

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI**

ORIGINAL APPLICATION NO. 1025/98

Date of Decision: 16.01.2003

Smt. S.K. Sahasrabudhe & Ors.

Applicant(s)

Shri S.P. Saxena.

Advocate for Applicants

VERSUS

Director General, ESIC & Ors.

Respondents

Shri V.D. Vadhavkar,

Advocate for Respondents

CORAM:

HON'BLE SHRI D.N. CHOWDHURY.

VICE CHAIRMAN

HON'BLE SMT. SHANTA SHAstry.

MEMBER (A)

1. To be referred to the reporter or not? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal? ✗
3. Library. ✓

(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1025/98
FRIDAY THE ^{TEN} THIRD JANUARY, 2003

CORAM: HON'BLE SHRI JUSTICE D.N.CHOWDHURY VICE CHAIRMAN
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

1. Smt. S.K. Sahasrabudhe
695, Narayana Peth,
Flat No.21, Ghaisas Construction,
Pune-411 030.
2. Mrs. Shailaja R. Superkar.
314/2, Mahatma Phule (Gunj) Peth,
Pune-411 042.
3. Mrs. Lalita Mahadevan
466, Rasta Peth,
Pune-411 011.Applicants

By Advocate Shri S.P. Saxena

Versus

1. Director General
Employees State Insurance Corporation,
Kotla Road, New Delhi-110 002.
2. Regional Director,
Employees State Insurance Corporation,
Lower Parel, Mumbai-400 013.
3. Director,
Employees State Insurance Corporation,
Plot No.689/690, Panchdeep Bhawan,
Bibwewadi, Pune-411 037. Respondents

By Advocate Shri V.D. Vadhavkar.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The grievance of the applicants three in number is that they have not been promoted to the regular and permanent post of Upper Division Clerk (UDC) against 25% quota reserved for candidates who pass the Limited Departmental Competitive Examination (LDCE) though the applicants have passed the examination and became

...2.

entitled for promotion in the vacancies of UDCs in 1985. The applicants are therefore seeking directions from the Tribunal to the respondents for granting them notional promotion as UDC against vacancies of 1985 with all consequential benefits.

2. The applicants are working as UDCs in the Employees State Insurance Corporation at Pune. They were initially appointed as LDC and regularised as follows: Applicant No.1 was appointed on 10.9.1980 and regularised on 25.9.1981, Applicant No.2 was appointed on 06.8.1981 and regularised on 13.7.1982 and Applicant No.3 was appointed on 14.4.1981 and regularised on 13.7.1982. Their next promotion was for the post of UDC. According to the recruitment rules for the post of UDC 75% of the vacancies are to be filled by promotion of the LDCs on seniority cum fitness basis. Remaining 25% of the vacancies are to be filled from amongst the candidates who passes LDCE. Accordingly, applicants had appeared in the LDCE against 25% quota in the examination which was held on 30.6.1985 and all the three applicants had passed the examination. According to the applicants, they have thus qualified and were entitled for promotion. However, they were not granted any promotion in 1985.

3. Subsequently, the applicants filed OA No.52/91 before this Tribunal praying interalia that they be

appointed retrospectively to the post of UDC from the date their juniors were promoted to the post of UDC along with all consequential benefits. The OA was finally decided on 02.02.1995 and a direction was given to the respondents to finalise the seniority list within four months and that all such monetary benefits that the applicants would be entitled to shall be paid in accordance with the rules. Liberty was granted to the applicants to approach the Tribunal if so required.

4. In the meantime, the applicants No.1 and 2 were promoted as UDC against 25% quota with effect from 22.9.1994 and the applicant No.3 with effect from 24.5.1996 on regular basis. This was was on the basis of the examination passed by them. The grievance is that although they had passed examination in 1985, they were granted promotion only in 1994 and 1996 and therefore they are entitled to notional promotion from 1985 onwards as they qualified against existing vacancies.

5. The respondents have opposed the OA on four grounds namely, the OA is hit by principles of resjudicata, it suffers from non-joinder of parties, it is hit by limitation and on merits also it is not maintainable. The respondents submit that the applicants had earlier filed OA No.52/91 in which they had sought a declaration that they are entitled to be

promoted to the post of UDC from the date their juniors were promoted or from the date they were entitled to be promoted to the post of UDC. The relief claimed as in para 8 of the aforesaid OA is reproduced below: (a) hold and declare that the applicants are entitled to be promoted to the post of UDC as per rules; (b) hold and declare in consequence that Respondents No 4 to 6 who are illegally promoted are liable to be reverted; (c) hold and declare that the applicants should be granted monetary and non-monetary benefits as per rules; and (d) grant costs. As already pointed out, the OA was decided on 02.02.1995 and the operative portion of the order is reproduced below:

"In the result, we direct the respondents No. 1 to 3 to finalise the seniority list within four months from the date of communication of this order and that all such monetary benefits that the applicants would be entitled to in accordance with the rules shall be paid to them soon thereafter. Should there be any anomaly in the monetary benefits in the monetary benefits which the applicants get and applicants' junior might get as a result of the seniority assigned in the seniority list to be prepared and if the applicants would be entitled to any monetary benefits as per rules, the applicants would be at liberty to approach the Tribunal for the purpose."

6. Thus, the main prayer of the applicants was to quash the promotion of juniors or to grant promotion to

the applicants for having passed the LDCE. However, as is evident, the only direction the Tribunal gave was, to finalise the seniority list within four months and consequent on finalisation of seniority list to pay the applicants the monetary benefits as per entitlement according to rules. The applicants were given liberty to approach the Tribunal in regard to entitlement of monetary benefits based on the seniority list. Thus, the applicants would have been justified for filing the fresh OA challenging the seniority list which was circulated on 10.4.1995 pursuant to the judgment or to claim monetary benefits as per the notified seniority list if due as per rules. The applicants did not do so, but filed a Contempt Petition No.73/96 alleging non-compliance of the order of the Tribunal dated 02.02.1995. The CP was dismissed on 21.10.1997 while dismissing the CP the Tribunal observed that the order is without any prejudice if any, for the applicants to take any action to agitate about the correctness of the seniority list and getting monetary benefits according to law. It was clearly stated in this order that if the applicants are aggrieved by the seniority list, the remedy would lie elsewhere. Inspite of this, the applicants have approached this Tribunal with the same prayer as in OA 52/91 of granting them promotion to the post of UDC as a result of the LDCE held in 1985 and to revert the juniors i.e. Respondents 4 to 6 therein. Thus, the present application is barred by doctrine of resjudicata and therefore, is not maintainable.

7. Further, the applicants have not disclosed the names of the juniors alleged to have been promoted before them, they have not been made parties either. Therefore, the OA suffers from non-joinder of parties.

8. The cause of action has arisen in 1985. Even assuming that the applicants had filed OA in 1991 and the Tribunal passed the direction in 1995 the applicants ought to have approached this Tribunal within one year thereafter. Again the seniority list was circulated on 10.4.1995, they have not approached the Tribunal within one year from that date either. Not only that, even the CP was dismissed on 21.10.1997, while the applicants have approached this Tribunal only on 16.11.1998. Thus, the application is hopelessly barred by Section 21 of the Administrative Tribunals Act, 1985, thus, the OA is liable to be dismissed on the ground of limitation. Apart from this legal objection, the respondents submit that it is true that the applicants had passed LDCE in the year 1985 and in normal course they would have been entitled to be promoted as UDC thereafter. However, the applicants could not be promoted for want of vacancies. No departmental examination was held after 1985 till 26.6.1993. As soon as the vacancies became available, the applicants were promoted. First applicants 1 & 2 were granted adhoc promotion on 16.3.1993 and applicant No.3 on 28.10.1993 after she had refused on 16.3.1993. The respondents submit that none of the juniors of the

applicants had been given adhoc promotion as UDC before the applicants. In any case, the question here is, is not of adhoc promotion, it is offered as per seniority subject to fitness. When the applicants qualified in the LDCE for the post of UDC there were a number of other candidates, who had already qualified in the departmental examination earlier to the applicants and who were waiting for their promotion. The respondents have given details regarding the date of their qualifying in the test and dates from which regular promotions were granted to them. All those who had passed test on 06.06.1982, 26.6.1983 were granted regular promotion from 28.8.1989, some of them were granted promotion from 20.6.1990, 29.7.1993, 30.12.1993, 22.9.1994 and so on, they were seniors to the applicants. Thus, none of the juniors to the applicants were promoted on regular basis before the applicants were promoted. More over, merely qualifying in the departmental examination does not suomoto confer any right for promotion. It is equally necessary to have the vacancies.

9. The respondents have also given the vacancies in the sanctioned strength of UDC from 1985 till 1994 and have pointed out how the strength of UDC went down from 399 in 1985 to 255 in 1994. There was surplus staff in the UDC cadre for the said period. The respondents further pointed out that the issue having

been agitated by the applicants in OA No.52/91 and further in CP 73/97, it was for the applicants to have challenge the seniority list which was prepared in pursuance the directions of the Tribunal. However, the applicants have not challenged the seniority list at any time. Thus, the applicants have no case according to the respondents.

10. The learned counsel for the applicants argued vehemently that according to the recruitment rules when a person had qualified in the LDCE he or she ought to have been promoted and it is only when the vacancies are available that the examination can be held. Therefore, there were vacancies and the applicants ought to have been promoted against those vacancies. Instead the respondents had promoted the departmental LDCs on the basis of seniority cum fitness. Further, the life of the panel is only for one year and the examination is to be held every year depending upon the vacancies and therefore, it cannot be that people who had passed examination earlier can be promoted after 4 - 5 years they are to be promoted in the same year. The learned counsel for the applicants also produced copy of the recruitment rules later on. The learned counsel also argued that the OA is not hit by principles of resjudicata. Applicants have approached the Tribunal as liberty was granted to them by the Tribunal in CP 73/96 and therefore, their application cannot be said to be

hit by principles of resjudicata also they are only claiming notional promotion. It is also not hit by limitation because of the orders passed by the Tribunal in OA 52/91 and CP 73/96. They have also contended that the contention of the respondents that applicants could not be promoted due to non-availability of vacancies is misleading and false. 25% of the post of UDC are necessarily to be filled up from amongst the LDCs, who had passed the LDCE, instead the respondents illegally filled these vacancies by promoting LDCs who have not qualified in the examination. Therefore, those LDCs who were promoted against vacancies of 25% quota must be reverted to LDC as soon as an employee from merit list of departmental exam is available. The situation of non-availability of vacancies is created by respondents by their own illegal action and to show favour to some who are ineligible for UDC. In short, the applicants submit that they are entitled for promotion to the post of UDC from the year in which they passed the LDCE and accordingly they are entitled to the consequential monetary benefits.

11. We have heard learned counsel for the applicants as well as the respondents. We find that the original prayer of the applicants in OA 52/91 was to promote them to the post of UDC and to revert Respondents 4 to 6. However, they did not succeed in that OA, in that the only direction given by the

Tribunal was to prepare a seniority list and on the basis of that seniority list, if the applicants had become entitled to any consequential monetary benefits, the same were to be granted to them. Not only that, even when the applicants raised the issue in CP again, the CP was dismissed noting that the applicants have been promoted in 1994 and 1996, no promotions were given with retrospective effect from 1985 and even in the CP the only liberty given to the applicants was to agitate the matter only with reference to the seniority assigned to the applicants and the consequential monetary benefits thereafter. Thus, having failed in the OA as well as in the CP, the applicants cannot now agitate the same issue again. It is to be noted that the applicants had not raised any objection in regard to the seniority list which was circulated on 10.4.1995. In fact, they have admitted in their OA that their seniority has been shown correctly and they have no grievance over the seniority list. The applicants have also not made the affected parties as respondents in this case. However, the same is overlooked as the applicants had made them parties earlier in OA 52/91. Further, as already pointed out by the respondents, the application is hit by Section 21 of the AT Act. The application has not been made within the stipulated period of one year from the date when the cause of action had arisen. Thus, on the grounds of being hit by the doctrine of resjudicata as well as limitation the application is not maintainable.

12. Even on merits, the respondents have explained that there were no vacancies available and there were others who had passed the examination earlier than the applicants and who had also been in the waiting list who were granted promotion as late as in 1989. It has also been pointed out that there was a surplus of UDCs in 1985 and the strength came to be reduced to 255 in the year 1994. Even though one may be in the panel and one may have passed the examination, there is no right for promotion. The applicants' contention that according to recruitment rules, the vacancies are to be filled in the same year in which the examination is held, is also not acceptable. We are satisfied that the respondents have acted in a fair manner and have not denied any promotion to the applicants inspite of vacancies being available. They were promoted as soon as the vacancies have become available. Also the applicants have admitted that they have no grievance over the seniority list which has been published. They have accepted their seniority position as shown in the seniority list of 10.4.1995 as being correct, their seniority is not disturbed at all.

13. In the facts and circumstances of the case and for the reasons recorded above, in our considered view, the OA has no merit. Accordingly, the OA is dismissed. No costs.

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(SMT. SHANTA SHAstry)
MEMBER (A)

(D.N. CHOWDHURY)
VICE CHAIRMAN

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