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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 207/88

~~Transfer Application No:~~

DATE OF DECISION ____ 8 -4-1993 ____

N B Bhikshu _____ Petitioner

In person _____ Advocate for the Petitioners

Versus

D.G., ESIC & Another   Respondent

Mr. A I Bhatkar for
Mr. M I Sethna
_____ Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri   Justice M.S. Deshpande, Vice Chairman   •

The Hon'ble Shri   Ms. Usha Savara, Member (A)

1. Whether Reporters of local papers may be allowed to see
    the Judgement ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of
    the Judgement ?

4. Whether it needs to be circulated to other Benches of
    the Tribunal ?

No

Member (A)   8.4.93

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

OA No. 207/88

Nandiraju Bhogeshwara Bhikshu
Regional Office
ESIC, ESIC Bhavan
Lower Parel, Bombay 13   ..Applicant

V/s.

1.   Director General
      Employees State Insurance
      Corporation, Kotla Road
      New Delhi

2.   Regional Director
      ESIC, Lower Parel,
      N M Joshi Marg, Bombay 13   ..Respondents

Coram: Hon.Shri Justice M S Deshpande, V.C.
       Hon. Ms. Usha Savara, Member (A).

APPEARANCE:

Applicant
in person

Mr. A I Bhatkar
for Mr. M I Sethna
Counsel
for the respondents

JUDGMENT: DATED: 8 -4-1993
(PER: Ms. Usha Savara, Member/ A /)

        The applicant, who is an employee of
Employees' State Insurance Corporation, has filed
this application praying for a direction to the
Regional Director and the Director General to
reckon his seniority from 1.9.1979 and to grant
him all consequential reliefs. The applicant is
relying upon the judgment of the Hon. Supreme
Court in AIR 1981 SC 41 for substantiating his
claim that the officiating service rendered by him as
Head Clerk from 1.9.1979 to 31.12.1981 be taken into
account for fixing his seniority.

2.   The facts are not disputed by the respondents,
who have filed a reply. Shri Bhatkar, for Mr. M I Sethna,
learned counsel for the respondents submitted that the
applicant was promoted on 1.9.1979 on purely ad hoc
and temporary basis as Head Clerk. By order dated
12.9.1979 (Exhibit A) 32 persons were promoted to
officiate as Head Clerks/Assistants in view of admi-
nistrative exigency. There was an all India seniority
list in the cadre of Head Clerks at that time, and
since it was not practicable for the seniormost person
in the feeder cadre posted and working far away from
Bombay to opt for such temporary and ad hoc promotions,
the promotions were made purely as stop-gap local
arrangement. The promotions were also made without
prejudice to the rights of the seniors in other regions,
and the persons so promoted, were liable to be reverted
at any time without any notice. Such a promotion did not
confer any right for regular promotion in future.
It was further submitted by the learned counsel for
the respondents that the applicant was promoted as Head
Clerk on regular basis with effect from 1.1.1982 on
the recommendation of the D.P.C. He was given the
benefit of counting the officiating period/service
as Head Clerk towards the period of probation as per
Regulation 5(3) of ESIC (Staff & Conditions of Service)
Regulations 1959, by which the competent authority has been con-
ferred discretionary power for the limited purpose of
allowing officiating period to be counted towards the
period of probation. This is not applicable for matters
of seniority. The seniority in the cadre is determined
according to the inter-se seniority in the feeder cadre
among those who figure in merit quota or seniority quota
list drawn by the D.P.C. in accordance with the Rules.

50% of the vacancies in the cadre of Head Clerk are to
be filled on the basis of selection on merit, and
29 employees, who were junior to the applicant in the
UDC's cadre, have found place in the Merit Quota list,
and hence they have superceded him in the cadre of Head
Clerk. Shri Bhatkar also stated that the judgment of
the Hon. Supreme Court was not relevant in this case,
as the initial promotion as Head Clerk from 1.9.1979
till his regular posting from 1.1.1982 was not according
to Rules, and was only made for administrative convenience
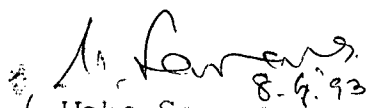without the approval of D.P.C.

3.   We have heard the applicant and the learned
Counsel for the respondents at length, and given our
earnest consideration to the arguments led by both of
them. The order dated 12.9.1979 clearly states that the
officiating arrangements were made purely temporary and
ad hoc basis. This order was not passed on the basis of
the recommendations of the D.P.C. and clearly the promotion
of the applicant was purely a fortituous promotion, due
to the exigencies of service. The Hon. Supreme Court's
judgment cannot help the applicant as it clearly lays
down that for counting of the officiating service it is
necessary that the applicant"fulfills the necessary
conditions for regular appointment such as probation
and consultation with the UPSC etc. "   The implication
is clear. Where the initial appointment is not according
to the Rules, and is made as a stop gap arrangement, the
period of officiation in such post cannot be taken into
account for counting seniority. The recent pronouncement
of the Hon. Supreme Court in the case of KESHAV CHANDRA
JOSHI V. U.O.I. & ORS., AIR 1991, SC 284, makes this
very clear. "The appointee would become member of service
in substantive capacity from date of appointment only
if it was made according to rules, and seniority would

be counted only from that date". In the case before us, the applicant was only appointed from 1.1.1982 by the DPC on the basis of seniority in accordance with rules. The approval of the DPC is mandatory and the initial appointment of the applicant was made without the recommendations of the DPC and therefore the period of officiation will not count for seniority.

4.   In view of the circumstances, there is no merit in the application, and we dismiss it but wihout any order as to costs.

(Usha Savara)
Member (A)

(M S Deshpande)
Vice Chairman

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