

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 27 JAN 1989

APPLICATION NO (s) 1934 to 1937 / 88(F)

W.P. NO. (s) /

Applicant (s)

Shri Jayaram & 3 Ors

To

1. Shri Jayaram
Head Clerk
Employees' State Insurance Corporation (ESI)
Local Office
Jalahalli
Bangalore
2. Shri V.L. Kuppaswamy
Head Clerk
Employees' State Insurance Corporation (ESI)
Local Office
Ichalkaranji Station Road
Ichalkaranji - 516 115 (Kolhapur)
3. Shri R. Narasimha
99, 2nd Main
MICC Layout
Bangalore - 560 076
4. Shri K.N. Shankarappa
Head Clerk
Employees' State Insurance Corporation (ESI)
Regional Office
No. 10, Binny Fields
Bangalore - 560 023

Respondent (s)

v/s The Regional Director, ESIC, Bangalore & another

5. Shri S.K. Srinivasan
Advocate
No. 10, 7th Temple Road
15th Cross, Malleswaram
Bangalore - 560 003
6. The Regional Director
Employees' State Insurance
Corporation
ESIC Building
No. 10, Binny Fields
Bangalore - 560 023
7. The Director General
Employees State Insurance
Corporation
ESIC Building
Kotla Road
New Delhi - 110 002
8. Shri M. Papanna
Advocate
99, Magadi Chord Road
Vijayanagar
Bangalore - 560 040

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/STAY/INTERIM ORDER/RECK
passed by this Tribunal in the above said application(s) on 16-1-89.

g/fued
K. M. Gan
30-1-89

dc

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE SIXTEENTH DAY OF JANUARY 1989

Present : Hon'ble Shri P. Srinivasan

: Member (A)

APPLICATIONS NO. 1934 to 1937/88(F)

1. Jayaram
Head Clerk, ESIC,
Local Office Jalahalli
Bangalore.
2. V.L. Kuppaswamy,
Local Office ESIC,
Ichalkaranji Station Road,
Ichalkaranji-416115(Kolhapur)
3. R. Narasimha,
Retired Head Clerk, ESIC,
99, 2nd Main, MICO Layout,
Bangalore - 560 076
4. K.N. Shankarappa,
Head Clerk, ESIC,
Regional Office,
Bangalore.

... Applicants

(Shri S.K. Srinivasan .. Advocate)

v.

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

(Shri M. Papanna .. Advocate)

These applications came up for hearing before this Tribunal today. Hon'ble Shri P. Srinivasan, Member (A) made the following:

ORDER

These cases have been listed for today in cases 'not ready for hearing'. However, when the matter was called out, Shri S.K. Srinivasan, learned counsel for the applicants and Shri M. Papanna, learned counsel for the respondents, submitted



P. Srinivasan

that these cases can be heard and disposed of finally. Accordingly both counsel have been duly heard.

2. In these applications, the four applicants who were working as Upper Division Clerks-in-Charge (UDCIC) in the Employees State Insurance Corporation (ESIC), Karnataka Region, complain that on their appointment as regular Head Clerks (HC) on different dates from 1.6.1973 to 1.9.1983 their pay had been fixed under FR 22C without taking into account the pay that they were drawing as UDCIC. The respondents took the view that the promotion was effectively from the post of Upper Division Clerk (UDC) and not from the post of UDCIC and hence ^{they} did not take into account the pay being drawn by the applicants as UDCIC. The applicants' contention on the other hand is that they had secured two promotions, one from the post of UDC to that of UDCIC and the second from UDCIC to HC and that, therefore, they were entitled to fixation of pay under FR 22C on promotion to the post of HC with reference to the pay drawn by them as UDCIC.

3. Three of the applicants are now working in the Karnataka Region of the ESIC at Bangalore, while one is working in Maharashtra region. A question has arisen as to whether this Bench of the Tribunal has jurisdiction to decide the dispute raised by Shri B.L. Kuppaswamy, applicant in A No.1935/88 who is currently working in the Maharashtra region of ESIC. Shri Srinivasan submits that when he was promoted as HC, Shri Kuppaswamy was working in the Karnataka region and his initial pay in the post was fixed by the Regional Director, ESIC, Bangalore (R-1) and it is that fixation that is challenged here. Therefore, R-1 has been impleaded as a respondent in these applications. Under Rule 6 of the Central

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Administrative Tribunals (Procedure) Rules, 1987, an application can be filed before a Bench within whose territorial jurisdiction either the applicant himself is posted or any one of the respondents is located. Since R-1 is located in Bangalore, Shri Srinivasan submitted this Bench has jurisdiction over Shri Kuppaswamy's application. Shri Papanna's objection is that since the applicant was posted in Maharashtra Region when the application was filed and is still working there and the refixation of his pay, if any, in pursuance of this order will have to be done by the Regional Director, Maharashtra, the application should not have been filed at Bangalore.

4. After careful consideration I am of the view that the application of Shri Kuppaswamy has been rightly filed before this Bench of the Tribunal. As pointed out by Shri Srinivasan, an application can be filed before a Bench of this Tribunal within whose territorial jurisdiction any one of the respondents is located. There is no doubt that the fixation of the applicant's pay in the post of HC which is disputed in Shri Kuppaswamy's case was made by the Regional Director at Bangalore. The Regional Director, Bangalore, has, therefore been rightly impleaded as a respondent and he is a necessary party to this litigation. Once we admit that the Regional Director, Bangalore, is one of the respondents, an application can be filed before this Bench of the Tribunal under the rules governing the subject. It is not necessary to discuss the matter any further. I, therefore, hold that this Bench of the Tribunal has jurisdiction over the application of Shri Kuppaswamy.



P.J. [Signature]

5. Shri Papanna raised another preliminary objection which runs as follows: the first three of the applicants were promoted as HC on different dates between 1.6.1973 and 22.1.1981 and their initial pay as HC fix was fixed on those dates. Their quarrel is with the fixation of their initial pay as HC. The cause of action for each one of them thus arose well prior to 1.11.1982. Several Benches of this Tribunal have held that no application can be entertained by this Tribunal in respect of causes of action arising before 1.11.1982. Therefore, in respect of these, Shri Papanna submitted, this Tribunal was not competent to deal with their disputes. In respect of the fourth applicant viz., Shri K.N. Shankarappa, he was promoted as HC on 1.9.1983 and his initial pay was fixed on that date. Since this date fell within three years prior to the setting up of this Tribunal, under Section 21 of the Administrative Tribunals Act, 1985, he should have filed his application within six months from the date of setting up of this Tribunal or within one year from the date of the cause of action, whichever was later. Shri Shankarappa should have filed his application on or before 1.5.1986. The present application has been filed by him on 6.12.1988 and is, therefore, badly delayed. Shri Papanna submitted that Shri Shankarappa's application should be dismissed as barred by limitation. In any case, Shri Papanna submitted, all these applicants had acquiesced in the fixation of their initial pay on promotion as HC several years ago and they cannot now be heard to say that such fixation in their cases was wrong.

P. J. K. S.

6. Shri Srinivasan submitted that the objections raised by Shri Papanna should not be accepted because the same objections concerning the competence of this Tribunal, limitation and acquiescence by the applicants were all raised and rejected in the case of T.K. PANDARISH AND OTHERS V. REGIONAL DIRECTOR ESIC, in A No.1580 to 1585, 1614 to 1621, 1810 and 1875/88(F) decided by Hon'ble Shri L.H.A. Rego, sitting as a Single Member Bench on 23.12.1988.

7. I have considered the matter carefully and have perused the order passed in Pandarish's case. I am satisfied that the facts of these cases relating to the contentions urged by Shri Papanna, viz., the competence of this Tribunal, limitation and acquiescence of the applicants to their initial pay fixation are in all respects in para materia with those on the basis of which similar contentions were raised in Pandarish's case. The applicants in Pandarish's case were, like the applicants here, the employees of ESIC and fixation of pay on promotion as HC was made in their cases was made in the year 1979 to 1984 and filed applications before this Tribunal on various dates between 29.9.1988 and 24.11.1988. The five applicants before me were promoted as HC on 18.12.1978, 1.6.1973, 22.1.1981 and 1.9.1983 and their initial pay in the cadre of HC was fixed on or about those dates. As pointed out in the judgment in Pandarish's case, the whole question as to how the pay of UDCIC on promotion as HC should be fixed was the subject of correspondence between the authorities of ESIC and remained in a state of flux with no conclusive decision having been taken till as late as 1988.



8. Parallelly the same question was agitated by four employees of ESIC before the High Court of Karnataka in writ petitions which came to be transferred to this Tribunal. The said writ petitions, renumbered as applications No.67 to 69 and 78 of 1987 (C.S. Gopala Sharma and others v. D.G., ESIC) were decided by a Bench of this Tribunal on 26.5.1987 in favour of the applicants therein. But even after that decision, the respondents took the view that the principle of fixation of pay on promotion as HC laid down in Sadashiv's case would be confined to the applicants in that case and not to others similarly placed. That is how the applications in Pandarish's case and the present ones now before me came to be filed. In Pandarish's case, Hon'ble Shri Rego after discussing the matter at great length, rejected the contentions of the respondents relating to competence of this Tribunal, limitation and acquiescence. Respectfully agreeing with that order I overrule the contentions of Shri Papanna in this case also and proceed to deal with the merits of these applications.

9. The question whether the appointment of an UDC as UDCIC and of a UDCIC as HC in the ESIC constituted promotion was considered by a Division Bench of this Tribunal consisting of Hon'ble Shri K.S. Puttaswamy, Vice Chairman and myself in A No.67 to 69 and 78/87. Disposing of these applications by an order dated 26.5.1987 we held that ^{appointment} of a UDCIC as a HC in ESIC constituted promotion. That decision was followed by another Bench of this Tribunal in Pandarish's case. Following these decisions, I hold that appointment of the applicants as

P. J. S. B.

HC constituted a promotion from the post of UDCIC. That being so the applicants were entitled to fixation of their pay on promotion as HC under FR 22C ~~mm~~ with reference to the pay drawn by them as UDCIC immediately before their promotion.

10. In view of the discussion above, the respondents are directed to refix the initial pay of the applicants on their promotion to the post of HC under FR 22C taking into account the pay that they were drawing earlier in the post of UDCIC and to pay them all arrears arising from such refixation within three months from the date of receipt of this order.

11. The applications are disposed of on the above terms leaving the parties to bear their own costs.



TRUE COPY

Sd/-
MEMBER (A) 16/1/1

bsv

By Member (A)
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL (27),
BANGALORE