

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**C.W.P. No. 8438 of 2011**  
**Date of Decision 12.05.2011**

Union of India and another -----Petitioners  
Versus

Central Administrative Tribunal,  
Chandigarh and another ---Respondents

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**  
**HON'BLE MR. JUSTICE GURDEV SINGH**

Present: Mr. O.S. Batalavi, Advocate  
for petitioner.

1. To be referred to the Reporters or not? yes
2. Whether the judgment should be reported in the Digest?

**M.M. KUMAR, J.**

1. The instant petition under Article 226 of the Constitution is directed against order dated 25.02.2011 (P-3) passed by Chandigarh Bench of the Central Administrative Tribunal (for brevity 'the Tribunal') holding that the original applicant-respondent A.K. Chandok was entitled to grant of non functional selection grade(for brevity 'the NFSG') being Employees Provident Fund Organisation (for brevity 'EPFO'). According to the Tribunal, the Board of Trustees is the final authority in the matter of determination of service condition of various categories of employees of EPFO. In that regard, the Tribunal has placed reliance on Section 5D(7) of Employees Provident Funds and Miscellaneous Provisions Act, 1952

(for brevity 'the 1952 Act') and proceeded to hold that the Central Board of Trustees was not required to seek prior approval of the Central Government in a case where there was no departure from the rules or order. In other words, if the benefit of the NFSG was not extended to employees of the Central Government and the departure was being made in respect of the employees working in EPFO only then approval from the Central Government was required. The view of the Tribunal is discernible from the following two paras of the judgment which reads as under:

"7. A perusal of the above quoted provisions of Section 5D(7) of the employees Provident Funds and Miscellaneous Provisions Act, 1952 leaves no manner of doubt that it is the Board of Trustees which is the final authority qua the determination of the service conditions of the Provident Fund Commissioners (be it the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner or any other officers and employees of the Central Board). The Central Government would necessarily come in "..... where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid. . ." The above quoted provision also provides that the conditions of service of the above indicated categories of officers and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders

applicable to the officers and employee of the Central Government drawing corresponding scales of pay." Thus, it is only when a departure from the rules aforementioned is envisaged that the Board would be obliged to obtain the prior approval of the Central Government.

8. In the facts and circumstances of this case as instance of departure from the rules could be envisioned only when the Central Board of Trustees recommends a higher grade of pay or special pay etc. to a category of employees whose counterparts in the Central Government are not enjoying the same. In this case it is common ground that a non functional selection grade had been allowed to Group A Officers of the Government of India. It is further apparent, from the pleadings raised by the parties, that the Central Board of Trustees agreed to the implementation of the 5<sup>th</sup> CPC recommendations to the employees of the respondent Organization in toto. The only exception was the non functional selection grade, the grant thereof was not decided upon by the Central Board of Trustees at a point of time when the decision was taken to implement the recommendations made by the 5<sup>th</sup> CPC. In common parlance, a decision had to be taken by the Central Board of Trustees about the grant or otherwise of the non functional selection grade to the categories of employees of the respondent organization, corresponding to their counterparts in the Central Government. If the Board were to agree to implement the non functional selection grade, it was not at all obliged to make a reference to the Central Government or to obtain prior approval therefore.

At the same time the prior approval of the Central Government was compulsive in case the Central Board of Trustees were to refrain from implementing the recommendations of the 5<sup>th</sup> CPC qua the grant of non functional selection grade to the relevant categories of employees.”

2. The aforesaid paras clearly propound the proposition that no permission from the Central Government was required and the original applicant-respondent was entitled to grant of NFSG as was approved by the Central Board of Trustees. There is, thus, no merit in the writ petition and the order passed by the Tribunal is wholly within the parameters of Section 5D(7) of the 1952 Act.

3. Accordingly, the present writ petition fails and the same is dismissed.

**(M.M. KUMAR)  
JUDGE**

**(GURDEV SINGH)  
JUDGE**

**May 12, 2011**

Atul