CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 365/92

~~Transfer Application No~~

DATE OF DECISION 21.1.93

Shri H.S. Ladbhe and others Petitioner

Shri W.W. Waishampayan Advocate for the Petitioners

Versus

The Director General ESIC, New Delhi and anr. Respondent

Shri M.V. Jaykar Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Jusice S.K. Dhaon, Vice Chairman

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? } No
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 ?

(S.K.DHAON)
VICE CHAIRMAN

NS/

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 365/92

Shri H.S. Ladbhe

Original Application No. 377/92

Shri G.N. Sannabhadti

Original Application No. 386/92

Shri S.N. Kulkarni

Original Application No. 387/92

Shri N.P. JADIYA

Original Application No. 388/92

Shri B.D. Manamulkar

Original Application No. 390/92

Shri V.D.Pradhan

Original Application No. 393/92

Shri J.S. Masurkar

Original Application No. 394/92

Shri S.T. Sahakari

Original Application No. 780/92

Shri H.S. Pujari

Original Application No. 786/92

Shri K.C. Augusty

Origional Application No. 787/92

Smti S.G. Ganchauani

Original Application No. 788/92

Smt. M.E. DISilva

Original Application No. 789/92

Miss K.M. Athalya

Original Application No.794/92

Shri K. Narayan Menon.

Original Application No. 795/92

Smt. M.A. Karendikar

Original Application No. 796/92

Smt. J.J. Kulkarni

Original Application No. 797/92

Shri B.D. Modak

Original Application No. 798/92

Shri G.H. Patil

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Original Application No. 894/92 P

Shri S.P. Kotian

Original Application No. 895/92 P

Shri C.B. Lalwani

Original Application No. 898/92 P

Shri C.K.S. Thapliyal

Original Application No. 960/92 P

Smt. K.P. Kocharekar.

Original Application No. 810/92 P

Mrs. Vijaya Ramrao Sambare .... Applicants.

Vs

The Director General
Employees State Insurance Corpn.
ESIC Building, Kotla Road,
New Delhi .

The Regional Director
Employees State Insurance Corpn.
108 N.M. Joshi Marg, Lower Parel,
Bombay . ... Respondents.

CORAM: Hon'ble Shri Justice S.K. Dhaon, Vice Chairman.

Appearance:

Shri W.W. Waishampayan and Shri H.S.Pujary counsel for the applicant

Shri M.V. Jaykar, counsel for the respondents.

*added vide Tribunal's Order dt.8-4-93. (Original in OA 780/92)

ORAL JUDGEMENT Dated: 21.1.93

(Per Shri S.K. Dhaon, Vice Chairman)

The applicants in this bunch were initially employed as UDCs. Some of them were on or after 1.1.73 promoted for a temporary period as In-charge UDCs and some of them had been promoted as Head Clerks for broken periods. Their grievance is that, though the respondent took work from them either as In-charge UDCs or Head Clerks, they were not paid emoluments, which were then payable to the In-charge UDCs and the Head Clerks, in accordance with the recommendations of the 3rd Pay Commission as accepted by the respondent. The controversy being common, in all the applications they were heard together and are being disposed of by a common judgement.

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Admittedly the respondents accepted the recommendations of the 3rd Pay Commission sometime in the year 1986 and gave effect to the same from 1.1.73. The counsel for the respondents has not been able to advance any convincing arguments to meet the case of the applicants on merits. Indisputably the applicants has either worked as In-charge UDCs or as Head Clerks. It is not the case of the respondents that the applicants volunteered to work on higher and more responsible posts on gratis. Law recognises the obligation of a person enjoying the benefit of non-gratutious Act. Section 70 of the Contract Act enjoins such a person to compensate the other person from whom the work is taken. FR 22 C too is based on the aforesaid principle. The applicants were, therefore, entitled to receive and the respondents were under an obligation to pay to them the same emoluments which were then payable to the In-charge UDCs and Head Clerks. It follows that the applicants were not paid the emoluments which were legally payable to them. They are entitled to claim the same even now and the respondents are liable to make the payment.

The learned counsel for the respondents raised the plea of limitation. He urged that the orders fixing the emoluments payable to the applicants were passed way back in August 1979 on the basis of memorandum issued on 2.3.78. He, therefore, urged that these applications are hopelessly barred by time.

S/Shri J.K. Golam and G.K. Kamath came to this Tribunal in OA 386/87 with a grievance similar to the one made by the applicants in these applications. The said OA was disposed of on 12.9.92. This Tribunal, relying upon FR 22 C, held that the applicants before it were entitled to refixation of their pay. On the basis of the said decision, the applicants made a representation

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on 3.2.90. They pleaded that their pay should also be refixed in the light of the aforesaid decision of this Tribunal. The applicants were informed by the Dy. Regional Director of the Employees State Insurance Corporation that their matter was engaging the attention of the Headquarters and after its approval necessary action for fixing their pay will be taken.

Surely, had the applicants approached this Tribunal with the prayer that appropriate directions may be issued to the Headquarters to take an expeditious decision on the question of fixation of their pay, such a prayer could not be refused on the ground that the applicants has approached this Tribunal at a belated stage. The question, however, is whether this Tribunal should direct the respondents to apply the decision of this Tribunal in the case of S/Shri J.K. Golam and G.K. Kamath and pay the applicants accordingly. Having considered the matter carefully, I feel that fair play and justice demand that the applicants should not be deprived of their legitimate dues on a technical plea of limitation. The State, a model employer, should not be permitted to raise a technical plea of limitation to deny a just claim of some pecuniary benefit to its employee.

The respondents shall work out the amount payable to the applicants and pay them such sum as they are entitled to. If they are entitled to some consequential benefits those too shall be given to them. I, direct the respondents to make the payments to the applicants and also give them consequential benefits, if any, within a period of six months from

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the date of receipt of a certified copy of this order.

With these directions these applications are disposed of. There shall be no order as to costs.

(S.K.DHAON)
VICE CHAIRMAN

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