

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

FORM OF INDEX AS PER CAT (DESTRUCTION OF RECORDS) RULES 1990
=====

LIST OF PAPERS IN OA/TA/RA/CP NO.....222/93.

Sl.No.	Items	Description of papers
1.	Orders Sheets	Kept
2.	All order/judgements of the Tribunal passed in the case	— do —
3.	Judgements and order received from the Supreme Court in the case	— No —
4.	All applications including MAs/ Plaints/Memoranda/appeals together with annexures and all other documents whether original or copies filed with them.	Kept
5.	Counter/written statement and reply affidavits	— do —
6.	All depositions of witnesses taken by way of affidavit	— do —
7.	All documents or certified copies received by the Court and marked as exhibits, reports and examination of commissioners	— do —
8.	Notices	Destroyed
9.	Letters filed by the counsel and other correspondences vakalathnama/memo of appearance	— do —
10.	All other papers not already specified.	— do —

*pvk

[Signature]

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

ORDER SHEET

Application No. **222** of 199 **3**.

Applicant

Smt. R. Indira.

Advocate for Applicant

Sh V.N. Holla.

Respondent

Regional Director, E.S.I. Corpn.,
B'lore and another.
Advocate for Respondent

Date	Office Notes	Orders of Tribunal
26.2.93.	<p>This application is filed u/s 19 of the Act. The applicant prays to:</p> <p>Quash the order of R-1. dtd. 26.3.90 and to declare that the applicant's rate of pay as UDC was bound to be stepped up up on par with junior. (Ann. 8).</p> <p>Direct the respdts. to remove the anomaly with effect from 16.8.1979.</p> <p>To grant consequential benefits.</p> <p><u>Interim Prayer:- Nil.</u></p> <p><u>M.P. NO:- 75/93</u>, for Condonation of delay with affidavit, and <u>76/93</u> for Condonation of delay with memorandum of facts.</p> <p>...</p> <p>As directed, this application is registered and posted before the Bench for prl. hearing and admission on 1.3.93.</p> <p>IPD is removed.</p> <p>.....</p>	<p><u>PKS (VC) / VR (MA)</u> <u>1.3.93</u></p> <p>Issue notice to the respondents on the main application as well as MP filed for condonation of delay. Call on 26.5.93.</p> <p><i>68/21/90</i> M(A)</p> <p><i>VC</i></p>

3/3/93

Notice issued to respondents.

27/3/93

Date	Office Notes	Orders of Tribunal
26.3.93 L.R. 26/3/93	R-2 served. Adk filed.	
30.3.93 L.R. 30/3/93	Shri M. Papanna has filed Vakalat for Respondents.	<p><u>PKS (VC) / VR (MA)</u> 26.5.93</p> <p>Respondents pray for time. Time granted. Adjourned to 11.6.93.</p> <p><i>MS</i> M(A)</p> <p><i>VC</i></p>
	<p>OA 222 & 228/93 <u>11.6.93</u> Before <u>PKS-VR</u> <u>VR-MA</u></p> <p>Sri V.N. Holla for A Sri M. Papanna for R Arguments heard in part for further - arguments Ad to 17.6.93</p> <p><i>MS</i> <i>Σ</i> <i>VO</i> <i>CH</i></p>	

**In the Central Administrative Tribunal
Bangalore Bench
Bangalore**

Application No. 222 of 199 93

ORDER SHEET (contd)

Date	Office Notes	Orders of Tribunal
	<p style="text-align: center;"><u>17.6.93</u> <u>Before</u> <u>OA 222/93 & 225/93</u> <u>Before</u> <u>PKS-VE</u> <u>VR-MCA)</u> Sri. V. N. Holla for A Sri. M. Raghanna for R Application disposed of order dictated. Dro G CO Gir</p> <p><u>24.6.93</u></p>	
	<p>Copies issued. of filed J Gn</p>	

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

....

EXAMINER'S REPORT IN THE APPLICATION

Presented by Shri N. K. Samba Halla Applicant/Agent/
Advocate/Clerk

Application No. 222/93

..... Smt. R. Indira Applicant

Versus

Reg. Director, EST. B.N. & Co. Respondent

Subject:- Ex. Stipend. of J. Pay. on. P. Ints. Junior.

1. Date of presentation/ No. of sets filed.	<u>22/9/92 - 4 sets.</u>
2. Is the application in prescribed form? (i.e. as per CAT (Procedure) Rules, 1987.	<u>Yes.</u>
3. Is the appeal in time? If not, whether an M.P. for condonation of delay, supported by an affidavit is filed.	<u>Since this Tribunal had rendered its judgment on 19-11-91 in the case of Similarly situated persons, the present Hearing, the applicant has filed a M.P. for C-D.</u>
4. Whether Vakalatnama is filed, with stamp of Rs.3/-	<u>Yes</u> <u>with stamp of Rs.3/-</u>
5(a) Is the application accompanied by prescribed fee;	<u>Yes</u>
(b) Whether the relief sought is single. f 1 1	<u>Consequential</u>
6. Whether legible and <u>attested</u> certified copy/ copies of the Order(s) against which the application is made, filed.	<u>Yes</u>
7. Is the matter raised in the application pending before any Court of Law or any other Bench of the Tribunal?	<u>NO -</u>

....2/-

<p>8(a) Is the application premature? (b) Has the applicant exhausted all channels of remedies available to him before presenting the application.</p>	<p>no 2y</p>
<p>9(a) Is the applicant resident/posted within the territorial jurisdiction of Karnataka? or whether the cause of action, wholly or in part has arisen in Karnataka? (b) Whether the subject matter is within the jurisdiction of the Tribunal (in terms of Sections 2, 3 & 14 of the A.T. Act, 1985)?</p>	<p>2y 2y</p>
<p>10(a) Whether the relief sought is specific? (b) Whether any interim relief is prayed for? (c) Whether specific reasons for seeking interim relief is/are furnished?</p>	<p>2y nil h-a</p>
<p>11. Whether all the necessary parties to the case are impleaded?</p>	<p>2y</p>
<p>12. Any other defect not covered by item Nos. 1 to 11 above?</p>	<p>Annexures have not been attached</p>

(a) The application is defective, the applicant/advocate may be asked to attend to defects as pointed out at item Nos. 12 above before the Registrar of DRS

(b) The application may be registered and posted before Court for Orders on the Office observations, pointed out at item Nos. above, and for prl. hg. & admn. on DRS

(c) The application is in order, it may be registered and posted before Court for prl. hg. & admn. on DRS

Dy. Registrar.

Registrar.

The applicant noticed the anomaly with pay of one in halves and has pay on 11.3.89 when the seniority list of Group 'E' Employees was checked on 16.3.90 to which the also made representative dated 16.3.90 (Ann. B). At least responders have replied on 26.3.90. From 26.3.90 the cause of action has arisen for the applicant to approach the Tribunal within the time permitted by law. The Application is filed on 22.9.92. Hence the applicant has filed an MP for C.O. The affidavit is known on 23.7.92. The delay from 23.7.92 to 22.9.92 is not explained by filing a separate application and affidavit. Hence there is a delay in filing the application. It approved the advocate will be asked to file another MP for C.O. Yes please. 23/9/92

Dy. No. 583/92

Regd - file observations on the scrutiny sheet
may please be seen.

The adv. has since filed another M.P. for
C.D. for the reasons stated in the memorandum of facts
explaining reasons for delay on his part in filing the
appln, from the date of swearing the affidavit for
C.D. by the applicant.

With this, the appln. is now in order, it
may be registered & posted before Bench alongwith
the two M.Ps for C.D. for perusal & admn. on 2/3/93
as desired by the advocate

Subscribed at

[Signature]
23/2/93

[Signature]
23/2/93

DR (J) & the 23/2/93

Registrar

Memorandum with M.P. for Coordination
of delay and post before Mr. Harkar
Bench for perusal of Adm. Officer
on 2.3.93

[Signature]
23/2

Recd. Assets of
Appln. from Smt. Indira Hollar
Adv. H. Elamie
Desires this to be posted on
1.10.92 (Hm)
226

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AT BANGALORE

APPLICATION No. **222/93**

Between:

Smt. R. INDIRA

.....

Applicant

AND:

The Regional Director,
ESIC(RO)(Karnataka)
Bangalore and another

.....

Respondents

I N D E X

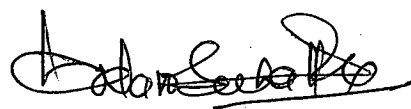
Sl. No.	Particulars	Page Nos.	Court Fee
1	Application Under Section 19 of the Administrative Tribunal Act-1985.	: 1-9 :	: : Rs. 50-00

ANNEXURES

2.	Applicant's representation dt.16-3-1990	: 10 :	
3.	Reply from E.S.I.C.(RO) Karnataka dt.26-3-1990	: 11 :	
4.	Judgement in application Nos.133 to 138/90 dated 10-11-1991	: 12-26 :	
5.	IA for condonation of delay.	: 27-31 :	
6.	Vakalath	: 32 :	Rs. 3-00
7.	Two copies of Application to Respondents	: : :	
Total:			Rs. 53-00

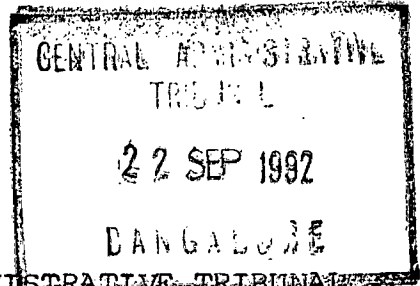
Bangalore,

Dated: 22-9 -1992



ADVOCATE FOR APPLICANT

Dy. No. J
583
22.9.92



IN THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,

AT BANGALORE -

APPLICATION No. **222**/1992

BETWEEN:

Smt. R. INDIRA,
Upper Division Clerk,
Employees' State Insurance
Corporation, Local Office,
~~Jeppu Market Road, ASHOKNA CHAR,~~
Mangalore 57500

..... Applicant

AND:

1. The Regional Director,
Employees' State Insurance
Corporation, Regional Office,
(Karnataka) No.10, Binny Fields,
Bangalore-560 023.

ed/-
2. The Director General,
Head Quarters,
Employees' State Insurance
Corporation, Kotla Road,
New Delhi-110 002.

..... Respondents

DETAILS OF APPLICATION:-

I. The application is against the following Order:-

- | | |
|-----------------------|---|
| (i) Order Number | : KAR/ADM/10(769)/90,
: dated 26-3-1990. |
| (ii) Date | : 26-3-1990. |
| (iii) Passed by | : Regional Director, E.S.I.C.,
: Karnataka. |
| (iv) Subject in brief | : Declining to step up the pay
: of the applicant at par with
: that of his Junior. |

II. Jurisdiction of the Tribunal:-

The applicant declares that the subject matter of the order against which she wants redressal is within the jurisdiction of the Tribunal.

....2...

R. Indira

III. Limitation:-

The applicant further declares that the application is within limitation, prescribed in Section 21 of the Administrative Tribunals Act.1985.

IV. Facts of the Case:-

The applicant begs to submit that the facts of the case are given below:-

1. That the applicant is an employee of the 2nd Respondent Corporation, working under the 1st Respondent. The applicant joined the service of the Respondent Corporation as Lower Division Clerk on 5-2-1976 and was regularised in the said cadre with effect from 10-6-1976. As per the gradationlist of the first Respondent Office as on 31st March, 1989, the applicant stood at Sl.No.73, in the Cadre of LDC. The present scale of pay of LDC is Rs.950-20-1150-EB-25-1500.(Pre-revised scale was Rs.260-6-290-EB-6-326-8-360-EB-8-390-10-400). The applicant was Senior to one Sri. P.S. Walvekar who is also working under the First Respondent and his name figures at Sl.No.85 in the gradation list above mentioned and Sri. P.S. Walvekar had joined service on 18-3-1976 and was regularised in the LDC Cadre with effect from 27-5-1977. Thus he was junior to the applicant throughout in the LDC Cadre and his scale of pay was same as that of the applicant.

2. Whereas, the said Sri. P.S. Walvekar, was promoted to the Post of UDC on Adhoc basis on 1-3-79,

R. Indira ...3...

not withstanding the fact that the applicant was senior to him. The applicant was promoted as Upper Division Clerk on Adhoc basis with effect from 16-8-1979, i.e., subsequent to that of his junior. On promotion to the post of UDC, the pay of Sri. Walvekar was fixed at Rs.330/- per month, with effect from 1-3-1979, in the pre-revised scale of Rs.330-10-380-EB-12-500-EB-15-560. Similarly, the pay of the applicant was fixed at Rs.330/- per month, as U.D.C. with effect from 16-8-1979. Thus, the applicant had drawn his first increment as U.D.C., only on 1-8-1980, while her junior had drawn the same much earlier on 1-3-1980; resulting in an anomaly. However, the applicant was regularised as U.D.C. with effect from 19-5-1982 and Sri. Walvekar also on 19-5-1982,

3. Wherefore, the respondents ought to have stepped-up the applicant's rate of pay as Upper Division Clerk with effect from 19-5-1982, to make it on par with that of her junior Sri. Walvekar, in the Cadre of U.D.C.

4. The applicant noticed the anomaly for the first-time when the seniority of Group 'C' employees as ^{on} 1-3-1989 was published in December, 1989, and received in the applicant's office at Mangalore, some times thereafter. Whereupon, the applicant made a detailed representations dated 16-3-1990 and requested the respondents to rectify the anomaly, by stepping up ~~the~~ her rate of pay as U.D.C. on par with that of Sri. Walvekar (ANNEXURE 'A').

...4...

R. Indira

5. However, while the respondents have never disputed facts regarding seniority as contained in the applicant's representation; have rejected the claim of the applicant stepping up under FR 22(C), on flimsy ground; by a letter dated 26-3-90 (Annexure-'B'). The present pay scale of Upper Division Clerks, is Rs.1200-30-1560-EB-40-2040. Both the applicant and Sri. Walvekar are still serving in the Respondent Corporation, and their respective rates of pay, as on 1-3-1989 was Rs.1440/- per month, and Rs.1470/- per month respectively which clearly signifies the anomaly. In this context the applicant also submits that cases of similarly placed employees, under application No.s 54 to 56/91, 133 to 138/90 and 153/90(F) have been allowed by this Honourable Tribunal under three separate but identical Judgements, all dated 19-11-1991. The applicant came to know that, judgements of this Honourable Tribunal has been implemented by the respondents and necessary orders, stepping up the pay of concerned applicants, have been issued by the Respondents recently.

V. GROUND FOR RELIEF:-

The applicant begs to submit that her prayers are based on the following grounds:-

1. That the first respondent as drawing and disbursing officer and the applicant being under his administrative control, ought to have stepped up the rate of pay of the applicant, as Upper Division Clerk to make it on par

....5..

R. Indira

with that of her junior Sri. P. S. Walvekar at the earliest opportunity, on 16-8-1979.

2. That the applicant was senior to Sri. P. S. Walvekar in the Cadre of Lower Division Clerk and they both were promoted to the post of Upper Division Clerk i.e. same cadre. Further, respective scales of pay of the Lower and Higher posts in which they both are entitled to draw pay are identical and the anomaly had arisen due to fixation of their pay, under FR 22(C), consequent on their promotion to the post of Upper Division Clerk.

3. The applicant being senior to Sri. P. S. Walvekar she ought to have been given promotion earlier, even if it was on Adhoc basis, whereas the junior was promoted, without considering the case of the applicant and this was in clear violation of Article 14 and 16 of the Constitution.

4. The applicant submits that, respondents decline to rectify the anomaly even after the applicant's representation as per Annexure 'A', is unjustifiable and ~~arbi~~ amounts to arbitrary action/decision.

5. The applicant submits that the similarly placed employees have approached this Honourable Court in application No.s 54 to 56 of 1990(F), 133 to 138 of 1990(F) and 153 of 1990(F). All these applications were allowed on 19-11-1991, to the extent indicated therein by three separate but identical orders(Annexure-'C').

...6..

R. Indira

Case of the applicant is exactly similar to the case of the applicants in the above cases, i.e. her case is fully covered by the Judgement of this Honourable Court in the above cases.

6. The applicant and her junior in the same cadre are working at different and distant stations, wherefore, she did not come to know about the anomaly earlier. She noticed it only recently during pay fixation, consequent on 4th Pay Commission Recommendations, through seniority list circulated in December 1989, and thereafter made representation to the respondents. Nevertheless the wrong is continuing.

7. In view of the above and in the interest of Justice and equity, the applicant is entitled to have her rate of pay as Upper Division Clerk stepped-up / advanced to a figure equal to that of her junior as on 16-8-1979, and consequential benefits.

VI. DETAILS OF REMEDIES EXHAUSTED:-

The applicant declares that she has availed of all the remedies available to her under the relevant service rules etc.

The applicant made a representation to the first respondent dated 16-3-1990 (Annexure- 'A'). However, the applicant's request for stepping up of pay

....7..

R. Indira

was not acceded to by the respondents vide
First Respondent's letter No.385/KAR/ADM.10(769)90,
dated 26-3-1990(Annexure-'B')

VII. MATTER NOT PENDING WITH ANY OTHER COURT ETC.

The applicant further declares that the matter
regarding which the application has been made is
not pending ^{or file} before any court of law or any other
^{or} authority or any other bench of the Tribunal.

VIII. RELIEF(S) SOUGHT:-

In view of the facts mentioned in Para (IV)
above, the applicant prays for the following reliefs:-

- (i) To quash the order of the first respondent's
bearing No.385-KAR.ADM.10(769)/90, dated
26-3-1990, and to declare that the applicant's ^{Am. B'}
rate of pay as Upper Division Clerk was bound
to be stepped up to make it on par with that
of her Junior i.e. Sri. P. S. Walvekar, by
advancing the date of increment;
- (ii) To direct the respondents to remove the anomaly
with retrospective effect from 16-8-1979 and
to pay all consequential benefits arising out
of such steppin-up of pay, including arrears,
to the applicant; and

....8..

R. Indira

- (iii) To award costs of the application and such other reliefs as this Honourable Court may deem fit in the circumstances of the case and in the interest of Justice and equity.

IX. INTERIM ORDERS IF ANY PRAYED FOR:

--- N i l ---

X. Particulars of postal order in respect of the application Fee:

1. Number of Indian Postal Order/s: 84
2. Name of the issuing Post Office :
3. Date of issue of Postal order/s :
4. Post office at which payable :

at 16/9/92
518299
R B 587-09

XI. List of Enclosures:

ANNEXURES

1. Applicant's representation dated 16-3-1990 'A'
2. Reply from E.S.I. Corporation (Regional Office) Karnataka, dated 26-3-1990 'B'
3. Judgement in application No.s 133 to 138 of 1990, dated 19-11-1991. 'C'

The Honourable Court may be pleased to call for the following records from the Respondents.

Gradation list as on 1-3-1989 and Memorandum of Employees' State Insurance Corporation (HQ No.A-27 (12)13/75-Estt.-III, dated 7-5-1977.

...9..

R. Indira

IN VERIFICATION

I, Smt. R. Indira, W/o DAYANANDA CHADDA age: Major,
Upper Division Clerk, Employees' State Insurance Corpora-
tion, Local Office, ^{ASOK NAGAR} ~~Jeppu Market Road~~, Mangalore,
resident of Bangalore do hereby verify that the
contents from (I) to (XI) are true to my personal
knowledge and belief and that I have not suppressed
any material facts.

PLACE: BANGALORE,

R. Indira

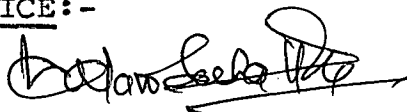
DATE: 23-7-1992

SIGNATURE OF THE APPLICANT

To

The Registrar,
Central Administrative Tribunal,
Bangalore.

ADDRESS FOR SERVICE:-



Sri. V. Narasimha Holla,
Advocate,
No.1762, 6th Main Road,
'D' Block, II Stage,
Bajajinagar, Bangalore-10.

Regional Director,
Establishment Branch I,
E. S. I. Corporation,
BANGALORE.

-10-

Annex A.

Sir,

(THROUGH LOCAL OFFICE MANAGER, MANGALORE)

Sub:- Anomaly in respect of Self

Kindly refer to Gradation List as on 31.3.89 in the cadre of U.D.C.s. There exist an anomaly as the fixation of pay in the cadre of Upper Division Clerk in my case (Sl.No.74 Page No.24) when compared with that of Shri.P. S. Walvekar, who is my junior (Sl.No.88 of Page No.25). The details obtaining in pay in the cadre of Upper Division Clerk in both the cases are furnished below:-

Particulars	<u>Smt. R. INDIRA</u>	<u>SHRI. P. S. WALVEKAR</u>
1. Date of appointment as L.D.C.	5.2.76 5.2.76	18.3.76
2. Date of promotion as U.D.C. on regular basis	19.5.82	19.5.82
3. Pay as on 1.3.89	Rs.1440/-	Rs. 1470/-

It may please be seen from the above that the pay of Shri.P. S. Walvekar, my junior, both in the cadre of L.D.C. and U.D.C. has been fixed at a higher stage from an earlier date. That is to say that Shri.P. S. Walvekar has been allowed the benefit of higher fixation for a period of 5 months in each year right from 19.5.82 (Date of regular promotion of both myself and Shri.P. S. Walvekar). As an anomaly exist in fixation of pay under FR 22 (C), I request that my pay may kindly be stepped up, enabling me to draw pay at the same stage as Shri.P. S. Walvekar has been drawing, at least from 19.5.82 (Date of regular promotion of both).

Requesting for an early action in this matter,

Yours faithfully,

MANGALORE.

16.3.90

R. Indira
(R. INDIRA)
U.D.C., L.L., P.T.C., MANGALORE

No. 53.A.20.11.85(R.I.)

Dated: 16.3.90

Forwarded to The Regional Director, Establishment Branch I,
E. S. I. Corporation, Bangalore for necessary action.

MANAGER. 16/3/90

4306
18/3/90

Copy

REGIONAL OFFICE (KARNATAKA)
EMPLOYEES' STATE INSURANCE CORPORATION
No.10, BINNYFIELDS, BANGALORE-560 023.

Ann B.

385

No.KAR.ADM.10(769)/90

Dated 26-3-1990

Smt. R. Indira,
UDC, Local Office,
E.S.I. Corporation,
MANGALORE.

Madam,

Sub: Stepping up of Pay at par
with Juniors

Ref: Your request dated 16-3-1990

-oOo-

You are informed that Sri P.S. Walvekar, UDC, the junior official is drawing more pay from time to time and as such, your request for stepping up of pay cannot be acceded to.

Yours faithfully,

G.R. Sreenivasan

(G.R.SREENIVASAN)
ASST. REGIONAL DIRECTOR.

bgk/-

2455
29/3

[Signature]

— 12

Annex - C

ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 30.01.1991

APPLICATION NO (S) 133 to 138 /90(F)
W.P. NO (S) _____

Applicant (s)

Shri M.R. Sreedhar & 5 Drs V/s
To

Respondent (s)

The Regional Director, Employees'
State Insurance Corporation, Karnataka,
Bangalore & anr

1. Shri M.R. Sreedhar
Upper Division Clerk
Legal Branch
E.S.I. Corporation (Karnatak)
Regional Office
No. 10, Binny Fields
Bangalore - 560 023

5. Shri S. Dasappa
Upper Division Clerk
Benefit Branch
E.S.I. Corporation
Regional Office (Karnatak)
No. 10, Binny Fields
Bangalore - 560 023

2. Shri J. Vishwanatha Patil
Upper Division Clerk
E.S.I. Corporation
DMC (SZ) Office
No. 10, Binny Fields
Bangalore - 560 023

6. Shri Puttenagerajiah
Upper Division Clerk
Insurance Branch-II
E.S.I. Corporation
Regional Office (Karnataka)
No. 10, Binny Fields
Bangalore - 560 023

3. Shri William Pushparaj
UDC Cashier
Employees' State Insurance
Corporation (ESIC)
Local Office
Yeshwanthapuram
Bangalore - 560 022

7. Shri V. Naresimha Holle
Advocate
No. 1762, 6th Main
'D' Block, II Stage
Rajajinagar
Bangalore - 560 010

4. Smt J.K. Ramadevi
Upper Division Clerk
Insurance Branch IV
Employees' State Insurance
Corporation (ESIC)
Regional Office (Karnataka)
No. 10, Binny Fields
Bangalore - 560 023
Division Clerk

8. The Regional Director
Employees' State Insurance
Corporation (ESIC)
Regional Office (Karnataka)
No. 10, Binny Fields
Bangalore - 560 023

9. The Director General
Employees' State Insurance Corporation
Headquarters Office
Kotla Road, New Delhi - 110 002

Subject: SENDING COPIES OF THE ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of the ORDER/STAY/
~~INXXXXXX~~ passed by this Tribunal in the above said
application(s) on 19-11-91.

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


DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE 19TH NOVEMBER 1991

Present :

Hon'ble Shri P.S. Hubeesh Mohamed ... Member (A)

Hon'ble Shri Syed Fazlulla Razvi ... Member (J)

APPLICATIONS NO.133 TO 138/90

1. M.R. Sreedhar,
UDC, Legal Branch,
ESI Corporation (Karnataka),
Regional Office,
No.10, Binny Fields,
Bangalore.

... Applicant in A No.133/90

2. J. Vishwanatha Patil,
UDC, ESI Corporation,
DMC(SZ) Office,
No.63, Binnyfields,
Bangalore.

... Applicant in A No.134/90

3. Mr. William Pushparaj
UDC Cashier, ESIC,
Local Office,
Yeshwanthapuram,
Bangalore.

... Applicant in A No.135/90

4. Smt. J.K. Ramadevi,
UDC, Insurance Branch IV,
ESICorporation,
Regional Office (Karnataka),
No.10, Binnyfields,
Bangalore.

... Applicant in A No.136/90

5. Sri S. Dasappa, UDC,
Benefit Branch I,
ESICorporation,
Regional Office (Karnataka),
10, Binnyfields,
Bangalore.

... Applicant in A No.137/90

6. Puttanagarajaiah, UDC,
Insurance Branch-III,
ESI Corporation,
Regional Office (Karnataka)
Bangalore.

Applicant in A No.138/90 .
... Applicants

(Shri V.N. Holla ... Advocate)



1. The Regional Director,
Insurance Corporation,
Regional Office (Karnataka),
10, Binnyfields,
Bangalore.

2. The Director-General,
Hrs. Employees State
Insurance Corporation
Kotla Road,
New Delhi.

... Respondents

(Shri M. Papanna ... Advocate)

These applications having come up for orders before this Tribunal today, Hon'ble Shri Syed Fazlulla Razvi, Member (J), made the following:

ORDER

1. In these applications filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have sought the same relief i.e., stepping up of their pay on par with their junior and ^{senior} employees. The relief sought for in all these applications is the same. The relief sought for in A No.133/90 are these:

i. To declare that the applicant's rate of pay as HBC was bound to be stepped up to make it on par with that of his junior i.e., Sri P.S. Walvekar, by advancing the date of increment.

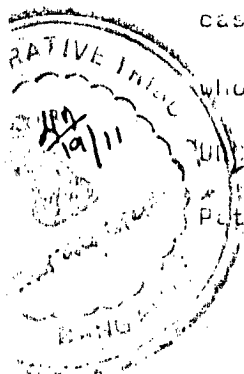
ii. To direct the respondents to remove the anomaly with retrospective effect from 1.3.1988, and to pay all consequential benefits arising out of such stepping up of pay, including arrears, to the applicant.

iii. To award costs of the application and such other reliefs as this Honorable Court may deem fit in the circumstances of the case and in the interest of justice and equity.

18/11/11

2. The case of the applicants briefly stated, is thus:

All the applicants except S. Dasappa, applicant in A No.137/80, joined the office of the first respondent as Lower Division Clerk (LDC for short). S. Dasappa, applicant in A No.137/80 had joined service as Chowkidar and came to be promoted as LDC on 9.9.1970 and was regularised on 8.9.1976. The applicants were thus working as LDC when a graduation list dated 1.3.1980 came to be prepared in which all these applicants were shown as seniors to the said Shri Walvekar. As things stood thus the said Walvekar came to be promoted to the post of Upper Division Clerk (UDC for short) on ad hoc basis on 1.3.79 whereas the applicants who were all seniors to the said Walvekar in the cadre of LDC were promoted subsequent to Walvekar on ad hoc basis with effect from various dates. The applicant in A No.133/80 H.R.-Sreedhar was promoted as UDC on ad hoc basis with effect from 1.9.1979, Shri T.V. Patil, applicant in A No.134/80 came to be promoted as UDC on ad hoc basis on 30.6.1979, while the applicant in A No.135/80 William Pushparaj came to be promoted as UDC on ad hoc basis on 4.9.1979 and the applicant in A No.136/80 J.K.-Ramadevi came to be promoted as UDC on ad hoc basis with effect from 26.12.1979. and the applicants in A No.137/80 S. Dasappa and A No.138/80 Putturangaiah both came to be promoted as UDC on ad hoc basis with effect from 1.9.1979. It is further the case of the applicants that the applicants as well as Walvekar who was junior to them came to be regularised in the post of UDC with effect from 19.5.1982, except the applicant Vishwanatha and Putturangaiah Patil who came to be regularised with effect from 7.2.1981 while



Walvekar came to be regularised with effect from 19.5.1982. The applicants contend that the promotion of Walvekar who was admittedly junior to the applicants to the post of UDC even on ad hoc basis without considering the case of the applicants who were admittedly senior to Walvekar is not in accordance with law and in view of the promotion though on ad hoc basis given to Walvekar prior to promoting these applicants to the post of UDC even on ad hoc basis Walvekar came to be fixed in the scale of pay higher than the applicants and ever since then the said Walvekar is drawing more pay than these applicants which has remained an anomaly throughout. The applicants further contend that the representations given by them for stepping up their pay so that the pay they draw in the scale of UDC should not be less than the pay being drawn by their junior Walvekar has not been considered in accordance with law and the respondents have negatived the claim of the applicants by putting forth an untenable ground by means of Annexure C filed in A No.133/90 to the effect that since the promotion of the junior as UDC on ad hoc basis in the nature of a fortuitous promotion, the case of the applicants for stepping up of their pay cannot be considered. In all these applications the applicants have sought for quashing the impugned communication dated 15.11.1981 by which their claim for stepping up of their pay to be on par with the pay of Walvekar has been negatived and have sought the reliefs aforesaid.

3. The respondents in all these applications have filed a joint reply in A No.133/90. As the case of the applicants, the reliefs

14/19/11

- 5 -

sought for and the grounds on which these applications have been resisted are common in all these applications we proceed to club all these applications and pass a common order. This order passed will cover all these cases.

4. The respondents have by way of joint reply filed in A No.- 133/90 contended mainly that the claim put forth by the applicants at this distance of time with respect to ad hoc promotion made during 1979 is clearly barred by limitation and that the applications are bound to fail even on the ground of limitation as well as on the question of jurisdiction of this Tribunal to deal with such applications. It is the case of the respondents that the applicants were working in Bangalore at the time when the said Walvekar who was working at Belgaum came to be promoted on ad hoc basis in the vacancy of HDC which was required to be filled up and since the offices of the first respondent are situated in various places in the state of Karnataka and any vacancy for a short period was to be filled up purely on temporary and ad hoc basis irrespective of the seniority, the said Walvekar came to be appointed on ad hoc basis as HDC solely to avoid hardship to the staff for a short period. The respondents also plead that the promotions on regular basis have been considered strictly in accordance with seniority and the applicants herein have been promoted when their turn came; that the appointment of Walvekar being temporary due to the fact that the vacancy was for a limited period and the said appointment was made on ad hoc basis which has been made clear in the office order issued while promoting



the said Walvekar on ad hoc basis, the applicants' claim is untenable. The respondents also resist the claim for stepping up of pay sought by the applicants on the ground that the said Walvekar had earned his increment on 1.3.1966 after completing one years' service in the cadre of UDC while the applicants completed one year service as UDC subsequently on different dates and, therefore, the applicants are not entitled to the claim of stepping up of their pay. The respondents thus seek the dismissal of these applications.

B. We have heard the learned counsel appearing for the parties and examined the respective contentions urged in the light of the material on record.

C. Before we proceed to examine the contentions urged, we may bring out the relevant facts which are not in dispute. They are these:

All the applicants herein and Sri Walvekar were in the cadre of UDCs and said Walvekar was junior to the applicants. Walvekar came to be promoted on ad hoc basis as UDC with effect from 1.3.1979 while the applicants came to be promoted on ad hoc basis as UDC subsequent to the promotion of Walvekar. At the time of promoting Walvekar as UDC on ad hoc basis with effect from 1.3.1979, the cases of the applicants who were senior to Walvekar were not considered nor any of the applicants sounded as to whether they were willing to be promoted on ad hoc basis to fill up the vacancy arising outside Bangalore. Walvekar who was promoted on ad hoc basis as UDC continued in the said post uninterruptedly without any reversion and was also regularised in the post

AM
19/11

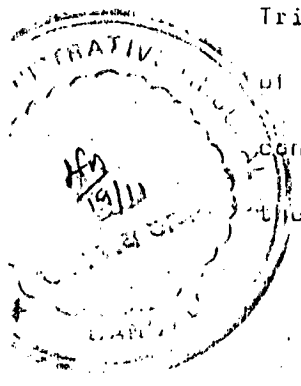
of UDC with effect from 10.5.1982. Consequent upon such promotion earlier to the applicants, the pay of Walvekar was fixed higher to the applicant taking his service as UDC on ad hoc basis with effect from 1.3.1979 while the applicants who were seniors to Walvekar are getting less pay due to the fact that they came to be promoted on ad hoc basis as UDC subsequently and later came to be regularised in the post of UDC.

7. The two questions that arise for determination in these applications are these:

(i) Whether this Tribunal has no jurisdiction to entertain the claim of the applicants and the applications are also barred by limitation?

(ii) Whether the applicants are entitled to the claim of stepping up of their pay as UDC to be on par with that of Walvekar?

8. Adverting to the first question it was strenuously urged for the respondents that the ad hoc promotion of Walvekar as UDC was effected in the year 1979 and so also that of the applicants and if the applicants were aggrieved in any manner they ought to have approached the proper forum immediately thereafter and the applications filed in 1980 to seek redressal of such grievance is clearly barred by limitation and further that this Tribunal has no jurisdiction to entertain such a claim the cause of action for which arose more than three years prior to the constitution of this Tribunal. It was, therefore, urged that these applications are liable to be dismissed both on the ground



of jurisdiction, as well as limitation. It was also pointed out that gradation lists prepared over the years have been published and they show clearly the pay drawn by the applicants as well as Balvekar and the applicants who were aware of the respective pay drawn by them as well as Balvekar having slept over their rights, if any, cannot now in the year 1990 file the present applications seeking stepping up of their pay.

5. For the applicants it was contended that it was only subsequent to the implementation of the IV Pay Commission Report that the applicants came to know about the disparity in the pay drawn by them and their junior Balvekar and thereafter they gave representations to the authorities to remove the anomaly and step up their pay on par with that of Balvekar and it was only by the impugned communication dated 15.11.1989 that they were informed the reason for not redressing their grievance and the applications filed are, therefore, within limitation. It was also contended that the disparity in the pay of the applicants vis-a-vis their junior Balvekar is continuing every month and is a continuous wrong or injury and therefore this Tribunal has got to entertain these applications and give appropriate relief. It was stated that if the Tribunal feels that due to the delay in approaching this Tribunal, it would not be proper to give monetary benefits to the applicants in respect of the stepping of their pay from the dates claimed in the applications, the Tribunal may restrict the award of monetary benefits from any appropriate date that the Tribunal may deem fit in the facts and circumstances of the case. To buttress this contention he

14/11/91

- 9 -

relied upon the ruling reported in 1990 LAB I.C. NOC81.

10. On carefully examining the respective contentions urged, we are inclined to agree with the contention urged for the applicants. The wrong complained of by the applicants is a continuing wrong. It is seen that the applicants were making representations to the authorities concerned to set right the wrong and it was only by way of the impugned communication dated 15.11.1989 that the respondents actually spelled out the reasons for rejecting their claim. It has been pointed out in the case of LOHARIAL PANDHEY V. STATE OF M.P. AND OTHERS reported in 1990 LAB IC NOC 81 by the Jabalpur Bench of the CAT that if a Government servant has been deprived of any legitimate rights and he is under a continuous wrong then the question of duty and laches does not arise provided that the tribunal has jurisdiction in terms of the cause of action. The disparity in the pay of the applicants vis-a-vis the said Walvekar who is admittedly junior to the applicants is a continuous wrong and these applications have been admitted by this Tribunal without any delay immediately after they were filed in February 1990. In the facts and circumstances of the case it cannot be said that this Tribunal has no jurisdiction to entertain these applications nor will it be proper for us to dismiss these applications as being barred by limitation.

Moreover as pointed out earlier it was only by way of the impugned communication dated 15.11.1989 that the applicants were informed of the reason for which their claim came to be refused. Therefore, if the claim is found to be legal restrict the award



of monetary benefits from a period subsequent to the period claimed in these applications. We, therefore, hold that these applications are not liable to be rejected either on the ground of want of jurisdiction or on the ground of being barred by limitation.

11. Adverting now to the merits of the claim, it is beyond any controversy that the applicants were and are admittedly seniors to the Balvekar. When Balvekar was promoted on ad hoc basis as UDC with effect from 1.3.1975, the case of any of the applicants were not considered for such promotion nor were they informed or enquired if they were willing to be promoted on ad hoc basis as UDC to fill up a post falling outside Bangalore while the applicants were working in Bangalore. It finds no merit in the contentions put forth for the respondents that the promotion of Balvekar as UDC on ad hoc basis was a fortuitous one and was only a temporary arrangement to fill up the post falling outside Bangalore and as such the applicants' claim for stopping up of their pay is unjustified. In the case of BALKISHOR V. SHRI ADMINISTRATOR reported (1981) 17 ATC 104 which case is relied upon for the applicants, the Hon'ble Supreme Court pointed out thus:

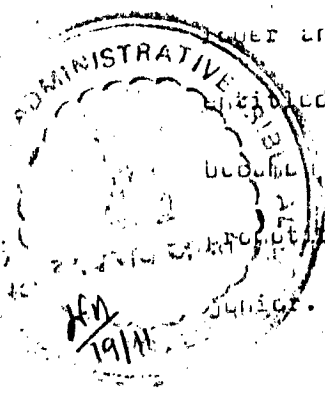
"In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted, without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution."

In the present case the promotion of Balvekar though on ad hoc basis as UDC without considering the case of the applicants who are seniors to the said Balvekar was continued uninterruptedly

HM
19/11

and subsequently came to be regularised with effect from 18.5.1982.

12. We may now refer to the rulings cited on behalf of the applicants. In the case of ANIL CHANDRA DAS AND ANOTHER V. UNION OF INDIA AND OTHERS reported in 1(1982) ATLT(CAT)(SN)67, the Calcutta Bench of the CAT was considering the question of stepping up of pay where the juniors to the applicants were getting more pay than the applicants therein and where the claim for stepping up of the Pay was denied on the ground that the juniors were promoted on ad hoc basis earlier on administrative grounds. It was held that the applicants therein were entitled to stepping up of pay as required under the relevant establishment service since the applicants and their juniors were in the same cadre before promotion and were promoted to the identical cadre after promotion and the unrevised and revised scale of pay of the lower and the higher posts in which the applicants and their juniors were entitled to draw pay were also identical. In the case of HERRAJ AGGARWAL V. UNION OF INDIA AND OTHERS reported in 1989 LAL IC 1800 the Ahmedabad Bench of the CAT has also ruled that when the petitioner therein and his junior were in the same cadre before promotion and were promoted to the identical cadre after promotion and the revised and unrevised scale of pay and the lower and higher post in which the petitioner and his junior were entitled to draw the pay were also identical, the petitioner became entitled to stepping up of his pay so that his pay on promotion becomes equal to the pay that was being drawn by his junior. In the present applications it is manifest and it is



also not disputed that the applicants and Walvekar were in the same cadre as LDCs before promotion and were promoted to the identical cadre after promotion as UDCs and the unrevised and revised scales of pay of the lower and higher posts in which the applicants and their junior Walvekar were entitled to draw the pay were also identical. The applicants in our opinion are entitled to the relief of stepping up of their pay so that their pay on promotion as UDCs becomes equal to the pay drawn by their junior Walvekar.

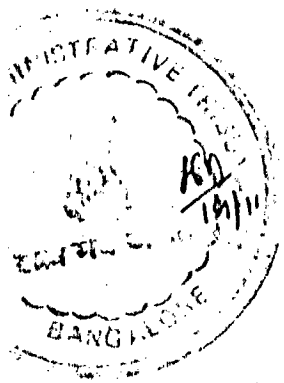
13. Now as regards the relief that has to be given, we have found that the applicants are entitled to the relief of stepping up of their pay to be on par with the pay drawn by their junior Walvekar in the post of UDCs. In the applications filed the applicants have sought for a direction to the respondents to remove the anomaly with retrospective effect from 1.3.1980 and to pay all consequential benefits to the applicants. In the representation dated 12.6.1981 produced at Annexure B in A No. 134/80 the request made is that they may be allowed to draw pay as UDC at Rs.360/- notionally fixing the date at that stage from 19.5.82 with next date of increment on 1.3.83 at pay of Rs.370/- Walvekar came to be promoted on ad hoc basis as UDC w.e.f. 1.3.79 and the applicants subsequently. Except the applicant Visvanath Patil in A No.134/80 ^{and Pullayyanganur A No 137/80} who came to be regularised as UDC w.e.f. 7.2.81 all other applicants came to be regularised as UDC w.e.f. 19.5.82 from which date Walvekar also came to be regularised as UDC. In the facts and circumstances of the case and consider-

ing the delay on the part of the applicants in approaching this Tribunal for redressal of their grievances we feel that in the interest of justice it would be reasonable and proper to direct the respondents to fix by way of proforma fixation, the pay of the applicants in the post of UDC on par with the pay drawn by the junior Walvekar as on 1.3.1983 by stepping up ^{to pay} of the applicants and fix the subsequent increments in the scale of pay to which they are entitled accordingly and further direct that the applicants would be entitled to monetary benefits only w.e.f. 1.3.85. These applications have been filed in February 1980. We decline to award monetary benefits consequent on the refixation of pay for the period earlier to 1.3.1981.

14. On the reasons aforesaid we allow these applications to the extent indicated above and pass the following order and give the directions infra:

(i) We set aside the impugned communication dated 15.11.85 rejecting the claim of the applicants for stepping up of their pay.

(ii) We hold that the applicants are entitled to the relief of stepping up of their pay in the post of UDC and direct the respondents to remove the anomaly by stepping up the pay of the applicants so that their pay becomes equal and on par with the pay ~~xxxxxxxxxxxx~~ drawn by their junior Walvekar w.e.f. 1.3.1983 and fix by proforma fixation the pay with effect from that date viz. 1.3.1983 and the subsequent increments accordingly in the pay scale to which the applicants are entitled and work out the difference. We also direct the respondents to pay to the applicants the difference arrived at by way of such fixation w.e.f. 1.3.1983 declining the monetary benefits prior to 1.3.1983.



(iii) Respondents to work out the difference and pay the balance to the applicants within three months from the date of communication of this order.

No costs.

The original judgment be kept in A No.133/90 and a true copy of the same be placed in the other connected cases disposed of by this order, for the purpose of record.

h o N
sd-

BERBER (A)

sd-

BERBER (S)

LSV

TRUE COPY

SECTION OFFICER
CENTRAL RECORDS
GENERAL INVESTIGATION
DEPT. OF JUSTICE

Copy
[Signature]

IN THE HONOURABLE ADMINISTRATIVE TRIBUNAL, AT BANGALORE

APPLICATION No. /1992

BETWEEN:

Smt. R. Indira,

... Applicant

A N D:

The Regional Director,
ESI Corporation and others,

.....Respondents

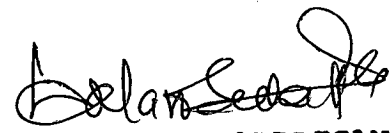
APPLICATION UNDER SECTION 21(%) OF THE ADMINISTRATIVE

TRIBUNALS ACT:-

The applicant in the above case most respectfully
begs to submit that, for the reasons stated in the
accompanying affidavit, this Honourable Court may be
pleased to condone the delay if any, in filing the main
application and dispose of the same on merit, in the
interest of Justice and Equity.

Bangalore.

Date: 22-9-1992


ADVOCATE FOR APPLICANT

28

IN THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,
AT BANGALORE

APPLICATION No. /199

BETWEEN:

Smt. R. Indira

... Applicant

A N D:

The Regional Director,
E.S.I. Corporation, Bangalore.

... Respondents

AFFIDAVIT

I, Smt. R. Indira, Wife of Dayananda Chadaga,
Major, working as Upper Division Clerk, Employees
State Insurance Corporation, Local Office, Ashoknagar,
Mangalore, do hereby solemnly affirm and state on
oath as under:-

1. I submit that, I have filed a separate application
under Section 19 of the Administrative Tribunal's Act,
against an order/reply bearing No.385.KAR.ADM-10(769)/90,
dated 26-3-1990. Further, I have also prayed for a
declaration that my rate of pay in the cadre of Upper
Division Clerk, was bound to be stepped up on par
with that of my Junior Sri. P.S. Walvekar, of the
same organisation, but working at different office.

....2..

No. of Corrections:

R. Indira



2. I submit that, I am working at Mangalore and I noticed the anomaly when the Seniority list of the Group 'C' and 'D' employees as on 1-3-1989 was published some times in early 1990. Immediately, thereafter, on 16-3-1990, I made a representation to the first respondent to step up my pay on par with that of my Junior Sri. Walvekar. However, my request was turned down by the first respondent by a letter dated 26-3-1990. But, at that time I was working at Mangalore and could not immediately come over to Bangalore to contact any Advocate or to file an application before the Central Administrative Tribunal on my own.

3. But in the meanwhile, I came to know that, some of my colleagues, posted at Bangalore and who were similarly placed, had approached this Honourable Court, with a prayer for stepping up of their respective rate of pay on par with that of their Junior Sri. Walvekar. The application was pending. At times, I made enquiries regarding

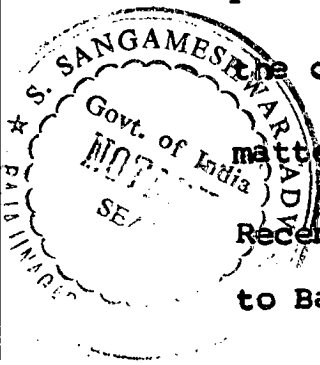
the outcome of the case, but I was told that, the matter was pending before the Honourable Court.

Recently, in last week of July 1992, when I came to Bangalore, for a training programme, in the

No. of Corrections:

R. Indira

...3...



first respondent office. I was told by my friends that, the case regarding stepping up of pay had been disposed of and Honourable Court had allowed the prayer of my similarly placed colleagues.

4. I submit that, during my stay at Bangalore, I contacted my Advocate and requested him to file an application before the Honourable Court. Thus, I submit that, any delay in filing the accompanying main application was unintentional and beyond my control, as I was staying out of Bangalore. I submit, that, the anomaly in the rate of pay drawn by me, compared to that of the rate of pay of my Junior Sri. Walvekar; is still continuing.

5. I therefore submit that, this Honourable Court may be pleased to condone the delay if any, in filing the above application and dispose of the case on merit in the interest of Justice and equity. My case is covered by the Judgement in Applications No.133 to 138 of 1990, dated 19-11-1991.

No. of Corrections:

.....4....



R. Indira

31

- 4 -

6. I further swear that, this is my name and signature and what is stated above in Para (1) to (4) above, are true to the best of my knowledge, belief and information.

Bangalore,


Date: 23-7-1992

Identified by me.

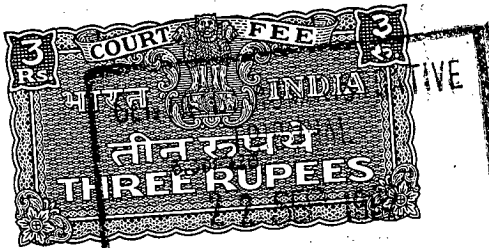

ADVOCATE

No. of Corrections: 


DEPONENT

SWORN TO BEFORE ME

NOTARY
RAJAJINAGAR, BANGALORE





32

IN THE COURT OF

BANGALORE

HAT

Bangalore

Appln No. 222 of 1992

Plaintiff/s, Petitioner/s
Appellant/s, Complainant/s,
Decree-Holder/s/Caveator

Vs.

Defendant/s, Respondent/s
Opponents, Accused
Judgement-Debtor/s

Smp R-India

R-ESSE Bangalore

I/ We Smp R-India the applicantNos. in the above matter hereby appoint and retain
Sri V. Narasimha Holga Alkagb

to appear act and plead for me/us in the above matter and to conduct/ prosecute defend and the same in all interlocutory or miscellaneous proceedings connected with the same or with any decree or orders passed therein, appeals and or other proceedings arising therefrom and also in proceedings for review of judgement and for leave to appeal to Supreme Court and to obtain return of any documents filed therein, or receive any money which may be payable to me/us,

2. I/We hereby authorise him/them on my/our behalf to enter into a compromise in the above matter, to execute any decree/order therein, to appeal from any decree/order therein and to appeal to act to plead in such appeal in any appeal preferred by any other party from any decree/order therein.

3. I/We further agree that if I/We fail to pay the fees agreed upon or to give due instructions at all stages he/they is/are at liberty to retire from the case and recover all amounts due to him/them and retain all my/our monies till such dues are paid.

Executed by me/us this 23rd day of July 1992 at B/lr

R. India

Signature/s

Executant/s are personally known to me and he has/they have signed before me

Satisfied as to identity of executant/s signature/s

[where the executants/are illiterate, blind or unacquainted with the language of vakalath]

Certified that the contents were explained to the executants/s in my presence in language known to him/them who appears/s perfectly to understand the same and has/have signed in my presence.

Accepted

V. N. HolgaAdvocate for ApplicantDate: 22/7/92

Address for service

No. 317, 12th A Main6th Block, RajahmundryBangalore - 560010

8. CRP 1167/88 (B)

IA VI for subsequent events.

C/W

CRP 1168/88

-do-

CRP 1189/88

C/W

CRP 1190/88

-do-

9. CRP 1199/88 (B)

10. CRP 1306/88

11. CRP 1359/88 (B)

12. CRP 1453/88 (B)

13. CRP 1455/88 (B)

14. CRP 1614/88 (B)
LGR PUT UP

15. CRP 1672/88 (D)

16. CRP 1677/88 (B)

17. CRP 1678/88 (B)

18. CRP 1698/88 (B)

Srl: M.S. Bhujanga Rao for ptr.
Srl: S. Narayan for Respts.
Srl: S. Sudarshana Reddy for Respts.

-do-

-do-

-do-

Srl: H.S. Jais for ptr.
Srl: N.D.R. Ramachandra Rao for ptr.
Srl: C.N. Kamath for Respts.
Srl: H.N. Nanjundiah for ptr.
Srl: N. Kumar for Respts.
M/s: S.V. Raghavachar and
Srl: G.R. Karissadavaru for ptr.
Srl: Devanar V. Athyanarayana for Res.

Srl: S.K. Jishi for ptr.
Srl: Kestur N. Chandrashekhar for ptr.
Srl: and C. Govrishankar for Res.

Srl: D.O. Kotresh for ptr.
Srl: H. T. Nageshwar Murthy and
Srl: K. Nimesh for Respts.
Srl: C.M. Desai for ptr.
Srl: Aswathanarayana Reddy for Respts.

Srl: M.B. Prabhakar for ptr.
Srl: S. Shikarshetty and
Srl: R.V. Ravindra for Respts.
Srl: V.K. Kulkarni for ptr.
Srl: S.V. Srinivasan for Respts.

Srl: Youngs Alkhan for ptr.
Srl: C.R.V. Swamy for Respts.
Srl: C.R.V. Swamy for Respts.

FOR HEARING ON 4-6-1992 :-

The Special Agent,
The House-Rate Controller R1 &
2 (SD)

STI: Sayanarayana Swayam for pfr.,
STI: C. S. Krishnamurthy for
Receipts.

Sgt. K. S. Desai for ptr.

Srl. P. P. Mathanna for CAVTR 1 & 2.
Srl. G. B. Lawasara for ptnr,
Srl. A. V. Gupta for CAVTR.
Respts.

W/V
for Subsequents.

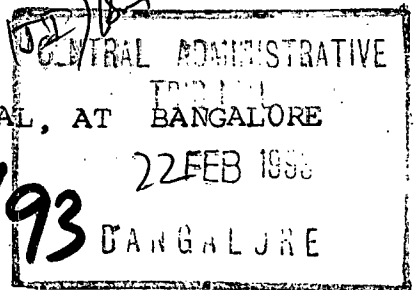
Recd. Assets of M.P. Kith
Memorandum of Facts Reg. delay
from Smt. V.N. Holle, Adv.
P. examine R22/2
Desires this O.A.
with most to be posted
on 2/3/93 (Tue)
So (22/2) S.R.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AT BANGALORE

M. P. No.

in

APPLICATION No. 222/1992



BETWEEN:

Smt. R. Indira,

... Applicant

A N D:

The Regional Director,
ESIC(R0)Karnataka,
Bangalore, and another,

... Respondents

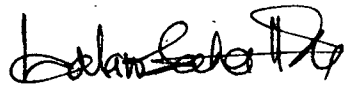
APPLICATION UNDER SECTION 21(3) OF THE ADMINISTRATIVE TRIBUNALS

ACT-1985:-

That for the reasons stated to in the accompanying
~~affidavit~~ Memorandum of Facts, this Honourable Court may
be pleased to condone the delay if any, in filing the
main application and dispose of the same on merit, in the
interest of of justice and equity.

Bangalore,

Date: 22-2-1993



ADVOCATE FOR APPLICANT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AT BANGALORE

MR APPLICATION No. *76/93* /1292

BETWEEN:

Smt. R. Indira, ... Applicants

A N D:

The Regional Director,
ESIC, Bangalore and another, ... Respondents

MEMORANDUM OF FACTS

I, V. Narasimha Holla, Advocate, No.317, 12th A Main Road, 6th Block, Rajajinagar, Bangalore-10, do hereby state as under.

1. I have been retained as the applicant's counsel in the above case, and am thus conversant with facts and circumstances of the case, based on records and oral instructions given by the applicant.

2. I submit that, the applicant has filed an application under Section 19 of the Administrative Tribunals Act, praying for stepping up of her pay on par with her junior one Sri P.S. Walvekar. There was some delay in filing the above application and the application was filed in September, 1992. Alongwith the main application the applicant has also filed Misc. Petition for condonation of delay if any, under section 21(3) of the Act. The said Misc. Petition is filed on September, 1992, but accompanying affidavit was sworn in July 1992, when the applicant had come to Bangalore. Thus, there was few days delay between the date of filing application under Section 19 along with Misc. Petition and the date on which the affidavit accom-

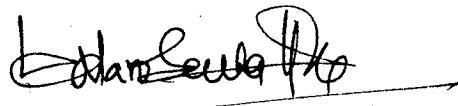
praying condonation of delay miscellaneous petition was filed. I submit that, this was due to the fact that, I had changed my residence during July 1992, from My earlier residence No.1762, 6th Main, 'D' Block, II Stage, Rajajinagar, Bangalore-10, to present residence No.317, 12th A Main Road, 6th Block, Rajajinagar, Bangalore-10. During shifting, the sworn affidavit, and other papers including main applications, duly signed by the applicant were misplaced and could not be traced for quite a some time. Hence, the application could not ^{be} filed in July, 1992. Instead it was filed in September, 1992. This delay was unintentional and was for bonafide reasons.

Wherefore, this Honourable Court may be pleased to condone the delay caused after the applicant signed the main application and had sworn the affidavit accompanying the Misc. Petition in the interest of Justice.

This is my name and signature and what is stated above is true and correct.

Bangalore,

Date: 22-2-1993


ADVOCATE FOR APPLICANT

Recd. 2 sets of reply from
Smt. Jayakanthi, Adv. Understood
Case is in C.H.T. today.
pl. see. R. 26/5
C.O.T.

CENTRAL ADMINISTRATIVE TRIBUNAL
In the High Court of Karnataka at Bangalore

PRESENTATION FORM

Application No. 222 of 1993

Serial No.

Bangalore District
Between

Advocate Sri

M. Papanna, B.A., B.L.,
ADVOCATE
99, Magadi Chord Road,
Vijayanagar,
BANGALORE-560 040

And

Regional Director
E.S.I. Corporation

Sl. No.	Description of Papers Presented	Court fee affixed on the papers
1.	On the Memo.....petition	
2.	On the Memo of Appeal Reply Statement	
3.	On Vakalat	
4.	On Certified Copies	
5.	On I. A. No.....for	
6.	On Process Fee	
7.	On Copy Application	
8.	
9.	
10.	
TOTAL		

Number of Copies Furnished

Other side served

Presented by

Advocate for petitioner /

Appellant / Respondent

Advocate's Clerk

Date.....199

Received Paper with
Court fee labels as above

Receiving Clerk

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT BANGALORE.

Application No.222 of 1993.

Applicant:-

Smt.R.Indira.

- Vs -

Respondents:-

The Regional Director,
E.S.I. Corporation,
Bangalore,
and another.

The respondents in the above application
file the following reply:-

1. The applicant has prayed in the above application for a direction to these respondents to step-up her pay to be on par with one Shri.P.S. Walvekar, on the ground that she is senior to the said Walvekar and that the latter is drawing more pay than what she has been drawing. She is not entitled to any of the reliefs in this application. Her application is barred by limitation and is also not maintainable in law.

2. It is admitted by the applicant that the above said Walvekar was promoted on ad-hoc basis with effect from 1-3-1979, while she was promoted on ad-hoc basis with effect from 16-8-1979. It is these promotions, which are sought to be challenged now by the applicant in this application and at this distance of time. This Hon'ble Tribunal has no jurisdiction to re-open or examine

...2.



these promotions. Moreover, Shri.Walvekar is not made a party of this application. This application is, therefore, liable to be rejected.

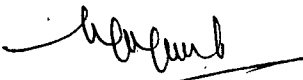
3. The allegations that the Gradation List of the employees of the Corporation as on 1-3-1990 was published in December 1990 is true. The Gradation List, showing the fact that the said Walvekar was drawing more pay than the applicant, was published on 10-12-1990 and the applicant knew and is deemed to have known this fact when the list was published. This application, which is filed after one year from the date of the publication of the list is barred by limitation. The grounds, urged for the condonation of the delay, are neither true nor sufficient for condoning the delay. The applicant has not shown any sufficient cause for condoning the delay and the application is liable to be rejected.

4. It is no doubt true that the applicant is senior to Shri.Walvekar and that the latter joined the services of the E.S.I. Corporation with effect from 18-3-1976, while the applicant joined the services with effect from 5-2-1976. It is also true that Shri.Walvekar was promoted to the post of Upper Division Clerk on ad-hoc basis with effect from 1-3-1979 and that the applicant was promoted as Upper Division Clerk on ad-hoc basis with effect from 16-8-1979, that on promotion to the post of Upper Division Clerk, the pay of Shri.Walvekar was fixed at

Wagurh

at Rs.330-00 per mensem with effect from 1-3-1979 in the pre-revised scale, while the pay of the applicant was fixed at Rs.330-00 with effect from ~~16~~ 16-8-1979 in the same scale and that the applicant had drawn her first increment as UDC on 1-8-1980, while Shri.Walvekar had drawn the same on 1-3-1980. It is also true that the pay of the applicant and Shri.Walvekar as on 1-3-1989 was Rs.1440-00 p.m. and Rs.1470-00 p.m., respectively.

5. Shri.Walvekar was working at Belgaum and the applicant was working in Bangalore, when a temporary vacancy of Upper Division Clerk arose at Belgaum. It is the experience of this Corporation that no official from Bangalore was willing to be posted to a temporary post outside Bangalore on ad-hoc ~~basis~~ promotion and for a short period. Since Shri.Walvekar was working at Belgaum and was otherwise qualified for being promoted, he was appointed as Upper Division Clerk on ad-hoc basis with effect from 1-3-1979. The Offices of this Corporation are situated in various parts of the State of Karnataka and the vacancies for a short period were being filled-up on purely temporary and ad-hoc basis from amongst the senior officials, who were working at the respective places, in the interest of the officials themselves, as the officials did not want to be disturbed from their places of working for filling up temporary vacancies even on promotion at distant places; and, the Corporation also did



not want to disturb the officials, against their wishes, for filling up temporary vacancies on promotion.

6. However, promotion on regular basis have been considered a strictly in accordance with the seniority; and, accordingly, the applicant was promoted on regular basis subsequently when her term came, while Shri.Walvekar was promoted on regular basis when his term came. Since Shri. Walvekar had drawn his increment earlier, having worked on ad-hoc basis, his pay was maintained when he was regularly promoted. The differences in the rate of pay of the salaries of the applicant as well as Shri.Walvekar is thus on account of the fact that Shri.Walvekar had earned his increment earlier than the applicant. The applicant, not having earned her increment and not having worked in the higher post, is not entitled to claim any parity with Shri.Walvekar in the payment of her salaries.


7. It is no doubt true that the applicant made a representation on 16-3-1990, requesting these respondents to step-up her pay at par with Shri.Walvekar. Her request was duly examined and has been negatived. The fact that she made a representation on 16-3-1990 and that the same was subsequently rejected by these respondents does not give her any cause of action for her to approach this Hon'ble Tribunal, as it arose on 1-3-1979 & itself. The applicant is not entitled to the relief which she has prayed in

Handwritten signature

the application and there is no substance in any of the grounds, urged in the application.

8. These respondents hereby deny the truth and the correctness of the allegations, made in the above said application, which have not been specifically traversed or admitted herein and which are contrary to the averments made in this reply statement.

Wherefore, the respondents pray that this Hon'ble Tribunal be pleased to dismiss the above application with costs, in the ends of justice.

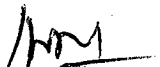

Advocate for the Respondents.


Respondents.

I, the Regional Director, Employees State Insurance Corporation, Bangalore, ~~xxx~~ hereby declare that what is stated above is true to the best of my knowledge, information and belief.

Bangalore.

Dated: -5-1993.


First Respondent.

FOR HEARING ON 15.4.1993

1. MFA 1947/88(LAC)
(LCR kept below)
C/w
MFA 2264/88 (LAC)
LCR placed below
Sri.S.M.Chandrasekhar for Applt.,
The Govt. Adv. for R-1s,
Sri.M.B.Bhat directed to take
notice for proposed R-2,

-do-
MFA 2423/88 (LAC)
(LCR kept below)
2. MFA 903/89 (LAC)
LCR kept below
MFA 907 & 910/89 Transferred
to D.T. Karwar.
C/w
The Govt. Adv. for Applt.,
Sri.Vigneswar S.Shastri for Respts.

C/w
MFA 904/89 (LAC)
LCR kept below
The Govt. Adv. for Applt.,
Smt.Annal Kum Janardhan Bhat Rsd.

C/w
MFA 908/89 (LAC)
(LCR placed below)
Sri.Vigneswar S.Shastri for Respts.

MFA 1709/89 (LAC)
Sri.Vigneswar S.Shastri for Applt.,
L.A.O. Asst. Commissioner Karwar
R-sd.

3. MFA 1014/89 (LAC)
(LCR kept below)
(Data matter)
C/w

MFA 1249/89 (LAC)
a/w IAI V for Orders.

Sri.K.V.Narayana for Applt.,
Sri.M.Pennu for R-1 to 6,

4. MFA 2214/88 (LAC)
(LCR kept below)
WP 4820 and 21/89 (put up
(Data matter).
Sri.U.L.Narayana R.O.
M.B.Prabakar for Applt.,
The Govt. Adv. for R-1,
Sri.R.V.Jayaprakash for R-2,

M/s. Vijayashankar Associates
for Applt.,
Sri. Jayakumar S. Patil
U.L. Narayana Rao for R-1,
Asst. Commr. Gadag R-2 sd.

The Govt. Advocate for Applt.,
Sri. M. B. Prabhakar for R-3,
M/s. Vijayashankar for R-4,

M/s. Vijayashankar Associates
for Applt.,
Sri. Jayakumar S. Patil &
U.L. Narayana Rao for
R-1 (1) & (2)
Asst. Commr. Gadag R-2 sd.

5. MFA 1228/89 (LAC)
(LCR kept below)

C/w

MFA 566/87 (LAC)
(Appeal already
D.D. on 27.8.92)

C/w

MFA 1229/89 (LAC)
(LCR kept below)

C/w

MFA 1230/89 (LAC)
LCR placed below

C/w

MFA 1231/89 (LAC)
(LCR kept below)

-do-

S.L.N.S.S. Inivasan for Applt.,
K.L. Manjunath to take notice
for Respts.,

7. MFA 2351/88 (LAC)

Sri. K.V. Narayanaappa for Applt.,
Ravi S. Bhalikar for Govt/R-1 to 4.

8. MFA 2502/88 (LAC)

M/s. P. Vishwanath Shetty for Applt.,
The Govt. Advocate for R-1,
Sri. V.V. Padhyaya for R-2,
M/s. P. Vishwanath Shetty for Applt.,
R.G. Lal to retaining or with The Govt. Advocate for R-1 & 2,
MFA FR 9254/88-(LAC)
A/w

MFA 1939 & 1940/88 put up.

9. MFA 1395/90 (LAC)

The Govt. Advocate for Applt.
Sri. N.K. Patil for Respts.,

10. MFA 1397/90 "

-do-

11. MFA 1398/90 "

-do-

12. MFA 1399/90 "

-do-

CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE.

DATED THIS THE 17TH DAY OF JUNE, 1993.

PRESENT:

Hon'ble Mr. Justice P.K.Shyamsundar, .. Vice-Chairman.
And
Hon'ble Mr.V.Ramakrishnan, .. Member(A)

APPLICATION NUMBER 222 OF 1992

Smt. R.Indira,
Upper Division Clerk,
Employees' State Insurance Corporation,
Local Office, Ashoknagar,
Mangalore. .. Applicant.

(By Sri V.N.Holla, Advocate)

v.

1. The Regional Director,
Employees' State Insurance Corporation,
Regional Office (Karnataka),
No.10, Binny Fields,
Bangalore-560 023.
2. The Director General,
Head Quarters,
Employees' State Insurance Corporation,
Kotla Road, New Delhi-110 002. .. Respondents.

(By Sri M.Papanna, Advocate)

--

This application having come up for hearing to-day, Hon'ble Vice-Chairman made the following:-

O R D E R

Heard Mr. Holla, learned counsel for the applicant and Sri M.Papanna, learned counsel for the respondents. It is submitted alround that there is a decision of this Tribunal bearing on the question in controversy in this application rendered by this Tribunal in O.A.Nos. 133 to 138 of 1990 decided on 19-11-1991. We need hardly mention that we are bound by that

decision. But, then we are told the Supreme Court has since entertained a Special Leave Petition in other matters bearing on the very controversy arising subsequently although, it would appear very strangely, the Tribunal's decision referred to supra itself was not taken up to the Supreme Court for consideration. Be that as it may, it seems to us we can find a way out of this impasse by making an order in terms as made in O.A.No.133 to 138 of 1990 referred to supra and at the same ^{time} making it clear that the rights of the parties herein will always be regulated on the basis of whatever order is passed by the Supreme Court in the pending Special Leave Petition supra. With these observations the above application stands disposed of. The financial benefits flowing from the disposal of this application stands limited to a period of one year prior to the presentation of the application. No costs.

[Signature]
MEMBER (A) 17/14/95

[Signature]
17/14/95
VICE-CHAIRMAN.