

(2015) 11 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No. 38450/2013 (S-CAT)

Union of India and Others

APPELLANT

Vs

M. Aswathanarayana

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0065

Hon'ble Judges : Mohan M. Shantana Goudar and B. Veerappa, JJ.

Bench : Division Bench

**Advocate : G. Mallikarjunappa, Central Government Counsel, for the Appellant;
A.R. Holla, Advocate, for the Respondent**

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—The order dated 18.6.2013 passed by the Central Administrative Tribunal in O.A. No. 324/2011 is called in question in this writ petition by the Union of India and others.

By the impugned order, the Tribunal has directed the petitioners herein to convene a review meeting of Departmental Promotion Committee ("DPC" for short) immediately to consider the case of respondent herein for regularization in the post of Assistant Provident Fund Commissioner ("APFC" for short) and for consideration of his promotion to the next higher grade of RPFC II. Certain other consequential directions were also issued by the Tribunal.

2. The records reveal that the respondent herein was working in Employees' Provident Fund Organisation ("EPFO" for short). He was promoted to the post of APFC by an order dated 15.6.2001 on ad-hoc basis by following due procedure. However, he was subsequently posted as APFC, Sub Regional Office, Vellore, by an order dated 18.6.2001. He was placed under suspension on 8.8.2002 in contemplation of disciplinary proceedings. The said order was revoked on 10.3.2003 and he was reinstated to the duties subsequently as APFC at Regional Office, Chennai. Thereafter, the Departmental Enquiry was conducted against the

respondent under Rule 10 of the EPF Staff (CCA) Rules, 1971, for imposition of major penalty. The enquiry proceedings though started in the year 2001, were completed only in the year 2009. The respondent was charged that, while he was working as APFC in EPFO, Sub Regional Office, Vellore during the period 2001-02, caused fraudulent withdrawal of Provident Fund and Pension amount by Sri. Dhandapani, depriving the benefit to the actual beneficiary, namely, Sri. J. Swaminathan and thereby caused loss to EPFO.

After completion of enquiry, the Enquiry Officer held that the charges were partially proved and imposed minor penalty of withholding of one increment of pay for a period of one year without cumulative effect. Thereafter, the appeal was filed by the respondent, which came to be dismissed. Thus, the imposition of minor penalty subsisted against the respondent. Since the enquiry proceedings culminated in imposition of minor penalty against the respondent, his suspension from 8.8.2002 to 10.3.2003 was considered as duty in terms of the order dated 1.6.2011. In the meanwhile, the juniors to the respondent were promoted to the post of Regional Provident Fund Commissioner II ("RPFC-II" for short) by the order dated 3.11.2010. However, the respondent was not promoted for the said post on the ground that he was promoted and posted as APFC on ad-hoc basis and the same was not a regular promotion. Though representation was made by the respondent praying that his promotion to the post of RPFC-II by regularizing his service in the cadre of APFC retrospectively with effect from the date on which his immediate junior has been promoted with all consequential benefits of pay, arrears and seniority, the department did not pass orders in favour of the respondent herein. Ultimately, the respondent herein approached the CAT in O.A. No. 324/2011 seeking to set-aside the order passed by the third petitioner herein in not promoting the respondent and consequently, sought for promotion to the post of RPFC-II from the date on which his juniors were promoted. The Tribunal on considering the material on record has allowed the application by the impugned order.

3. We do not find any ground to interfere with the impugned order inasmuch as the same is just and proper on the facts and circumstances of the case. The learned Advocate for the respondent has produced the copies of the minutes of Screening Committee constituted for the purpose of ad-hoc promotion of various persons including the respondent herein. He has also produced the records pertaining to overall assessment of the candidates including the respondent to contend that the respondent was stated to have been promoted to the post of APFC on ad-hoc basis. The EPFO by following the due procedure as contemplated under the Rules has promoted the respondent and others.

4. The minutes of the Screening Committee constituted for the purpose of ad-hoc promotion of EO/AAO, Superintendent and Private Secretary to the post of APFC, clearly reveal that it was proposed to fill up 31 Direct Recruitment vacancies of APFC by ad-hoc promotion of eligible officers in the feeder cadres of EO/AAO, Superintendent and PS. It is also clear from the minutes that three vacancies

arose due to retirement of three APFCs, one on 31.4.2001, two on 31.05.2001 and 11 more are anticipated due to retirement before 31.12.2001. The Screening Committee selected certain number of persons including the respondent as APFC on ad-hoc basis only after having satisfied that those officers fulfill eligibility conditions prescribed in the Rules for promotion. It is also made clear that the ad-hoc promotion was done on the basis of seniority-cum-fitness and the benchmark prescribed was "Good". Thus, the minutes of the Screening Committee as confirmed by EPFO/employer would clearly reveal that all the procedure contemplated under the relevant Rules for appointing the persons of RPFC is followed by virtue of the appointment of certain officers including the respondent to the post of APFC. Though the promotion APFCs was termed as on ad-hoc basis, the same was made after following due procedure and as per Rules. The minutes of the meeting which considered overall assessment clearly disclose that the respondent's performance is assessed as "Very Good", which means the respondent's assessment was more than the bench mark prescribed.

5. On going through the records maintained by the employer/EPFO, it is clear that the initial appointment of the respondent for the post of APFC was made by following the due procedure laid-down in the Rules and the respondent has continued in the post uninterruptedly till regularization of his service in accordance with law on 12.11.2012. In view of the same, the period spent by the respondent while in officiating service from 15.6.2001 to 12.11.2012 shall be counted for the purpose of seniority and to have other benefits relating to promotion, etc., in favour of the respondent. The Tribunal has rightly concluded so in the impugned order.

6. It is relevant to note the dictum laid-down by the Apex Court in the case of The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, (relevant portion of paragraph-44), which reads thus:

"44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to Rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the Rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the Rules, the period of officiating service will be counted."

(emphasis supplied)

7. On going through the aforementioned clauses, it is clear that if the initial

appointment is made on ad-hoc basis and in case, the appointee is continued in his post till regularization in accordance with Rules, the period of officiating service will be counted for the purpose of seniority and promotion etc.

In view of the above, we do not find any ground to interfere with the impugned order.

Petition fails and the same stands dismissed.