

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 577 / 2005

Wednesday, this the 5th day of March, 2008.

CORAM

HON'BLE MRS SATHI NIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

1. P.Balachandran,
U.D.C., Regional Office,
ESI Corporation,
Trichur.
2. K.Abdul Gafoor,
U.D.C., Regional Office,
ESI Corporation,
Feroke.
3. C.Krishna Kumar,
U.D.C., Regional Office,
ESI Corporation,
Vellore.
4. T.P.Mohandas,
U.D.C., Regional Office,
ESI Corporation,
Trichur.
5. S.S.Mohammed Ali,
U.D.C.(898), Regional Office,
ESI Corporation,
Trichur.
6. K.Sasikumar,
U.D.C., Regional Office,
ESI Corporation,
Kannur.
7. K Haridasan,
U.D.C./Cashier, Branch Office,
ESI Corporation,
Kannur.
8. V.C.Vijayan,
U.D.C., Regional Office,
ESI Corporation,
Trichur.
9. Nalini V.J.
U.D.C., Branch Office,

ESI Corporation

Palakkad

10. V.Sarada,
U.D.C., Regional Office,
ESI Corporation,
Jain Medu, Palghat-12.
11. N.Madhusoodanan,
U.D.C.
Branch Office (Kanjikkode),
ESI Corporation,
Palakkad-678 007.
12. K.S.Sulaika,
U.D.C., Regional Office,
ESI Corporation,
Trichur.
13. K.V.Jemsy,
U.D.C., Regional Office,
ESI Corporation,
Trichur.
14. Jose Mathew,
U.D.C., Regional Office,
ESI Corporation,
Trichur.
15. T.K.Bhuvanesh,
U.D.C., Regional Office,
ESI Corporation,
Trichur.
16. M.S.Sugadha,
U.D.C., Regional Office,
ESI Corporation,
Trichur.

....Applicants

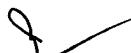
(By Advocate Shri TA Rajagopalan)

v.

1. The Regional Director,
ESI Corporation,
Thrissur.
2. The Director General,
ESI Corporation,
New Delhi.

....Respondents

(By Advocate Mr. T.V.Ajayakumar)



This application having been finally heard on 7.2.2008, the Tribunal on 5.3.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Through this Original Application, 16 ad hoc Upper Division Clerks (UDC for short) working under the 2nd respondent, viz, Regional Director, ESI Corporation, Thrissur as detailed below are seeking a direction to the respondents to regularise their services in the cadre of UDC from their respective dates of their ad hoc promotions:

<i>S.No.</i>	<i>Name of applicant</i>	<i>Date of appointment as LDC</i>	<i>Date of regularisation as LDC</i>	<i>Date of promotion as UDC on ad hoc basis</i>
1	P Balachandran	08/11/82	01/02/83	13.6.1996
2	K Abduyl Gafoor	08/11/92	01/02/83	10/06/96
3	C Krishnakumar	27.11.1982	01/02/83	01/11/96
4	T.P.Mohandas	11/08/83	01/04/84	20.8.2001
5	S.S.Mohandas	10/05/83	01/02/84	29.10.2002
6	K Sasikumar	09/12/82	23.12.1984	28.4.1997
7	K Haridasan	18.11.1982	17.11.1984	01/11/96
8	V.C.Vijayan	08/11/82	20.4.1983	28.10.1996
9	Nalini.V.J.	19.11.1982	01/12/93	01/11/96
10	V.Sarada	12/08/83	28.3.1984	01/04/04
11	N Madhusoodhanan	11/08/83	16.10.1984	03/05/04
12	K.S.Sulaika	05/02/83	01/08/83	29.4.1997
13	K.V.Jensy	14.12.1982	27.3.1983	15.1.1997
14	Jose Mathew	07/11/83	08/04/83	20.8.2001
15	T.K.Bhuvanesh	24.11.1982	01/02/83	28.1.1996
16	M.S.Sugatha	24.12.1982	28.4.1983	10/02/97

2. The applicants submitted that they are continuing on ad hoc basis for several years as detailed below:

<i>S.No.</i>	<i>Name</i>	<i>Date of adhoc promotion</i>	<i>Date of regularisation</i>	<i>Period of Officiation</i>
1	P.Balachandran	13.6.96	26.9.06	10 yrs 3 months
2	K Abdul Gafoor	10/06/96	26.9.06	10 yrs. 3 months
3	C.Krishnakumar	07/11/96	26.9.06	10 yrs. 10 months
4	K Sasikumar	29.4.97	26.9.07	10 yrs. 5 months
5	K Haridasan	01/11/96	26.9.07	9 yrs. 10 months
6	V.C.Vijayan	28.10.96	26.9.07	10 yrs. 11 months
7	V.J.Nalini	01/11/96	26.9.07	9 yrs. 10 months
8	K.S.Sulekha	29.4.97	26.9.06	10 yrs. 5 months
9	K.V.Jensy	15.1.97	26.9.07	10 yrs. 8 months
10	T.K.Bhuvanesh	28.10.96	26.9.07	10 yrs. 11 months
11	M.S.Sugadha	10/02/97	26.9.07	10 yrs. 7 months
12	T.P.Mohandas	20.8.01	Not regularised	More than 6 years
13	S.S.Mohammed Ali	20.10.02	-do-	5"
14	V.Sarada	01/04/04	-do-	3"
15	N.Madhusoodanan	30.5.04	-do-	3"
16	Jose Mathew	20.8.01	-do-	6"

3. According to them, the sanctioned strength of UDCs in the office of the second respondent is 180 and out of them 90 are continuing on ad hoc basis for the last 18 years. They have further submitted that their juniors in the LDC grade who appeared in the test for the post of UDCs under 25% departmental competitive examination quota in the year 1998-99 have already got promotion as UDCs on regular basis but because the respondents did not conduct any departmental test under the promotion quota from 1987 to 1994, they did not get any opportunity to pass the test and to become UDCs so far. Consequently, they were also denied the opportunity to get themselves promoted to the next higher grade of Head Clerk/Assistant as they could not fulfil the conditions of 3 year regular service as UDCs even though they have been working in that post



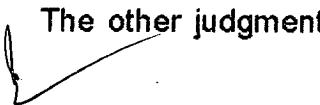
on ad hoc basis for several years. They have, therefore, made the identical Annexure A-2 representation dated 18.8.2004 to the respondents to regularise them in the cadre of UDCs from the respective dates of their ad hoc appointments as UDCs to enable them to apply for the departmental test for Assistants.

4. The applicants have mainly relied upon the judgment of the Apex Court in the case of **S.B.Patwardhan and another v. State of Maharashtra and others** [(1997) 3 SCC 399] in which the question of promotion under the direct recruitment quota and departmental promotion quota has been considered and in para 28 of the said judgment and the Apex Court held as under:

“... Thus, for purposes of seniority, the promotees had to depend firstly on the availability of substantive vacancies and secondly on the arbitrary discretion of the Government to confirm or not to confirm them in those vacancies. The fact that a substantive vacancy had arisen and was available did not, proprio vigore, confer any right on the promotee to be confirmed in that vacancy. The 1941 Rules contained the real germ of discrimination because the promotees had to depend upon the unguided pleasure of the Government for orders of confirmation. In the pre-Constitution era, such hostile treatment had to be suffered silently as a necessary incident a government service.”

They have also relied upon para 38 of the said judgment in which the Apex Court further held as under:

“..The rule cannot be construed to mean that for every three confirmations of Deputy Engineers, not more than one promotee can be confirmed as Deputy Engineer. In A.K.Suibraman (supra) it was held by this Court, while interpreting rules relating to Central Engineering Service Class I, that though in cases where recruitment is made from different sources the quota system can be validly applied, the quota rules was to be enforced at the time of initial recruitment to the posts of officiating Executive Engineers and not at the time of their confirmation. The Court further observed that there was a well recognised distinction between promotion and confirmation and that the tests to be applied for the purpose of promotion are entirely different from those that had to be applied at the time of confirmation.”

The other judgments relied upon by the applicants in support of their claim are

the following:

- i) **Direct Recruit Class I Engineering Officers' Association v. State of Maharashtra and others** [(1990) 2 SCC 715]
- ii) **Rudra Kumar Sain and others v. Union of India and others** [AIR 2000 SC 2809]
- iii) **S.N. Dhingra and others v. Union of India and others** [AIR 2001 SC 1535]
- iv) **Santhosh Kumar v. State of Andhra Pradesh and others** [AIR 2003 SC 4036]

5. The respondents in their reply have submitted that the applicants are governed by the ESI Corporation (Recruitment) Regulations 1965 which have been amended by notification dated 5.3.1997 (Annexure R1(b)). As per Regulation 28 of the said rules, the method of filling up the post of UDC is :

- "(a) 75% of the vacancies shall be filled by promotion on the basis of seniority subject to rejection of unfit.
- (b) The remaining 25% shall be filled up on the basis of departmental competitive examination."

Three years regular service in the feeder category of LDC is the minimum requisite qualifying period for promotion as UDC. The departmental tests for promotion to the post of UDCs under 75% quota were not conducted during the period from 1987 to 1993 in view of the implementation of the revised norms and the consequent surplusage of LDCs/UDCs in the Kerala Region. However, the departmental competitive examinations for promotion under 25% quota were held on 29.6.1986 and 26.6.1994 and every year thereafter except in 1996 and 1997 when the examination was held exclusively for SC/ST candidates. All the applicants who have acquired 3 years regular service as LDC as on 29.6.1986 or afterwards are eligible to appear in the said test. Though the applicants appeared in the test, yet they did not qualify and therefore their juniors who

qualified in the examinations were regularly promoted as UDCs.

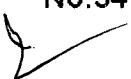
6. As regards the sanctioned strength of the cadre of UDCs, the respondents submitted that as on 31.3.1996, the sanctioned strength was 184 with 77 UDCs at Regional Offices 53 UDCs at Branch Offices, 52UDC – Cashiers at Branch Office and 2 UDCs at Revenue Recovery Cell of Regional Office. Out of them, 175 posts of UDC were already regularised. Thus actual vacancies as on 31.3.1996 were only 9. Thereafter, vide Office Orders dated 2.9.1999 and 29.9.2005 (Annexure R1(d) and Annexure R1(e)) 9 officiating UDCs each were promoted on regular basis with effect from 1.9.1999 and 28.9.2005 respectively. Out of them, 7 persons were promoted under the seniority quota and the remaining 2 under the SC quota. In the final seniority list of LDCs as on 31.3.2002, those 7 UDCs have been assigned seniority at Sl.No. 18 to 24 and the applicants have been placed at Sl. Nos. 28, 30, 45, 70, 64, 47, 39, 37, 41, 69, 77, 53, 48, 85, 42 and 49 respectively (Annexure R1(f)). The respondents have, therefore, ejected the applicants' request vide Annexure A-1 letter dated 31.8.2004 stating that none of their juniors have been promoted as UDCs on regular basis so far and they will be promoted in their turn, subject to availability of vacancies and their fulfilling the prescribed eligibility condition. They have also submitted that in terms of the ACP Scheme introduced by the Government of India vide OM No.35034/1/97-Estt(D) dated 9.8.1999, applicants 4, 5, 10, 11, 14 have already been granted the financial upgradations.

7. They have, therefore, contended that the judgment of the Apex Court in **S.B.Patwardahn's** case cited by the applicant (supra) does not apply in the case. On the other hand, they have contended that the Apex Court has held in **Badri Prasad v. Union of India** [(2005) 11 SCC 304] that an employee who was granted ad hoc promotion for even 20 years cannot claim regular promotion

and such employees will be entitled for benefit of salary only.

8. In the rejoinder, the applicants denied the non-availability of vacancies and pointed out that they would not have been promoted as UDCs on ad hoc basis and allowed to continue in the same capacity for such a long period, if there were no vacancies or if those posts were surplus. They have further contended that it was clear from the submissions of the respondents themselves that when regular UDCs were promoted on ad hoc basis, they were promoted against those posts on ad hoc basis. Since such promotion continued for a very long period of time, the term "ad hoc" lost its meaning and relevance and there is no justification whatsoever for keeping 90 UDC posts as ad hoc since 1996.

9. Thereafter, the respondents and the applicants filed a series of replies and rejoinders. In the reply statement to the rejoinder, the respondents have submitted that the applicants 1 & 2 have since been promoted as UDCs with effect from 26.9.2006 (Annexure R1(g)) and regularisations are being done every year in the cadre of UDC/H.C by the Regional Office to fill the clear regular vacancies by holding DPC meetings. According to them, one main reason for the continued adhocsism is the non-availability of suitable SC/ST candidates inasmuch as 8 SC and 9 ST posts in the grade of H.C./Assistant and 21 SC and 12 ST posts in UDCs are lying vacant and they cannot de-reserve those vacancies as per the existing instructions on the subject and the applicants have also no claim against those regular vacancies meant for SC/ST employees. According to respondent No.1, because of the implementation of revised norms for staff in Regional Office and Local Offices effective from 1989, there was a considerable reduction in the staff strength of Thrissur Region and 66 UDC/UDC-C and 92 LDCs were rendered surplus by the headquarters office letter No.54.A.11/11(19)/89-E-III, dated 16.3.1989. The continuance of the surplus



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posts was allowed subject to the condition that those posts are to be absorbed/adjusted in the future vacancies. As a result, a total of 158 surplus posts were adjusted during the past years and hence no regular vacancies of LDCs occurred in the region since 1989. They have also denied the allegations of the applicants that they are purposely kept on ad hoc UDC for such a long period, though there were actual physical vacancies available.

10. In order to get more clarity to the position, this Tribunal directed the respondents on 9.10.2007 to make available the details of regular vacancies of UDCs which have arisen from 1996 i.e. the date of their ad hoc appointments till date and the action taken to fill up those vacancies. Pursuant to the above directions, the respondents furnished the following statement stating that out of the 16 applicants, 11 of them have already been regularised as under:

Sl.No.	Name of Applicant	Date of ad hoc promotion to the post of UDC	Present status of the applicant regular UDCs except Sl.Nos. 4,5,10,11 & 14	
			Date of Regular promotion	O.O.No. & date by which regularised
1	Balachandran P	13.06.1996	26.09.2006	O.O.No.628 of 2006 dated 26.9.2006
2	Abdul Gafoor	10/06/96	26.09.2006	O.O.No.628 of 2006 dated 26.9.2006
3	Krishnakumar C	07/11/96	26.9.2007	O.O.No.615 of 2007 dated 28.9.2007
4	Mohandas T.P.	20.8.2001	Not regularised	Not regularised
5	Mohammed Ali S.S	29.10.2002	Not regularised	Not regularised
6	Sasikumar K	29.4.1997	26.9.2007	O.O.No.615 of 2007 dated 28.9.2007

<i>Sl.No.</i>	<i>Name of Applicant</i>	<i>Date of ad hoc promotion to the post of UDC</i>	<i>Present status of the applicant regular UDCs except Sl.Nos. 4,5,10,11 & 14</i>	
7	Haridasan K	01/11/96	26.9.2007	O.O.No.615 of 2007 dated 28.9.2007
8	Vijayan V.C.	28.10.1996	26.9.2007	O.O.No.615 of 2007 dated 28.9.2007
9	Nalini V.J.	01/11/96	26.9.2007	O.O.No.615 of 2007 dated 28.9.2007
10	Sarada V	01/04/04	Not regularised	Not regularised
11	Madhusoodanan N	03/05/04	Not regularised	Not regularised
12	Sulaikha K.S	29.4.1997	26.9.2007	O.O.No.615 of 2007 dated 28.9.2007
13	Jemsy K.V.	15.1.1997	26.9.2007	O.O.No.615 of 2007 dated 28.9.2007
14	Jose Mathew	20.8.2001	Not regularised	
15	Bhuvanesh T.K.	28.10.1996	26.9.2007	O.O.No.615 of 2007 dated 28.9.2007
16	Sugatha M.S	0.2.1997	26.9.2007	O.O.No.615 of 2007 dated 28.9.2007

They have also furnished the vacancy position of UDCs from 1996 to 2007 as under:

<i>Year</i>	<i>Seniority quota</i>				<i>Test Quota</i>			
	<i>SC</i>	<i>ST</i>	<i>UR</i>	<i>Total</i>	<i>SC</i>	<i>ST</i>	<i>UR</i>	<i>Total</i>
1996	4	3	16	23	3	1	3	7
1997	4	5	27	36	4	2	10	16
1998	12	9	-5	16	7	3	3	13
1999	13	9	9	31	6	3	4	13
2000	14	9	7	30	6	3	4	13
2001	14	9	6	29	6	3	3	12
2002	14	9	4	27	6	3	1	10
2003	13	9	1	23	6	3	2	11
2004	18	9	7	34	6	3	1	10

Year	Seniority quota				Test Quota			
2005	18	9	7	34	6	3	2	11
2006	16	9	11	36	6	3	1	10
2007	18	9	20	47	6	3	4	13

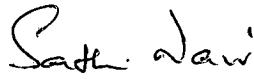
11. Respondents have also submitted that 11 out of 16 applicants have since been promoted as UDCs on regular basis on the basis of the seniority and reiterated that the posts on regular basis can be filled up only when regular vacancies arise in the cadre. For example, the 21 ad hoc Insurance Inspectors/Manager Grade-II/Superintendents as on 1.11.2007 mentioned in Annexure R1(m)(i) are regular Assistants and only when they are regularised on regular basis, vacancies will be available for promotion of Assistants and UDCs on regular basis. The applicants, on the other hand, have submitted that there is no merit in the contention of the respondents that the post rendered surplus consequent to the new norms adopted by the Corporation are still being adjusted/absorbed. The position regarding surplus posts have been communicated to the 1st respondent by Headquarters office vide their letter dated 16.3.1989 which is about 7 years prior to ad hoc promotion given to many of the applicants. 62 posts of UDCs and 92 posts of LDCs are rendered surplus and adjustment of surplus posts against the vacancies created by retirement/death etc. must have commenced from 1989 onwards.

12. We have heard Shri T.A.Rajagopalan, counsel for applicants and Shri T.V.Ajayakumar, counsel for respondents. The allegation of the applicants that they have been deliberately kept on ad hoc basis for the last several years has no basis. They had the opportunity to compete for the departmental competitive examination under the 25% quota and came out successful as regular UDCs. The applicants attempted in the said examination but failed. Now their claim is for promotion under the 75% quota on the basis of their seniority.

First of all none of their juniors have been promoted to the higher grade of Head Clerks/Assistants. Secondly, they can be promoted only against the regular vacancies. The respondents have been filling up the available vacancies on the basis of their seniority and some of the applicants themselves have since been promoted. The reasons given by the respondents for their ad hoc promotion have to be taken into consideration. Many of the posts which are lying vacant in the grad of Head Clerks/Assistants are meant for SC/ST candidates. In the absence of non-availability of candidates belonging to SC/ST, the respondents can only promote the general category candidates on ad hoc basis. The applicants, being general category candidates, have no vested claim against those vacancies. The other reason for them the continuance on ad hoc basis is the surplusage in the cadre of Head Clerks/Assistants. Till those surplus staff are adjusted against the regular vacancies which would occur on account of retirement, death etc. they cannot be filled up from the candidates from the feeder cadre. We, therefore, do not find any merit in the O.A and accordingly the same is dismissed. There shall be no order as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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