

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1404/1989

Date of decision: 25.10.91

Mrs. Urmil Sharma and Others

...Applicants

Vs.

The Director General, Employees State
Insurance Corporation & Others

...Respondents

For the Applicants

...Mrs. Raj Kumari
Chopra, Counsel

For the Respondents

...Shri D.P. Malhotra,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? (J.)
2. To be referred to the Reporters or not? (J.)

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicants who are working as Laboratory
Technicians in the Directorate General, Employees State
Insurance Corporation (ESIC) filed this application under
Section 19 of the Administrative Tribunals Act, 1985, praying
for the following reliefs:-

- "(i) To direct the respondents to treat and designate the applicants as Laboratory Technicians from their respective dates of appointment;
- (ii) to direct the respondents to apply the ratio of the judgment in T-747/86 to the present applicants forthwith;
- (iii) to direct the respondents to give the applicants arrears

of pay and all other consequential benefits;

(iv) to direct the respondents to pay the costs of the legal proceedings; and

(v) to pass any other order or direction which this Hon'ble Tribunal thinks fit and proper in the facts and circumstances of the case".

2. The applicants were initially appointed as Laboratory Technicians on 24.7.1964, 13.9.1962 and 7.8.1964 respectively. Some other Laboratory Technicians, who were similarly placed as the present applicants, had challenged the wrong fixation of pay for Laboratory Technicians in the scale of Rs.110-200 in Delhi High Court in Writ Petition No.410 of 1974 (Shri Virbhan Thakker and Others Vs. ESI Corporation). In that petition the petitioners had claimed the scales of Rs.130-300 and Rs.150-300 (for graduates) for the posts of Laboratory Technicians. The said petition stood transferred to this Tribunal and the same was disposed of by judgment dated 25.4.1988. The Tribunal partly allowed the petition with the direction that the pay of the petitioners shall be fixed in the pay scale of Rs.130-300 (Graduates will be given a higher start of Rs.150/- in the scale) from 1st April, 1962 or the actual date of their joining the ESI Corporation, whichever is later and they (including legal heirs in the case of petitioner No.4) shall be paid arrears of salary and increments in the said scale for the period

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upto 31st December, 1972. This direction shall be complied with within a period of three months of the receipt of this order by the respondents.

3. The applicants represented to the respondents on 11.10.1988 and 16.10.1988 for extending the benefit of the aforesaid judgment to them but they received no reply from the respondents.

4. The respondents have stated in their counter-affidavit that the case of the applicants is not identical with that of Shri Virbhan Thakar and Others in as much as the latter had come on transfer to ESIC from the Delhi Administration on transfer whereas the applicants before us were directly appointed by ESIC in the scale of Rs.110-200 after their specific and explicit acceptance of offer of appointment in that scale. They have also contended that the application is not maintainable on the ground of bar of limitation.

5. We have carefully gone through the records of the case and have considered the rival contentions. The learned counsel for both parties have cited before us numerous judgments in support of their respective contentions and we have duly considered them.*

* Judgments relied upon by the learned counsel for the applicants:-

1991(1) SLJ 25; AIR 1991 SC 56; 1989(2) SLJ 632

* Judgments relied upon by the learned counsel for the respondents:-

1989(10) ATC 394; Order dated 25.4.1991 of the Supreme Court in Civil Appeal No.897 of 1987, Union of India Vs. All India Services Pensioner's Association & Another; ATR 1987(1) CAT 1; 1987 SCC (I&S) 271; 1990 Lab. IC 398.

In our opinion, the respondents should not have raised the technical plea of limitation to defeat the just claims of the applicants. The cause of action arose from the date of the judgment of the Tribunal dated 25.4.1988. The application was filed within a period of one year and six months and the representation made by them were not replied to by the respondents. We, therefore, overrule the plea of limitation raised by the respondents.

6. It is true that the applicants were appointed as Laboratory Technicians by the ESIC directly unlike Shri Virbhan Thakar and others who came over to ESIC on transfer from the Delhi Administration. At the same time, it is relevant to observe that all the Laboratory Technicians were doing the same work, with no difference in the nature of duties and responsibilities. Apart from this, when the applicants represented against change in their designation from Laboratory Technician to that of Laboratory Assistant in the same scale of pay of Rs.260-430 by Memorandum dated 6.5.1977, the respondents informed that "the same will be considered/examined after finalisation of the Writ Petition pending in the High Court (Vir Bhan Thakar & Others Vs. ESI Corporation)*(Vide Annexure A-4, page 24 of the Paper Book). In our view, the non extension of the benefit of the judgment of the Tribunal dated 25.4.1988 in the case of Vir Bhan Thakar & Others to the applicants before us is unjust and discriminatory.

7. In the light of the foregoing, the application is partly allowed and disposed of with the following orders and directions:-

(i) The respondents are directed to refix the pay and allowances of the applicants in the post of Laboratory Technician on the same basis as that of S/Shri Vir Bhan Thakar and Others pursuant to the judgment of this Tribunal dated 25.4.1988 in T-747/86 with effect from their respective dates of initial appointment as Laboratory Technicians. They shall also release to the applicants difference in the pay and allowances from their respective dates of initial appointment as Laboratory Technicians to the date of disbursement, together with simple interest at the rate of 12% per annum. The applicants would also be entitled to all consequential benefits.

(2) The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

(3) There will be no order as to costs.

B.N.Dhundiyal
(B.N. DHUNDIYAL) 25/10/91
MEMBER (A)

25/10/91
(P.K. KARTHA)
VICE CHAIRMAN (J)