
(2025) 09 CAT CK 0453

In the Central Administrative Tribunal, Allahabad Bench, Allahabad

Case No : Original Application No. 1119 Of 2013

Raj Yash Sharma

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 15-09-2025

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Employees Provident Fund Organisation Enforcement Officer / Accounts Officer (Group B post), Recruitment Rules, 2020 — Rule 5

Citation : (2025) 09 CAT CK 0453

Hon'ble Judges : Rajiv Joshi, Member (J); Anjani Nandan Sharan, Member (A)

Bench : Division Bench

Advocate : Rakesh Kumar Dixit, Satyajeet Mukherjee

Final Decision : Disposed Of

Judgement

Rajiv Joshi, Member (J)

1. Heard Rakesh Kumar Dixit, learned counsel for the applicant and Shri Satyajeet Mukherjee, learned counsel for the respondents.

2. Instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief(s):-

"i. issue an order or direction in the nature of mandamus commanding the respondents to consider the case of the applicant for promotion to the post of EO/ AAO and grant the same forthwith along with all consequential benefits of seniority and arrears of pay etc.

3. The brief facts of the case, as stated by the applicants in the Original Application, are as under:-

3.1 The applicant was initially appointed as Lower Division Clerk (LDC) in the office of the Regional Provident Fund Commissioner, Regional Office, Kanpur (Respondent No.3) on 16.08.1982 vide office order dated 01.09.1982. He was

promoted on ad hoc basis as Upper Division Clerk (UDC) in February 1987, after recommendation of the Departmental Promotion Committee and was subsequently regularized on the said post on 03.01.2001.

3.2 The Employees' Provident Fund Organisation (EPFO) introduced the Examination Scheme of 1992 for promotion to the posts of Enforcement Officer/ Assistant Accounts Officer (EO/AAO). As per the scheme, 25% of the posts were to be filled through departmental examination, 50% through seniority quota, and 25% through direct recruitment. The applicant, being eligible as a UDC with more than five years of service, appeared in the departmental examination held in December 2009 pursuant to Notification dated 01.09.2009, which had advertised 15 vacancies for the General category, 2 for SC, and 3 for ST candidates.

3.3 The result of the said examination was declared showing 12 successful candidates in the General category and keeping 3 vacancies unfilled pursuant to interim orders passed by this Tribunal in connected Original Applications (O.A. No.1453/2009, O.A. No.1518/2009 and O.A. No.1519/2009). The applicant's name appeared at Serial No.13 in the merit list under the General category. He contends that, but for the interim orders, he would have been promoted against one of the three kept-vacant posts.

3.4 The applicant came to know that certain candidates who had appeared in an earlier examination of 1999, but were unsuccessful, had approached this Tribunal through the aforesaid O.As. and obtained interim orders directing the respondents to keep posts vacant. According to the applicant, such candidates had neither qualified in the 1999 exam against notified vacancies nor participated in the 2009 exam and hence had no legal claim. Despite this, their O.As. led to three posts being kept unfilled in 2009.

3.5 The applicant has made several representations, including dated 17.08.2010 and 26.12.2011, seeking consideration for appointment against one of the withheld posts. He has also approached the High Court, which on 30.08.2012 directed the matter to be decided expeditiously. However, no final decision has been taken by the respondents, resulting in continued denial of promotion to the applicant despite his position in the merit list. He has thus approached this Tribunal seeking relief for promotion to the post of EO/AAO against the vacancies kept vacant under the interim orders.

4. Official Respondents-1 to 3, have filed their counter affidavit on 01.07.2014 wherein, they have denied the claim of the respondents and stated that:-

4.1 Three vacancies of EO/AAO in the 2009 departmental examination for U.P. Region were kept vacant in compliance of interim orders passed by this Tribunal in O.A. Nos.1453/2009, 1518/2009 and 1519/2009. Therefore, unless those O.As. are finally decided, the relief claimed by the present applicant cannot be considered or granted.

4.2 On the issue of alleged miscalculation of vacancies, respondents have taken the stand that any variation in vacancies after notification is adjusted in the next departmental examination cycle, as per the notified scheme of 1992. Hence, even if some miscalculation occurred, the applicant cannot claim a vested right to be appointed against those withheld vacancies.

4.3 The respondents submit that they are handicapped due to subsisting stay orders in the connected O.As. and, therefore, cannot issue appointment letters in favour of the applicant. They assert that the present O.A. deserves to be dismissed as premature, being wholly dependent upon the outcome of the earlier O.As. pending adjudication before this Tribunal.

5. Private Respondent No.4 (Shri Ashok Kumar Agarwal) has also filed his counter affidavit on 05.02.2015 and contended that the relief sought by the applicant in the present Original Application (O.A.) cannot be granted at this stage because three posts relevant to the claim have been kept vacant pursuant to stay orders passed by this Hon'ble Tribunal in O.A. Nos. 1453/2009, 1518/2009, and 1519/2009. He submits that until the disposal of these earlier O.A.s, any consideration of the applicant's claim would be premature. He further stated that the present O.A. is a reiteration of relief already sought in O.A. No. 1453/2009 in which the applicant was a party but did not succeed, rendering the current application legally impermissible and liable to be dismissed.

6. During the pendency of the present Original Application, the applicant filed Supplementary Affidavit on 11.07.2024 to place additional facts on record and stated that:-

6.1 He is retired Enforcement Officer (EO) from the EPFO Kanpur Regional Office, who initially sought promotion to the post of EO/AO and subsequent Non-Functional Upgradation (NFU) to Level-9 in the Pay Matrix, as his junior, Radhey Shyam, had already received such benefit.

6.2 He had appeared for the Limited Departmental Examination (LDE) in 2009 and was placed 13th in the UP Quota, but three posts were withheld due to interim orders in O.A. Nos. 1453/2009, 1518/2009 and 1519/2009. After dismissal of those OAs, the revised result declared in October 2018 placed him at 14th position and he was eventually promoted to EO/AO on a notional basis with effect from 01/10/2010, formalized by an order dated 08/02/2019.

6.3 Despite this promotion, the applicant was deprived of NFU in Level-9, as under the EO/AO Recruitment Rules, 2020, four years of regular service in Level-8 was initially required. However, DoPT instructions dated 20/09/2022 reduced the qualifying service to two years, which the applicant satisfies.

6.4 He contended that the delay in his promotion caused him to miss the financial benefits he was otherwise entitled to under the rules. Relying on the DoPT instructions and Rule 5 of the EO/AO Recruitment Rules, 2020, the applicant requested that the NFU in Level-9 be granted with all consequential

benefits on the ground that denial would cause undue hardship and discrimination, especially since his junior had already been granted the benefit.

7. The submissions of the learned counsel for the applicant in support of his case are as follows:-

7.1 Although the applicant has since been promoted to the post of EO/AO, the present Original Application is not rendered infructuous. The primary grievance relates to the effective date of his promotion and its consequential impact on seniority, pay, and entitlement to Non-Functional Upgradation (NFU) under the MACP Scheme.

7.2 Several juniors, including private respondent No.4, were promoted before the applicant's promotion was regularized on 08/02/2019, despite the applicant having qualified the departmental examination in 2009. This created an anomalous situation, causing the applicant to suffer loss of seniority and financial benefits. It was submitted that, as per settled service jurisprudence, a senior officer cannot be made to suffer for administrative delays, and where juniors are promoted earlier, the senior is entitled to notional promotion from the same date, i.e., 01/10/2010.

7.3 The delay in promotion has adversely affected the applicant's eligibility for NFU in Level-9, which is linked to the date of regular promotion under the EO/AO Recruitment Rules, 2020. The applicant contended that the dismissal of his earlier O.A.s in 2018, which pertained only to the declaration of departmental examination results, does not bar him from raising the present grievance regarding denial of promotion with consequential seniority, arrears of pay, and NFU benefits.

7.4 In conclusion, it is prayed that this Tribunal recognize that the present Original Application retains full force, as the grievance primarily concerns NFU and consequential financial benefits. The applicant's counsel requested that the respondents be directed to consider and decide his representation dated 05.11.2022 regarding NFU in a time-bound manner to remove the prejudice caused by delayed promotion and ensure that he receives all due financial benefits.

8. Per contra, learned counsel for the respondents submits that the applicant has already been promoted to the post of EO/AO vide order dated 08.02.2019 with notional effect from 01.10.2010. Therefore, the relief sought for promotion in the present O.A. is rendered largely infructuous.

8.1 The respondents further contend that the promotions of other candidates were made strictly in accordance with the departmental rules, the 1992 Examination Scheme and the seniority list. Hence, no illegality or arbitrariness can be attributed to the respondents.

8.2 It is further submitted that the applicant's earlier O.As. (No. 1453/2009, 1518/2009, and 1519/2009) were dismissed in 2018, and the present attempt is

only an indirect re-agitation of issues already settled. As regards the grievance relating to seniority, financial benefits, or Non-Functional Upgradation (NFU), the same has to be examined separately by the competent authority in accordance with applicable rules, instructions, and DoPT guidelines. The respondents therefore submit that the present O.A. is devoid of merit and deserves to be dismissed.

9. We have carefully considered the rival submissions and perused the pleadings, counter affidavits and supplementary affidavits filed by the parties.

10. It is an undisputed fact that the applicant has already been promoted to the post of EO/AO vide order dated 08.02.2019 with notional effect the date of promotion of his junior. Consequently, the primary relief of promotion sought in the present Original Application stands satisfied and the O.A. to that extent is rendered infructuous.

11. The surviving grievance of the applicant pertains to the consequential benefits of such notional promotion, including arrears of pay, fixation of seniority and eligibility for Non-Functional Upgradation (NFU) under Pay Level-9 of the Modified Assured Career Progression (MACP) Scheme.

12. It is settled law that promotion cannot ordinarily be ante-dated unless specifically provided under the rules, or unless denial of promotion is attributable to wrongful or illegal action on the part of the employer. In the present case, the applicant's departmental examination result was declared belatedly due to pendency of connected O.As., and his earlier litigations challenging the declaration of results were dismissed in 2018. Therefore, there is no adjudication from this Tribunal directing grant of retrospective promotion to the applicant.

13. However, considering the specific grievance of the applicant regarding grant of NFU in Level-9 and other consequential financial benefits, the competent authority is directed to consider and decide the applicant's representation dated 05.11.2022 regarding grant of NFU. The authority shall pass a reasoned and speaking order in accordance with law and as per the rules, within a period of three months from the date of receipt of a certified copy of this order.

14. With the above direction, the present Original Application is disposed of. No order as to costs.

All pending MAs, if any, also stand disposed of.