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

O.A.No.966/93.

Date: 11-4-1996.

Between:

Smt. M.Indira Bai .. Applicant

And

Regional Director,
Employees'State Insurance
Corporation, Adarshnagar,
Hyderabad. .. Respondent

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

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

CORAM:

THE 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 counsel for the respondents.

2. The applicant in this OA joined as LDC in ESI Corporation at Regional office, A.P.Region on 9.1.1980. She was promoted on adhoc basis as UDC from 1.2.1985 to 31.12.1985 and again from 3.4.1989 to 15.5.1989 till she was promoted as UDC on regular basis with effect from 15.5.1989.

3. The applicant compares her case for stepping up of pay with that of one Sri K.M.G.Ali Hyder. Sri Ali Hyder also joined as LDC in the ESIC of A.P. Region, but at Kurnool station on 1.10.1980. He was promoted on adhoc basis as

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UDC on 7.8.1983 and continued as such till he was regularly promoted as UDC on 9.6.1989. Thus Sri Ali Hyder had an advantage of having worked in UDC cadre on adhoc basis earlier and it gave him an opportunity for fixing up of his pay when he was regularly promoted as UDC at a higher stage compared to the applicant when she was promoted regularly as UDC. It is admitted that the applicant is senior to Sri Ali Hyder in the cadre of LDC as well as in UDC cadre.

4. The applicant herein submitted a representation dt. 21.3.1993 to the Director General that representation was rejected by impugned order dt. 12.7.1993 bearing No.52/A/20/11/772/80-Estt.I (Annexure A.3).

5. Agrieved was filed this OA praying for a direction to the respondent for stepping up of her pay equal to that of her junior Sri K.M.G.Ali Hyder with all consequential benefits.

6. The main contention of the applicant in this OA is that she was never asked to go for adhoc promotion. The reported memorandum dt. 16.7.1981 bearing No.52-A/22/12/76-Estt. (pg.10 of Rep. No. 12/76-Estt.) was not brought to her notice at any time. Hence promoting Sri K.M.G.Ali Hyder on adhoc basis as UDC without giving her any opportunity to officiate on adhoc basis is arbitrary and hence she is entitled to get her pay fixed equal to that of Sri Ali Hyder when she was regularly promoted as UDC.

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7. The learned Standing Counsel for the respondent submitted that the memorandum dt. 16.7.1981 was issued calling for options from both the cadres of UDC/LDCs for posting them as UDCs. One of the stations mentioned in that memorandum where the adhoc promotion to UDC is to be ordered is Yemmiganur. It is further stated in page-4 of the reply statement that nobody submitted their willingness in response to that notification. As nobody had submitted their willingness Sri K.M.G.Ali Hyder, who was working as LDC at Kurnool was posted on adhoc basis to Yemmiganur which is hardly about 20 Kms. from Kurnool. The applicant having been at Hyderabad far away from Yemmiganur, she was not posted to Yemmiganur and hence not given her willingness when options were called for adhoc posting as UDC. The above posting of Sri Ali Hyder to Yemmiganur is a presumption that even if he has not given willingness inspite of notification dt. 16.10.1981, his posting as UDC at Yemmiganur will not cause any hardship to him. Posting of applicant to Yemmiganur will cause lot of hardship to her as she has to move to a far off place from Hyderabad and also because of the fact that she has not given her willingness. If she has not any inclination to go over to the far off place by giving her willingness, she would have been posted to Yemmiganur by Sri Ali.

8. The learned counsel for the applicant submitted that the Memorandum dt. 16.7.1981 was not circulated. If it had been circulated to her notice she would have submitted her willingness to the respondents in

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not bringing that memorandum to her notice which resulted in her not giving willingness in response to the memorandum dt. 16.7.81. Her silence in not giving an option should not be treated as unwillingness to go on adhoc promotion as UDC.

9. The main point for consideration is whether the memorandum dt. 16.7.81 was brought to the knowledge of the applicant or not. It is stated in the reply that there was no response to the memorandum by any of the staff of the ESIC. As there was no option given by any of the employees of ESIC, the respondent corporation took a view that posting a person from nearer places mentioned in the notification, ^{without any} ~~without any~~ where adhoc posting is necessary ~~that~~ ^{which} ~~was~~ not been effectively rebutted by the applicant in the rejoinder. However, the applicant states that the said memorandum was not brought to her notice which resulted in her failure to give her option in response to the notification. The applicant further states that the procedural difficulties such as not obtaining ~~.....~~ ^{.....} for the memorandum and presuming difficulty of the respondents in posting the applicant for a far off place from Hyderabad, should not ~~.....~~ ^{.....} right to get adhoc promotion and denial of benefit of increase in pay.

10. In OA 753/91 disposed on 2.11.1994 on the file ~~.....~~ ^{.....} arose. In that OA also the applicant therein requested for higher pay fixation on par with his junior on account of junior having been given adhoc promotion earlier~~x~~ to his regular promotion.

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It was also submitted in that OA by the respondents therein that the applicant in that OA had not given his willingness when a memorandum was issued for going on adhoc promotion and as he had not given his willingness in response to the notification, he is not entitled for higher pay fixation on par with his junior who went on adhoc promotion earlier to his promotion on regular basis. It was contended in that OA by the applicant therein that the memorandum/notification was not brought to his notice and hence he cannot be held responsible for not giving his option in response to that notification. In that context that "even if there was nothing on record to show that it was specifically brought to the personal notice of the applicant, we are inclined to hold that the applicant ^{was aware} the posting of his junior as UDC Incharge/hush-hush affair."

11. In this OA also a similar contention is raised by the learned counsel for the applicant in not bringing the memorandum to the notice earlier, there was no rebuttal from records to prove that it was not brought to her notice. Further, the observation of this Tribunal in OA 753/91 dt. 2.11.1994 is very relevant. The applicant cannot be ignorant of the memorandum issued from the regional office. The ~~respondents~~ ^{respondents} in the regional office of the respondents at Hyderabad. When such a memorandum for adhoc promotion was issued, it spreads like fire to all the offices. Especially, when it is issued at Hyderabad

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I can see no reason for not having been spread over among the officers of Hyderabad. I come to the conclusion that for the reasons best known to the applicant, she has not responded to the memorandum. It can be fairly said that the applicant being a lady, may not like to go a far off place like Yemmiganur and other places mentioned in the memorandum. Probably, had this adhoc promotion been at Hyderabad, she would have given her option readily. This presumption of mine is very common in Government service. Hence, I ~~do~~ do not consider that this contention is relevant to this case.

12. Secondly, if the said memorandum was not brought immediately after her junior was promoted way back in the year 1983. She waited till 1993 i.e. for about a decade to appeal against the promotion for fixing her pay with respect to her junior. She could have atleast represented her case immediately after 9-6-1989 when her junior was promoted. But she ~~has~~ not done that, ~~even~~ as observed in OA 753/91, the promotion of her junior as adhoc UDC cannot be said as ^{an} hush-hush affair. Probably, the applicant as well as other employees must be under the impression that they can wait for an opportunity to claim for higher pay fixation when they are promoted, thereby they will reap the advantage of higher pay fixation as well as working as UDC in their place of choice. Such situation cannot be accepted in service matters especially in Govt. departments.

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13. The learned counsel for the applicant further submitted that her application dt. 27.3.1993 was submitted after the judgment of this Tribunal in OA 607/90 disposed on 3.9.1991. When the applicant in OA 607/90 had filed the OA, the applicant could also have filed the application in 1990 and she need not have waited for the results of the said OA for filing this O.A. Normally, the applicant should press for his/her right immediately when he/she has come to know of her position. In this case, when her junior was promoted ^{Afslas} in 1989, she did not press for her right till 1993. But this OA is not dismissed on account of limitation and considered on the basis of merits.

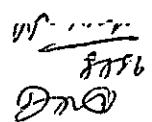
14. In the result, the OA is dismissed as having no merits. No costs.



(R. Rangarajan)
Member (Admn.)

Dated 11th April, 1996.
Open court dictation

Grh.


DDO