

UNION OF INDIA AND ORS.

A

v.

VINOD KUMAR AND ORS.

JULY 15, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

B

*Employees Provident Fund and Miscellaneous Provisions Act, 1952 :
Section 5-D (7)(a)—Proviso.*

Service Law—Recruitment—Promotion—Rules and orders regarding—Departures from—Permission for—Prior permission of Central Government—Held necessary Ex post facto approval given for promotion made in deviation of rules held not valid in law—Direction given by Tribunal for issue of Notification for fresh recruitment in accordance with rules held valid.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9817 of 1996.

D

From the Judgment and Order dated 4.10.95 of the Central Administrative Tribunal, Chandigarh in O.A. No. 1002/PB/94.

R.V. Reddy, C.V.S. Rao and T.C. Sharma for the Appellants.

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Ms. Meera Agrawal and R.C. Mishra for the Respondents.

The following Order of the Court was delivered :

Delay condoned.

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Leave granted.

We have heard the learned counsel.

The only short question is whether the deviation from rule of granting promotion of 50% of the quota giving 2 years additional benefit to the Upper Division Clerks is valid in law ? Sub-section (7)(a) of Section 5-D of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 provides method of recruitment as under :

G

" 7(a) The method of recruitment, salary and allowances, discipline

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- A 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 Government drawing corresponding scales of pay.
- B

- C Provided that 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, it shall obtain the prior approval of the Central Government."

- D Under the proviso, 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 enumerated above it is mandatory that it should obtain prior approval of the Central Government. Admittedly, prior approval was not obtained. On the other hand, *ex post facto* approval was obtained but in the teeth of the language of the proviso *ex post facto* approval is not an approval in the eye of law. Under these circumstances, the Tribunal had rightly held that the approval was not valid in law and the matter was kept at large and directed the appellant to issue notification afresh for recruitment in accordance with rules. We do not find any illegality in the order.
- E

The appeal is accordingly dismissed. No costs.

T.N.A.

Appeal dismissed.