

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2637/2004

New Delhi this the 4th July, 2005

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

1. P.C.P. Mahapatra
Dy. Director (HRD)
ESI Corporation (Hqrs. Office)
C.I.G. Road, New Delhi-110002.
2. A.K. Mukhopadhaya
Dy. Director,
ESI Corporation, Regional Office,
Grant Lane, Kolkata.
3. V.V.S.P.Rao,
Dy. Director,
ESI Corporation, Regional Office,
Panchdeep Bhawan, Bhawani Singh Marg,
Jaipur-302 001.
4. D.Vengugopal,
Dy. Director,
ESI Model Hospital,
Nacharam, Hyderabad.
5. M.R.Pratap,
Dy. Director,
ESI Model Hospital,
Nacharam, Hyderabad.
6. J.K. Dagar,
Dy. Director,
ESI Corporation, Regional Office,
Panchdeep Bhawan, Bhawani Singh Marg,
Jaipur-302 001.
7. R.Ramakrishnan,
Dy. Director,
ESI Corporation, Regional Office,
Panchdeep Bhawan,
143, Sterling Road,
Chennai-600 034. ...Applicants

(By Advocate: Shri V.K.Rao and Shri Statish Kumar)

Versus

1. D.G., ESI, C.I.G. Road,
New Delhi-110002.
2. Chairman, Standing Committee,
ESIC & Secretary, Ministry of Labour,
Government of India, New Delhi.
3. Union of India,
Through the Secretary,
Department of Personnel and Training,
New Delhi.

4. Union of India,
Through the Chairman, U.P.S.C.,
Dholpur House, Shahjan Road,
New Delhi.
5. S.S.Malhotra, Dy. Director,
C/o D.G., ESI Corporation (Hqrs. Office),
Panchdeep Bhawan, C.I.G. Road,
New Delhi-110 002.
6. R.Natrajan, Joint Director,
ESI Corporation (Hqrs. Office),
Panchdeep Bhawan, C.I.G. Road,
New Delhi-110 002.
7. A.K.Mishra, Joint Director,
ESI Corporation (Hqrs. Office),
Panchdeep Bhawan, C.I.G. Road,
New Delhi-110 002.
8. Janardhan Rao,
Regional Director,
ESI Corporation, Regional Office,
Chhatisgarh, Raipur.
9. R.C.Sharma, Joint Director (P&D),
ESI Corporation (Hqrs. Office),
Panchdeep Bhawan, C.I.G. Road,
New Delhi-110 002.
10. S.Ghosh, Joint Director I/C,
ESI Corporation, Divisional Office,
Rohini, New Delhi-110 085.
11. P.Ganapathi Swamy, Regional Director,
ESI Corporation,
Pondichery.
12. T.Balaguruswamy, Joint Director,
ESI Corporation, Regional Office,
Bangalore.
13. H.C.Sharma, Joint Director,
ESI Corporation, Regional Office,
Kanpur.
14. M.B.Bhattacharjee, Joint Director,
C/o D.G., ESI Corporation (Hqrs. Office),
Panchdeep Bhawan, C.I.G. Road,
New Delhi-110002.
15. Prakash Chand, Joint Director,
ESI Corporation (Hqrs. Office),
Panchdeep Bhawan, C.I.G. Road,
New Delhi-110002.
16. N.Gopala Krishanaiah, Deputy Director,
ESI Corporation, Regional Office,
Andhra Pradesh.
17. P.A. Shejwadkar, Deputy Director,

- ESI Corporation, Regional Office,
Goa.
18. D.Ratnam, Joint Director I/C,
Sub Regional Office,
Hubli.
19. K.Kharkongor,
C/o D.G., ESI Corporation (Hqrs.Office),
Panchdeep Bhawan, C.I.G. Road,
New Delhi-110 002.
20. B.S.Negi, Joint Director I/C,
Divisional Office,
Ambala (Haryana).
21. S.S.Birua, Deputy Director,
ESI Corporation, Regional Office,
Guwahati. ... Respondents.
- By Advocate: Ms. Richa Srivastava for Ms. Geeta Luthra for
Respondent's no.1 and 2.
Shri Arun Bhardwaj for respondents no. 7, 8, 9, 15 and 18)

ORDER

By Shri S.A.Singh, Member (A)

UPSC published an Advertisement No.48 dated 02.12.1989 for filling up 36 vacancies of Regional Director Grade-IV/Deputy Regional Director/Deputy Administrative Officer (Re-designated as Deputy Director on 2.7.1995) in the grade of Rs.2200-4000. The applicants successfully competed for these posts and joined ESIC in 1991.

2. The applicants have prayed for quashing and setting aside the seniority list issued by ESIC Headquarters' Memo dated 31.7.1997, quashing and setting aside paragraph (h) of the Memo dated 12.07.2002 and prayed for a direction to the respondent to redraw and re-fix the seniority list according to DOPT instructions and DOPT clarification OM dated 29.2.2000.

3. One Shri P.C.P.Mahapatra and 6 Others filed an OA No.549/1999 seeking, in addition to other relief, revision of the draft seniority list circulated vide letter dated 21.7.1995. This OA was disposed of with the following orders:

"3. Before we are called upon to adjudicate on (i) and (ii) above, our attention has been invited to OM dated 29.2.2000 (taken on record) from Respondent No.3 to Respondent No.2 with copy to Respondent No.1, with reference to the present OA stating therein inter alia that it is not clear whether OM dated 7.2.86 issued by respondent No.3 has been correctly interpreted or not, and explaining the manner in which it is required to be interpreted.

4. As official respondents are not clear amongst themselves in regard to the claims of applicants in the present OA, we are of the

considered view that any adjudication by us at this stage would be premature."

In compliance with the direction of the Tribunal, the respondents had passed a speaking order dated 12.7.2002, which is at Annexure A-1.

4. The main grievance of the applicants is that the seniority list for the year 1989, which has admittedly been drawn in the year 1995, is blatantly illegal, and violation of existing instructions. The seniority of the applicants should be fixed by interpolation as per the rota-quota Rules for the year 1989.

5. The Corporation had sent a requisition to the UPSC for the post of Deputy Director under the direct recruitment quota in 1989 and as per the recruitment regulation, the inter se-seniority between direct recruits and promoted officers should have been drawn, keeping in view the year wise vacancies in the ratio of 1:1. The respondents have illegally and arbitrarily finalised the seniority list by bunching together direct recruits of 1989 under the promoted officers of 1990. They have also interpolated seven promoted officers of year 1991 according to rota-quota rule and then placed rest of the directly recruited batch of 1989 in a bunch under the promoted officers of 1991. This is not according to DOPT Memo dated 7.2.86 and as clarified by DOPT vide its memo-dated 29.2.2000.

6. The respondents have contested the averment of the applicants stating that the seniority list of Deputy Directors in the ESIC showing the position as on 1.1.1995 was finalized on 31.7.1997. The respondents have pleaded that though the DOPT has given a clarification on 29.2.2000 but it did not meet the specific requirements of the respondent no.1 as to how it is to be implemented when there is a considerable delay in the process of direct recruitment. Moreover, the clarification-dated 29.2.2000 was found to be at variance with the fixation of seniority guidelines contained in the DOPT instructions dated 7.2.1986. The only course available to them was to decide the matter according to the principles laid down by the Apex Court in Suraj Parkash Gupta and Ors. Vs. State of Jammu and Kashmir & Ors. 2001 (1) SLJ 179 and in Direct Recruit Class II Engineering Officers Association vs. Station of Maharashtra wherein it has been held that 'in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not born

(5)

in the service'. The seniority list has been confirmed vide impugned order dated 12.7.2002 (Annexure A-1).

7. We have heard the counsel for the parties and gone through the documents placed on record. The basic facts are not in dispute. The controversy narrows down to the applicability of clarification-dated 29.2.2000.

8. We find that DOPT's guidelines dated 7.2.1986 for fixation of seniority between promoted officers and direct recruits has been clarified by the OM dated 29.2.2000 and the relevant portion reads as under:

It is clarified that on a perusal of our OM dated 22.12.1959 read with our OM dated 7.2.1986 it will be clear that the inter-se seniority of direct recruits and promotees will have to be fixed by following the principle of rotation of quotas prescribed for them in the recruitment rules subject to the condition that the rotation as per quota will be made only up to the actual number of DRs promotees available and to the extent direct recruits / promotees do not become available in any recruitment year the promotees or the direct recruits as the case may be will be bunched together at the bottom of the seniority list. In other words only where appointing authority has not been able to fill up the post in spite of best efforts with reference to the requisition for the particular recruitment year in question, the instructions contained in OM dated 7.2.1986 will come into operation as will be clear from Para 5 thereof. For example, if the quota in the RRS for DR and promotees is fifty-fifty and if the UPSC had recommended only 2 DRs against the three vacancies of a particular recruitment year say, 1987, for which requisition was sent to them in 1987 and even if both the DRs had joined in 1988 the inter-se seniority of DRs and promotees may be fixed in the ratio of 1:1 up to the number of DRs available i.e. the first four places in the seniority list will be assigned alternatively to DR and promotee. The 5th place in the seniority list, which would have normally gone to DR, will now go to the promotee because of the non-availability of DR and the 6th will in any case go to promotee. But for the instructions contained in our OM dated 7.2.1986, the 5th place would have been kept reserved for the DR as and when it is actually filled by DR even if it takes a few years. However, after the issue of OM dated 7.2.1986, it is no longer kept vacant but is assigned to the promotee who is available.

In this context, it is also clarified that ordinarily the process of direct recruitment takes more than a year to be completed and if DR is to join in the same year for getting seniority of that year then no DR will get seniority of the same year because as already stated the DR process takes more than a year. Hence, initiation of action for recruitment is sufficient. For example if action for the Recruitment year 1987 has been initiated at any time during that Recruitment year even if the exam is held in 1988 and the results are declared in 1989 and the candidates join only 1990, since the action for recruitment was initiated in 1987 itself merely because the process of recruitment took so long for which the candidates cannot be blamed and since the responsibility for the delay in completing the process of recruitment squarely lies with the administration, it would not be appropriate to deprive the candidates of their due seniority of 1987. Consequently, if action was initiated during the Recruitment year 1987 even it culminates in the joining by the

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selected candidates only in 1990, they will get seniority of 1987. In other words, if such DRs of 1987 ultimately join in 1990 yet they will be rotated with promotees of 1987 in terms of our OM dated 22.12.1959 read with our OM dated 7.2.1986 as clarified above."

9. After receiving clarification-dated 20.9.200, Respondent No.1 made a back reference to DOPT. However, the reply of the DOPT to this reference has not been placed on record. Respondent No 1 has on the other hand brought on record photocopies of file noting, which show a difference of opinion within DOPT. However, the Deputy Secretary in his note of 15.7.2002 finally ruled that there is no variation between the OMs dated 7.2.1986 and 29.2.200. Adding, that OM dated 7.2.1986 laid down the modified general principles of seniority and OM dated 29.2.2000 clarified the meaning of recruitment year.

10. The respondents have attached a copy of the Deputy Secretary's Note dated 15.7.2002. The relevant portion is reproduced:

In February 2000, we had issued a clarificatory order to Ministry of Labour, clarifying the meaning of recruitment year in the context of our OM dated 7.2.1986. It may be recalled that vide OM dated 7.2.1986, the general principles of seniority were modified to the effect that for the purpose of determining relative seniority of direct recruits and promotees in a particular recruitment year, they would get their seniority as per the principle of rota quota. However, the excess candidates, if any, belonging to any category would be bunched at the bottom of the seniority list for that particular recruitment year. In his context, as the result of a CAT case, Labour Ministry had a doubt regarding the meaning of recruitment year and vide our OM dated 29.2.2000, it was clarified that initiation of action for recruitment is sufficient for a direct recruit to get the seniority of the year in which the recruitment action was initiated. This was done on the grounds that generally recruitment action is initiated in a particular year but due to administrative procedure it takes more than a year to complete the process and declare the result etc.

2. Now, Ministry of Labour has again referred this case to us after CAT Principal Bench has passed an order maintaining that our clarificatory OM dated 29.2.2002 is at variance with our original order dated 7.2.1986.

3. In this case, it is pointed out that there is no variation between the two OMs of this department. While the first OM lays down the procedure to be followed along with introduction of the principles of bunching, the second OM only clarifies what is a recruitment year for the purpose of the earlier OM. As has been clearly demonstrated by way of an example in OM dated 29.2.2000, generally there are delays in the process of direct recruitment for which recruits cannot be held responsible and since the vacancies pertain to that particular year, the recruits of that year are to be given the seniority of the year in which the vacancy arose under the principle of rota-quota. Hence, the second order is only clarificatory order and we may ask Ministry of Labour to take further action on the basis of the above clarification.



11. Respondent no 1, however, has not acted as per DOPTs clarification and given the following logic in his order-dated 12.7.2002 (Annexure A-1):

"The clarification dated 29.2.2000 interpreting its instructions dated 7.2.86 has been issued by DOPT after a long gap of 14 years when the seniority list of the cadre of Dy. Director in ESIC has already been finalized. It is not considered feasible to redraw the seniority list after such a long period of its finalization, based on the clarification dated 29.2.00 of DOPT which was not implicit in its original instruction. The seniority list circulated vide Memo, dated 31.7.97 has thus been drawn/finalized correctly based on the then prevailing instructions and its interpretation, since no other clarification was available / given at the appropriate time.

For the above reasons, I, Suman Swarup, Director General, ESI Corporation, New Delhi hold that the seniority list already finalized vide this office Memo. No. A-24/15/1/95-EIA dated 31.7.97 had been drawn correctly at the relevant time and there is no scope of re-opening the question of seniority, keeping in view the hardship that it likely to be caused to a large number of officers. Also the clarification now furnished by the DOPT cannot be given retrospective effect but shall be applied prospectively."

In Para 'd' of the OA Respondent no 1 has reasoned as under:

"(d) But, the Deputy Secretary insisted in his note dated 5.7.2002 (Page 11 of the abovementioned Note File) that there was no variation between the two instructions dated 7.2.1986 and 29.2.2000. The Respondents-1 however, could find proper and just solution to the problem only in the guidelines set by the Hon'ble Supreme Court.

Accordingly, the speaking order was issued on 12.7.2002 relying on the principles laid by the Hon'ble Supreme Court in the cases mentioned therein." (Emphasis in original).

Clearly, respondent no. 1 has decided to follow his own interpretation of the rules claiming that his solution is proper and just as it based in the principles laid down by the apex court.

12. We cannot agree with this view of the respondents for the reason that as per Sub clause 2 (a) of Section 17 of E.S.I.C. Act 1948 (as amended) read with regulation 24 of the E.S.I.C. (Staff and Conditions of Service) Regulations 1959 ESIC is bound to follow all the instructions, rules and regulations of Central Government in matters of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation. It is not open to Respondent No. 1 to disregard a rule simply because he finds it inconvenient to implement.

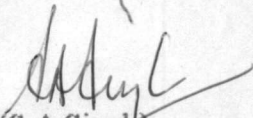
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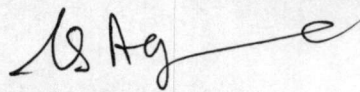
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13. The apex court has held in the case of O.P. Lather and Ors. Vs. Satish Kumar Kakkar and Ors. 2001(3) SLJ 117 that the vacancy must be filled up as per rules in force when vacancies arose and the clarification issued by the Government to clarify existing rules need not specifically mention that it will apply retrospectively.

14. We dispose of this OA with the direction that respondent no. 1 should recast the seniority list within three months of the receipt of this order, in accordance with the clarification given in DOPTs OM dated 29.2.2000. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/kdr/