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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 255 OF 1992

&

ORIGINAL APPLICATION NO. 545 OF 1992

Cuttack, this the 2nd day of August, 1999.

O.A. NO. 255 of 1992.

Ranjan Kumar Dutta. Applicant.

versus

Union of India & Others. Respondents.

O.A. NO. 545 of 1992

Srimanta Kumar Dash. Applicant.

versus

Union of India & Others. Respondents.

FOR INSTRUCTIONS

1. WHETHER it be referred to the reporters or not? Yes,
2. WHETHER it be circulated to all the Benches of the Central Administrative Tribunal or not? NO -

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
28.9.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 255 OF 1992

AND

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Cuttack, this the 2nd day of August, 1999.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

...

O.A. NO. 255 OF 1992.

Shri Ranjan Kumar Dutta,
Aged about 35 years,
S/o. late A.K. Dutta,
Upper Division Clerk,
E.S.I Corporation,
Regional Office,
ESIC Bhawan,
Janpath,
Bhubaneswar-7.

....

Applicant.

By legal practitioner : M/s. P. V. Ramdas, B.K. Panda, D.N. Mohapatra,
Advocates.

- Versus -

1. Union of India represented by the
Secretary, Department of Labour &
Employment, Government of India,
NEW DELHI-110 001.
2. Director General,
ESI Corporation,
Panchadeepa Bhawan,
Kotla Road,
NEW DELHI-110 002.
3. Regional Director,
ESI Corporation,
Regional Office,
ESIC Bhawan,
Janpath,
Bhubaneswar,
Dist. Khurda.
4. Shri B.B. Mohanty,
5. Shri P.K. Rath,
6. Shri A. Sadani,

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Nos. 4, 5 & 6 are Upper Division Clerks, Office of the Regional Director, ESI Corporation, ESI Corporation, ESIC Bhawan, Janpath, Bhubaneswar, Dist. Khurda.

..... Respondents.

By legal practitioner : Mr. B. S. Tripathy, learned Advocate.
(For Res. Nos. 1 to 3)

By legal Practitioner : Mr. S. P. Mohanty, Advocate.
(For Res. Nos. 4, 5 & 6)

A. A. NO. 545 OF 1992.

Shri Srimanta Kumar Dash,
Aged about 36 years,
S/o. Sri Somanath Dash,
Upper Division Clerk,
Office of Regional Director,
ESI Corporation,
ESIC Bhawan, Janpath,
Bhubaneswar-751012.

..... Applicant.

By legal practitioner : M/s. P. V. Ramdas, D. N. Mohapatra,
Advocates.

-VERSUS-

1. Union of India represented by the Secretary, Department of Labour & Employment, Government of India, New Delhi-110 001.
2. Director General,
ESI Corporation,
Panchadeep Bhawan,
Kotla Road,
New Delhi-110 002.
3. Regional Director,
ESI Corporation,
Regional Office,
ESIC Bhawan, Janpath,
Bhubaneswar-7.
4. Shri B. B. Mohanty,
5. Shri P. K. Rath,
6. Shri A. Sadani.

(Nos. 4, 5 & 6 are Upper Division Clerks, Office of the Regional Director, ESI Corporation, ESIC Bhawan, Janpath, BBSR-7.)

..... Respondents.

S. S. M.

By legal practitioner ; Mr. B. S. Tripathy, Advocate.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN;

These two cases have been heard together. Some persons are, private Respondents 4, 5 and 6 in both these applications. Applicants in both these cases have claimed seniority over private Respondents 4, 5 and 6 in the rank of Upper Division Clerk. Therefore, one order will govern both these cases.

2. In Original Application No. 255 of 1992 Departmental Respondents have filed counter. At the time of hearing, it was submitted by learned counsel for Departmental Respondents that counter filed by them in Original Application No. 255 of 1992 may be taken into consideration in Original Application No. 545 of 1992 as well. This having not been objected to by the learned counsel for Applicant, counter filed by the Departmental Respondents in Original Application No. 255 of 1992 has been taken note of in both these cases.

3. Facts of both these two cases have, however, to be set out separately. Applicant in Original Application No. 255 of 1992 joined Employees State Insurance Corporation (in short ESIC) on 22-4-1980 as Lower Division Clerk. In the gradation list of Lower Division Clerks, published on 15-7-85

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at Annexure-A/1, he was shown senior to Private Respondents 4, 5 and 6. Applicant's position was at Sl.No.19 whereas, private Respondents 4, 5 & 6 were shown against Sl.Nos. 28, 33 and 34 respectively in the seniority list of LDCs. Applicant has stated that he was promoted on adhoc basis as Upper Division Clerk in Office Order dated 2.7.81 and has continued in the post of Upper Division Clerk without any interruption. In June, 1984, DPC meeting was held. Names of Applicant and private Respondents 4, 5 and 6 were before the DPC and their names were recommended for promotion to the post of UDC but while doing so, the name of applicant appeared below the private Respondents 4, 5 & 6. This according to applicant is not in conformity with the Rules. In the gradation list dated 1.12.1989 of UDCs, which is at Annexure-A/2, the name of applicant was shown against Sl.No.39, whereas, the names of private Respondents 4, 5 and 6 were shown against Sl.Nos. 30, 34 and 26 respectively. Applicant has stated that his seniority in the rank of UDC has been wrongly shown. He filed representation on 1.1.1990 but the same was rejected in order dated 5.2.1990 (Annexure-3). A further representation, at Annexure-4, was also rejected in order dated 23.4.1991, at Annexure-5. In the context of the above facts, applicant in OA No.255 of 1992 has prayed for fixing his seniority above the private Respondents 4, 5 and 6 in the cadre of UDC.

4. In original Application No.545 of 1992, applicant has stated that he joined the Employees State

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Insurance Corporation on 14.1.1980 as Lower Division Clerk and was promoted to Upper Division Clerk, on Ad-hoc basis w.e.f. 2-7-1981. In the gradation list of ~~Lower~~ Division Clerks, published on 15-7-1985, name of applicant was shown against Sl.No.17 while Respondents 4,5 and 6 were shown against Sl.Nos.28, 33 and 34 respectively. Thus, in the cadre of ~~UDC~~ ^{J Som}, applicant was admittedly, senior to private Respondents 4,5 and 6. In June, 1984, DPC considered the case of applicant as also cases of private Respondents 4,5 and 6 and their names were recommended for promotion to the post of Upper Division Clerk but while doing so, a list was prepared in which applicant shown below private Res. Nos. 4,5 and 6. This, according to applicant, is illegal. In the gradation list of UDCs issued on 1.12.1989, which is at Annexure-2, applicant was shown against Sl.No. 38 whereas Respondents 4,5 and 6 were shown against Sl. Nos. 30, 34 and 26 respectively. Thus, in the rank of UDC, applicant became junior to private Respondents 4,5 & 6. His representation was rejected in order dated 5-2-1990 at Annexure-3 and a further representation was rejected in order dated 11.11.1991 at Annexure-5. In the context of the above facts, applicant in OA No.545 of 1992 has prayed for fixing his seniority in the cadre of UDC on the Respondents 4,5 and 6.

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5. Private Respondents, 4, 5 and 6 were issued notice but they have not filed counter except Respondent No.6, who has filed counter in Original Application No.255/92.

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6. Departmental Respondents, in their counter filed in Original Application No. 255 of 1992, have stated that according to ESI Corporation (Recruitment) Regulation, 1965 as amended vide Notification No. 3/2/2/70-Estt. I (Col. II), dated 5-3-1977, in the rank of UDCs, 75% of the vacancies shall be filled up by promotion on the basis of seniority subject to rejection of unfit and the remaining 25% of the vacancies, shall be filled up by promotion on the basis of Departmental competitive Examination. According to Departmental Respondents, Departmental competitive Examination was held in the year 1984 for filling up of the vacancies falling against Departmental Competitive Examination quota. Applicant, in Original Application No. 255 of 1992 alongwith private Respondents, 4, 5 and 6 took the examination and all of them qualified. In that test, private Respondent No. 6, occupied the first position, Private Respondent No. 4 occupied second position and private Respondent No. 5 occupied the third position. Applicant in Original Application No. 255 of 1992 occupied 7th position. It has been stated by Departmental Respondents that seniority of applicant and private Respondents in the cadre of UDC was finalised strictly in accordance with the ESI Corporation, Recruitment Regulations and other instructions. Though applicant in Original Application No. 255 of 1992, qualified in the test, his seniority was fixed placing his name against the seniority quota as that was more beneficial for him. Had he secured higher position in the merit list, then he would have come through the Departmental

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Competitive Examination quota for the 25% vacancies.

As regards applicant's adhoc appointment, Respondents have stated that even though he was made UDC on adhoc basis w.e.f. 2.7.1981, it was stipulated in the order itself that it was merely an adjustment and he would not be entitled to the pay and allowances as admissible for the post of UDC till further orders. Departmental Respondents have further stated that as per the relevant instruction, prevalent at that time, placing the names of officials against the Departmental Competitive Examination quota and seniority quota is done on 1:3 basis. After placing the name of persons who have secured first position in the Departmental Competitive Examination, three senior officials who were found fit for promotion were placed and then the name of persons who secured the second position in the said test were placed and so on. In the instant case, seniority has been fixed strictly in accordance with the above instructions. Departmental Respondents have also denied the averments of the applicants that Respondents 4, 5 and 6 had not completed the minimum three years of service required for promotion to UDC by the time, Departmental/^{Competitive} Examination was held. They have pointed out that the said examination was held on 24.6.1984 and Private Respondents 4, 5 and 6 having joined as LDC on 6.3.1981 and 6.4.1981 and 6.4.1981, respectively had completed three years of service by the date of holding the examination. On the above grounds, Departmental Respondents have opposed the prayers of the applicants in both the cases.

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7. We have heard Mr.P.V.Ramdas, the learned counsel for the applicants in both the cases; Mr.B.S.Tripathy, the learned counsel appearing for the departmental respondents; and Mr.S.P.Mohanty, the learned counsel appearing for the private respondents in both the cases and have also perused the records.

8. Learned counsel for the applicants has filed a note of submission with date-chart along with a copy of the Recruitment Regulations of 1965, which has also been taken note of. The learned counsel for the private respondents has also filed a copy of the Recruitment Regulations of 1965. From the above recital of facts in both these cases the admitted position is that in the rank of ^{L.D.Cs.} both these applicants were senior to private respondent nos.4,5 and 6. But while in the rank of U.D.C. the private respondent nos.4, 5 and 6 have come through 25% Departmental Competitive Examination quota, the applicant in OA No.255/92 has been promoted against the seniority quota. While private respondent nos.4,5 and 6 have been promoted to the rank of U.D.C. on 8.11.1985, both the applicants have been promoted to the rank of U.D.C. on 24.8.1989. That is how private respondent nos.4,5 and 6 became senior to the applicants in these cases. The departmental respondents have pointed out that interse seniority between persons who have come through Departmental Competitive Examination in the 25% quota and those who have come against 75% quota on the basis of seniority is to be fixed on the ratio of 1:3. Moreover, Clause 28 of the Recruitment Regulations,1965, as amended in 1977, provide that 25% of the vacancies to be filled up through

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Departmental Competitive Examination will be filled up by promotion on merit. Accordingly, respondent no.6, who was junior not only to the applicants but also to respondent nos.4 and 5 in the rank of U.D.C., has become senior to all of them in the rank of U.D.C. and has occupied the position against serial No.26. Next three posts, serial nos.27, 28 and 29 have gone to seniority quota persons and thereafter against serial no.30 respondent no.4 has come, he having occupied the second position in the merit list in the Departmental Competitive Examination. Respondent no.4 has been followed by three other persons who have apparently come through the seniority quota, and thereafter respondent no.5 has come. Even though private respondent nos.4,5 and 6 have all been promoted to the rank of U.D.C. on the same date on 8.11.1985, their seniority has been shown in the above fashion and rightly. The applicant in OA No.545/92 was senior to the applicant in OA No.255/92 in the rank of L.D.C. and therefore, after their promotion in the seniority quota, the applicant in OA No.545/92 has been shown senior to the applicant in OA No.255/92 and they have been assigned position against serial nos.38 and 39 respectively. As earlier noted the applicants have been promoted to the rank of U.D.C. with effect from 24.8.1989 and therefore, their seniority in the rank of U.D.C. has been counted from that date and they have been rightly shown as junior to private respondent nos.4,5 and 6.

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9. In consideration of the above, we hold that the applicants have not been able to make out a case for refixing their seniority. Their seniority vis-a-vis private respondent nos. 4, 5 and 6 has been rightly fixed. Both the Original Applications are therefore held to be without any merit and are rejected but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
28.9.99