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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: O.A. No.118/88

XXXXXXXXXXXXXX

DATE OF DECISION 8.4.93

Shri N.T.Kate & Ors. Petitioner

Advocate for the Petitioners

Versus

The Regional Director, E.S.I.C., ESIC
Bhavan, Lower Parel, B'bay-13. Respondent

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

CORAM:

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

The Hon'ble ~~Savarkar~~ 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.

U.S. Savara
(USHA SAVARA)
MEMBER (A).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.118/88.

Shri N.T.Kate & Ors.

..... Applicants.

V/s.

The Regional Director,
Employees' State Insurance
Corporation, ESIC Bhavan,
108 N.M.Joshi Marg, Lower
Parel,
Bombay - 400 013.

..... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Ms. Usha Savara, Member(A).

Appearances:-

Applicant in person.
Respondents by Mr.A.I.Bhatkar.

JUDGMENT:-

¶Per Ms.Usha Savara, Member(A)

DATED: 8.4.1993.

This application has been filed by three applicants who are employed as Head Clerks in the Employees' State Insurance Corporation (In short, E.S.I.C.) praying for quashing of the seniority list dated 23.1.1987 (Ex. 'K'), restoring the applicants to their original serial Nos. 6, 16 & 48 as per decision taken by D.P.C. held on 29.11.1980 on the basis of Judgment delivered by Hon'ble Justice Bharucha in Writ Petition No.392/81, and to direct the respondents to implement the above Judgment in its true sense. It is also prayed that the applicants be promoted from the date their juniors were promoted as Insurance Inspectors.

2. A reply has been filed by the respondents. The principal issue is the preparation of seniority list of Head Clerks for the Maharashtra Region of E.S.I.C. Till 30.11.1980, there was a common seniority list of all the Head Clerks working throughout the Country. Only those Head Clerks, who had been promoted on a regular basis were included in the list. Due to exigencies of service,

ad hoc promotions were given locally to Upper Division Clerks to work as Head Clerks on the basis of their local seniority only. Consequent upon the decision taken to decentralize the seniority of Head Clerks, the All India Seniority List of Head Clerks was to be replaced by a seniority list of Head Clerks belonging to various regions. In order to fill the vacancies to the post of Head Clerks in Maharashtra Region on regular basis, a D.P.C. was constituted, which met on 29.11.1980 to make selection to the post of Head Clerks w.e.f. 1.12.1980. This was the 1st D.P.C. held for this purpose, and it made its recommendations and empanelled 50 names for the post of regularly promoted Head Clerks. Giving effect to these recommendations, the respondent published a list of selected persons in accordance with their appropriate seniority in the seniority list of Head Clerks in Maharashtra. The three applicants were duly selected and placed at serial Nos. 6, 16 and 48 respectively (Ex. 'A').

3. Writ Petition No.1396/80 was filed by one S.R.Shinde (ad hoc Head Clerk) in the Bombay High Court challenging the selection made by the D.P.C. on the ground that the D.P.C. was not properly constituted. At the time of hearing, the Department made a statement to the Hon'ble High Court that they would reconvene the D.P.C. which would be constituted in accordance with the law "to review and revise the select list in accordance with the Government of India instructions on promotion by merit with due regard to seniority". Leave was granted to withdraw the petition.

4. The second D.P.C. held its meeting on 27.2.1981

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and made selection for the regular promotion of 84 Head Clerks from amongst candidates in the feeder cadre, who fell in the zone of consideration. Except for applicant No.3, the present applicants were not in the zone of consideration, and therefore, did not figure in the Select List drawn by the second D.P.C. Applicant No.3 was considered, but was not selected. Therefore, the three applicants along with 5 others, similarly placed, were ordered to be reverted to the post of U.D.C. (vide) order dated 12.3.1981. This reversion was challenged in Writ Petition No.392/81 on the ground that they were not parties to the 1st Writ Petition, and they had already been appointed to the post of Head Clerks w.e.f. 1.12.1980 on the basis of 1st D.P.C's recommendations. Hon'ble Justice Bharucha ruled on 30.6.1983 that the order of reversion was bad, and that the respondents should treat them ^{as} applicants as having been promoted as Head Clerks from 1.12.1980 (Ex. 'D'). The respondents had to include the applicants in the list of selected employees, eight supernumerary posts had to be created to comply with the directions of the Hon'ble High Court. As a natural consequence, the seniority list of the Head Clerks had to be recast in order to interpolate the names of these 8 persons in their appropriate places where they were in the original list of 50 selected persons of the first D.P.C. (Ex. 'E').

5. This selection by the 2nd D.P.C. was challenged by a substantive U.D.C. (ad hoc Head Clerk) Mrs. Ishwari Advani, who filed a Writ Petition No.572/84 in the Hon'ble High Court. By order dated 5.10.1985, Hon'ble Mr. Justice Kantharia upheld the contention of the petitioner, and directed that the Select List of 84 persons be quashed and also directed that the petitioner be deemed to have been promoted as Head Clerk from

1.12.1980. The respondents were further directed to post her at proper serial number according to her seniority just above the person who was first junior to her and promote her to the post of Head Clerk on the basis of seniority w.e.f. 1.12.1980 with all consequential benefits. An appeal was filed against this order dated 5.10.1985. The Hon'ble Appeal Court did not interfere with the order passed by the learned Single Judge so far as Mrs. Advani was concerned (Ex. 'F').

6. However, two more Writ Petitions Nos. 281/85 and 493/85 which were disposed of by order dated 13.1.86. The operative order was that "In case the Judgment of Justice Kantharia delivered on 5.10.1985 in Writ Petition No. 572/84 becomes final, subject to the right of appeal by the Department then the Department would not implement modified list dated 5.9.1984". As mentioned earlier, the Appeal Court decided the matter on 22.1.1986 confirming Justice Kantharia's order dated 5.10.1985.

7. The respondents were now required to convene a Review D.P.C. for making selections for the post of Head Clerk, keeping in view the Judgment of the High Court in the afore mentioned Writ Petitions. This review D.P.C. or the third D.P.C. met on 16.1.1987, and completed the selection process and finalized the list of 84 persons for regular promotion to the post of Head Clerks as on 1.12.1980. The petitioners were placed at serial Nos. 79 onwards. They were not within the zone of consideration, but their names had to be included to implement the judgment of Justice Bharucha in Writ Petition No. 392/81. The petitioners were juniormost and but for the order of Justice Bharucha would not even have been considered. Therefore, being the juniormost, they were placed at the bottom of the list.

Selection List. The list drawn by the third D.P.C. is the impugned list in this application.

8. We have heard the opposite parties at length. The D.P.C. proceedings have been scrutinized, as well as the orders passed by the Hon'ble High Court in the Writ Petitions. In compliance with the order of Justice Bharucha in Writ Petition No. 392/81, the petitioners have been included in the selection list by the review D.P.C. for filling up the post of Head Clerks on regular basis w.e.f. 1.12.1980. The aforesaid judgment also quashed the order of reversion dated 12.3.1981 in so far as it pertained to the petitioners. The only question before us is whether their names have been placed in the "appropriate place" in the seniority list dated 23.1.1987. The learned counsel for the respondents submitted that the question of seniority was dealt with by the Hon'ble Justice Kantharia in Writ Petition No. 572 of 1984 filed by Mrs. Ishwari Advani. Since the appeal filed by the respondents was dismissed on 22.1.1986, the judgment delivered by Hon'ble Justice Kantharia became final. In compliance with that, the respondents convened the review D.P.C. and finalized the list of 84 persons for regular promotions to the post of available 84 vacancies as on 1.12.1980. As directed by the Hon'ble High Court Mrs. Advani the petitioner in Writ Petition No. 572 of 1984 was ~~to~~ be placed at her proper serial number according to her seniority just above the person who was first junior to her. Mrs. Advani had been promoted under Regulation No. 28 (1-A)(b) i.e. on the basis of seniority subject to rejection of the unfit. While ordering that she be placed at her proper serial number according to her seniority, the Hon'ble High Court has clarified in the order passed on 8.10.1992 in the Contempt Motion taken by

against the respondents, that the petitioner Mrs. Advani was to be placed above all persons who were junior to her. The new seniority list was prepared on the basis of the Judgment given by the Hon'ble High Court. The applicants in the present Original Application were junior to Mrs. Advani, and therefore, according to the Hon'ble High Court's order Mrs. Advani was to be placed above them.

9. There is another reason why the applicants have been placed at the bottom of the seniority list. The D.P.C. which selected the applicants was not properly constituted. The second D.P.C. which met on 27.2.1981 did not approve the names of the applicants, as they did not fall within the zone of consideration. The first D.P.C. had fixed the zone of consideration arbitrarily without regard to the instructions on the subject. For that reason alone, the applicants' names had been approved by the first D.P.C. Finally, the review D.P.C. was held on 16.1.1987 but the applicants were not within the zone of consideration. It is only because of the orders of the Hon'ble High Court that they have been placed in the select list. Since they are, admittedly, the juniormost, they have rightly been placed at the bottom of the seniority list. It is also worth noticing that the Hon'ble Justice Bharucha has not even whispered a word about the seniority of the applicants.

10. In view of the facts stated above, this application has no merit, and is dismissed with no order as to costs.

U. Savara
8.4.93
(USHA SAVARA)
MEMBER (A)

M.S. Deshpande
(M.S. DESHPANDE)
VICE-CHAIRMAN