CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 3 JAN 1989

APPLICATION NOS. 1580 TO 1585, 1614 TO 1621, 1810 AND 1875/88(F)

Applicants

Shri T.K. Pandarish & 15 Ors

V/s

Respondents

The Regional Director, ESI Corporation, Bangalore & another

To

1. Shri T.K. Pandarish
Head Clerk
ESI Corporation
Regional Office
No. 10, Binny Fields
Bangalore - 560 023

2. Shri V. Ramachandra Rao
Head Clerk
ESI Local Office
Sreeramapuram
Bangalore - 560 021

3. Shri T.R. Santhanasundaram
Head Clerk
ESI Corporation Local Office
Nagappa Block
Bangalore - 560 021

4. Shri S. Ramachandran
Head Clerk
ESI Regional Office
No. 10, Binny Fields
Bangalore - 560 023

5. Shri N.S. Seetharam
Manager
ESI Local Office
Tilak Nagar
Gunthakal - 515 801
Andhra Pradesh

6. Shri N. Jagadekaveera
Head Clerk
ESI Local Office
Shivajinagar
Bangalore - 560 001

7. Shri S.S. Kumaran
Head Clerk
ESI Corporation Regional Office
No. 10, Binny Fields
Bangalore - 560 023

8. Shri K.R. Subbaraman
Head Clerk
ESI Corporation Local Office
Malleswaram West
Bangalore - 560 055

9. Shri S. Sreedhara
Head Clerk
ESI Corporation Regional Office
No. 10, Binny Fields
Bangalore - 560 023

10. Shri E. Natarajan
Head Clerk
ESI Corporation Regional Office
No. 10, Binny Fields
Bangalore - 560 023

11. Shri P. Kunhiraman
Head Clerk
ESI Corporation Regional Office
No. 10, Binny Fields
Bangalore - 560 023

...2

12. Shri M.B. Tenkeali
Manager
ESI Corporation Local Office
Bijapur

13. Shri V. Gundu Rao
Manager
ESI Corporation Local Office
Dharwad

14. Shri M. Narayanaswamy
Manager
ESI Corporation Local Office
Nanjangud

15. Smt B.K. Seetha
Manager
ESI Corporation Local Office
Malleswaram
Bangalore - 560 003

16. Shri S. Shamanna
Manager
ESI Corporation Local Office
Harihara (II)
Harihara
Chitradurga District

17. Shri V. Narasimha Holla
Advocate
No. 1762, 6th Main
'D' Block, II Stage
Rajajinagar
Bangalore - 560 010

18. Shri S.K. Srinivasan
Advocate
No. 10, 7th Temple Road
15th Cross, Malleswaram
Bangalore - 560 003

19. The Regional Director
Employees State Insurance Corppration
ESIC Building
No. 10, Binny Fields
Bangalore - 560 023

20. The Director General
Employees State Insurance Corporation
ESIC Building, Kotla Road
New Delhi - 110 002

21. Shri M. Papanna
Advocate
99, Magadi Chord Road
Vijayanagar
Bangalore - 560 040

******

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Enclosed herewith please find a copy of ORDER passed by this Tribunal in the above said applications on 23-12-88.

SECTION OFFICER
(JUDICIAL)

Encl : As above

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 23rd day of December, 1988

Before

THE HON'BLE MR.L.H.A.REGO, MEMBER(A)

APPLICATIONS NOS.1580 TO 1585 OF 1988(F)
C/w. 1614 TO 1621 OF 1988 & 1810 and
1875 of 1988(F):

---

1. T.K.Pandarish S/o T.G.Krishnamurthy, Head Clerk,ESIC Regional Office,Bangalore-23.	Applicant in	A.1580/88
2. V.Ramachandra Rao S/o late D.Vittal Rao, Head Clerk,ESI Local Office, Sreeramapuram,Bangalore-21.	-do-	A.1581/88
3. T.R.Santhanasundaram S/o T.S.Raghunathacharya, Head Clerk, ESIC Local Office, Nagappa Block, Bangalore-21.	-do-	A.1582/88
4. S.Ramachandran S/o V.S.Sangameshwara Head Clerk, ESI Regional Office, Bangalore-23. ..	-do-	A.1583/88
5. N.S.Seetharam S/o N.Sreekantaiah, Manager, ESI Local Office, ESI Corporation, Tilak Nagar,Guntakal-515 801.	-do-	A.1584/88

.....2

6. N.Jagadekeveera
S/o Late A.Nagesh Rao
Head Clerk,ESI Local Office,
Shivajinagar,Bangalore-1. Applicant in A.1585/88

7. S.S.Kumaran
48 years,
Head Clerk, Regional Office,
ESIC, Bangalore-560 023 -do- A.1614/88

8. K.R.Subraman,55 years,
Head Clerk, Local Office,
ESIC. Malleswaram West,
Bangalore-55. .. -do- A.1615/88

9. S.Sreedhara
52 years, S/o G.Sampangi Naidu,
Head Clerk, Regional Office,
ESIC, Bangalore-23. -do- A.1616/88

10. E.Natarajan,
48 years,
S/o K.Ellappa,
Head Clerk,
Regional Office,
ESIC, Bangalore-23. -do- A.1617/88

11. P.Kunhiraman
47 years,
S/o P.Ramankutty Guptan
Head Clerk,
RO of ESIC, Bangalore-23. -do- A.1618/88

12. M.B.Tanksali
56 years, S/o Bhim Rao,
Manager Lo.
ESIC, Bijapur .. -do- A.1619/88

13. V.Gundu Rao,
49 years,
S/o B.V.Naranappa,
Manager, Local Office of ESIC,
Dharwad. .. -do- A.1620/88

14. M.Narayanaswamy,
52 years, S/o Muniswamy,
Manager, LO of ESIC,
Nanjangud. .. -do- A.1621/88

.....3

15. Smt.B.K.Seetha
W/o K.N.Dasarathi,
Manager, ESI Local Office,
Rajajinagar,
Malleswaram, Bangalore-560 003. Applicant in A.1810/88

16. S.Shamanna S/o S.V.Subba Rao
Manager, Local Office(Harihara II)
ESI Corporation, HARIHARA.
Davangere Tq. -do- A.1811/88

(Shri V.Naresimha Holla, Advocate for applicants in Applications Nos. 1580 to 1585/88 and 1810 and 1875 of 1988.

" S.K.Srinivasan, Advocate for the applicants in Application Nos.1614 to 1621/88.)

-vs.-

1. The Regional Director
Employees State Insurance Corporation
ESIC Building, No.10 Binny Fields,
Bangalore-560 023.

2. The Director General
Employees State Insurance Corporation
ESIC Building, Kotla Road,
NEW DELHI-110 002. .. Respondents in all the applications.

(By Shri M.Papanna, Counsel for Respondents)

These applications coming on for hearing this day, the Hon'ble Member(A), made the following:

ORDER

These are in all 16 applications, filed under Section 19 of the Administrative Tribunals Act, 1985, wherein, the main prayer is, to direct the respondents(R) to

to fix the pay of the applicants (A), in the post of Head Clerk ('HC' for short) under Fundamental Rule ('FR' for short) 22-C, with reference to the pay last drawn by them, in the pay scale of the post of Upper Division Clerk In-charge ('UDC I/c' for short, as distinguished from 'UDC' i.e., Upper Division Clerk) with retrospective effect and to grant them all consequential relief, inclusive of arrears of pay.

2. Shri Narasimha Holla, learned Counsel, appears for the applicants in Applications Nos.1580 to 1585, 1810 and 1875 of 1988, which for ease of reference, shall be designated as the 'Ist Set', while Shri S.K. Srinivasan, learned Counsel, appears for the applicants in Applications Nos.1614 to 1621, which for like reason, shall be designated as the 'IInd Set'. Shri M.Papanna, learned Counsel appears for all the respondents, in both the Ist and the IInd Sets of applications.

3. Since both the sets of applications are alike, in point of facts and law, they are heard together and are dealt with by a common order.

4. The background to these cases is succinctly brought out, by the following tabular statement, furnishing the relevant details of the service curriculum vitae, of the various applicants (designated by their respective

respective Application Nos.to facilitate reference) as based on the date furnished by the respondents:

Application No.	Date of appointment to the posts of: U.D.C. (Regular)	U.D.C. I/c.	H.C. or its equivalent.	Pay(Rs)p.m. immediately prior to promotion as HC in the post of UDC (deemed)	UDC (In-charge)	Fixation of pay(Rs)p.m. in the post of HC or its equivalent. Original Date	Original Pay	Revised Date	Revised Pay
1	2	3	4	5	6	7	8	9	10
			I. THE Ist SET						
1580	23.10.69	26.3.79 to 21.9.79	24.9.1979	428/-	455/-	24-9-79	455/-	22-7-81	455/-
1581	1-10-66	11.10.76 to 30.10.76							
		24.11.76 to 10-4-77							
		2-5-77 to 6.10.77							
		17.4.78	25-1-79	452/-	470/-	23-3-79	470	22.3.84	470/-
1582	9.11.70	22.9.79	7-7-80	428/-	440/-	17-7-80	440/-	6.8.80	455/-
1583	9.11.70	15.5.79	10.9.79	428/-	455/-	-	455/-	27-4-81	455/-
1584	12.7.65	14.2.73 to 15.8.73	16.8.73 to 30.8.73	404/-	425/-	22.8.78	425/-		
		31.8.73 to 10.6.75	11.6.75 to 30.8.75	416/-	455/-	22.8.78	455/-		

.....6

1	2	3	4	5	6	7	8	9	10
		31.8.75 to 9.5.76	10.5.76	428	455	22.8.78	470	23.11.82	455+ 15PP.
1585	9.11.70	30.8.79 to 2.10.79	3.10.79 to 4.1.81	416	440	3.10.79	440	1.8.80	440
		.	1.5.81	440	-	9-6-81	455	?	455
1810	6.10.66		25.5.78	416	-	25.5.78	440		
		7.7.78 to 31.7.78	31.7.78	416	440	30.9.78	440	17.6.81	440
1875	1.10.66	19.10.70 to 3.1.71							
		5.5.75 to 11.6.78	12.6.78	452	485	22.8.78	485	17.8.84	470+ 15PP.

II. THE IInd SET.

1614	15.4.60	15.1.79	15-2-80	452*	440	16.3.81	470	-	-
			16.2.83	488	-	10.3.83	515	-	-

(*Penalty of stoppage of 2 increments due, imposed on 1.2.77 & 1.2.78)

1615	20.2.67	13.6.78 to 6.7.78							
		1.8.78 ..	1-7-79	452	455	1.7.79	455	13.12.82	470

.....7

1	2	3	4	5	6	7	8	9	10
1616	3-2-67	20-5-78	13-3-79	440	455	23.3.79	455	17.6.81	455
1617	15.12.68	11.4.77 to 20.3.79	1.7.79	428	455	3.1.83	455	1981	455
1618	9.11.70	22.8.79	3.10.79	428	455	3.10.79	455	1982	455
1619	2.12.66	2.5.78	26.3.79	476	485	17.4.79	485	6.8.80	500
1620	9.11.70	16.8.79	10.9.79	428	455	5.9.79	455	-	455
		-	24-2-81	440	-	11-3-81	470	-	-
1621	1.10.66	10.5.76 to 11.6.76							
		4.1.78	12.1.79	452	470	3.2.79	470	-	-

NB: (i) 'PP' means "Personal pay"

(ii) The details of the period intervening between promotion, from the post of UDC I/c (or in some cases, from that of UDC) to that of HC or the posts equivalent thereto, are not furnished, these minutiae being unnecessary. This period is said to cover events such as: leave, joining time, transit period etc.

(iii) There are some gaps/disparities here and there, in the data furnished by the respondents, which would have to be filled in/resolved if need be, at the time of compliance with the decisions in these cases.

.....8

5. The applicants are all serving in the Employees' State Insurance Corporation, Karnataka Region(ESIC(K), for short) under R-1.

6. According to the recommendations of the IIIrd Central Pay Commission, the pay scales of the employees in the Employees' State Insurance Corporation, came to be revised,with effect from 1-1-1973. The comparative pay scales of the respective posts before and after revision,were as follows:

S.No.	Category of post.	Pay Scale(Rs.)	
		Prior to 1.1.1973	After 1.1.1973
(1)	(2)	(3)	(4)
(i)	U.D.C.	130-5-160-8-200 EB-8-256-EB-8-280.	330-10-380-EB-12-500-EB-15-560.
(ii)	UDC I/c	130-5-160-8-200 EB-8-256-EB-8-280-10-300-Plus Charge Allowance of Rs.25/- per mensem.	425-12-530-EB-15-560-20-600.
(iii)	HC or Assistant or Inspector or Manager Gr. III.	210-10-290-15-320-EB-15-435.	425-15-500-EB-15-560-20-700.

NB: Consequent to revision of the pay scales the Charge Allowance of Rs.25/- per mensem came to be discontinued.

7. Some of the applicants are said to have been promoted to the posts of Assistant, Insurance Inspectors or Manager Grade III(eg. A.No.1583) from that

that of UDC or UDC I/c. All these three posts, are said to be identical, in the time-scale of pay, with that of HC viz., Rs.425-15-500-EB-15-560-20-700 (Revised). All these four categories of posts, which are the terminal posts of promotion, in the cases before me, in which the applicants contend, that their pay has not been correctly fixed under FR 22-C, will be designated as a class, as the Terminal Post('TP' for short) for the sake of correct connotation.

8. The applicants claim, that their pay on promotion to the post in the TP, from the post of UDC I/c, ought to have been fixed, in accordance with FR 22-C, with reference to the pay ~~which~~ drawn in the post of UDC I/c and not in that of UDC, which was a stage lower. They allege, that R1 denied them this benefit and fixed their pay instead, with reference to the pay last drawn by them, in the post of UDC. They further claim, that the TP, entails higher responsibilities, than that of UDC I/c and therefore, they are entitled to the benefit of FR 22-C, with reference to the pay last drawn by them, in the post of UDC I/c, while fixing their pay in the TP.

9. They state, that their colleagues in the ESIC, similarly placed like them, had filed Applications Nos.67 to 69 and 78 of 1987 (T) before this very Bench of the Central Administrative Tribunal [C.S.GOPAL SHARMA & 3 ORS. -vs.- DIRECTOR GENERAL, ESIC, NEW DELHI & ANR.]

and

and had succeeded in getting a decision in their favour, in deriving the benefit of FR 22-C in the fixation of their pay, in the TP, with reference to the pay last drawn by them, in the post of UDC I/c. The operative part of the judgment, rendered in the aforesaid applications on 26-5-1987 reads thus:

> "5. We have considered the rival contentions carefully. We do not agree with Shri Papanna that merely because the applicant held posts of UDC i/c as a temporary arrangement they are not entitled to the benefit of FR 22-C. 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 22C 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 entitely in agreement with the decision rendered therein that the post of Head Clerk carries higher responsibilities than that of a 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 22C with reference to the pay drawn by them as UDC i/c immediately before their appointment to the post. The respondents will fix the initial pay of the applicants accordingly and pay the applicents all consequential arrears flowing therefrom.
>
> 6. In the result, the applications are allowed. Parties to bear their own costs."

10.The

10. The applicants state, that soon after they came to know of the above order, dated 26-5-1987 of the Tribunal, they represented to R-1, to extend the benefit of that order to them. Some of them, who did not get a favourable reply from R-1, submitted a further representation to R-2.

11. The following tabular statement furnishes at a glance, the relevent details of the dates relating to:

(i) fixation of pay of the applicant, in the TP.

(ii) their representation thereon to R-1 and R-2; and

(iii) the reply of R1 and R2, to these representations.

	Dates pertaining to					
A.No.	Fixation of pay in the TP	Repn. to R-1	Disposal of representation by R-1.	Representation to R2	Disposal of reprn. by R2	Filing of appln. before the Tribunal.
(1)	(2)	(3)	(4)	(5)	(6)	(7)
			I. Ist Set:			
1580	22.7.81	26.5.87	21.6.88	27.7.88	19.8.88	29.9.1988
1581	22.3.84	25.4.88	"	3.8.88	3.9.88	"
1582	6.8.80	28.4.88	"	-	-	"
1583	27.4.81	20.4.88	"	27.7.88	19.8.88	"
1584	23.11.82	11.5.88	"	-	-	30.9.88
1585	?	13.5.88	"	29.7.88	2.9.88	"
1810	17.6.81	25.4.88	"	1.8.88	2.9.88	10.11.88
1875	17.8.84	7.6.88	"			24.11.88
			II. IInd Set			

.....12

II. IInd Set:

(1)	(2)	(3)	(4)	(5)	(6)	(7)
1614	10-3-83	21-4-1988	21.6.88	-	-	3.10.88
1615	13.12.82	25.4.88	"	-	-	"
1616	17.6.81	21.4.88	"	-	-	"
1617	1981	"	"	-	-	"
1618	1982	"	"	-	-	"
1619	16.8.80	25.5.88	"	-	-	"
1620	1979/81	28.4.88	"	-	-	"
1621	?	30.5.88	"	1.8.88	2.9.88	"

12. The applicants have appended copies of their representations as above, to R1 and R2 and of the replies of the latter thereto (negativing their request) on their respective applications.

13. Aggrieved, the applicants have approached this Tribunal, through their present applications for redress.

14. The respondents have filed their reply to Applications Nos.1614 to 1621 of 1988, resisting the same. These were heard by me on 25.11.1988 and their further hearing was adjourned to 8.12.1988, to enable counsel for the respondents, to produce certain documents, which were considered by me as essential, to help resolve the preliminary objection of limitation raised by him. When the matter in regard to the aforesaid applications came to be further heard on 8.12.1988, Counsel for the respondents filed some

of

of these documents,along with a statement of additional objections,in respect of A.Nos.1614 to 1621, serving a copy thereof on the Counsel for the applicants in these cases. He however expressed inability to argue the matter,owing to unforeseen urgent reasons and prayed for a short adjournment. The matter was therefore adjourned to 20-12-1988,to be heard along with the connected applications aforementioned.

15. When the cases were heard on 20-12-1988, Shri Papanna furnished copies of the following references on my direction:

(i) Letter No.53.A-27.17.1.76 Estt.Dated 23.7.1980 addressed by R-1 to R-2,seeking clarification regarding fixation of pay, in respect of UDC I/c,on implementation of the revised scale of pay, pursuent to the recommendation of the III Central Pay Commission,with reference to the instructions issued in this regard by R2,in his Memo dated 23-6-1980.

R1 had cited therein,two specific cases,one of Shri V.Krishnamurthy and the other of Shri M.S.Sreepada Rao resulting in recovery of substantial excess payment of emoluments,on account of revised fixation of pay in the TP. He had stated therein,that quite a number of cases necessitated review,in this light,to help determine the total quantum of recovery of emoluments,owing to revised

fixation

fixation of pay, R1 had therefore sought instructions from R2, in regard to fixation of pay of the employees concerned and had brought to his notice, that pending clarification from R2, in the matter, recovery of excess payment in these two cases was abeyed and these two incumbents were being allowed to continue to drew the emoluments as at present.

(ii) D.O. Letter No.53.A.27.17.1.76 Estt.I dated 27-6-1981 addressed by R1 to the Regional Director, ESIC under R2, inviting attention to his earlier letter dated 23.7.1980 aforementioned, and to the several reminders sent thereon and impressing the need for instructions early, in regard to fixation of pay in the TP.

He had further stated therein that about 20-25 cases were involved, where excess recovery of emoluments was to be effected, according to the revised pay fixation and had brought to the notice of R2, that this recovery was stayed, pending instructions from him.

16. Shri Papanna informed, that R2 has not yet issued instructions in the matter, either in regard to fixation of pay or recovery of excess payment of emoluments.

17. As ascerteined from Shri Papanna in the course of the hearing, pay of the applicants in both sets of the applications, was fixed twice in the TP as

as under:

(i) The pay was originally fixed under FR 22(a)(ii) [Cols.7 and 8 of the tabular statement in para-4 above] with reference to the pay drawn as UDC I/c immediately prior (col.6 ibid) to promotion in the TP, safeguarding however, the pay drawn as UDC I/c.

(ii) The above pay was later revised (Cols.9 and 10 ibid) under FR 22(C) with reference to the deemed pay drawn as UDC (col.5 ibid) without safeguarding however, the pay drawn as UDC I/c (Col.6 ibid), which resulted in substantial recovery of the emoluments already drawn, by the employees, according to the original pay fixation.

18. Shri Papanna filed a reply to A.No.1580 on 20-12-1988, countering the same, serving a copy thereof, on counsel for the applicant therein, and submitted that he proposed to adopt the same in respect of the remaining applications in the Ist set.

19. When Applications in the IInd Set came up for hearing on 25-11-1988, Shri Papanna raised the following preliminary objections. Firstly, he submitted, that these applications were not filed individually, in Form I, as prescribed in Rule 4 of

the

the Central Administrative Tribunal(Procedure) Rules 1987, but in a combined form,which was not permissible under these Rules and therefore,these applications could not be entertained by this Tribunal.

20. On the face of it, this contention of Shri Papanna seems captions and does not ring true,as the "seeming" infirmity,does not in any manner fetter the even course of justice. It must be remembered,that the reason of law is the soul of law and in that context, one has to bear in mind the legal maxim,that too much subtlety in law is discountenanced - nihil subtilitas in jure reprobetur. This Tribunal has accordingly entertained many applications of the like,hithertofore. In this background, it is apparent,that Shri Papanna is making a fetish of the so called infirmity and therefore,his contention in this regard,has merely to be stated to be rejected outright, as bereft of merit.

21. Shri Papanna next raised the other preliminary objection,in regard to the IInd Set of applications, on the score,that they were hit by the bar of limitation,under Section 21 of the Administrative Tribunals Act,1985. He iterated this impediment,in regard to the Ist Set of applications also, stating, that the cause of action had arisen,for all the applicants,as long back as between 1980 to 1982. He

also

also urged, that all these applications were not maintainable, as the grievance therein, arose from an order of pay fixation, passed on a date more than 3 years immediately preceding the constitution of this Tribunal i.e., 1-11-1985 and therefore, this Tribunal in the light of its decision in ATR 1986 CAT 203 (V.K.MEHRA v. THE SECRETARY, UNION MINISTRY OF INFORMATION AND BROADCASTING) had no jurisdiction, power or authority to entertain this application and therefore, these applications were liable to be rejected in limine.

22. He pointed out, that ESIC, New Delhi, had by its memo dated 23-6-1980(Ann.R-1, in the Ist Set) clarified inter alia, to all the Regional Directors of ESIC, as to the manner in which the pay in the post of HC should be fixed. This was iterated by R-1, by his Memo dated 21-7-1980(Ann.R-2), to all the Local Office Managers of ESIC. It was stated in the said Memo, that the post of UDC I/c, would be treated as an ex-cadre post, till the Recruitment Regulations for the said post, were finalised and that the pay in the post of HC, would be fixed under FR 22(C), with reference to the pay drawn as UDC, on the date of promotion as HC.

23. Shri Papanna affirmed, that the pay of all the applicants was fixed accordingly, on their

promotion

promotion to the post of HC. and they accepted the same without demur, over the years, inclusive of the instructions contained in the aforesaid memos dated 23-6-1980 and 21-7-1980. In these circumstances, he asserted, that the applicants were barred by limitation and also estopped from questioning their pay fixation, in the post of HC, at this distance of time.

24. Shri Papanna asserted, that none of the applicants, had addressed any representation to the concerned authorities in the ESIC, that they were aggrieved with the fixation of their pay, in the TP, according to para 17 above, except those submitted by them to R-1(and by some, to R2 as well) as indicated in para 11 above. As long a period varying from 6 to 8 years had elapsed, from the date, the actual cause of action had arisen to them, he stressed, and therefore, the applications he submitted, were hit by the bar of both limitation, as well as maintainability.

25. Countering the question of limitation and maintainability, raised by Shri Papanna, at the threshold, Shri Srinivasan, Counsel for the applicants in the IInd Set, relied on a long catena of rulings as under, to develop his argument:

S.No.	Citation	Ratio
(1)	(2)	(3)
(i)	AIR 1982 Cal.307 /KUMAR VEDA KANTHA SINHA vs. STATE OF WEST BENGAL & ORS/	In considering the question of delay, the merits of the case should be taken into account as also the effect of delayed grant of relief.

.....19

(1)	(2)	(3)
(ii)	AIR 1982 Delhi 83 (S.C.MALIK v. P.P. SHARMA).	Delay in making petition would not be a ground for rejecting relief if appointment had been unconstitutional.
(iii)	1986 ATC 531 (MANOHAR-SITARAM NANDANWAR vs. U.O.I.)	Limitation for approaching the Tribunal, commences from the date of rejection of the representation, against the impugned order.
(iv)	AIR 1986 SC 508 (RAGHUBIR JHA vs. STATE OF BIHAR & ORS.)	Suit filed within 3 years from the date of communication of the order of rejection relating to discharge of a Government servant Ber of limitation does not apply.
(v)	AIR 1986 SC 2086 (K.R.MUDGAL & ORS. v. R.P.SINGH & ORS.)	Petition challenging inter se seniority, filed after 18 years after issuance of the Ist Seniority List, dismissed on grounds of laches.
(vi)	1986 ATC 531 Bombay Bench (MANOHAR SITARAM NANDANWAR v.U.O.I)	Limitation commences from the date of rejection of representation (relating to retrospective promotion as a result of revision of seniority).
(vii)	AIR 1988(2) CAT 499 Calcutta. (ANANTHA KUMAR MONDAL v. U.O.I. & ORS.)	Claim for Overtime Allowance relating to the period from 3.4.66 to 18.8.72 - Applicant became aware of his right only after the right was established by a judgment delivered on 30-5-79. Applicant thereafter made representation, starting from 1980 onwards. All representations remained unanswered. Final decision taken on 11-8-1986 when the claim of the applicant and others similarly placed employees were rejected. Petition filed on 23-2-87, claiming the above relief - Application held to be not barred by time.

....20

(1)	(2)	(3)
(viii)	AISLJ 1987(1)CAT 489 Patna Bench. (MAJOR YUDHISTIR SINGH v. G.O.I. & ORS.)	Limitation starts with reference to representation and not advice of a decision (relating to retirement).
(ix)	ATR 1988(1)CAT 1, Principal Bench,Delhi. (B.KUMAR v. U.O.I. & ORS.)	Limitation runs from the date of rejection of the representation and the same will not hold good where the Deptt. concerned,chooses to entertain a further representation and considers the same on merits before disposing of the same.
(x)	AISLJ 1988(2) CAT 217 Calcutta Bench. (BIBAS CHAKRABORTHY & ORS. -vs.- U.O.I.& Ors.)	Limitation does not apply, since the applicants were constantly pursuing their claim when the cause arose in mid-seventies. Their claim was said to be under consideration and was not negatived. Application filed in 1987,was not hit by limitation.
(xi)	AISLJ 1988(2) CAT 273 Delhi Bench. (RAMNATH CHADHA v. U.O.I.)	Applicant was discharged in 1959 and reappointed in 1962. The intervening period was treated as break in 1979. It was held that the 1959 order merged with the 1979 one; hence there was no bar of limitation.
(xii)	1987(2) ATC 852 Calcutta Bench. (KANAK KUMAR SINHA vs. CHAIRMAN, CENTRAL BOARD OF DIRECT TAXES & ORS.)	The delay of about 6 years on the part of the respondents in settling arrears of salary was unconscionable; hence interest was awarded.
(xiii)	1987(2)ATC 444 Jab.Bench (GOPAL ANANT MUSALGAONKAR -vs.- UOI & ORS.)	Court or Tribunal has the judicial discretion to decide the plea of laches and remiss-ness,in filing writ petitions depending on reasonableness of circumstances in each case. In the case of fundamental right there is a continuing wrong

(1)	(2)	(3)
		wrong, so long as the claimant is in service and it is not redressed (In this case, the Tribunal exercised discretion of condoning delay or laches (18 years) as the petitioner was a low-paid functionery (peon) and was in indigent circumstances. The matter pertained to reversion for failing in confirmation test).
(xiv)	1987(2)ATC 32 Jabalpur Bench (MUNNILAL v. UOI and ORS.)	Petition filed 24 years after entering service in regard to change of date of birth. Employee was illiterate. Identity card issued by the Employer supporting his claim. Delay condoned on this circumstance.
(xv)	1988(6) ATC 609 Jodhpur Bench (LAXMANDAS v. UOI & ORS.)	Applicants were awaiting decision of a case and thereafter, submitted representation relating to their reversion. Meanwhile, the period of limitation expired. Delay was condoned, in exercise of discretionary power on the premise, that the applicants were justified to await the decision. Guidelines for condonation of delay as enumerated in AIR 1987 SC 1353(Collector, Land Acquisition case) were outlined and their import was brought out.
(xvi)	1988(8) ATC 49 JABALPUR BENCH (SUSHILA BAI v. UOI & ORS)	Employee expired on 25-9-1984. Widow was informed on 29-10-85 that she was entitled to 50% of the Provident Fund dues. Notice under Sec.80 of the CPC, was issued on 28-11-1985. Application was filed on 25-11-1986. This was held to be in time.

26.Shri

26. Shri Srinivasan therefore submitted, in the light of the above rulings, that the question of limitation had to be decided on the merits of each case and the Tribunal could exercise its judicial discretion, in doing so. He asserted that his clients had a strong case to prove, that the delay if any, on their part, in approaching this Tribunal was unconscionable, in the peculiar fact-situation of their cases. He vehemently refuted the allegation of Shri Papanna, that his clients had acquiesced in the fixation of their pay in the TP, as shown in para 4 above. He said, that the matter was under consideration of R-1 but as there was no progress, some of the employees who were similarly placed as his clients, as in GOPAL SHARMA's case(para 9) filed writ petitions in the High Court of Judicature, Karnataka in 1983, after waiting for a reasonable time, for a favourable decision from the respondents. Those writ petitions came to be transferred to this Tribunal he said, consequent to enactment of the Administrative Tribunals Act, 1985. His clients he said, were hopefully awaiting the decision in that case, relying on the dicta of the Supreme Court in 1985 SCC(L&S) 526 [INDER PAL YADAV & Ors. -vs.- U.O.I. & ORS.] that those who could not approach the Court, need not be at a disadvantage, as compared to those who rushed to it and that if they were otherwise similarly situated, they were entitled

to

to similar treatment, if not by anyone else, at the hands of the Court.

27. Shri Srinivasan assiduously argued, that his clients were sufficiently vigilant, as to their cause of action, in the light of the above dicta of the Supreme Court and had promptly represented their grievance to R-1 and R-2(by some of them) for redress, when this Tribunal rendered its decision on 26-5-1987 in GOPAL SHARMA's case, as is seen from the details furnished in para-11 above. He therefore vehemently pleaded, that his clients were not hit either by the bar of limitation or maintainability, as alleged by Shri Papanna.

28. Shri Holla, Counsel in the Ist Set of applications urged, that it was the primary duty and responsibility of the respondents, to fix the pay of his clients correctly, under the statutory rules viz., FR 22-C on their promotion from the post of UDC or UDC I/c as the case may be, to the TP, but they failed to do so, in the case of his clients, even after the decision of this Tribunal in GOPAL SHARMA's case on 26-5-1987, until which, he stated, his clients were not aware of the correct position in regard to the fixation of their pay. The cause of action for them arose as on the date,

when

when the above decision was rendered by this Tribunal in GOPAL SHARMA's case, wherein the applicants were similarly placed. The respondents he argued, could not make an invidious distinction between those who approached the Court/Tribunal for redress and those who did not, even though similarly circumstanced, to substantiate which, he sought to derive support from INDER PAL YADAV's case (para 26) relied upon by Shri Srinivasan.

29. He submitted, that his clients had promptly submitted their representations to R1 and R2(some of them) for redress, as shown in para-11 above, no sooner than this Tribunal rendered its decision on 26-5-1987, in GOPAL SHARMA's case.

30. He invited attention to the Order dated 22-7-1981(Ann.H) issued by R-1, in regard to fixation of pay in TP and pinpointed, that the name of one of his clients viz., Shri T.K.Pandarish(A-1580) appeared therein. He focussed attention on the concluding para of Ann.H, which reads thus:

> "The Regional Director has also approved that recovery of excess payment of pay and allowances arising out of re-fixation of pay/increment ordered above, upto the date of issue of Hqrs. memo under reference, may be kept in abeyance, till the Hqrs. decision for the reference made by this office on the said matter is received."

31. In

31. In the above background, Shri Holla argued, that the question of correct refixation of pay in TP, not only in respect of A-1580, but of all others in the Ist Set of applications, who were similarly circumstanced, was very much alive, as even though more than 7 years had elapsed, no decision seems to have been arrived at, on the proposals said to have been sent by R1 to R2, as long back as in 1981 and the entire matter was still unresolved, and was in a state of flux, he submitted. In these circumstances, he trenchantly pleaded, that it ill-behoved the respondents, to hold the bar of limitation and maintainability, against his clients. Besides, he pointed out, that neither R1 nor R2 had in their reply to the representations, filed by the applicants (para-11 above), pointed out, that the same were barred by limitation.

32. Shri Holla endeavoured to bolster his case on this point, relying not only on the rulings already cited by Shri Srinivasan, but also on the following further decisions:

S.No. (1)	Citation (2)	Ratio (3)
(i)	AIR 1960 SC 335 (RUKHMABAI v. LALA LAKSHMINARAIN & ORS.)	There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the

(1)	(2)	(3)
		the suit is instituted. Where a particular threat gives rise to a compulsory cause of action, depends on a question whether that threat effectively invades or jeopardises the said right.
(ii)	AIR 1987 SC 1353 (COLLECTOR, LAND ACQUISITION, ANANTNAG & ANR. -vs.- MST. KATIJI & ORS.)	Principles for a liberal approach towards condonation of the delay enunciated, highlighting inter alia, that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice is to be preferred, for the otherside, cannot claim to have vested right, in injustice being done, because of non-deliberate delay and that refusing to condone delay, can result in a meritorious matter being thrown out at the very threshold and the cause of justice defeated.

33. Shri Papanna, in reply, sought to rebut the contentions of both Counsel, on the point of limitation and maintainability and distinguish the various rulings relied upon by them, to buttress their case. Referring to RUKHMABAI's case, he contended, that it envisaged a compulsive cause of action, necessitating filing of a suit and that the threat thereof, should be given effect to. This was not the case, in regard to the applications before the Tribunal, he said, as the threat (cause of action) arose as far back as 1981 and therefore RUKHMABAI's case was not relevant, he asserted.

34. The

34. The dicta of the Supreme Court in COLLECTOR, LAND ACQUISITION case, he submitted, only amplified the scope of Section 5 of the Limitation Act, in relation to the original jurisdiction of the Court and nothing more. Besides, there was no application from any of the applicants in the present cases for condonation of delay, he argued. He therefore pleaded ,that the dicta in the above case, did not come to the avail of the applicants and urged,that all the applications be rejected in limine,on the impediment of limitation and non-maintainability.

35. I have examined carefully,the averments of both sides,on the question of limitation and non-maintainability of the applications. As stated in 1953 All 747 FB (BANKEY LAL BABU),the rules of limitation are prima facie, not substantive rules but are rules of procedure and they neither create any rights in favour of any person nor define or create any causes of action but merely prescribe that remedy could be exercised,only upto a certain period and not subsequently. Though all the rulings relied upon by both Counsel for the applicants, may not squarely govern the cases before me(in fact some of them as at S.Nos.(v) and (xi), in the tabular statement,at para 25 above, are beside the point), it is clear therefrom that

that the Court/Tribunal,has to exercise its discretion judiciously,while condoning delay, taking duly into account,the peculiar facts and circumstances of each case.

36. It is seen from the case produced by the respondents,on my direction,that R1 had, by his letter dated 23-7-1980,addressed to R2,requested for clarification,in regard to fixation of pay in TP,under FR 22-C,as this had resulted in ----- substantial recovery of overpayment made, to illustrate which,he had cited two specific instances and had sent several reminders thereon, but to no avail,as is evident from his subsequent Letter dated 27-6-1981, addressed to R-1. Pending clarification from R-1, R2 is seen to have abeyed overpayment of emoluments to the concerned employees, on account of pay fixation as above. The whole matter thus appears to be in a nebulous state(vide paras 15 and 16 above).

37. Shri Papanna stated,that the above reference dated 23-7-1980,was made by R-1 suo motu, without any representation having been made in this regard,by any of the affected employees. Scrutiny of the pertinent case papers reveals,that this does not accord with facts, as the Karnataka ESIC employees,had addressed a representation to the concerned

authorities

authorities earlier, in regard to pay fixation and recovery of overpayment. Some of the employees namely, Shri T.A.Raman Kutty and Shri C.S.Gopal Sharma similarly placed like the applicants in the cases before me, are seen to have addressed a written representation in this regard, to R-1 later, on 24-6-1981.

38. Shri Holla submitted, that his clients were not aware of the Memo dated 23-6-1980 issued by R-1, to all the Regional Directors of ESIC and of Memo dated 21-7-1980 issued by R-2, to all the Local Office Managers of ESIC on 23-7-1980, in regard to pay fixation in TP and therefore, no cause of action could have arisen to them, with reference to these memos. This does not seem to be credible, considering the overall facts of the case and particularly, the fact, that some of their colleagues, who were in like situation, had agitated the matter, before the concerned authorities. It is therefore apparent, that the applicants were at least, indirectly aware of the implications of the aforesaid two memos.

39. Nevertheless, the fact remains, that R-1 stayed recovery of overpayment as a result of fixation of pay under FR 22-C in TP and this gave the applicants a glimmer of hope of relief but that hope seems to have been belied, even though more than 8 years have elapsed.

Some

Some of the employees,other than the applicants before me,seem to have approached the High Court of Judicature, Karnataka in 1983 through Writ Petitions as in GOPAL SHARMA's case, for relief, after having waited for nearly 3 years.

40. Shri Srinivasan submits,that since the above colleagues of his clients,who were similarly placed,had approached the High Court of Karnataka for redress, his clients thought it proper,to await the result of their writ petitions and not to rush to Court,relying on the dicta of the Supreme Court in INDER LAL YADAV's case.

41. The statement of Shri Papanna,that the cause of action for all the applicants,arose as long as 8 years back,with reference to the date of their revised pay fixation,is not true in all cases,as in some cases, the pay was so fixed in 1982 and even 1984 (para 4 above).

42. 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 have thus left them in "beguiled expectation" so far, keeping the matter

yet

yet alive, I feel it would be unfair in this fact-situation, to hold the bar of limitation and maintainability against the applicents. The dicta of the Supreme Court in INDER LAL 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.

43. The contention of Shri Papanna, that R-1 should not have indefinitely awaited instructions from R-2, on the Letter dated 23-7-1980, addressed to him, seeking clarification in regard to pay fixation but should have finalised the matter, inclusive of recovery of overpayment of emoluments and that R2 was not bound to give him a reply, on the face of it, is bizarre and exposes the administration to unjustifiable callousness but justifiable criticism. It is hoped. that the respondents will resolve the matter now at least, without further loss of time, bearing in mind the legal maxim, that the law always abhors delay - lex delationes semper exhorret. For the reasons aforestated, the actual cause of action for the applicants, in my view, arose from the dete of the decision of this Tribunal, namely 26-5-1987 in GOPAL SHARMA's case, which resulted, in an invidious distinction between those employees, who approached the High Court/Tribunal

and

and those who did not, violating thereby, the principle of equality, enshrined in Articles 14 and 16 of the Constitution. The applicants are seen to have represented thereafter, to the concerned authorities, with the desired expedition, for redress, as is evident from the details furnished in para 11 above.

44. In view of the foregoing, I overrule the preliminary objection raised by Shri Papanna, in regard to limitation and maintainability.

45. The next question fervently canvassed by both Counsel, was on the law of "binding precedents", recognised in Article 141 of our Constitution, according to which, they urged, that the decision of this Tribunal in GOPAL SHARMA's case(para 9 above), which was on all fours, with the cases before me, was binding on the respondents. Shri Srinivasan relied on the following rulings, to buttress his case:

(1)	(2)	(3)
(i)	1985 II LLJ 303 (PIARA LAL & ORS. v. STATE OF PUNJAB & ORS.)	Declaretory judgments of the Court dealing with the legality of status, rules and Govt. Policies are binding not only on the parties, to the legal proceedings but on others also, who may be affected incidentally, by such declaration.

.....33

(1)	(2)	(3)
(ii)	1985 SCC(L&S)526 (INDRAPAL YADAV v. U.O.I. & ORS.)	Those who could not come to Court, need not be at a disadvantage as compared to those who rushed into the Court. If they are otherwise similarly situated, they are entitled to similar treatment, if not by any one else, at the hands of this Court.
(iii)	ATR 1988(2)CAT 518 Principal Bench, New Delhi. (A.K.KHANNA & ORS. vs. U.O.I. & ORS.)	Not extending benefit of a judgment, to others, who were similarly placed but never a party to that judgment, would amount to discrimination, violative of Articles 14 and 16 of the Constitution.

46. Shri Srinivasan relied on the following decisions to bring out, that in like cases, the persons should not be treated differently and the judgment should be the same:

(i) AIR 1985 SC 1124 (P.SAVITA & ORS. v. UOI)

(ii) Appln.No.1205/88(F) decided by the Bangalore Bench of the Central Administrative Tribunal on 9-12-1988.

47. Shri Srinivasan, also invoked the principle of judgment in rem, enunciated by the Bangalore Bench of the Tribunal, in Applications Nos.120, 1537, 1605 to 1607 and 1626 of 1986, decided on 30-3-1987, to which I was a party. That matter related to revision of pay scales of Field Investigators in the National Sample Survey Organisation. It was held therein, that the judgment

judgment of the High Court of Judicature of Karnataka in an allied case was a judgment in rem and was therefore applicable to all other persons similarly situated as the writ petitioners, who were not parties to that judgment.

48. Placing reliance on AIR 1986 SC 180 (OLGA TELLIS & ORS. v. BOMBAY MUNICIPAL CORPORATION & ORS.) he stressed, that the Supreme Court had observed in that case, that procedure which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law, which prescribes that procedure and consequently the action taken under it. It had further observed, he said, that the action must firstly be within the scope of the authority conferred by law and secondly, it must be reasonable. Shri Srinivasan alleged, that none of these principles were followed by the respondents, in the case of his clients, specially when it entailed civil consequences to them, in substantial loss of emoluments, as a result of erroneous fixation of pay in the TP. No show cause notice was given to them he submitted, before their pay was fixed in TP, to their grave detriment. This was grave violation of the principles of natural justice, he stated.

.....35

49. Shri Holla, Counsel for the applicants in the Ist Set of applications, relied on the following dicta of the Supreme Court in AIR 1961 S.C. 1457 (DARYAO & ORS. v. STATE OF U.P. & ORS.) to bring home the point, of binding nature of the decision, rendered by this Tribunal, in GOPAL SHARMA's case:

> "The argument that res judicata, is a technical rule and as such, is irrelevant in dealing with petitions under Art.32 cannot be accepted. The rule of res judicata as indicated in S.11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Art.32.
>
> xx xx xx xx
> xx xx xx xx
>
> The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis."

50. Shri

50. Shri Holla also alleged, as argued by Shri Srinivasan, that the respondents had violated the principles of natural justice, while fixing the pay of his clients in the TP.

51. Shri Holla submitted, that the Special Leave Petition filed by the respondents in GOPAL SHARMA's case, in the Supreme Court was rejected and therefore, that judgment had become binding in all similar cases.

52. In rebutting the above contentions of both Counsel for the applicants, Shri Papanna submitted, that the various rulings cited by them, to bring home the point of "binding nature" of the judgment in GOPAL SHARMA's case, had no application to the present cases before the Tribunal, in that, the judgment in that case, bound only the parties thereto and not others. The fact that the Supreme Court had rejected the Special Leave Petition in GOPAL SHARMA's case, could not, for the reasons stated by this Tribunal in Applications Nos.1208 to 1486 of 1988, recently decided on 14-12-1988, he said, lead to infer, that the decision in GOPAL SHARMA's case had a binding effect, on the present cases.

53. Referring to INDER PAL YADAV's case, he said, only the declaration by the Supreme Court under Article 141 of the Constitution was binding on all parties

similarly

similarly situated and which had not approached it. The judgment of this Tribunal or of a High Court, he submitted, did not have such a binding effect.

54. Besides, Shri Papanna contended, that the applicants could not regard themselves, as similarly placed, as compared to the applicants in GOPAL SHARMA's case. There was a patent difference he said, between those who approached the Court and those who did not, though otherwise their grievance may be similar. The applicants in the present cases, he therefore argued, could not claim parity, with those in GOPAL SHARMA's case. For like reasons, Shri Papanna submitted, the applicants could not seek benefit from DARYAO's case too.

55. The dicta of the Supreme Court in the case of OLGA TELLIS case, he submitted, had no relevance to the present applications, as the applicants could not complain of violation of natural justice, when for eight long years they acquiesced without demur in the fixation of their pay in TP.

56. As regards A.K.KHANNA's case, Shri Papanna submitted, that the questions of limitation and jurisdiction, were not raised therein, no principles were laid down in the decision therein and the points urged before this Tribunal, were not directly in issue and therefore, the decision in that case was merely recommendatory and advisory in nature.

57. Shri

57. Shri Papanna did not react to the other rulings, cited by both Counsel and in particuler, on the point of judgment in rem and its implications, as argued by Shri Srinivasan.

58. Shri Papanna submitted, that in GOPAL SHARMA's case, all the points urged in the present applications, were not examined by the Tribunal and therefore, the decision in that case, would not squarely govern the cases now before the Tribunal.

59. I have examined carefully the rival contentions on the above points. The various rulings relied upon, by both Counsel for the applicants, to advance their point, on the question of binding effect, of the decision in GOPAL SHARMA's case, are apposite to the present cases. In particuler, the ratio of the decision in the case of A.K.KHANNA by the Principal Bench of the Central Administrative Tribunal, New Delhi, with which I deferentially concur and in that of INDER PAL YADAV, has a direct bearing and concludes the question.

60. The submission made by Shri Papanna that the decisions of only the Supreme Court have a binding effect in like cases, where the parties did not appear before the Court, but not those of the High Court or this Tribunal is indeed startling.

Such

Such a submission can emanate only from an inadequate comprehension of our Constitution and has to be rejected as patently ill-founded.

61. The other distinction, which Shri Papanna sought to make between the parties which appeared before a Court and those which did not, though otherwise their case was alike, so as to state that they were not similarly placed, seems to me as an overwrought figment of imagination. If such a quaint view is taken, I am afraid, that the legal maxims: de similibus idem est judicium (i.e., in like cases, the judgment is the same) or in consimile casu, consimile debet esse remedium (i.e. in similar cases, the remedy should be similar) would only remain on paper and the poor litigant would only be vexed, by driving him to Court needlessly, at no little expense and hardship, as pointedly observed by the Supreme Court, in INDER PAL YADAV's case.

62. As regards the question of judgment in rem, urged by Shri Srinivasan (para 47 above), to which Shri Papanna did not react, it is pertinent, to refer to the decision of a 3-Member Bench in Applications Nos.27 and 28 of 1987 (JOHN LUCAS & ANR.v. THE ADDITIONAL CHIEF MECHANICAL ENGINEER, SOUTH CENTRAL RAILWAY & ORS.) decided by the Bangalore Bench of the Central Administrative Tribunal, wherein Hon'ble Shri Justice K.Madhav Reddy, Chairman, speaking for that Bench, observed

observed as under:

> "Quite apart from the above this should be so because 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 effect 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 judgments. 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 Sec.19, apart from the likelihood of conflicting judgments being rendered, the Authorities required to implement them being one and the same, would be in a quandary. Implementing one would result in disregarding the other."

63. In the context of the above observation in JOHN LUCAS case, it is apparent, that the decision in GOPAL SHARMA's case has the lineaments of a judgment in rem and therefore, is binding on all those similarly placed but who did not approach the Tribunal.

64. The submission of Shri Papanna that the decision of this Tribunal in A.K.KHANNA's case is only recommendatory or advisory in nature and

therefore

therefore not binding, on the face of it, seems ludicrous. If the Tribunals were to give merely hortative or didactic decisions, without those decisions binding the respondents, as envisioned by Shri Papanna, learned Counsel for the respondents, of what avail are such decisions to a litigant in travail, knocking at the doors of this Tribunal for relief? Perhaps only the learned Counsel can find an answer!

65. The contention of Shri Papanna (para 56 above) that all the points urged in the present applications, were not argued and gone into depth in GOPAL SHARMA's case, is not true. That decision expresses entire agreement, with the judgment rendered by this Tribunal, in Applications Nos.170 and 171 of 1986 (H.S.SADASHIV v. U.O.I. & ORS.) on 11-12-1986, to which I was a party. The judgment in SADASHIV's case, has examined in great detail, all the relevant aspects involved in the present cases and therefore, it is disingenuous for Shri Papanna to contend, that in GOPAL SHARMA's case, the matter was not examined in depth.

66. Questions such as whether the post of UDC I/c is a cadre post, whether it carries higher responsibility than that of UDC, have all been dealt

with

with at length, in SADASHIV's case. In that case, it has been clearly stated (para 20), that the principle enunciated in the allied case, in Writ Petition No.6086 of 1970, filed by Shri V.R.Hegde, was being given effect to, lest it should result in invidious discrimination, between Shri V.S.Hegde on the one hand and the applicants on the other, which was not desirable. The respondents would need to realise, that perpetuation of such discrimination among employees, similarly circumstanced, would not conduce to administrative efficiency and harmony.

67. Shri Papanna submitted, that the post of UDC I/c, was filled in from amongst the UDCs, not strictly in order of seniority but according to the willingness of the employees. This was refuted by Counsel for the applicants, by producing a copy of the Memorandum dated 14-7-1978, issued by the Administrative Officer of the ESIC. I have perused the same and notice, that it is explicitly stated therein, that the post of UDC I/c is to be filled in, strictly according to seniority, unless a senior agrees to forego his claim, for appointment to this post. The submission of Shri Papanna on this point, therefore is ill-founded.

68. In

68. In the end, Shri Papanna submitted, that in case the respondents did not succeed in these cases, the applicants may be given the benefit of FR 22-C, only with prospective but not retrospective effect.

69. I have given due thought to this submission of Shri Papanna.

70. In the light of the above discussion, I hold, that the decision rendered by this Tribunal in GOPAL SHARMA's case on 26-5-1987, governs the present cases, mutatis mutandis and is binding on the respondents. As the decision in the said cases concludes all other points urged in the applications before me, there is no reason to go into those points again.

71. In the result, I hold, that the applicants are entitled to fixation of their initial pay in the TP (i.e., HC, Assistant, Insurance Inspector or Manager Grade-III, as the case may be,) in accordance with FR 22-C, with reference to the pay drawn by them as UDC I/c, immediately prior, to appointment in the TP. The respondents shall fix their initial pay accordingly and grant them all consequential arrears, with retrospective effect within a period of 3(three) months, from the date of receipt of this order.

72. The

72. The applications are disposed of in the above terms. No order as to costs.

Sd/-

TRUE COPY

(L.H.A.REGO) 23.12.1988
MEMBER(A).

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

kms: