

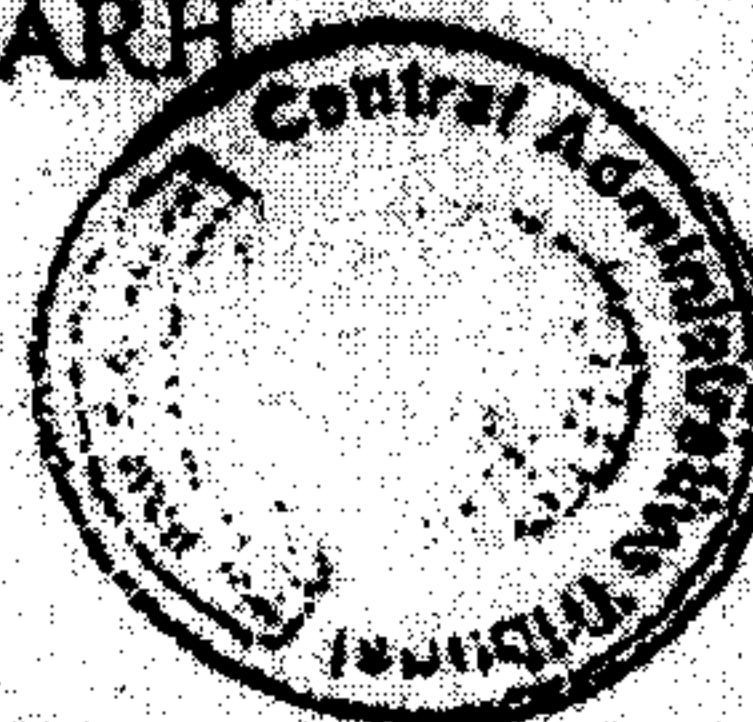
DESPATCH NO. 1355

DATED 3/3/11

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH

From

The Registrar,
Central Administrative Tribunal,
Chandigarh Bench.



- 1. Sh. R. K. Sharma, Advocate C/o CAT, Bar Association, Chandigarh.
- 2. Sh. Deepak Agnihotri, Advocate, C/o CAT, Bar Association, Chandigarh.

Original Application No. 400/HR/2010

A. K. Chandok

Versus

.....Applicant(S)

Union of India

.....Respondent(S)

Sir,

I am directed to forward herewith a copy of order dated 25.2.2011 passed by a Bench of this Tribunal comprising Hon'ble Mr. Justice S.D. Anand, Judicial Member and Hon'ble Mr. Khushiram, Administrative Member in the above mentioned case for information/Compliance and necessary action please.

Yours Faithfully,

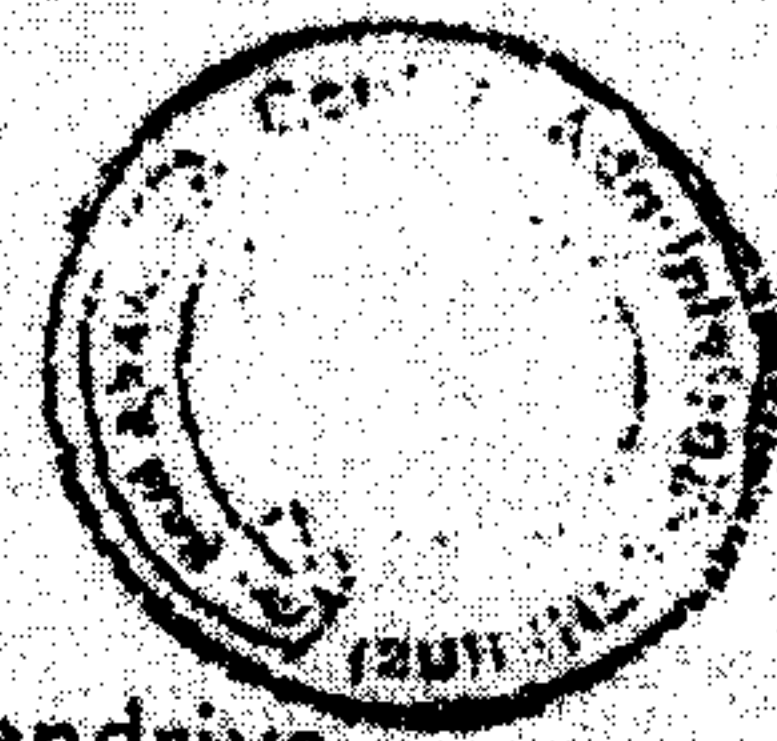
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3/3/11

(O.A. No.400-HR of 2010)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

ORIGINAL APPLICATION NO.400-HR of 2010
Chandigarh, this the 25th day of February, 2011

CORAM: HON'BLE MR. JUSTICE S.D. ANAND, MEMBER (J)
HON'BLE MR. KHUSHI RAM, MEMBER (A)



4. A.K. Chandok son of Jai Gopal Chandok; resident of Flat No. 185, Kendriya Vihar-II, Sector 25, Panchkula.

...APPLICANT

BY ADVOCATE: SHRI R.K. SHARMA.

VERSUS

1. Union of India through the Secretary, Ministry of Labour, Government of India, Shram Shakti Bhawan Rafi Marg, New Delhi.
2. Central Provident Fund Commissioner, Bhavishya Nidhi Bhawan, 14, Bhikaraj Cama Place, New Delhi 66.
3. Central Board of Trustee, through its Chairman.

...RESPONDENTS

BY ADVOCATE: SHRI DEEPAK AGNIHOTRI.

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ORDER**HON'BLE MR. JUSTICE S.D. ANAND, MEMBER(J):-**

Facts, apparent from a conjunctive perusal of the pleadings of the parties and conceded as well in the course of the presentation, are as under.



2. The recommendations made by the Fifth Central Pay Commission (referred to as 'the 5th CPC') were accepted by the Central Government, in respect of the relevant categories of employees, and made applicable with effect from 1.1.1996. Those recommendations included the non-functional selection grade as well which was made available to all Group 'A' officers of different allied cadres.

3. The respondent, Employees' Provident Fund Organization ('EPFO', for short) also implemented the recommendations made by the 5th C.P.C. in toto with the exception that the matter pertaining to the grant of non-functional selection grade came to be decided by the Board of Trustees of the Organization at its meeting held on 13.8.1999. The decision taken by the Board of Trustees was that the non-functional selection grade shall be made available to the relevant category of employees w.e.f. 13.8.1999. The decision taken by the Board of Trustees was referred to the Government of

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India, in the Ministry of Labour & Employment, which agreed to the grant of non-functional selection grade in principle, but did not agree with the implementation thereof with effect from 13.8.1999. It ordered that it shall be implemented with immediate effect.

4. The pure and simple plea, raised on behalf of the applicant, is that the Board of Trustees being the final authority in the matter of determination of the service conditions of the relevant categories of employees of the EPFO, the forwarding of the matter to the Government of India was a mere surplusage and, in that view of things, the determination of the date with effect from which that decision was ordered to be implemented (i.e. with immediate effect) by the Government of India is also mere surplusage. Reliance, in support of the above averment was placed upon Section 5D(7) of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which is extracted hereunder:-

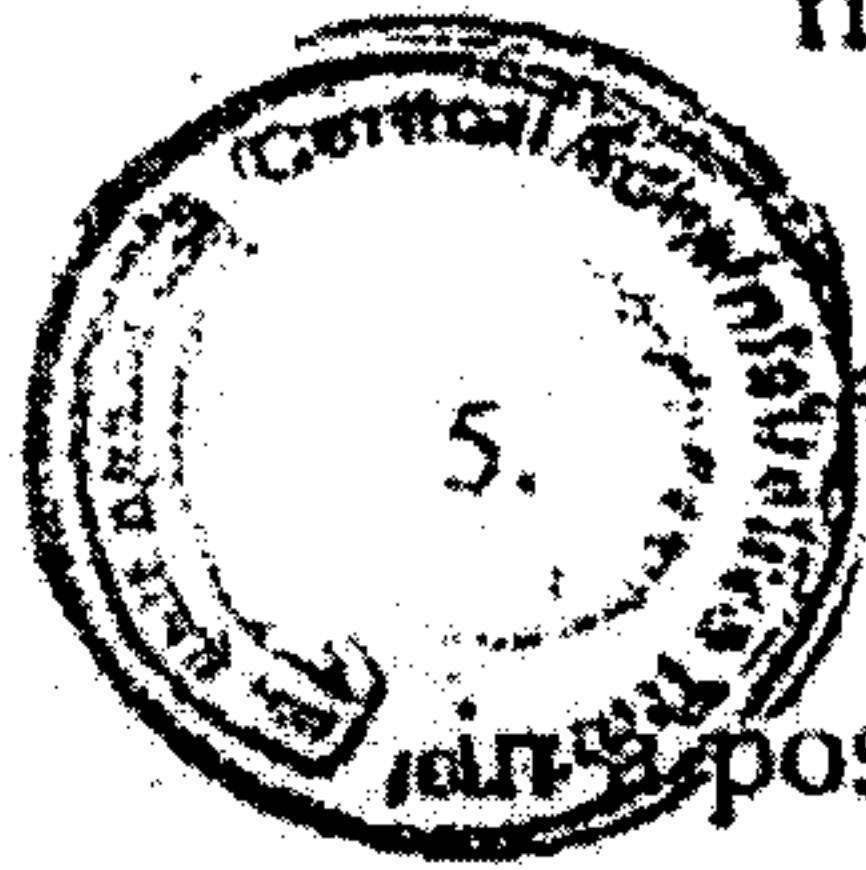
"5D(7)(a) The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident fund Commissioner and other officers and employees 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 employees of the Central Govt. drawing corresponding scales of pay:

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or

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orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Govt.

(b) In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Govt. and in case of any doubt, the Central Board shall refer the matter to the Central Govt. whose decisions therein shall be final.



5. The learned counsel, appearing on behalf of the respondents, was not in a position to dispute the correctness of the averment that it is the Central Board of Trustees which is the competent authority to take a decision in the relevant behalf. However, it was argued that since there was a departure from the rules, the matter did call for approval by the Central Government.

6. We have not been able to persuade ourselves to agree with the learned counsel for respondents. The reasons therefor are as under.

7. A perusal of the above quoted provision 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

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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 employees of the Central Govt. 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, an 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 5th CPC

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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 5th 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 therefor. 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 5th C.P.C. qua the grant of non-functional selection grade to the relevant categories of employees.

9. In view of the fact that the Central Board of Trustees agreed to implement the recommendations made by the 5th C.P.C. qua the grant of non-functional selection grade to Group 'A' officers in toto, no reference at all was required to be made to the Central Government. If any reference came to be made inadvertently, it would not authorize the Central

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Government to decline concurrence to the decision taken by the Central Board of Trustees to implement the relevant Pay Commission recommendations with effect from 13.8.1999. Even at the cost of repetition, we may notice that the reference made to the Central Government is as much a surplusage as was the decision taken by the Central Government for the implementation of the decision aforementioned (taken by the Central Board of Trustees) with immediate effect and not with effect from 13.8.1999, in terms of the recommendations made by the Central Board of Trustees qua the date of implementation thereof.

10. We have, thus, no hesitation in holding that the 5th C.P.C. recommendations regarding the grant of non-functional selection grade to the relevant categories of employees of EPFO were to be implemented with effect from 13.8.1999.

11. Faced with the predicament aforementioned, the learned counsel appearing on behalf of the respondents argued that the O.A. is time-barred inasmuch as the relevant decision by the Central Government came to be taken in the year 2006; whereas, this O.A. came to be filed in the year 2010.

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