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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1149 of 1992

DATE OF JUDGMENT: 7th JANUARY, 1993

BETWEEN:

Mohd: Abdul Rab .. Applicant

AND

The Regional Director,
Employees State Insurance Corporation,
Hyderabad-500463. .. Respondent

COUNSEL FOR THE APPLICANT: Mr. B.S.Rahi

COUNSEL FOR THE RESPONDENT: Mr. N.R.Devaraj, Sr. CGSC

CORAM:

Hon'ble Shri C.J.Roy, Member (Judl.)

JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER(JUDL.)

Mr. Mohd: Abdul Rab filed this application under
Section 19 of the Administrative Tribunals Act, 1985 praying
for a direction to the ^{Regional} Director, Employees State Insurance
Corporation, Hyderabad to step-up and refix his pay as Upper

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Division Clerk equal to the pay of his Junior Mr. D. Madhava Rao with effect from 1.5.1979 and also to refix his present pay as Assistant with consequential benefits such as arrears of pay and allowances along with interest thereon @ 12% per annum with costs.

2. The applicant was appointed as Lower Division Clerk on 1.10.1976 on a basic pay of Rs.260/- per month. He was promoted as Upper Division Clerk on adhoc basis on 1.12.1980. Subsequently on 26.10.1981 he was regularised in the post of Upper Division Clerk.

3. Mr. D. Madhava Rao who was working as Lower Division Clerk from 10.3.1977 was promoted on adhoc basis as Upper Division Clerk on 1.5.1979 and he was regularised in the post of Upper Division Clerk on 26.10.1981. Mr. D. Madhava Rao happened to be junior to the applicant as Lower Division Clerk and also as Upper Division Clerk as per the gradation list of Upper Division Clerks as on 31.12.1991 in respect of Andhra Pradesh Region wherein the name of the applicant was shown at Sl.No.19 and the name of Mr. D. Madhava Rao was shown at Sl.No.22.

4. Heard the learned counsel for the applicant Mr. B.S. Rahi and Shri Rajeswara Rao for the learned Senior Standing Counsel for the Respondents, Mr. N.R. Devaraj.

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5. It is seen from the gradation list that the applicant who was appointed as LDC on 1.10.1976 was placed in the gradation list of UDCs at Sl.No.19 and Mr. Madhava Rao who was appointed as LDC on 10.3.1977 was placed at Sl.No.22 in the gradation list of UDCs i.e., three steps lower. On officiating basis, the applicant was promoted on 1.12.1980 whereas Mr. Madhava Rao was promoted on 1.5.1979 as UDC . It may be seen that Mr. Madhava Rao was officiating as UDC , from 1.5.1979 and he was regularised as UDC only on 26.10.81 whereas the applicant was officiating as UDC from 1.12.1980 and he was given regular ~~promotion~~ promotion as UDC on 26.10.1981. On 1.12.1991 the basic pay of the applicant was Rs.1500/- whereas the basic pay of Mr. Madhava Rao was Rs.1530/- i.e., Mr. Madhava Rao must have earned some fortuitous increments.

6. It is not in dispute that both are on the same ladder. In O.A.No.607 of 1990 (K.L.K.Rao Vs. Regional Director, ESIC, Hyderabad) and also in O.A.No.575/92 (C.Narayana Vs. Regional Director, ESIC, Hyderabad), this Tribunal heard the cases which were with regard to the fixation of pay in similar circumstances.

7. The applicant made representations on 6.4.1987, 30.9.1991, 18.11.1991, 17.1.1992, 28.12.1992 and 11.6.1992 to the Regional Director, ESIC, Hyderabad for stepping up of his pay but his claim was rejected by the respondent.

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8. Annexure A-2 dated 7.9.1987 is the reply of the respondent stating that the anomaly has not arisen due to fixation of pay under the recommendations of 4th Pay Commission. Since the applicant's junior was drawing higher pay even prior to 1.1.1986 by virtue of his length of service, his request for fixation of pay on par with his junior was rejected. Annexure A-10 is the letter dated 30.4.1992 from the respondent stating that the judgment of the Central Administrative Tribunal, Hyderabad in O.A.No. 607/90 is applicable to the petitioner therein only and as such the benefit of stepping up of pay was rejected. Since the junior to the applicant was drawing more pay than the applicant by virtue of his length of service in the UDC cadre, the request of the applicant was rejected by the respondent.

9. It is seen that the respondent has not countered the averments of the applicant but on the other hand the learned counsel for the respondent conceded that this matter is covered by the Judgment of this Tribunal in O.A.No.696/92 dated 7.12.1992.

10. It is well settled law that the repeated representations made by the applicant on the dates stated supra do not give him cause of action, as held by the Hon'ble Supreme Court in "S.S.Rathore Vs. Union of India (AIR 1990 SC 10)". However, though the case is barred by time, the grievance with regard to pay fixation and grant of pensionary benefits would be of

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continuous nature and it cannot be rejected on the point of limitation. Following the guidelines in the aforesaid Judgment, I have least hesitation in accepting the reasoning of the learned Member of the Tribunal Shri T.Chandrasekhara Reddy in the O.A.No.696/92 dated 7.12.1992 and the other O.As referred to above and the increments drawn by Mr. Madhava Rao is only fortuitous in nature. Both the applicant and Mr. Madhava Rao belong to the same category.

11. The fact that both the applicant and Mr. Madhava Rao were promoted on regular basis as UDC on 26.10.1981 is not in dispute. As the applicant and Mr. Madhava Rao were recruited in the same cadre and in the same grade and their pay is identical in all respects, there cannot be any dispute about the fact that the applicant is ~~not~~ entitled for stepping up of his pay equal to that of Mr. Madhava Rao, junior to the applicant with effect from 26.10.1981. So, the applicant is entitled for notional benefits with effect from 26.10.1981 not only in the post of UDC but also in other posts in which he had been promoted. However, in view of the late approach of the applicant to this Tribunal, I am persuaded ^{myself} to direct the respondent to step up the pay of the applicant notionally on par with his Junior Mr. D.Madhava Rao and the applicant is entitled to the monetary benefits only from the date of filing of this application i.e., with effect from 31.12.1992. This exercise shall be completed within a reasonable time. The applicant is not entitled to the payment of interest.

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12. With the above observations, the application is disposed of with no order as to costs.

C.J. Roy
(C.J.ROY)
Member (Judl.)

Dated: 7th January, 1993.

8/1/93
Deputy Registrar (J)

To

1. The Regional Director,
Employees State Insurance Corporation
Hyderabad-463.

via.

2. One copy to Mr. B.S. Rahi, Advocate, 33 Rock Roof III
Road No. 12, Banjara Hills, Hyderabad.
3. One copy to Mr. N.R. Devraj, Sr. CGSC. CAT. Hyd
4. One spare copy.

pvm.

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RVS
21/1/82
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TYPED BY _____ COMPARED BY _____
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CHECKED BY _____ APPROVED BY _____
HYDERABAD BENCH
HYDERABAD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD

THE HON'BLE MR. _____ V.C.
AND
THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)
AND
THE HON'BLE MR. T. CHANDRASEKHAR REDDY: M(J)
AND
THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 7 - 1 - 1992

~~ORDER~~ JUDGMENT:

R.A./ C.A./M.A.No.

in

O.A.No.

1149/92

T.A.No.

(W.P.No. _____)

Admitted and Interim Directions issued

Allowed

Disposed of with directions

Dismissed

Dismissed as with drawn

Dismissed for default

M.A. Ordered/Rejected

No order as to costs.

pvm.

Central Administrative Tribunal
HYDERABAD BENCH
21/1/92