

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.436/97

Dated the 1st day of November, 1999

CORAM

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

N.S.Harihara Sharma
Assistant
Regional Office
Employees State Insurance Corporation
Trichur.

...Applicant

(By advocate Mr K.R.B.Kaimal)

Versus

1. Employees State Insurance Corporation
represented by its Director General
New Delhi.
2. The Regional Director
Employees State Insurance Corporation
Trichur.
3. Assistant Regional Director
Employees State Insurance Corporation
Regional Office
Trichur.

...Respondents.

(By advocate Mr T.V.Ajayakumar)

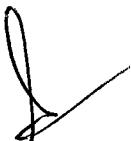
The application having been heard on 1st November, 1999,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash Annexure A-2, A-4 and the
decision of the first respondent referred to in Annexure
A-4 and to direct the respondents to restore the fixation
of pay at Rs. 340/- granted to him with effect from 2-6-81
with consequential refixation of pay in the post of Assistant
w.e.f. 19-1-96.

2. The applicant commenced service as Lower Division Clerk
under the first respondent on 8-6-76. While so, he was
promoted as Upper Division Clerk in the scale of Rs. 330-560
on adhoc basis in leave vacancies during certain spells in



the year 1980. There arose a leave vacancy in the cadre of Stenographer in the scale of Rs. 330-560. He was promoted as Stenographer on adhoc basis in the said leave vacancy as per Annexure A-1. In the meantime, his turn for promotion as UDC arose and the second respondent promoted him as UDC and he joined duty as UDC on 2-6-81. His pay was fixed at Rs.340/- in the scale of Rs. 330-560 by taking into account the broken periods of adhoc promotions as UDC and Stenographer in the same scale. He was subsequently promoted as Assistant w.e.f. 19-1-96. His pay was fixed as per A-2. By that order, his pay was refixed at Rs.330/- on 2-6-81 instead of the original fixation at Rs. 340/-. As the above fixation was illegal, he submitted a representation Annexure A-3. As per Annexure A-4 his representation was rejected.

2. Respondents resist the OA contending that the pay drawn by the applicant on adhoc basis of Stenographer cannot be protected under the rules. It was found that the pay fixation granted to him by taking into account the period of officiating stenographer was done wrongly. His pay was refixed in the cadre of UDC when he was subsequently promoted as Assistant/Head Clerk. His pay in that cadre was fixed as per rules.

3. As per the rules for fixation of pay in the promoted post, the pay drawn in the feeder category is to be considered. The post of LDC is the feeder category for promotion to the post of UDC and not for the category of Stenographer. The old post before his promotion held by him on regular basis was the post of LDC only. He was only officiating on adhoc basis as Stenographer. There is no rule or provision to count officiating service in the Steno cadre for fixing the pay in the UDC cadre. These are different cadres carrying different duties and obligations.



4. Applicant is relying on FR 22 (c) in support of his case that the earlier fixation of his pay is in order and the impugned orders are unsustainable. F.R.22 (c) was there in the Fundamental Rules during the relevant period. F.R.22(c) says that "Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued." FR 22 (c) applies where a Government servant is promoted in a substantive, temporary or officiating capacity while holding a post in a substantive, temporary or officiating capacity. The applicant's grievance is with regard to non-inclusion of his officiating period as Stenographer for the purpose of fixation of pay as per the impugned orders. Applicability of FR 22 (c) would have attracted if the applicant was promoted from the post of Stenographer to that of UDC. The order promoting the applicant as UDC is not produced here. Learned counsel appearing for the applicant submitted across the bar that the applicant was promoted as UDC from the post of LDC which was his permanent post after reverting him from the post of Stenographer. So this is a case where the applicant while holding the post of LDC was promoted as UDC. In such a case, FR 22(c) is not attracted as contended by the applicant.



5. Learned counsel appearing for the applicant pressed into service clause (ii) in the 3rd proviso to FR 22 (c) and submitted that the re-fixation is not according to the rules. The second clause in the third proviso says that "if a Government servant either has previously held substantively or officiated in a permanent or temporary post on the same time-scale, then proviso to FR 22 shall apply in the matter of initial fixation of pay and counting of previous service for increment." Proviso to FR 22 says that "The Government servant should have been approved for appointment to the particular grade/post in which the previous service is to be counted." Here it is a clear case that the applicant was not approved for appointment to the post of Stenographer; that his appointment approved was only as LDC and from that post he was promoted as UDC. From A-2 it is clearly seen that he was given adhoc promotion as Stenographer and it is the admitted case of the applicant also. That being so, based on the proviso to FR 22 the applicant cannot say that his period of adhoc service as Stenographer should also be counted for the purpose of fixation of his pay as UDC. That being so, we are unable to interfere with the impugned orders except to the extent of recovery of the excess payment ordered.

6. It has been held by the Apex Court in Shyam Babu Verma & others vs. Union of India (1994 (2) SCC 521) that "although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1st January, 1973 and only after a period of 10 years they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs. 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with



effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same." There is no indictment against the applicant. That being so, the respondents are not entitled to recover the excess payment made erroneously.

7. Accordingly, we hold that the applicant is not entitled to the reliefs claimed for except to the extent of directing the respondents not to recover the excess payment made erroneously. We direct that no steps should be taken to recover or to adjust any excess payment made to the applicant due to the fault of the respondents.

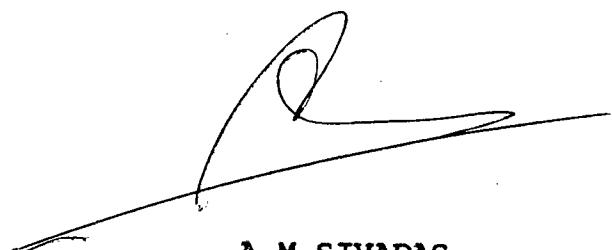
Original Application is disposed of as above.

No order as to costs.

Dated 1st November, 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A. M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A-2: True copy of order 212/96 No.54A20/11/353/86 Adm.I dated 20.2.96 issued by the third respondent.
- A-4: True copy of order No.54A.20/11/353/86 Adm.I dated 12-9-96 of the third respondent.
- A-1: True copy of office order No.689/80 No.54A.22/15/79 Admn dated 29.9.80 issued by the third respondent.
- A-3: True copy of representation of the applicant dated 20-3-96 to the first respondent.