

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2403/2004

This the ~~28~~ ²⁹ day of April, 2006

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HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MRS. CHITRA CHOPRA, MEMBER (A)

Sh. Pratap Singh Bisht,
S/o Sh. Joginder Singh Bisht,
Lower Division Clerk,
Under Employees State Insurance Corp.,
Pandhdeep Bhawan,
C.I.G.Road,
New Delhi-2.

(By Advocate: Mrs. Meenu Maine proxy for Sh. B.S.Maine)

Versus

Union of India through

1. The Director General,
Employees State Insurance Corp.,
Pandhdeep Bhawan,
C.I.G.Road,
New Delhi-2.
2. The Additional Commissioner,
Regional Office,
Employees State Insurance Corp.
Lower Parel,
Mumbai-13.

(By Advocate: Sh. Nilesh Sharma proxy for Sh. Yakesh Anand)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant filed the present OA for a direction to the respondent to consider the date of joining of the applicant, i.e., 21.7.2000 as the date of his regular appointment as LDC with all consequential benefits.

2. The facts are short and simple. Applicant on being selected for appointment in the post of LDC in an examination conducted by the Staff Selection Commission in the year 1998 was nominated to Employees State Insurance Corp. and was appointed in Maharashtra Regional Office at Mumbai as temporary LDC on 20.7.2000 vide offer of appointment dated 19.6.2000 which is annexed to the counter reply. Applicant was regularized as LDC on 5.10.2001. Subsequently he was transferred from Maharashtra

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region to Delhi region on his request and on joining the service in Delhi region he was assigned bottom seniority as per the service rules. Applicant made a representation that he ought to have been regularized from the date of his appointment on 21.7.2000 did not find favour with the respondent. The contention of the applicant is that since he had been selected by the Staff Selection Commission and posted against a regular vacancy so he ought to be treated as a regular employee from the date of his joining and the order, which is impugned, that he has not rendered the regular service from 21.7.2000 was arbitrary and discriminatory. In fact he was disallowed to appear at the departmental examination going to be held in November 2004 for promotion of LDCs to the post of UDC against the quota on the ground that he had not completed minimum 3 years eligible qualifying regular service as LDC as on 31.3.2004. The applicant is aggrieved and has filed the present OA.

2. The respondent in the counter reply refuted the claim of the applicant. There is a preliminary objection that the present OA suffers from delay and laches and should be dismissed for his reason alone. It is further submitted that the applicant was offered the post of LDC in Employees State Insurance Corp. Maharashtra Region vide memo dated 19.6.2000 in which it was clearly mentioned that the offer was for the appointment on temporary basis which was accepted by the applicant on 4.7.2000 and accordingly the applicant was appointed as LDC on temporary basis w.e.f. 21.7.2000. It is further submitted that as per the Recruitment Regulation, copy of which has been filed along with the counter reply, 75% vacancies in the post of LDC were to be filled by direct recruitment and remaining 25% from amongst the class IV employees and that no regular vacancy was available in 75% direct recruitment quota when the applicant was appointed and as soon as the regular vacancy became available the applicant was also regularized w.e.f. 5.10.2000. The applicant thereafter requested for his inter-regional transfer so he was transferred from Maharashtra region to Delhi region w.e.f. 5.5.2003 and was assigned bottom seniority in the new region. As per the Recruitment Regulation the LDCs having 3 years regular service in the said grade were eligible for appearing in the departmental test for promotion to the post of UDC. As the applicant was regularized as LDC w.e.f. 5.10.2001, he had not completed 3 years regular service and fulfilled the

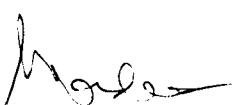
Mr. A. R. ...

eligibility condition as on the cut of date on 31.3.2004 for appearing at promotion examination.

3. In the rejoinder applicant has reaffirmed his case.
4. We have heard the learned counsel for the parties and perused the record.
5. Admittedly, the seniority of the employees in Employees State Insurance Corp. is on regional basis and on inter-regional transfer made on request of the employee bottom seniority is assigned in the grade of the employee. In the present case, the applicant was selected for appointment to the post of LDC by the SSC in the examination held in 1998. He was nominated to Employees State Insurance Corp. The applicant along with 44 other persons was selected and was given temporary appointment as LDC in Maharashtra Region on 21.7.2000. The offer of appointment is dated 19.6.2000, copy of which has been filed along with the counter reply which clearly stipulated that the appointment would be on "temporary basis". Applicant has accepted this condition of his appointment and has joined as temporary LDC on 21.7.2000. The Recruitment Regulations provided the eligibility condition of 3 years regular service as LDC for appearing at the examination for promotion to the post of UDC. The examination for the UDC was conducted in November 2004 and for fulfilling the eligibility condition of 3 years regular service, the crucial cut of date was 31.3.2004. Applicant did not fulfil this condition. His repeated representations for counting his temporary service prior to 5.10.2001, the date on which he was regularised as LDC, as part of his regular service to become eligible for appearing at the departmental examination for promotion to the post of UDC evoked no response for long and were ultimately rejected.
6. Applicant was given offer of appointment as temporary LDC which he had accepted with open eyes. He cannot turn around and challenge the order after a lapse of about 4 years taking shelter behind the repeated representations made by him. Therefore, there is considerable force in the contention of the respondent that the OA suffers from delay and laches and should be rejected for this reason. But we do not find that the claim of the applicant could be allowed on merit also. So we will consider the other questions involved.
7. The thrust of the claim of the applicant is that he was selected by the Staff Selection Commission against a regular vacancy, therefore, he ought to have been

appointed as a regular LDC and should not have been appointed on temporary basis so he should be deemed to have joined the service as LDC on regular basis w.e.f. 21.7.2000. In the counter reply the respondent have stated that there was no regular vacancy available in Maharashtra region for appointment of the selected candidates by the Staff Selection Commission. The applicant has drawn our attention to the letter of the Under Secretary (P&P-I) addressed to the applicant on 13.5.2003 which stated that as per the clarification received from the Regional office of Staff Selection Commission he had been nominated against a regular vacancy of ESIC thereby meaning that the selection of the applicant was against a regular vacancy. Learned counsel has also pointed out to the compilation of Instruction on Recruitment through Staff Selection Commission in Chapter 17 Part A of Swamy's Manual in Establishment and Administration for government servants which provided that the requisition would be sent to the Staff Selection Commission only for filling up of a regular vacancy and not a temporary vacancy. The reading of these instructions and the letter referred to will lead to the conclusion that the Staff Selection Commission had selected the applicant against a regular vacancy available in Employees State Insurance Corporation.

8. In the counter reply it is stated that regular vacancies were not available in Maharashtra Regional Office at Mumbai for appointment of the applicant on regular basis. It is stated that the applicant was one of the 45 candidates appointed on temporary basis in Maharashtra region and the applicant was not the seniormost. The letter which has been referred to by the applicant does not say that 45 regular vacancies were available in Mumbai Regional office when the applicant was made the offer of appointment on temporary basis. The claim of the senior on the merit list could not have been ignored to give appointment to the applicant on regular basis by the Employees State Insurance Corp. in Maharashtra region. The applicant and other selected candidates could have been given regular appointment on the available regular vacancies at Mumbai Regional Office as the seniority of cadre of LDC was Regional wise. A perusal of the order of the Hyderabad Bench of this Tribunal in OA-767/2002 titled S.Sashi Bhushan and others vs. Employees State Insurance Corp. decided on 24.10.2003, copy of which has been filed with the counter reply, will show that earlier also similar temporary appointment were made in Mumbai Regional Office when regular



vacancies were not available though regular vacancies were available in Hyderabad Regional Office of Employees State Insurance Corp.. There may be regular vacancies available in certain other regional offices of Employees State Insurance Corp. but the seniority list of ministerial employees was regionwise. The letter dated 13.5.2003 did not show regular vacancies in the post of LDCs were available in Maharashtra Region when applicant's selection was made by the Staff Selection Commission. So we have no reason to disbelieve the pleadings of the respondent that regular vacancies were not available in Maharashtra Region when the offer of appointment on temporary basis was made to the applicant which the applicant has accepted without a murmur. As and when the regular vacancies in the cadre of LDCs became available in Mumbai Regional Office the temporary appointees were also regularized in the posts. Therefore, we do not find that simply because the applicant had been selected against a regular vacancy available in Employees State Insurance Corp. he could be given regular appointment irrespective of the fact whether regular vacancy in the cadre of the LDCs was not available in Maharashtra Regional Office at Mumbai. The applicant was not appointed against an available regular and permanent vacancy but he was appointed against a temporary vacancy. The claim of the applicant, therefore, that he should be deemed to have been appointed on regular basis from the date of his appointment on temporary basis, to our view is not tenable.

9. Moreover, assuming that some regular vacancies were available in Mumbai Regional Office, recruitment rules do not require that the persons selected against a regular vacancy can be appointed only on regular basis. Despite a permanent vacancy being available in direct recruitment quota still the respondent could have made appointment of the selected candidate on temporary basis to be put on probation or to be regularized in service later.

10. For the reasons stated above, we find the case of the applicant devoid of any merit. It is accordingly rejected.

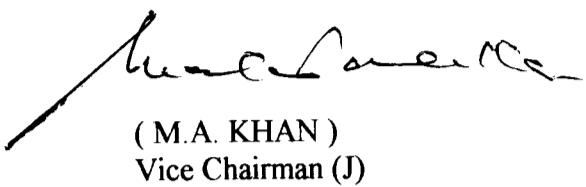
11. Before parting with it may be pointed out that by order dated 25.11.2004, the applicant was permitted to appear provisionally in the departmental examination for



promotion to the post of UDC subject to the final outcome of the present OA, since we are dismissing the OA, respondent are free to take their own decision in the matter as per rules.


(CHITRA CHOPRA)
Member (A)

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(M.A. KHAN)
Vice Chairman (J)