the tribunal and to resolve the controversy once and for all, it has been decided by the respondents that the decision in implementing the post based roster with effect from 14.7.97 and making recruitments based on the same was due to misinterpretation of the D.O.P.T instructions and that the same required to be rectified and the directions of the learned Tribunal in B.P.Jain's case being the proper appreciation of law need to be applied to the extent that only 25% vacancies can be filled up by DR and no more.
5. The respondents intend to assess the actual year wise vacancies for the three modes of recruitment that should be made following the vacancy based roster so far as the recruitment is concerned and consequently the excess recruitments in the category of DR and EQ that had been made by the department with year wise break up of the same be assessed.
6. These DR and EQ vacancies for all the regions would be compiled and the total number of DR and EQ would be given seniority from the date the actual vacancies for their recruitment arise as per the revised mode of calculation.
7. The additional posts of DR and EQ would be adjusted by creation of supernumerary posts, which would be adjusted/merged with the posts of DR and EQ once the same arise in the subsequent vacancy years.
8. The Regional Provident Fund Commissioner and ACC (Zones) will be directed to convene review DPC as per the revised vacancy position and reservation position so as to determine the notional promotion of the SQ officials against the vacancies to which they actually belong.

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9. The notional seniority of SQ officials would be given from the vacancy year against which the actual vacancy for the particular mode of recruitment arose as assessed by the review DPC and not from the actual date of joining or the vacancy year against which they have been promoted by the current DPCs. Similarly the seniority will be given to the DR and EQ officials from the vacancy year against which the actual vacancies arise and not from the year of their joining.
10. This arrangement would give due seniority to the departmental candidates who have been denied promotion/seniority due to wrong calculation as well.
11. That the respondents submit that in case the seniority lists are finalized in the aforesaid manner, then in that event justice would be done to all categories of officials and simultaneously it would also enable the respondents to implement the orders passed by this learned Tribunal in B.P. Jain's case.

Prayer.

In view of the submissions made herein above, the respondents would like to bring to the notice of this Hon'ble Court as also the applicants in the cases of B.P. Jain and Ajay Kumar Singh the proposed actions the respondents intend to take in order to amicably resolve the entire controversy.

It is prayed accordingly.

Respondent

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VERIFICATION

I, Udit Choudhary working as Regional Provident Fund Commissioner -II (HRM), do hereby verify that the contents of this counter reply are true to my personal knowledge and belief and that nothing material has been concealed.

Verified at New Delhi, this 28th November 2006.

Udit
Respondent.

Through;

V.S.R.KRISHNA,
ADVOCATE.

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December 5, 2006
MA 1124/2005
MA 1125/2005
OA 2472/1999

Present: Shri MK Bhardwaj, counsel for applicant
Shri VSR Krishna, counsel for official respondents
Shri SN Anand, counsel for private respondents

MA-1125/2005

On agreement with parties as per law, the decision of the Tribunal in OA-2472/99, which stood affirmed by the High Court of Delhi shall be complied with in true letter and spirit but it is to be ensured that while such compliance is made, private respondents before us shall not be adversely prejudiced to their detriment in any manner. This shall be done within a period of three months from the date of receipt of a copy of this order.

With this, MA stands disposed of.

(Neena Ranjan)
Member (A)

/sunilv



(Shanker Raju)
Member (J)

17/12/06
Examinations
केन्द्रीय माध्यमिक शिक्षा बोर्ड
Central Board of Secondary Education
New Delhi

PRINCIPAL BENCH

O.A.NO. 2472/1989

New Delhi, this the 14th day of March, 2001

HON'BLE SHRI JUSTICE ABROK AGARWAL, CHAIRMAN
HON'BLE SHRI GOVINDAN S. TAPRI, MEMBER (A)

1. E.P. Jain S/o Late Sh T.R. Jain
R/o 78, B.N. Enclave,
New Delhi - 17
2. Bishan Kumar S/o Sh. S.N. Aggarwal,
R/o 1209, Gali Shamsan,
Frash Khana, Delhi - 6
3. Smt. Ved Kumari W/o Shri Jasmant Rai,
R/o 11-C, Shalimar Bagh,
New Delhi - 52
4. Smt. Adarsh Bala W/o M.M. Kutria
R/o E-10-A, Mokhran Garden,
Tilak Nagar, New Delhi - 18
5. B.C. Ahuja S/o Sh. K.C. Ahuja,
R/o I-96, Lajpat Nagar-II,
New Delhi - 24
6. Smt. Balwant Kumar W/o Shri P.P. Singh
R/o EA/115, SFS Flats,
Maya Enclave, G-8 Area,
Ghantahghar, Rajouri Garden, Delhi
7. P.P. Chadha S/o Sh. Khairati Ram Chadha
R/o F-369, B. Sudarshan Park,
New Delhi-15
8. Smt. Promila Kalra W/o Sh. Ved Prakash
R/o 31/18, Old Rajinder Nagar,
New Delhi
9. Devanand Mandal S/o Sh. Baldev Mandal
R/o 84, B.N. Enclave,
New Delhi
(By Shri A.K. Bhardwaj, Advocate) **APPLICANTS**

VERSUS

1. The Employees Provident Fund Organisation

Through -

The Central Provident Fund Commissioner,
Head Office, Bhavishya Nidhi Bhawan,
14 Bhikaji Cama Place,
New Delhi - 110 066

2. The Regional Provident Fund Commissioner,
Regional Office, Mayur Bhawan,
New Delhi - 110 001

Shri Hansraj Singh Nain,
R/o House No. 159, V&P.O. Jatkore,
Delhi 39

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(2)
Shri Deepak Kant,
R/o B-9/209, 210, Sector 5
Rohini, Delhi: 110 085

Shri Avinash,
R/o NP-160, Mourya Enclave,
Pitampura,
Delhi : 110 034 Respondents
(By Shri V.S.R. Krishna, Advocate)

O R D E R (ORAL)

Shri Govindan S. Tampi, Member (A) :

Heard the learned counsel for the applicants and respondents today.

2. The relief sought by the applicants in this

OA are as follows:-

- a) to direct the respondents not to post more than 16 persons in Delhi Region as EO/AAO, against direct recruitment quota in all.
- b) to restrain the respondents from posting more than 7 more candidates/persons as EO/AAO in Delhi Region against direct recruitment quota.
- c) to mandate the respondents to apply the Recruitment Rules of 3.3.1990 only to such vacancies which occurred after 3.3.1990 & not to apply the said rules with retrospective effect.
- d) to direct the respondents not to earmark the vacancies w.e.f. 5.8.1982 as per the Recruitment Rules of 3.3.1990 & to earmark only such vacancies as per rules of 3.3.1990, which occurred after 3.3.1990.
- e) to allow the present OA with cost of the litigation.
- f) to pass such other & further orders which their lordships of this Hon'ble Tribunal deem fit & proper in the existing facts & circumstances of the case.

3. The applicants are presently working as

Enforcement Officer(E.O)/Assistant Accounts Officer

(A.A.O) in the Delhi Region of Employees Provident Fund

Office, (EPFO for short). In this OA they are assailing

The move of the respondents to fill up the posts of
 E.Os in the Organisation through direct
 recruitment, which would disturb the ratio between the
 promotees and direct recruits in the cadre. According
 to Shri Bhardwaj, learned counsel for the applicant, that
 in terms of Employees Provident Fund Enforcement
 Officer/Assistant Accounts Officer Recruitment Rules,
 1990, the method of recruitment to the post was 50%
 by promotion, 25% through departmental competitive
 examination, failing which direct recruitment and 25% by
 direct recruitment. Six of the applicants, originally
 Head Clerks in the Delhi Region, have been promoted on
 31.5.1995 on ad hoc basis as EO/AAO. The present move
 of the department, keeping in mind the total number of
 posts of EO/AAO for working out the quota will benefit
 the direct recruits in such a manner as they would have
 having far in excess of what they should be given in *get fresh*
 terms of the Recruitment Rules, for the rules provide
 not for filling up the posts, but the vacancies.
 Therefore, the direct recruitment could be undertaken
 only to fill up 25% of the vacancies which had arisen
 after the Recruitment Rules were framed and, therefore,
 it should be restricted only to 16 for the Delhi Region.
 As already 9 persons have been recruited as E.O/A.A.O,
 only 7 more persons should be so recruited. However,
 the respondents were attempting to get more direct
 recruits holding the total number to be 87, including
 those posts existing before 1990, which was incorrect
 pleads Shri Bhardwaj. The learned counsel reiterates
 that it is settled law that the Recruitment Rule is only
 prospective in operation and, therefore, the quota or

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the percentage to be worked on the basis of the Rules should also be prospectively applied. The attempt to increase the extent of direct recruitment was improper and should be prevented, the learned counsel pleads.

4. Shri V.S.R. Krishna, learned counsel, appearing for the respondents states that the applicants do not have a genuine cause of action. No representation has been made by any of the individual applicants though a letter in this context has been filed by the Staff Association. With regard to the interpretation of the Recruitment Rules, Shri Krishna draws our special attention to note (1) relating to promotion under column (12) stating that notwithstanding anything contained in these rules, any person holding the post of Provident Fund Inspector in Gr.II on regular basis on 5.8.1982 shall be deemed to have been appointed as Enforcement Officer/Assistant Accounts Officer on a regular basis under these rules at the initial constitution from the said date, and his inter-se-seniority on absorption shall be assigned in accordance with his relative seniority in the cadre of Provident Fund Inspector (Gr.II). Similarly, under note 2, it is directed that person holding the post of E.O/A.A.O on ad hoc basis after 5.8.1982 before the notification of Recruitment Rules on 3.3.1990 shall also be deemed to have been so appointed to the said post regularly after assessing their suitability. It would mean, therefore, that the entire strength of the cadre has been taken together and those who were already promoted as E.O/A.A.O, at the time of the constitution

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would be deemed to have become adjusted in the 50% promotion quota as per the Recruitment Rules. The total number of posts have correctly been taken for arriving at the share of the direct recruits and, therefore, the plea made on behalf of the applicants that the same should be worked out differently restricting to subsequent vacancies was improper and should not be entertained. This was clearly against the scheme envisaged under the Recruitment Rules and the cadre strength. Even otherwise, the applicants have come to the Tribunal at a belated stage. If at all they had any grievance with the order of 31.5.1995, when they were promoted on a purely ad hoc basis as E.O/A.A.O, and in a stop gap arrangement, with the direction that the promotion was for six months or till the examination quota/direct recruitment quota candidates became available or till further orders whichever was earlier, they should have challenged the same then, instead of coming with this OA, when the selection process for direct recruitment was in the final stage and the orders are under issue. Shri Krishna, therefore, prays that the application does not merit acceptance.

5. We have carefully considered the rival contentions. Point for determination of this OA revolves around the interpretation of the Employee' Provident Fund Organisation Enforcement Officer/Assistant Accounts Officer Recruitment Rules, 1990. The Schedule to the said Rules in column 11 refers to the method of recruitment and percentage of the vacancies to be filled by various methods i.e. 50%

Administrative Tribunal
 Administrative Tribunal
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 Administrative Tribunal

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by promotion falling which by direct recruitment, 25% by promotion through departmental examination and 25% by direct recruitment. Naturally, therefore, the Rules are applicable with reference to the vacancies arising after the constitution of the cadre and the notification of RRs and not before and the cases of those officials who are holding the posts either on redesignation or on promotion prior to that date, would not fall within the purview of the Rules for arriving at the quotas for promotion, direct recruitment etc. The plea by the respondents that the persons who were promoted earlier also constituted the 50% promotion quota does not appear to be borne out by fact as in Note under column 12 it is very clearly stated that any person holding the post shall be deemed to have been appointed at the time of the constitution of the RR. Obviously, the vacancies which have arisen on dates subsequent to the notification of Rules would be reckoned for being filled up in terms of the Rules. Thus the number of persons who were already holding the post either by redesignation or by promotion on earlier dates cannot be described as constituting the promotion quota. Promotion, departmental examination and direct recruitment quotas could have been worked out only with reference to vacancies arising after the Recruitment Rules and so worked out the vacancies falling in the quota for direct recruitment would be 16. As already 9 direct recruits have been appointed in Delhi Region, 7 more persons only could be appointed in that quota. Posting anyone more will go against the prescription under the Recruitment Rules. The fact that recruitment

ADMINISTRATIVE

REPLY

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process for direct recruitment has been initiated and those selected will be hit by this direction is not acceptable as there is no right for anyone to get appointed to any post, where a quota is fixed for different categories, his or her number falls in excess of the relevant permissible quota. Even otherwise, the direct recruits seeking posting as E.O/A.A.O. are deemed to have been put on notice by the interim order dated 22.4.1999, to the effect that appointment of direct recruits was subject to the outcome of this OA.

6. In the result the application succeeds and is accordingly allowed. Respondents are directed to ensure that the quota for direct recruitment to the post of E.O/A.A.O is kept at 16 and not more for the present and appointments are ordered accordingly. No costs.

(MOVINDAN S. TAMPI)
MEMBER (A)

(ASHOK AGARWAL)
CHAIRMAN

(pk)

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August 25, 2005

MA 1124/2005
MA 1125/2005
OA 2472/2004 99

Present: Shri MK Bhardwaj, counsel for applicant

Shri S.N. Anand, counsel for respondents 3 & 4

None for respondents 1 & 2

Learned counsel for respondents 3 & 4 states that he has filed a separate OA (OA-1680/2004), wherein he had also prayed for interim relief. Status quo order has been issued so probably the order passed in the OA cannot be implemented. However, he seeks two weeks to file reply. List on 23.9.2005.

(D. R. Tiwari)
Member (A)

(Kuldip Singh)
Vice Chairman (J)

/sunil/



CERTIFIED TRUE COPY
Dated: 25/8/05
जनमान सचिवारी (सी-३)
Section Officer (J-3)
केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
नया दिल्ली
New Delhi