

(35)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. (1) OA 2548 of 1989 Date of decision: 25.10.91
(2) CCP 188 of 1990 in
OA 2548/89

(1) OA 2548/1989

Smt. Urmil Sharma & Others ...Applicants

Vs.

The Director General, ...Respondents
Employees State Insurance
Corporation & Others

(2) CCP 188/1990 in
OA 2548/1989

Smt. Urmil Sharma & Others ...Applicants

Vs.

Smt. Kusum Prasad & Others ...Respondents

For the Applicants in (1) and (2) ...Mrs. Raj Kumari
Chopra, Counsel

For the Respondents in (1) and (2) ...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? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

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

The applicants who have worked as Laboratory Technicians in the Employees State Insurance Corporation (ESIC) filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (a) The application may be admitted with cost.

(b) That the impugned seniority list at Annexure A-2 be quashed.

(c) That Respondent No.3 may be directed to consider applicants for the upgraded post.

(d) That Hon'ble Tribunal may issue any other direction/ order as deemed fit in the matter".

2. The application was filed in the Tribunal on 20.12.89.

On 21.12.1989, an ex parte interim order was passed to the effect

that the respondents shall consider the suitability of the

applicants in accordance with their position in the 1971

seniority list for promotion to the post of Senior Laboratory

Technicians along with the other candidates on a provisional

basis. This order was continued thereafter till the case

was finally heard on 18.9.1991 and judgment reserved thereon.

The alleged non-compliance with the aforesaid order by the

respondents is the subject matter of CGP 188 of 1990 filed by them.

3. The facts of the case, in brief, are as follows.

The applicants were appointed as Laboratory Technicians

in ESK during 1962/1964 in the scale of pay of B.110-200.

On 27.11.1989, the respondents upgraded 5 posts of

Laboratory Technicians into posts of Senior Laboratory

Technicians. This was in addition to one such post which was

already available. According to them, they have been holding

the same post of Laboratory Technician for the last 28 years

or so without any promotion and that having regard to their

position in the 1971 seniority list, they are entitled to

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promotion to the upgraded posts of Senior Laboratory Technicians. They have challenged the validity of the circulated impugned seniority list by the respondents in 1988 in which their seniority has been altered to their disadvantage without giving any show cause notice to them.

4. The stand of the respondents is as follows. The applicants were appointed as Laboratory Technicians in the scale of pay of Rs.110-200 after their explicit acceptance of the offer of appointment and the said scale of pay and the educational qualifications and experience prescribed for the said post corresponded to the post of Laboratory Assistants under the Central Government. On the recommendations of the Third Pay Commission, the scale of pay of Rs.110-200 for the post held by the applicants was revised to Rs.260-430 and by an amendment of the ESIC (Recruitment Regulation) made in 1977, the nomenclature of the post was changed from Laboratory Technician to that of Laboratory Assistant to make it correspond to the designation of the post under the Central Government which carried the same scale of pay and for which the same educational qualifications and experience were prescribed as that for the post of the applicants under the ESIC. The change in the nomenclature of the post was only nominal and has no other effect on the service prospects of the applicants. Applicant Nos. 1 and 2 were promoted to the post of Laboratory Technicians with effect from 30.4.1987 and Applicant No.3 with effect from 14.12.1988. The impugned seniority list was prepared

in pursuance of the judgment of this Tribunal in the case of

Vir Bhan Thakar Vs. ESIC(T-747/84 decided on 25.4.1988).

The representations made by the applicants against the impugned seniority list are still under consideration.

5. The respondents have contended that the seniority list of 1971 is irrelevant in view of the subsequent seniority lists of Laboratory Assistants and of the Laboratory Technicians as on 31.3.1977, 31.10.1980 and 31.3.1988. The applicants did not figure in the seniority list for the post of Laboratory Technicians as on 31.3.1977 and 31.10.1980 against which they did not make representations.

The seniority list of Laboratory Assistants as on 30.6.1986 including the names of the applicants was finalised after circulation and inviting objections to which the applicants did not raise any objection. Their names figured for the first time in the impugned seniority list of Laboratory Technicians as on 31.3.1988. According to them, in the recruitment rules for the post of Senior Laboratory Technician, 5 years service in the post of Laboratory Technician has been prescribed as an essential eligibility condition. The applicants do not fulfil the same and come within the zone of consideration for promotion to the post of Senior Laboratory Technician.

6. We have gone through the records of the case carefully and have considered the rival contentions. We have also duly considered the numerous authorities cited by both sides in

respect of their respective contentions*.

7. We may, at the outset, consider the preliminary objection raised by the respondents that the application is not maintainable on the ground that it is barred by limitation. According to them, the cause of grievance to the applicants first arose during 1962/1964 when they were appointed as Lab. Technicians in the scale of Rs. 110-200 and again in early seventies when on the recommendation of the Third Pay Commission the above scale was revised to Rs. 260-430 and the designation of their post was changed as Lab. Assistants. As against this, the learned counsel for the applicants has argued that the applicants have pursued their claims by making representations and their representations against the impugned seniority list of 1988 are still under consideration of the ESIC. In such a case, the bar of limitation will not apply. (Vide AIR 1991 SC 424). The judgment of the Tribunal in Vir Bhan Thakar's case also gave rise to a fresh cause of action to them. In the facts and circumstances of the case, the plea of limitation raised by the respondents is devoid of merit and is overruled.

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- * Cases cited by the learned counsel for the applicants:-
ATC 1987(2) 862; ATC 1990(13) 630; ATC 1987(3) 645;
ATC 1989(11) 486; ATC 1987(2) 454; ATC 1987(2) 460;
 - * Cases cited by the learned counsel for the respondents:-
1988 Lab. IC 999; 1990(16) ATC 576; 1991(1) SLJ 161;
ATC 1991(15) 655; 1991(15) ATC 840.

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8. As regards the merits of the case, we feel that the grievance of the applicants is genuine. In our judgment dated 25.10.1991 in OA 1404 of 1989, Mrs. Urmila Sharma and Others Vs. The Director General, ESIC, the respondents have been 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 the Tribunal dated 25.4.1988 in T-747/86 with effect from their respective dates of initial appointment as Laboratory Technicians and that they would also be entitled to all consequential benefits. It would mean that seniority of applicant No.1 in the post of Laboratory Technician should be reckoned from 28.7.1964, of applicant No.2 from 18.9.1962 and of applicant No.3 from 7.8.1964. Redesignating them as Laboratory Assistants pursuant to the Memorandum dated 6.6.1977 and again promoting them with effect from 30.4.1987/14.12.1988 as Laboratory Technicians would not be legally tenable in the changed situation due to the extension of the benefit of the judgment of the Tribunal in Vir Bhan Thakar's case to the applicants. It would also follow that the seniority list should be redrawn so as to give to the applicants

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their due seniority.

9. In the light of the foregoing discussion, the applicants are entitled to the relief to the extent indicated as follows:-

(1) The impugned seniority list issued by the respondents by Memorandum dated 23.5.1988 is set aside and quashed. The change in the nomenclature of the post of Laboratory Technician to that of Laboratory Assistant by Memorandum dated 6.6.1977 is also set aside and quashed.

(2) The respondents are directed to revise and redraw the seniority of the applicants by reckoning the seniority of the applicants from the respective dates of initial appointment (ie 28.7.1964, 19.9.1962 and 7.8.1964 respectively) within a period of three months from the date of communication of this orders

(3) The respondents shall convene a review DPC to consider the suitability of the applicants and other Laboratory Technicians for promotion to the post of Senior Laboratory Technician on the basis of the revised seniority as directed in (2) above and if the Review DPC finds the applicants fit for promotion, they shall be promoted as Senior Laboratory Technicians from the dates their immediate juniors were so promoted. In that event,

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they would also be entitled to all consequential benefits including arrears of pay and allowances from the due date and increments. The respondents shall comply with this direction within a period of three months from the date of communication of this order.

(4) The parties will bear their respective costs.

CCP 188 of 1990

In view of the aforesaid orders and directions, we do not consider it necessary to pass any order on the CCP. The notice of contempt is discharged.

Let a copy of this order be placed in both the case files.

(B.N. DHOUNDIYAL) 25/10/91
MEMBER (A)

(P.K. KARTHA)
VICE CHAIRMAN (J)