CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 1768/89,
O.A. NO. 2546/89,
O.A. NO. 855/91,
O.A. NO. 856/91,
&
O.A. NO. 854/91

(21)

New Delhi this the Ist day of June, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

O.A. NO. 1768/89.

1. W.D. Arya,
S/o Late Shri Chander Lal,
R/o MIG Flat 691, Pocket GH-14,
Paschim Vihar,
New Delhi.

2. V.K. Verma,
S/o Late Dr. P.C. Verma,
R/o 46-A, Mayur Vihar,
Pocket-IV,
Delhi.

3. R.K. Malik,
S/o Late Shri D.R. Malik,
R/o R-10/86-A, Raj Nagar,
Ghaziabad(UP).

4. R.N. Manna,
S/o Late Shri A.C. Manna,
R/o Pocket No. 8, Sec.VIII,
Flat No. 174, Rohini,
Delhi.

5. S.N. Shorey,
S/o Late Shri G.R. Shorey,
R/o B-3/64-A, Lawrence Road,
Delhi.

6. Ramesh Chandra,
S/o Shri Sardar Bahadur,
R/o KK-149, Kavi Nagar,
Ghaziabad.

7. Daya Ram,
S/o Shri Barhi Ram,
R/o Flat No. 9, ESI Colony,
Sector 56,
Noida.

8. N.R. Dhinwar,
S/o Shri Shyam Lal,
R/o 89-A, Sunlighat Colony,
Hari Nagar, Ashram
New Delhi.

9. R.K. Mehta,
S/o Shri B.S. Mehta,
R/o BB/51A, Janakpuri,
New Delhi.

22

10. Sadhu Ram,
S/o Late Shri Shive Gulam,
B-59B, Sector-19,
Noida. ...Petitioners.

By Advocate Shri R.K. Kamal.

Versus

Union of India through

1. The Secretary,
Ministry of Labour,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.

2. The Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
North Block,
New Delhi.

3. The Director General,
Employees State Insurance Corporation,
Kotla Road,
Delhi.

4. Mrs Saramma Thomas,
W/o Shri Thomas Mathew,
R/o E-34-E, MIG Flats,
Mayapuri,
New Delhi.

5. A.K. Varma,
S/o Shri Kishan Chand,
R/o H.No. 835, Ghasi Ram Building,
Bada Gurdwara Gali,
Gandhi Nagar,
Delhi. ...Respondents.

By Advocate Shri G.R. Nayyer (for Respondents 1 to 3) and Shri E.X. Joseph (for Respondents 4 to 5).

O.A. NO. 2546/89.

1. Mrs Saramma Thomas,
W/o Shri Thomas Mathew,
R/o E-34-E, MJG Flats,
Mayapuri,
New Delhi.

2. A.K. Verma,
S/o Shri Kishan Chand,
R/o H.No. 835, Ghasi Ram Building,
Bada Gurdwara Gali,
Gandhi Nagar,
Delhi. ...Petitioners.

By Advocate Shri E.X. Joseph.

Versus

1. The Employees' State Insurance Corporation
through its Director General,
ESI Corporation,
Kotla Road,
New Delhi.

(23)

2. Shri U.C. Sharma,
Dy. Regional Director,
ESI Corporation,
Bhagwani Singh Road,
Jaipur.

3. Shri B.N. Khapre,
Accounts Officer,
Regional Office,
ESI Corporation,
Ashram Road,
Ahmedabad.

4. Shri W.D. Arya,
Deputy Administrative Officer,
ESI Corporation,
Kotla Road,
New Delhi.

5. Shri V.K. Verma,
Administrative Officer,
ESI Corporation,
Kotla Road,
New Delhi.

6. Shri R.K. Malik,
Assistant Director (P&D),
ESI Corporation,
Kotla Road,
New Delhi.

7. Shri R.N. Manna,
Asstt. Director,
ESI Corporation,
Kotla Road,
New Delhi.

8. Shri S.N. Shorey,
Administrative Officer,
ESI Corporation,
Kotla Road,
New Delhi.

9. Shri Ramesh Chandra,
Dy. Chief Accounts Officer,
ESI Corporation,
Kotla Road,
New Delhi.

10. Shri Daya Ram,
Joint Regional Director,
Regional Office,
ESI Corporation,
Block No. 3, Sector 19,
Chandigarh.

...Respondents.

By Advocate Shri G.R. Nayyar (for Respondent No. 1) and Shri R.K. Kamal (for Respondent No. 4 to 10).

O.A. NO. 855/91.

1. V. Vijayan,
Dy. Regional Director,
ESI Corporation,
10, Binnyfields, Binnypet,
Bangalore.

(24)

2. S. Jayaprakash,
Dy. Regional Director,
ESI Corporation,
10, Binnyfields, Binnypet,
Bangalore.

By Advocate Shri B.B. Raval. ...Petitioners.

Versus

1. The Employees State Insurance Corpn,
through its Director General,
"ESIC Building" Kotla Road,
New Delhi.

2. Shri W.D. Arya,
Dy. Administrative Officer (HQrs.),
ESI Corporation, Kotla Road,
New Delhi.

3. Shri V.K. Verma,
Administrative Officer (Trg.),
ESI Corporation, Kotla Road,
New Delhi.

4. Shri R.K. Malik,
Asst. Director (P&D),
ESI Corporation, Kotla Road,
New Delhi.

5. Shri R.N. Manna,
Asst. Director,
ESI Corporation, Kotla Road,
New Delhi.

6. Shri S.N. Shorey,
Administrative Officer,
ESI Corporation, Kotla Road,
New Delhi.

7. Shri Ramesh Chandra,
Dy. Chief Accounts Officer,
ESI Corporation, Kotla Road,
New Delhi.

8. Shri Daya Ram,
Jt. Regional Director,
ESI Corporation,
Block No. 3, Sector 19,
Chandigarh.

9. Shri N.R. Dhinwar,
Jt. Regional Director,
ESI Corporation,
Colaba,
Bombay.

10. Shri S.Srinivasa Iyer,
Jt. Regional Director,
ESI Corporation,
North Swaraj Round,
Trichur (Kerala).

11. Shri K.K. Saha,
Deputy Chief Accounts Officer,
ESI Corporation,
Regional Office,
Bombay.

(25)

12. Miss. D. Mirchandani,
Vigilance Officer,
Regional Office,
ESI Corporation,
Bombay.

...Respondents.

By Advocate Shri G.R. Nayyer.

O.A. 856/91.

B.K. Venkatesh,
Deputy Regional Director,
ESI Corporation,
Regional Office,
Bangalore.

...Petitioner.

Versus.

By Advocate Shri B.B. Raval.

1. The Director General,
Headquarters Office,
ESI Corporation,
New Delhi.

2. B.N. Khapre,
Regional Director,
Sub-Regional Office,
ESI Corporation,
Goa.

3. W.D. Arya,
Administrative Officer-III,
HQ Office, ESIC,
New Delhi.

4. S.V.K. Verma,
Admn. Officer (Trg.),
HQ Office, ESI Corporation,
New Delhi.

5. R.K. Malik,
Admn. Officer,
HQ Office, ESI Corporation,
New Delhi.

6. R.N. Manna,
Admn. Officer, HQ Office, ESI Corporation,
New Delhi.

7. S.N. Shorey,
Admn. Officer,
HQ Office, ESI Corporation,
New Delhi.

8. Ramesh Chandra,
Dy. Chief Accounts Officer,
HQ Office, ESI Corporation,
New Delhi.

9. Daya Ram,
Jt. Regional Director,
Sub-Regional Office,
ESIC Corporation,
Bombay.

10. N.R. Dhinwar,
Jt. Regional Director,
ESI Corporation,
Bombay.

11. S. Srinivasa Iyer,
Jt. Regional Director,
ESI Corporation,
New Delhi.

12. K.K. Saha,
Dy. Chief Accounts Officer,
ESI Corporation,
Bombay.

13. Miss. D. Mirchandani,
Vigilance Officer,
ESI Corporation,
Bombay.

...Respondents.

By Advocate Shri G.R. Nayyer.

O.A. NO. 854/91.

Babu Verghese P.
Deputy Regional Director,
ESI Corporation,
Bangalore.

...Petitioner.

By Advocate Shri B.B. Raval.

Versus

1. The Director General,
Headquarters Office,
ESI Corporation,
New Delhi.

2. Daya Ram,
Jt. Regional Director,
Sub-Regional Office,
ESI Corporation,
New Delhi.

3. N.R. Dhinwar,
Jt. Regional Director,
ESI Corporation,
Trichur (Kerala).

4. K.K. Saha,
Deputy Chief Accounts Officer,
ESI Corporation,
Bombay.

5. Miss D. Mirchandani,
Vigilance Officer,
ESI Corporation,
Bombay.

...Respondents.

By Advocate Shri G.R. Nayyer.

(27)

ORDER (ORAL)

Shri Justice V.S. Malimath.

As common questions of law and fact have arisen in these cases, they were heard together and are being disposed of by a common order. Whereas the first case is by the promotees, remaining four cases are by the direct recruits to the cadre of Regional Directors, Grade-IV and other equivalent posts. A provisional seniority list has been circulated by a notification dated 1.8.1989 of the Regional Directors, Grade-IV and other equivalent cadre as on 31.12.1988. Objections have been invited and it is stated that if no objections are received by 31.8.1989, no representation thereafter will be entertained and the list will be treated as final. The promotees in the first case came to the Tribunal with the prayer for refixing their seniority in the impugned provisional seniority list on the basis of the length of service in Grade-IV and to grant them the benefit of consideration for promotion to Grade-III and other consequential benefits. The real reason for their approaching the Tribunal is that in the provisional seniority list their rankings are not based directly on the basis of the dates on which they were regularly promoted to Grade-IV. In the remaining four cases, the respondents have sought relief to prevent the administration from giving promotion to the promotees who are juniors to them in accordance with the provisional seniority list treating them as having become eligible for consideration for promotion to Grade-III taking into account the service rendered by them from the respective dates of promotion. In the process, they apprehended that those who are juniors to them who are promotees would be promoted on the ground that

they had a longer length of service in Grade-IV which had earned them the requisite period necessary for earning eligibility for consideration of promotion to Grade-III. In other words, the direct recruits are seeking directions to ensure that promotions are made on the basis of the seniority position as available from the provisional seniority list. During the pendency of these applications, the petitioners in all the cases have been given ad hoc promotion to Grade-III. Their cases for regular promotion have not been considered obviously because of the pendency of these proceedings as also for the reason of not finalising the seniority list. As all the parties to the present proceedings have already got into Grade-III on ad hoc basis on different dates, it is obvious that their cases for regular promotion in accordance with the legitimate seniority should be considered in accordance with the rules. This is possible only when the seniority list is finalised. The administration has not finalised the seniority list even though there is no injunction against them on the ground that the question regarding seniority is subjudice in these proceedings. Whether they are justified in not finalising the seniority list is not a matter which need detain us. ~~Having regard to the fact that~~ The respondents themselves have stated that the provisional seniority list has not been finalised by them having regard to the pendency of these proceedings.

2. So far as the promotees and direct recruits are concerned, the statutory rules provide that 50% of the vacancies should be filled by promotion and 50% of the vacancies by direct recruitment. The facts in this case makes it clear that there is no question of the quota rule having broken down. Hence, what is now required to be done by the resondents is that

(29)

after inviting objections they should finalise provisional seniority list, review promotions to Grade-III and give benefit of promotions to all persons with effect from the dates they become due for promotion.

3. So far as the promotees who have questioned the seniority list in the first case are concerned, some of them have not filed any objections to the provisional seniority list as they were agitating their grievance in their application before the Tribunal. In the circumstances, it is just and fair that they should be afforded an opportunity of filing objections within the time schedule fixed by us, the provisional seniority list admittedly not having been finalised so far. In this background, we consider it just and proper to dispose of all the applications with the following directions:

1. The ESI Corporation shall give fresh opportunity to all persons to file the objections, if any, to the provisional seniority list dated 1.8.1989 by giving them one month's time from the date of publication of their notification inviting objections and representations.

2. The seniority list shall be finalised by the Corporation following the principles contained in Annexure A-2 except paragraph 7 of the said annexure, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training Office Memorandum No. 35014/2/80-Estt(D), dated 7.2.1986.

3. After considering the objections or representations that may be received and which have already been received, the Corporation shall finalise and publish the seniority list within three months from the last date for receipt of the representations.

(30)

4. The Corporation shall review promotions to Grade-III on the basis of the final seniority list preferably within a period of four months from the date of publication of the final seniority list.

5. The Corporation shall give deemed dates of promotion as on the dates on which they became due and grant consequential monetary benefits. No costs.

(P.T. Thiruvengadam)
Member(A)

(V.S. Malimath)
Chairman

'SRD'
10694

Attested
Suresh Kumar
8/6/99
Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House,
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New Delhi-110001