

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:502.94 .

Dated, this Friday the 5th day of November 1999.

Smt. Ishwari U Advani Applicant.

Shri G.K.Masand Advocate for the
Applicant.

VERSUS

E.S.I.C & Anr Respondents.

Shri V.D.Vadhavkar for
Shri M.I.Sethna Advocate for the
Respondents.

CORAM: HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.
HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

- (i) To be referred to the Reporter or not? No
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal? No
- (iii) Library? No.

B.N. Bahadur
(B.N.BAHADUR) /
MEMBER(A)

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MUMBAI BENCH
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DATED THE _____ DAY OF _____ 99.

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.
HON'BLE SHRI B.N.BAHADUR, MEMBER(A).

Smt.Ishwari U Advani,
working as Manager at Wagle Estate,
Thane Local Office of
Employees State Insurance Corporation,
and residing at
Building No.6/A/85, Daulat Nagar,
Thane.

... Applicant.

By Advocate Shri G.K.Masand.

v/s.

1. Employees State Insurance Corporation,
having its head office at ESIC Building,
Kotla Road,
New Delhi.

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

... Respondents.

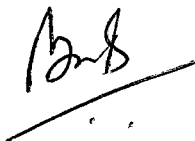
By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna.

(ORDER)

(Per Shri B.N.Bahadur, Member(A))

This is an application filed by Smt.Ishwari U Advani
seeking the reliefs as follows:-

- (a) That this Hon'ble Tribunal will be pleased to direct the
respondent to convene Review D.P.C. for considering the



her juniors Shri H.G.Sahani, and others and on the basis of the said review, to promote the applicant to the post of the Manager/Insurance Inspector in May, 1981.

- (b) That Respondent be directed to fix the pay of the applicant in the post of Manager/Insurance for May 1981 and to pay the difference of pay and allowance that may become payable to her on that basis.
- (c) That the costs of this applicant be awarded to the applicant.
- (d) That such other and further as may appear just and proper be granted in favour of the applicant.

In short, therefore, she seeks that her date of promotion to the post of Manager/Insurance Inspector should be accorded [1~promotion from the date her erstwhile juniors were promoted to the said post in May,1981.

2. The facts of the case, as put forth by the applicant, are that applicant joined as lower division clerk(LDC) in 1961 in the respondent Corporation, and through normal promotion, promoted as headclerk in April,78 on an adhoc basis. She was reverted from this post on 1/12/1980, although the office order was issued on 28/2/1981. Simultaneously, some officials junior to her as UDCs including Shri Sahani were promoted as Headclerk on 1/12/80 on the basis of promotion order on the same date viz. 1/12/80. Applicant was again promoted as Head Clerk w.e.f. 1/1/82. Applicant avers that during this 13 month period between 1/12/80 and 1/1/82 applicant's juniors including Shri Sahani and 1/1/82 applicant's juniors including Shri Sahani received



further promotions beyond Head Clerk i.e. to the post of Manager/Insurance Inspector. She claims that the posting to the post of Manager/Insurance Inspector is on non selection basis.

3. After reciting the basic facts, the applicant goes on to describe the details of the litigation that ensued thereafter in the High Court. She has described the proceedings in the High Court in great detail. Applicant states that she was promoted as manager w.e.f. 31/1/89 on the basis of her seniority position being serial No.43. Applicant contends that her seniority position should be 36 in the post as Head clerk. Applicant goes on to say that with the correction of seniority position under the list she has become entitled to promotion from the date of promotion of her juniors. It is in these circumstances that applicant approaches this Tribunal seeking the reliefs, as mentioned above.

4. The respondents have filed a reply statement. They have stated that the petition is misconceived and discloses no cause of action which can be entertained by the Tribunal. They have annexed a statement at Ex-1 which they assert shows the number and nature of proceedings in the case of the applicant. It is averred that the grievances raised by the petitioner have been redressed from time to time within the directions of the appropriate judicial forums. It is contended that the applicant is abusing the process of law and that the application deserves to be dismissed.

5. The reply statement then goes on to deal with the merits of the case. It is averred that as per the decision in ~~as per the~~

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~~decision~~ in WP-573/84, the entire 1981 list

was scrapped and a new list was prepared. It is stated that the new list was prepared on the basis of quota reserved for feeder cadre of UDC as also for the quota of assessment on merit at 50% each. This provision was again challenged by the applicant in notice of motion No.130/87. It is agreed that the court had ordered that the applicant should be placed above her first junior, whereupon a fresh list was again prepared in 1992 and the applicant placed at Sr. No. 36 with Shri Sahani and other juniors being placed below her. The respondents further states that by the time the new list was finalised on 8/1/92 as per the directions of Hon'ble Variava J, Shri Sahani and others had already been promoted to the post of Inspector on the basis of the then operative seniority list. These persons were not reverted on the preparation of the reverted on the preparation of t, infact, many of them had by that date as shown in Annexure Ex-2 of reply statement.

6. The further litigation in the High Court initiated by the applicant is then described in detail, and it is stated that this was dismissed on 10/2/94(Exhibit-3). It is further averred that the Department is bound to operate the 8/10/92 seniority list and that the fact Shri Sahani and 6 Ors were promoted on the basis of this seniority list, which was ultimately quashed, did not institute a vested right on the petitioner for automatic promotion with back date.

7. We have carefully seen all the documents filed in the

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case, and have heard the learned Counsel on both sides.

8. Arguing the case, the learned counsel for applicant strenuously took us over the facts of the case in full detail, the decisions taken by the High Court, and documents like office orders, seniority list etc which are all very relevant to the issues in this case. We are not repeating these here as they are already mentioned in gist while recalling the pleadings in OA or are otherwise on record.

9. The learned applicant stated that the applicant was available all along for promotion, but was denied the opportunity. She had been fighting for her rights throughout. It was argued that the remedy was also indeed provided to her by High Court, but that the respondents had failed to give her the benefits. The case of her immediate junior, Shri Sahani, was cited as an example to press home the point that applicant's reversion deserves to be quashed and that it should be assumed that she was not reverted. Shri Sahani's promotion is effective from 1981 and this is the benefit that is applicant's rightful due.

10. Referring to the point regarding the promotion being adhoc, it was stated that a senior has a right to be considered for adhoc promotions also. In support of this point judgement of the Delhi High Court (1973 AISLJ 239) was cited. The judgements of the Bombay High Court mentioned in the pleadings as also during arguments were referred to and a copy of judgement in WP-572/84 was provided.

11. It was also argued that applicant was never judged as unfit

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15. It is relevant to note that in April, 1978 the applicant was made Headclerk on an adhoc promotion in a clear vacancy. It is stated that no DPC was held because the promotion was adhoc. Admittedly, Sahani was promoted in May, 1981. As per the chronology of events (reproduced at Ex-1 by respondents) it is seen that the promotion list dated 28/2/81 was quashed and that the petitioner was given promotion by High Court's order w.e.f. 1/12/1980 on regular basis with consequential benefits. Seniority was decided by placing her just above her first junior. Her seniority was admittedly restored to Sr.No.36 on 8/10/92 i.e. above Shri Sahani and others who are the points of contention.

Subsequent petitions in CP and petitions for clarification made by the applicant to the High Court have not met with success.

16. One important point before us is that the respondent agrees that after the correction of the seniority list in 1992 the applicant has been ranked higher than Shri Sahani and others. However, the contention is strongly made that this does not ipsofacto give her the benefit of promotion from the date on which Shri Sahani was promoted, because such promotions had already been made by the respondents on the basis of the earlier seniority list. It is also true, that even the fact that the applicant did not succeed in the High Court in this regard, and that the term "consequential benefits", used by the High Court, did not give her the automatic benefit of being considered for promotion w.e.f. 1/5/81 (for the post of Inspector).

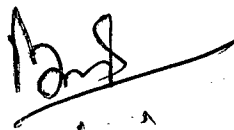
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during the entire period of selection and the post was a non selection post.

12. Arguing the case on behalf of respondents, their learned counsel asserted that all promotions before 1989 were adhoc and that this was an important point against the applicants claims. Even if the matter were to be agreed to on the contentions of the applicant then there may be others apart from the applicants who may be deserving like Shrichand, etc. Learned counsel cited the case of Shehal Amir (ATR 1987 (2) CAT-19) Madras to make the point that there was no protection against adhoc promotions and that the Next Below Rule(NBR) does not apply to adhoc promotions. Even when NBR applies, it is only in a one to one ratio.

13. Counsel for respondents continued to argue that the provision of notional benefit to the applicant with reference to date of the adhoc promotions will upset the ratio of Swaminathan's case and that regular promotion can only be from the date of regular promotion of Shri Sahani, at best. The provisions of FR 22 were recalled in this regard.

14. It must be stated at the outset that as is clear the matter has been under litigation for a long time. Infact, it was stated that the applicant is now retired. The various issues have been agitated at different times and the matter has had the benefit of attention at the level of the Hon'ble High Court on more than one occasion. Needless to say, we cannot and would not go into those issues which are settled by the High Court, but can safely go into the issues that can justifiably be agitated in the background of the earlier litigation in the High Court.



17. It is also acceptable that in the absence of any other direction at that time the respondents were bound to operate the ~~available~~ ^{8/10/92} list for Headclerks for promotion. The point therefore to be decided is whether the quashing of the seniority list of Headclerks ultimately conferred a vested right on the petitioner for being promoted as Inspector from an earlier date, with reference to her junior's date of promotion.

18. Now it is clear that the High Court had gone into the matter in great detail not only once, but more than once. The dismissal of the contempt petition and the rejection of the application for clarification regarding the term " consequential benefits" are two factors which go against the applicant. The Hon'ble High Court had analysed the entire situation in detail and have consciously taken the above mentioned decisions.

19. Learned counsel for applicant drew support from the judgement in the case of Vasant Rao Roman (1993 SCC L&S 590), where the claim for promotion over juniors and for arrears of emoluments was allowed. In this case a literate shunter had not been considered for promotion because of shortage of number of firing KMs; however his claim has been allowed because he had been deputed by the Administration for table work, being literate. It was obviously on the ground that it was not his fault that he was unable to have the necessary number of firing KMs. The ratio settled in this case cannot help the case of the applicant.

20. Another case cited by the learned counsel for applicant is that of Balkishan v/s. Delhi Administration (1999 SCC L&S 879). In this case we have seen the facts and circumstances, it

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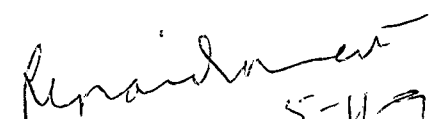
has been held that the junior concerned had been given benefit due to the faulty implementation of the order of the High Court. This had resulted in the supercession of his seniors. No Principle as such has been settled by the Hon'ble Apex Court, in this judgement, which could be stated to be applicable to the present case before us.

21. Given the facts and circumstances, described above we find strength in the contentions raised by the respondents. The matter has been agitated for years before the High Court and even after the applicant had filed petitions for contempt and for clarification they have not got benefits. This will definitely go against the case of the applicant in the relief sought herein. It is unfortunate that she has had to fight a legal battle for a long period of her career but a right for automatic assignment of date of promotion to the grade of inspector/manager with reference to the date of Shri Sahani/juniors cannot be accorded to her by the Tribunal. In view of the discussions above, we are not convinced that the applicant can be provided the reliefs she seeks.

22. In consequence this application is hereby dismissed with no orders as to costs.


(B.N. BAHADUR)
MEMBER(A)

05/11/95


(R.G. VAIDYANATHA)
VICE CHAIRMAN

5-11-95

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