CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

DATE OF DECISION: 30.10.1989

P R E S E N T

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NOs. OA K-602/88, 97/89, 131/89, 134/89, 140/89, 141/89, 142/89, 146/89, 160/89, 169/89, 183/89 and 194/89.

1. CR Madhavan - Applicant in OA K-602/88
2. TCG Menon - Applicant in OA 97/89
3. TL Paul - Applicant in OA 131/89
4. CL Vilasini - Applicant in OA 134/89
5. P Bhargavi - Applicant in OA 140/89
6. T Janardhanan - Applicant in OA 141/89
7. P Balakrishnan Nair - Applicant in OA 142/89
8. K Vidyasagaran - Applicant in OA 146/89
9. A Abraham - Applicant in OA 160/89
10. KU John - Applicant in OA 169/89
11. CR Vijayakumara Menon - Applicant in OA 183/89
12. C Kunhikrishnan Nambiar - Applicant in OA 194/89

Versus

1. The Regional Director,
   ESI Corporation,
   Regional Office,
   Trichur - 680 020.
2. The Director General,
   ESI Corporation,
   Kotla Road,
   New Delhi - 110 002. - Respondents

Mr.KA Abdul Gafoor - Counsel for applicants

Mr.CS Rajan - Counsel for respondents

O R D E R

(Hon'ble Mr.AV Haridasan, Judicial Member)

Since the questions of law/facts and the evidences are similar in these cases, they are beeing considered jointly.

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2. These application were filed by 12 applicants who were working in ESI Corporation as Head Clerk/ Inspector/Manager Grade III, which are all equivalent posts. The grievance of the applicants is that when they were promoted to the post of Head Clerk/Inspector/Manager Grade III, while they were holding the post of U.D.C in charge (U.D.C I/c), they were not given the benefit of F.R. 22(c). The pay of each of the applicants were fixed while they were promoted to the post of Head Clerk from U.D.C I/c on the basis of notional pay arrived at as if they had been working in the post of U.D.Cs in the scale of pay of Rs.330-560. Their contention is that, the post of Head Clerk carries higher responsibilities than that of U.D.C I/c and therefore, they are entitled to fixation of their initial pay as Head Clerk under F.R. 22(c) with reference to the pay drawn by them as U.D.C I/c immediately before such promotion. In individual case, the initial fixation was on different dates between 1981 onwards. When the Bangalore Bench of the Central Administrative Tribunal in Gopal Sharma's case in Application No.67 to 69 and 78/87 held that, employees of the ESI Corporation while promoted from U.D.C I/c post to the post of Head Clerk, they are

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entitled to have their pay fixed under F.R. 22(c) with reference to the pay drawn by them as U.D.C I/C, each of the applicants made a representation requesting for fixation of his pay as Head Clerk under F.R. 22(c) taking the scale of pay of U.D.C I/C. The respondents rejected the representations stating that the decision of the Central Administration was applicable to the petitioners in those cases only and not universally. Therefore, the applicants have approached this Tribunal for having their initial pay in the cadre of Head Clerk/Inspector/Manager Grade III, under F.R. 22(c) on the basis of their pay as U.D.C I/C and for a direction to pay them the arrears. The respondents resist the applications. The main contentions raised are that the post of U.D.C I/C being an Ex-cadre post, fixation of pay in the post of Manager/Head Clerk would be only with reference to the pay of the respective incumbents in the post of U.D.C, and that the applications are barred by limitation.

3. I have heard the arguments of the learned counsel appearing on either side. In application Nos. 67 to 69 and 78/87 of the Bangalore Bench of the Central Administrative Tribunal, a Division Bench of the Tribunal has under similar sets of facts and circumstances held that the post of U.D.C I/C is not an ex-cadre post and that, on being promoted as Head

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Clerk while working as U.D.C I/c, one is entitled to ~~xxxx~~ initial fixation of pay under F.R. 22(c). It has been held as follows:

> "We are unable to understand how the posts of UDC i/c can be treated as ex-cadre posts. As a matter of fact posts of UDC i/c existed at the material time in every department of Government. Therefore, we do not agree ~~that~~ these posts were ex-cadre posts disentitling the applicants to the benefit of FR 22 C on their appointment as Head Clerks. We have gone through the decision of this Tribunal in A.Nos. 170 and 171/86 and we are entirely in agreement with the decision rendered therein that the post of Head Clerk carries higher responsibilities than that of UDC i/c and is in fact a promotional post. We therefore hold that the applicants are entitled to fixation of their initial pay as Head Clerk under FR 22 C with reference to the pay drawn by them as UDC i/c immediately before their appointment to the post".

The contention of the respondents that the decision of the Bangalore Bench of the Tribunal in Gopal Sharma's case is applicable only to the petitioners in that case cannot be accepted. In John Lukose and another -Vs- The Additional Chief Mechanical Engineer, S.Railway and others which was heard by a Three Member Bench (Application Nos.27 & 28/87)

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The Hon'ble Chairman Justice K Madhava Reddy speaking for the Bench observed as follows:

> "In "service matters" any judgment rendered, ~~except perhaps in disciplinary proceedings, will rendered~~ except perhaps in disciplinary proceedings, will affect someone or the other member of the service. The interpretation of Rules governing a service by the Tribunal, while it may benefit one class of employees, may adversely affect another class. So also upholding the claim of seniority or promotion of one may infringe or affect the right of another. The judgments of the Tribunal may not in that sense be strictly judgments in personam affecting only the parties to that petition; they would be judgments in rem. Most judgments of the Tribunal would be judgments in rem and the same Authorities impleaded as respondents both in the earlier and the later applications would have to implement the judgment. If a party affected by an earlier judgment is denied the right to file a Review Petition and is driven to file an original application under Section 19, apart from the likelihood of conflicting judgments being rendered the Authorities required to implement them being one at the same would be in a quandary. Implementing one would result in disregarding the other."

4. In the light of the above observation, it can be said that the decision in Gopal Sarma's case

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is a judgment in Rem applicable to all similarly placed persons. The applicants in these cases just as the applicants in Gopal Sharma's case are Head Clerks/Inspectors/Managers Grade III in ESI Corporation who were denied the benefit of fixation of pay under F.R. 22(c) with reference to that pay in the post of U.D.C I/c. Therefore the contention of the respondents that the decision of the Central Administrative Tribunal in Application Nos. 67 to 69 and 78/87 of the Bangalore Bench is applicable to only to parties thereto and that therefore, the applicants are not entitled to the benefit of F.R.22(c) as claimed by them has only to be rejected. Their contention that the post of U.D.C I/c is not a cadre post has also to be rejected. Now coming to the question of limitation in all these cases, the applicants have made a representation on the basis of the decision of the Central Administrative Tribunal. The respondents rejected this representation stating that the applicants are not entitled to fixation of pay as claimed by them, since the decision of the Central Administrative Tribunal referred to their representation bound only the parties thereto. The respondents have not stated in the order rejecting the representation that their representations were

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rejected, because they were barred by limitation. Since the ESI Corporation has not yet finally resolved the question of fixation of pay, the applicants have made the representation immediately after the Tribunal pronounced orders in Gopal Sharma's case, without much delay on receipt of the rejection of the representation, they have filed the applications in this court. Therefore, I am of the view that the applications cannot be held to be time barred.

5. In the result, the applications are allowed. The respondents are directed to fix the initial pay of the applicants in the post of Head Clerk/Inspector/ Manager Grade III under F.R.22(c) with reference to the pay drawn by each of them as U.D.C I/c immediately before their appointment to the post and to pay them all consequential arrears within a period of three months from the date of receipt of this order.

6. There is no order as to costs.

(A.V.HARIDASAN)
JUDICIAL MEMBER