

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 12.12.1989

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN

AND

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

ORIGINAL APPLICATION 227/89

P.O.Thomman - Applicant

Versus

1. The Regional Director,
Regional Office,
ESI Corporation,
Trichur.

2. The Director General,
ESI Corporation,
ESIC Building,
Kotla Road,
New Delhi. - Respondents

Mr.K.A.Abdul Gafoor - Counsel for applicant

Mr.C.S.Rajan - Counsel for respondent

O R D E R

(Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed that the impugned order at Annexure-A6 dated 21.12.1988 of the Deputy Regional Director of ESI Corporation refusing to refix his pay as requested by him in his representation dated 5.12.1988 may be set aside and that the respondents may be directed to refix his pay on promotion as Head Clerk under FR 22-C with reference to the pay drawn by him as

UDC in-charge immediately before his promotion and to grant him all consequential benefits including arrears. Leaving out unnecessary details, the material facts of this case as set out in the application can be narrated thus. The applicant commenced his service in ESI Corporation in 1956. He was working as UDC from the year 1963 onwards. While so in 1972 he was promoted as UDC in-charge in the scale of pay of Rs.425-15-530-E8-15-560-20-600. While working as UDC in-charge with a basic pay of Rs.500/- he was promoted as Head Clerk in the pay scale of Rs.425-15-500-E8-15-560-20-700 on 27.9.1976. While working as Head Clerk by order dated 23.6.1983, the first respondent refixed the applicant's pay as UDC i/c as on 7.7.1973 at Rs.425/- and based on this his pay on the date of promotion as Head Clerk in the scale of UDC i/c was to be Rs.470/-. The applicant objected to this in his representation dated 15.9.83 followed by a reminder dated 9.1.1984. He was informed that the matter had been referred to the second respondent. Based on the fixation as aforesaid, the applicant's pay in the post of Head Clerk was also retrospectively refixed reducing the same from Rs.500/- to Rs.455/- as on 29.7.1976. by Annexure-A4 order dated 5.6.1985.

Against this refixation also the applicant made a representation dated 10.7.1985. The post of Head Clerk is having a higher pay scale than the post of UDC i/c and the duties and responsibilities are higher. Despite this on promotion pay of the applicant was reduced. On promotion from the post of UDC i/c the applicant was entitled to get his pay fixed under the provisions of FR 22-C reckoning the pay drawn by him as UDC i/c on the date of promotion. But he was given fixation taking notional pay as UDC as if he continued so without being promoted as UDC i/c. There had been several cases in which the question of fixation of pay on promotion to the post of Head Clerk from UDC i/c were involved. No final decision had been taken by the respondents. But the applicant came to know that the Bangalore Bench of the Central Administrative Tribunal in case Nos. 67 to 69/87 and 78/87 had declared that the post of UDC i/c is not an Ex-cadre post and that on promotion to the post of Head Clerk from the post of UDC i/c the incumbents are entitled to fixation of pay under FR 22-C with reference to pay in the cadre of UDC i/c. The applicant thereupon made a representation to the first respondent for review of the refixation of his pay. The first respondent has by the impugned order at Annexure-A6

informed him that the judgment of the Central Administrative Tribunal, Bangalore Bench would apply only to the petitioners concerned in those cases and that he was not entitled to have his pay refixed as requested.

Aggrieved by that the applicant has filed this application. It has been averred in the application that as the contention raised by the ESI Corporation that is the post of UDC i/c only an ex-cadre post and that therefore, on promotion to the post of Head Clerk one is not entitled to have the pay fixed under FR 22-C with reference to the pay in the post of UDC i/c and that as the plea of delay in filing application for the relief have been rejected by the CAT, Bangalore Bench and this Bench in several cases and since to adopt a double standard in regard to fixation of pay in respect of similarly placed officers on the ground that some of them had filed cases earlier would be violative of the principles of natural justice and also the fundamental rights guaranteed under Article 14 and 16 of the Constitution of India.

2. In the reply statement filed by the respondents it has been contended that the post of UDC i/c being an ex-cadre post fixation of pay under FR 22-C on a

person being promoted while working as UDC i/c to the post of Head Clerk can be had only with reference to his pay in the post of UDC and that this application has at any rate to be dismissed as the same is barred by limitation.

3. At the time when the case came up for argument, the learned counsel on either side submitted that this Tribunal has disposed of a batch of applications namely 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 in which the identical question was considered and that therefore the matter may be decided on that basis.

4. We have gone through the pleadings and records produced on either side very carefully.

5. There has been several cases before this Bench as well as before other Benches of this Tribunal in which the identical question of fixation of pay under FR 22-C with reference to the pay in the post of UDC i/c was involved. In Gopal Sharma's case i.e. Application Nos. 67 to 69 and 78/87 the Bangalore Bench of the CAT held that employees of the ESI Corporation while promoted from UDC i/c post to the post of Head Clerk were entitled to have their pay fixed under FR 22-C with

...6/-

reference to the pay drawn by them as UDC i/c. The contention of the ESI Corporation that the post of UDC i/c is an ex-cadre post has been rejected in that case. It was observed by the Tribunal in that case 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 benefits 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 this decision in Gopal Sharma's case is applicable to the parties to that case ~~can~~ alone ^{can} not 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) 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 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 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."

Relying on this observation this Tribunal has in the batch of applications OA 602/88, etc. held that the decision in Gopal Sharma's case being a judgment in rem applied to all similarly placed persons. In the

batch of applications also as in this case the respondents has raised a plea of limitation. But this plea of limitation has been rejected on the ground that as the ESI Corporation had not yet finally resolved the question of fixation of pay and since the applicants have made representations for refixation soon after the pronouncement of orders in Gopal Sharma's case. In Application Nos. 1580 to 1585/88 the Bangalore Bench of the CAT rejecting the plea of limitation in identical set of facts has observed as follows:

"Taking a holistic view of all the above facts and circumstances and considering specially, that even after a lapse of as long as 8 years, the respondents have not as yet resolved the question of fixation of pay in the TP and waiving of recovery of overpayment of emoluments in respect of the affected ESIC employees and having thus left them in "beguiled expactation" so far, keeping the matter yet alive, I feel it would be unfair in this fact-situation, to hold the bar of limitation and maintainability against the applicants. The dicta of the Supreme Court in INDER PAL YADAV's case really comes to their aid specially when their colleagues in GOPAL SHARMA's case, had approached the High Court for redress within a reasonable period of 3 years."

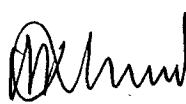
The situation is identical in this case as well.

Therefore the plea of the respondents that the claim of the applicant is barred by limitation also has to be rejected.

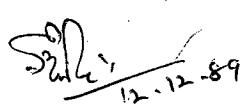
6. In the result, the application is allowed.

Annexure A-6 order is set aside and the respondents are directed to refix the applicant's pay on promotion as Head Clerk under FR 22-C with reference to the pay drawn by him as UDC i/c (to be fixed again under FR 22-C if not already done) immediately before his promotion and to give him all consequential benefits including arrears within a period of three months from the date of receipt of this order.

7. We do not make any order as to costs.


(A.V. HARIDASAN)

JUDICIAL MEMBER


(S.P. MUKERJI)

VICE CHAIRMAN

12.12.1989