

Union of India and Others

Vs

Vinod Kumar and Others

Civil Appeal No. 9817 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

15.07.1996

JUDGMENT

1. Delay condoned.

2. Leave granted.

3. We have heard the learned counsel.

4. 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 or recruitment as under :

"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 Rule and orders applicable to the officers and employees of the Central Government 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 orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government." 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 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 legality in the order.

5. The appeal is accordingly dismissed. No costs. Appeal dismissed.