



EMPLOYEES' PROVIDENT FUND OFFICERS' ASSOCIATION
EMPLOYEES' PROVIDENT FUND ORGANISATION

Ministry of Labour and Employment, Government of India

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Dated: 06.10.2015

To
Shri K.K. Jalan, I.A.S.,
Central Provident Fund Commissioner,
Head Office,
New Delhi.

Sub: Revision of Seniority List issued on 16.07.2015 & Issue of fresh and up-to-date Seniority List applicable for Financial Year 2015-16 or Calendar Year 2015 - DOPT OM No.20011 dated 04.03.2015 in consequence of Hon'ble Supreme Court judgment in the case of N.R. Parmar Vs Union of India & Others - Reg

Ref:

1. Office Order issued vide
No. HRM-II/S-1(1)2013/16649 dated 16.07.2015
2. Office Order issued vide
No.HRM-II/P-2(3)2015/DPC/24820 dated 9.09.2015

Sir,

It is observed that an office order has been issued vide No. HRM-II/P-2(3)2015/DPC/24820 dated 09.09.2015 regarding appointment to the post of Regional Provident Fund Commissioner-II based on recommendation of Departmental Promotion Committee held on 05.08.2015.

Point wise submissions are made on two orders issued and mentioned in reference:

1. Illegality of Seniority List issued on 16.07.2015 for purpose of DPC of FY 2015-16 & need for issuing fresh and up-to-date Seniority List applicable on 31.12.2014 or 31.03.2015

It is kindly submitted to your good self that order for appointment to post Regional Provident Fund Commissioner -II on regular basis dated 09.09.2015 seems to have been issued **based on seniority list of APFCs as on 31.12.2012** issued vide No.HRM-II/S-1(1)2013/16649 dated 16.07.2015 and **no fresh seniority list, applicable on crucial date for determining eligibility for DPC for calendar year 2015 or financial year 2015-16, as the case may be**, have been prepared for purpose of Departmental Promotion Committee held on 05.08.2015 for considering appointment to the post of Regional Provident Fund Commissioner-II on a regular basis.

Relevant excerpts on "Seniority List" from DOPT O.M. issued vide No. 22011/5/86-Estt (D) dated 10.04.1989 on checklist for consideration of DPC, is being mentioned below:

"(a) Whether complete and up-to-date seniority list of officers in the feeder grade furnished in the proforma as prescribed by the DoP&T Office Memorandum No.22011/5/86-Estt(D) dated 10.4.1989.

(b) Whether separate seniority lists/combined seniority list of all feeder grades furnished (in case more than one feeder grades exist).

(c) Whether all the officers who were in position as on the crucial date (including those who have since retired/expired) have been included in the Seniority List.

(d) Whether the seniority list is certified to have been circulated to all concerned before finalisation.

(e) Whether changes in seniority list since the last DPC have been indicated."

It is urged from your good self that **no up-to-date seniority list** of APFCs has been prepared which is applicable for DPC for Financial year 2015-16 or Calendar Year 2015. **Further, the APFCs Seniority list issued on 16.07.2015, which seems the basis of order of promotion/appointment to the post RPFC-II dated 09.09.2015, has been**

prepared without giving any opportunity to the Direct Recruit APFC for representation, thereby violating the principles of natural justice and resulting in the non-inclusion of the Direct Recruit APFC on the crucial date for DPC conducted on 05.08.2015.

Chronological developments on the issue of seniority between Direct Recruits and Promotees, including DoPT OM dated 03.03.2008, is being summarized below for your kind consideration:

- DoPT vide its O.M. No.35014/2/80-Estt.(D) dated 7.2.1986, issued comprehensive guidelines as to how inter-se-seniority of Direct Recruits and Promotees are to be fixed and DOPT vide its OM No.22011/7/1986-Estt.(D) dated 03.07.1986 consolidated all orders on seniority issued till that date.
- DoPT vide its O.M. No. 20011/5/90-Estt.D dated 4th November, 1992 delinked issue of Seniority from date of confirmation subsequent to Hon'ble Supreme Court order in case of Class II Direct Recruits Engineering Association vs State of Maharashtra and thus issue of seniority reached finality with respect to any consideration of date of confirmation.
- Further DoPT vide Office Memorandum No.20011/1/2006-Estt.(D) dated 03.03.2008 which was in nature of clarification to OM No.22011/7/1986-Estt.(D) dated 03.07.1986, clarified that the seniority of an individual would be worked out on the basis of date of joining / date of promotions.
- The DOPT OM dated 03.03.2008 led to litigation which finally reached the Hon'ble Supreme Court in form of case **Union Of India & Ors vs N.R. Parmar & Ors**. Consequently, Hon'ble Supreme Court in its judgment, popularly known as N R Parmar Judgment, held that "... *The OM dated 03.03.2008 has clearly breached the parameters and the ingredients of a 'clarification'. Therefore, for all intents and purposes, the OM dated 03.03.2008 must be deemed to be non-est to the extent that the same is in derogation of the earlier OMs dated 07.02.1986 and 03.07.1986..... OMs dated 07.02.1986 and 03.07.1986 would have an overriding effect over the OM dated 03.03.2008 (to the extent of conflict between them) ... OM dated 03.03.2008 is not relevant for the determination of the present*

controversy” (Para 29). It is also pertinent to mention here that the circular of DoPT dated 03.03.2008 which was made void by above Hon’ble Supreme Court judgment, was never introduced / applied in EPFO by means of any corrigendum to EPF Seniority Fixation Regulation, 1989 however Seniority List of APFCs issued dated 16.07.2015 seem to be modeled on this void DOPT OM dated 03.03.2008.

- Further, while analyzing provisions of DoP&T’s OM dated 07.02.1986 and dated 03.07.1986, Hon’ble Supreme Court held that “*It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be relevant factor for determining seniority of direct recruits. It would suffice if action had been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so because delay in administrative action, it was felt, could not deprive an individual of his due seniority*” {Para 22(b)}.
- Hon’ble Apex Court also explained the words “initiation of action for recruitment” and the words “initiation of recruitment process” as the **date of sending the requisition to the recruiting authority** {Para 23(b)}.

In pursuance of above SC judgement in the case of NR Parmar vs. UOI & Ors, DoPT in consultation with the Department of Legal Affairs issued O.M. No. 20011/1/2012-Estt.(D) dated 04.03.2014 and decided that the manner of determination of inter-se-seniority of direct recruits and promotees would be as under:

- DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as nonexistent/withdrawn *ab initio*;
- The rotation of quota based on the available direct recruits and promotees appointed against the vacancies of a Recruitment Year, as provided in DOPT O.M. dated 7.2.1986/3.07.1986, would continue to operate for determination of *inter se* seniority between direct recruits and promotees;

- The available direct recruits and promotees, for assignment of *inter se* seniority, would refer to the direct recruits and promotees who are appointed against the vacancies of a Recruitment Year;
- **Recruitment Year would be the year of initiating the recruitment process against a vacancy year;**
- **Initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits;** in the case of Promotees the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up the vacancies through promotion would be the relevant date.
- Carry forward of vacancies against direct recruitment or promotion quota would be determined from the appointments made against the **first attempt for filling up of the vacancies for a Recruitment Year.**

Subsequently, this DoPT OM dated 04.03.2014 has since been adopted in toto by various organizations such as Income Tax, Central Excise etc. As parity of Central Board of Trustees officers with officers of CBDT (Income Tax Department) has been approved in 72nd Executive Committee meeting, there seems no ground for any deviation and thus fresh and up-to-date seniority list needs to be drawn in accordance with this settled principle.

Your kind attention is solicited on Seniority List of APFCs issued vide No. HRM-II/S-1(1)2013/16649 dated 16.07.2015. It reveals that Sr. No. 283 (Shri Mahabir Singh) to Sr. No. 461 (Shri R.P. Pawar) have been promoted on one date i.e. 24.08.2011 which means they have been promoted on DPC held on 24.08.2011 or some time before it. In any case they have been promoted in the financial year 2011-12. Similarly officers from Sr. No. 462 to 520 have been promoted in the financial year 2012-13. The requisition for recruitment of 253 DR APFCs, was first initiated, vide the letter bearing no. HRM-I/A-10(2)2001/DR APFC/1716 dated 15.01.2009, by way of sending requisitions to UPSC, Therefore the **recruitment year** in Direct Recruit APFC case as per above circulars & O.M. of DOPT, Employees' Provident Fund Staff

(Fixation of Seniority) Regulations, 1989 and NR Parmar judgment will be **2009-10 (FY)**.

Therefore, it is urged from your good self to kindly direct concerned officials to prepare a fresh and up-to-date seniority list legally valid for DPC of 2015-16, based on above mentioned settled principles of seniority in which Direct Recruit APFC of year 2011-12 to be placed senior to the Promotees regularised through DPC of Financial year 2011-12 (i.e. with Serial number 283 to 461 of seniority list of APFCs issued on 16.07.2015).

2. Instituting Review DPC and withholding implementation of order issued vide No. HRM-II/P-2(3)2015/DPC/24820 dated 09.09.2015

It is also kindly submitted to your good self that while issuing above said appointments to the post of RPF-C-II, **no fresh and up-to-date seniority list** have been issued for year 2014 or 2015 which are **“crucial and deciding”** for any promotion/appointment occurring in year 2015 in terms of DPC requirement and neither Seniority List presented vide No. HRM-II/S-1(1)2013/16649 dated 16.07.2015 is legally valid for DPC being conducted in Financial Year 2015-16.

Based on above, it is apparent that above order issued vide No. HRM-II/P-2(3)2015/DPC/24820 dated 09.09.2015 is plagued by **procedural defects**, anomalies and against the prevailing rules and regulation applicable and thus grossly arbitrary. And therefore, it is humbly prayed and urged from your good self to:

1. Kindly withhold implementation and rescind the office order issued vide No. HRM-II/P-2(3)2015/DPC/24820 dated 09.09.2015, which is **plagued by defects of substantive character**, by placing the matter to the competent authority, if required to avoid any situation where juniors become seniors or officers getting demoted due to correction/rectification of procedural lapses /anomalies and by implementation of Hon'ble Supreme Court Judgment.
2. Arrange to prepare fresh list of seniority as applicable on 01.04.2015 for any future appointments to the post of Regional Provident Fund Commissioner-II to avoid any anomalies based on **above mentioned settled principles of seniority in which Direct Recruit APFC of year 2011-12 is to be placed**

senior to the Departmental Promotees regularised through DPC for Financial year 2011-12 (i.e. with Serial number 283 to 461 of seniority list of APFCs issued on 16.07.2015).

3. Consider institution of a review DPC to correct above said defects, anomalies and gross arbitrariness arisen by placing the matter to the competent authority.

Thanking you.

Yours faithfully,

A. Swami
(Saurabh Swami)
Secretary General