

(51)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH::  
AT HYDERABAD.

O.A.No.828/93.

Date:11-4-1996.

Between:

Smt. G.Satyavathi ..

.. Applicant

And

Regional Director,  
Employees' State Insurance  
Corporation, Hill Fort Rd.,  
Adarshnagar, Hyderabad.

.. Respondent

Counsel for the applicant : Sri B.S.Rahi, Advocate.

Counsel for the Respondent : Sri N.R.Devaraj, Sr.CGSC

C O R A M :

HON'BLE SRI R. RANGARAJAN, MEMBER (ADMINISTRATIVE)

J U D G M E N T

{ as per Hon'ble Sri R.Rangarajan, Member(Administrative) }

Heard Sri B.S.Rahi, learned counsel for the applicant and Sri N.R.Devaraj, learned Standing Counsel for the respondent.

2. The applicant in this OA was appointed as LDC on 16.10.1973 in the Employees State Insurance Corporation (ESIC for short), in A.P.Region. She was promoted as UDC on regular basis on 18.7.1981 and the pay of the applicant was fixed in the cadre of UDC as per rules. Earlier to her promotion as UDC in 1981 on regular basis, she was promoted on adhoc basis as UDC on 10.9.1979 till she was regularised on 18.7.1981.

3. It is stated that one Sri P.K.R.Murthy, who joined in service in the same Corporation in A.P.Region as LDC on 28.4.1976 i.e. 2½ years later than the applicant, was also promoted as UDC on regular basis on 18.7.1981. Sri Murthy, earlier to his regular promotion as UDC in 1981, was promoted as UDC on adhoc basis during the period from 21.4.1977 to 11.10.1977, 23.5.1978 to 1.9.1979 and from 3.10.1979 onwards till he was regularly promoted. It is further submitted that Sri Murthy was junior to the applicant both in the category of LDC and also in UDC. To bring out this, seniority list of UDCS of A.P.Region bearing No.52-A/24/14/88-Estt.I dt. 12.1.1990 (Annexure A.5) is furnished with the O.A. As per this seniority list, the applicant herein is placed at Sl.No.12 and the said Sri Murthy is placed at Sl.No.40.

4. The pay of Sri Murthy, on his promotion as UDC on regular basis was fixed at higher stage than <sup>that of</sup> the applicant herein on account of his earlier adhoc promotion in three spells. The pay of the applicant herein, who officiated adhoc UDC post only once earlier to her regular promotion as UDC, was fixed at lower stage than <sup>that of</sup> her junior Sri Murthy when she was regularly promoted as UDC on 18.7.1981.

5. The applicant herein submitted a representation dt. 10.7.1992 (Annexure A.3) to the Director General, ESIC, New Delhi for stepping up of her pay equal to that of Sri Murthy, from the date when Sri Murthy was promoted as UDC on regular basis and his pay was fixed at higher stage than the applicant. Her representation was turned down by order dt. 7.4.1993 bearing No.52-A/27/17/92-Estt.I(A) (Annexure A.4) stating that she is not one of the applicant in the CAT case for giving her the benefit of stepping up of pay.

6. Aggrieved by the above, she has filed this OA for a directions to the respondents to step up and refix her pay in the cadre of UDC equal to the pay of Sri Murthy her junior and for payment of arrears accordingly.

7. It is stated for the applicant that Sri Murthy was junior to her and that his pay in the LDC cadre was also less than the applicant. It is also submitted that at no time the applicant was asked to exercise her option to work on adhoc basis. In view of the above, the applicant is entitled for getting the stepping up of pay as prayed for in this O.A.

8. It is not in controversy that Sri Murthy is junior to the applicant and also that he belongs to A.P. Region of ESIC. It is also not in controversy that the seniority of the applicant and Sri Murthy was borne on the same seniority unit.

9. The learned Standing Counsel for the respondents submit that an option was called for from all concerned by Memorandum dt. 17.3.1978 bearing No.52-A/22/12/76-Estt. The applicant did not respond to that Memorandum by which options were called for adhoc promotion as Manager Gr.III/Head Clerk/UDC-Incharge/UDC-Cashiers and UDCs at various offices of ESIC in A.P.Region. The learned Standing Counsel further submitted that the conditions stipulated in the said Memorandum dt. 17.3.78 granted to Sri Murthy earlier, in 1977. As the applicant

herein failed to respond to the said memorandum dt. 17.3.1978, it should be treated that

she did not prefer the adhoc UDC post earlier also.

/if such  
option memo  
was not  
issued for  
adhoc  
promotion.

even/ In view of the above, the applicant is not entitled for any stepping up of pay with respect to her junior Sri Murthy.

10. The contention of the learned Standing Counsel for the respondents as noted above is baffling. Just because she has not given her option to the memorandum dt. 17.3.1978, it cannot <sup>be presumed</sup> that she would not have liked to go as UDC on adhoc promotion earlier to 1978. Hence, this presumption of the learned Standing Counsel for the respondents is ~~not sustainable~~ and untenable. Even in the Memorandum dt. 17.3.1978, options were called for from UDCs/UDC-Cashier/UDC-Incharge and officiating Head Clerks of ESIC of A.P. Region. It does not say that the option is meant for LDCs also. When the memorandum dt. 17.3.1978 was issued, the applicant was holding the post of LDC. Hence, she cannot be blamed <sup>or faulted</sup> for not giving her option in response to the said memorandum, as she was not holding the post in any of the categories mentioned therein. Hence the contention that the applicant has not opted to go as adhoc UDC and other equivalent categories in terms of memorandum dt. 17.3.1978 is also not sustainable. However, she was promoted as adhoc UDC on 10.9.1979 in which post she continued till she was regularly promoted as UDC on 18.7.1981.

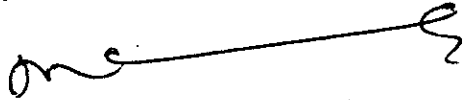
/as that  
memo was  
not addressed  
to LDCs.

11. In view of what is stated above, the applicant is entitled for stepping up of pay with respect to her junior Sri P.K.R. Murthy.

12. In this OA the applicant requests for arrears from the day she was promoted as UDC i.e. from 18.7.81. The applicant approached the authorities concerned for stepping up of her pay only on 10.7.1992 about 11 years after her promotion and that was rejected by letter dt.7.4.1993 and thereafter she has approached this judicial forum after a lapse of over 12 years. Hence, it has to be considered that this OA is belated. The stepping up of pay and payment on that basis is a continuous process. This Tribunal is consistently taking the view that in case of continuing cause, the applicant has to be given arrears from one year prior to filing of the OA if the applicant succeeds. This ruling will hold good in this OA also. In view of the above, the following direction is given:-

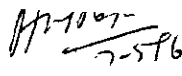
The pay of the applicant has to be stepped up notionally in the cadre of UDC from the date she was drawing less pay than her junior Sri Murthy. But, she is entitled for arrears only from one year prior to 10.7.1992 (this OA was filed on 19.7.1993).

13. The OA is ordered accordingly. No costs.

  
( R. Rangarajan )  
Member (Admn.)

Dictated in open court.

Grh.

  
7-596  
Dnc.

P8  
TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : MEA

DATED: 11/4/96

ORDER/JUDGEMENT

M.A. NO/R.A/C.A. NO.

IN

B.A. NO.

828/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDERS AS TO COSTS

\* \* \*

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal अवेक/DESPATCH - 9 JUN 1996 हैदराबाद न्यायालय HYDERABAD
--