

ANNEXURE - I

List of papers in Original Application No.

1595/93

Sl. No. of Papers	Date of Papers or Date of filing	Description of Papers.
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Part - I

11-4-86

Original Judgement

22-12-93

O.A & Material Papers

18-1-94

Counter

1-7-94

Reply Counter.

PART - I , PART - II, PART - III
Destroyed.

A
15/8/99

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

RECORD SECTION INDEX SHEET

O.A. No. 1595 /199 3

- a) Applicant (S) Smt Vinodini
Versus
b) Respondent (S) Regional Director, ESTE, Hyderabad

Sl.No.	Description of Documents.	Page. No.
	Part. I	
	Order Sheet	1-2
	Original Application	22-12-93 3-9
	Ma-terial Papers	10-13
	Order dated	—
	Counter Affidavit.	18.1.94 14-27
	Reply Affidavit	1.7.94 28-29.
	Order dated	11.4.96 30-34.
	Part. II	
	Duplicate Order Sheet.	
	" Application	
	" Material Papers	
	" Order dt.	
	" Counter Affidavit	
	" Reply Affidavit	
	" Order dt.	
	Part-III	
	✓ Vakalat	22.12.93
	✓ Notice Papers	3.1.94
	Memo of Appearance	—

27/6/93

~~0A1286193~~

0A159579

ABPA:

1. 2.65
G.M.
UDC on
rept

3. 1.77
rept (9.4.77)

Hyd.

~~Vivek Singh~~
~~Vivek Singh~~

LDC 24/3/65

Adhoc
U.D

16/2/72

19/4/77

Simpura (Car)

UDC

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

CA 256/94
+ CA 1596/93
CA 827/93
CA 828/93
CA 965/93
CA 966/93
CA 1025/93
CA 1286/93
CA 16/94

O.A. No./T.A. No. 1595 of 1993

Smt. Vinodini

Applicant (S)

Versus

Regl. Director, E-S.T. Corporation Hyd

Respondent (S)

Date	Office Note	Orders
------	-------------	--------

28-12-93

3.1.94

Notice sent to SR by RPAD.
SR-SD
SF
or
18.1.94.

Admit.

post on 19-1-94
along with batch cases
OA 965/93 & OA
966/93 for reply
in the meanwhile.

HRRN
M(A)

HVNRT
VC

19-1-94

Counter filed by Mr. NR Bewast,
Sr. Cysr on 18/1/94.

Post it on 18-4-94 along
with batch cases OA 965/93,
OA 966/93, OA 827/93, OA 828/93
OA 1025/93, OA 1286/93, OA 16/94
and also OA 25/94 & 26/94.

HRRN
M(A)

HVNRJ
VC

21/4/94

17/6/94

Don these cases on 27/6/94
HRRN
VC
Post these cases on 4/8/94
for response in the meanwhile.
HRRN
VC

18/8/94

①
OA 1595/93 & batch

Date

Office Note

Orders

5-7-94

Post on 12-7-94.

6-7-94

Reminder folder by
Mr. BS Rader, Adv,
on 1-7-94.

HRR
M(A)

HARRIS
rc

By order

DR (J)

25-7-94

Post along with the
stepping up cases
(next month or September, 94)

HRR
M(A)

HARRIS
rc

By order

DR (J)

11-4-1996

OA is dismissed vide
orders on separate
sheets. No costs.

HRRN
M(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH - HYDERABAD

ORIGINAL APPLICATION NO. 1595 OF 1993

Sri Suz D - Vinodini Applicant (s)

Versus

Asst. Director, ESI Corp., Hyd.

Respondent (s)

This Application has been submitted to the Tribunal

by B. J. Nali Advocate under section 19 of the Administrative Tribunals Act, 1985 and same has been scrutinised with reference to the points mentioned in check list in the light of the provisions contained in the Administrative Tribunal (Procedure) Rules, 1987.

The application has been in order and may be listed for admission on -12/93



Scrutiny Officer.


Deputy Registrar (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

Diary No.

Report on the scrutiny of Application

Presented by *Mr. B. J. Reddy*

Date of Presentation.....

Applicant(s) *S. D. Vinodini*

Respondent(s) *Sh. H. Dinata, ESI Corp, HMA*

Nature of grievance *Slitting up of pay*

No. of applicants: *1*

No. of respondents: *1*

CLASSIFICATION*

Subject..... (No.)) Department (No....)

1. Is the application in the proper form?
(Three complete sets in paper books form in two compilations) *4*
2. Whether name, description and address of all the parties been furnished in the cause title? *4*
3. (a) Has the application been duly signed and verified? *4*
(b) Have the copies been duly signed? *4*
(c) Have sufficient number of copies of the application been filed? *4*
4. Whether all the necessary parties are impleaded? *4*
5. Whether English translation of documents in a language other than English or Hindi been filed? *4*
6. Is the application in time?
(See Section 21) *4*
7. Has the Vakalathnama/Memo of appearance/authorisation been filed? *4*
8. Is the application maintainable?
(U/s 2, 14, 18 or U.R. 8 etc.) *4*
9. Is the application accompanied by IPO/DD for Rs. 50/-? *4*
10. Has the impugned orders original/duly attested legible copy been filed? *4*

Contd.....

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

INDEX SHEET (ORIGINAL)

O.A. NO. 1595 of 1993

CAUSE TITLE Smt Vinodini

VERSUS

Regl. Director, E.S.E. Corporation, Hyd

Sl.No.	Description of Documents	Page No.
1.	Original Application	1 to 6
2.	Material papers	7 to 10
3.	Vakalat	1
4.	Objection Sheet	-
5.	Spare Copies 1 (one)	
6.	Covers 1	

My to direct the ~~Request~~ Request to step up and register the Applicant's pay as UDC equal to the pay of his junior.

Step up of pay.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH

General

(3)

O.A. No. 1595 of 1993

SMT. D. VINODINI

Vs.

REGIONAL DIRECTOR,
EMPLOYEES' STATE INSURANCE CORPORATION,
HYDERABAD.



I N D E X

S.No.	Description of Document relied upon	Page No.
1.	Chronological Statement xxx of Events	1
2.	Application	2-6
3.	Representation Dated 22-06-1993; ESIC, HYDERABAD (Annexure-A-1)	-
4.	Representation Dated 08-07-1993 to Director General, ESIC, New Delhi, (Annexure-A-2).	8
5.	Letter Dated 30-11-1993 from Regional Director ESIC, HYDERABAD to the Applicant (Annexure-A-3). (<u>IMPUGNED ORDER</u>)	9
6.	Extract of Gradation List of UDC's as on 31-01-1979 showing the seniority of applicant and that of his junior Sl.No. 6 and 8 respectively (Annexure A-4).	10.

M.
SIGNATURE OF ADVOCATE

SIGNATURE OF APPLICANT.

(B.S. RAHI)
33, ROCK ROOF - III,
ROAD No. 12, BANJARA HILLS,
HYDERABAD - 500 034.

FOR USE IN TRIBUNAL OFFICE:

Date of Filing: _____

REGISTRATION NO. _____

RECEIVED COPY
N.R. Devaraj
Allotted to SC

(9) (1)

O.A. No. 1595 of 1993


SMT. D. VINODINI

Vs. REGIONAL DIRECTOR, ESIC, HYD.

CHRONOLOGICAL STATEMENT OF EVENTS

S.No.	DATE	E V E N T S
(1)	01-03-1965	Applicant joined the service of ESIC, A.P. REGION as LDC On Basic Pay of Rs. 110/- per month.
(2)	24-03-1965	Shri. R. VISWAROOPACHARI (Junior to the Applicant) joined the service of ESIC, A.P. Rs. 110/- per month.
(3)	19-04-1977	Applicant promoted as UDC on
(4)	19-04-1977	Sri. R. VISWAROOPACHARI (Junior to Applicant) Promoted as UDC on <u>regular basis.</u>
(5)	01-04-1993	Pay of Applicant: Rs. 1760/- PM Pay of Junior : Rs. 1950/- PM

SIGNATURE OF THE APPLICANT



SIGNATURE OF THE ADVOCATE

(4) (2)

ORIGINAL APPLICATION NO. 1595 OF 1993

SMT. D. VINODINI wife of SRI. D. JANARDHAN RAO,
residing at H.No. LIGH BLOCK- 38, FLAT No. 4,
BAGH LINGAMPALLY, HYDERABAD and employed at
as ASSISTANT IN OFFICE OF REGIONAL DIRECTOR,
EMPLOYEES' STATE INSURANCE CORPORATION,
ADARSHNAGAR, HYDERABAD - 500 463. ..

APPLICANT

Vs.

REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE
CORPORATION, HILL FORT ROAD, ADARSHNAGAR,
HYDERABAD - 500 463. ..

RESPONDENT

DETAILS OF APPLICATION

- (1) PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE.
ORDER No. 52/A/27/17/92 - ESTT. I (A), DATED 30-11-1993

(ANNEXURE-A-3); vide which the respondent has rejected the request of the applicant for the stepping up of her pay equal to that of her junior.

- (2) JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject-matter of the order against which she wants redressal is within the jurisdiction of the TRIBUNAL as prescribed in section 14 of the Administrative Tribunals Act, 1985.

- (3) LIMITATION:

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

- (4) FACTS OF THE CASE:

(a) The applicant joined the service of ESIC as Lower Division Clerk on 01-03-1965 in A.P. Region on basic pay of Rs. 110/- per month. The applicant was promoted as Upper Division Clerk on regular basis on 19-04-1977 and

6 3

the pay of the applicant was fixed as UDC according to existing rules.

- (b) One Sri. R. VISWAROOPACHARI, who had joined at service of the ESIC as LDC on 24-03-1965 on basic pay of Rs. 110/- PM was also promoted as UDC on 19-04-1977 on regular basis. Sri. R. VISWAROOPA CHARI was junior to the applicant as LDC and also as UDC. As per gradation list of UDC's of A.P. REGION as on 31-01-1979 (Annexure-A-4), the applicant is placed at S.No. 6 and the said Sri. VISWAROOPA CHARI is placed at S.No. 8. The pay of Sri. VISWAROOPA CHARI, was fixed as UDC at a higher stage than that of the applicant on the ground that Sri. VISWAROOPA CHARI, had been officiating as UDC earlier than the applicant on local/adhoc basis.
- (c) Consequently, the applicant continued to draw lower pay than that of Sri. VISWAROOPACHARI, upto the present. The present pay (as on 01-04-1993) of applicant is Rs. 1760/- whereas that of Sri. VISWAROOPA CHARI is Rs. 1950/- PM.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

- (a) The applicant is entitled for fixation of her pay on par with that of her junior. Sri. R. VISWAROOPA CHARI, under the provisions contained in F.R./S.R. and other rules/orders issued by Government of India.
- (b) The applicant is also entitled to the above relief in view of the fundamental rights enshrined in articles 14 and 16 of the constitution of India.
- (c) The applicant is also entitled to the relief prayed for in the light of the judgements delivered by this Bench of Hon'ble Tribunal in O.A. Nos. 607 of 1990, 6/91, 484/92, 485/92, 574/92, 577/92, 576/92, 578/92, 618/92, 619/92, 620/92, 621/92, and several other cases.

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A

6. DETAILS OF REMEDIES EXHAUSTED:

i) Representation dt. 30-06-1993 by the applicant addressed to Regional Director, ESIC, HYDERABAD and representation 8-7-1993 addressed to Director General, ESIC, NEW DELHI (Annexures A-1 and A-2). Reply received to the above representations from Regional Director, ESIC, HYDERABAD vide his letter dated 30-11-1993 (Annexure-A-3).

7. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter, in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT:

In view of the facts mentioned in para 4 above, the applicant prays for the following reliefs:-

(a) REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION, HYDERABAD, be directed to stepup and re-fix applicant's pay as UDC equal to the pay of her junior, Shri. R. VISWAROOPACHARI, within a specified period.

(b) Arrears of pay and allowances be directed to be paid to the Applicant as a result of above re-fixation of pay within a specified period, (along with interest thereon at 12% p.a.) as permitted by law of limitation.

Contd...4.

8

5

(c) Costs of this case be ordered to be paid to the applicant by the Respondent.

(d) Any other relief which may be admissible in the circumstances of this case, or as deemed fit, be awarded to the applicant.

9. INTERIM ORDER, IF ANY PRAYED FOR:

- NIL -

10. IN THE EVENT OF APPLICATION BEING SENT BY REGISTERED POST

- NOT APPLICABLE -

11. PARTICULARS OF POSTAL ORDER FILED IN RESPECT OF THE APPLICATION FEE

ISSUED BY	:	:	KHAIRATABAD - P.O. HYDERABAD
SL. NO.	:	:	8 05 885060
DATE	:	:	13-12-1993
AMOUNT	:	:	Rs. 50/-

12. LIST OF ENCLOSURES:

1

(1) POSTAL ORDER NO.	:	:	8 05 885060
DATED	:	:	13-12-93

(2) CPON (ANNEXURE-A-1 TO A-4)	:	:	
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LP.O./B.C./D.D./Removal

(3) VAKALAT DULY EXECUTED BY THE APPLICANT.

Contd.....5.

ANNEXURE.A-1.

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7

To
The Regional Director,
Regional Office,
E.S.I. Corporation,
HYDRABAD.

Sir,

Sub: Stepping up of pay at par with my junior
Shri R.Viswaroopa chary, Asst, R.O. Hyd.-Reg.
- - -

I have to inform that Shri R.Viswaroopa Chary, Asst.,
Regional Office, Hyderabad is junior to me in all cadres and is
drawing more pay than me.

In this connection, I have to request you to kindly
refer to the C.A.T. judgement in O.A.No.607/90 filed by
Shri K.L.Kameswara Rao and to request you to step up my pay
at par with my junior.

Thanking you,

Yours faithfully,

D. Vinodini
(D.VINODINI) 30/6/93.
ASSISTANT
R.O.
HYD.

Copy forwarded to: The Director General, (Estt-I(B), Hqrs. Office,
E.S.I. Corporation, New Delhi for favourable
consideration.

Attested.
M. S. RAHI
B. S. RAHI
B. A LL. B.
ADVOCATE.

To
The Director General,
E.S.I. Corporation,
Kotla Road,
NEW DELHI.

(THROUGH PROPER CHANNEL)

Sub: Stepping up of my pay, at par with my junior -
Removal of anomaly - Regarding.

Sir,

Kindly refer to my representation dated 30.6.1993
to the Regional Director, Andhra Pradesh, Hyderabad (copy
enclosed) and Regional Office reply vide their letter No.
52-A/27/17/92-Estt-I(A) dated 6.7.93 (copy enclosed).

In this connection, I am to state, ^{that} Sri R. Viswaroopa
Chary, Assistant, R.O. Hyderabad is junior to me and drawing
more pay than me.

I have therefore, to request you to kindly consider
my case, in pursuance of Judgement of Central Administrative
Tribunal, Hyderabad in O.A.No.607/90 and do justice by
stepping up of my pay with that of my junior at an early date.

Yours faithfully,

D. Vinodini

(D. VINODINI)
ASSISTANT, R.O. HYD.

Encl (as above)
Dated: 8.7.1993
HYDERABAD.

Copy to Regional Director, E.S.I. Corporation,
Regional Director, Hyderabad.

B. S. RAHI

B. S. RAHI
B. A LL. B.
ADVOCATE.

ANNEXURE.A-3

(12) (9)

REGIONAL OFFICE: ANDHRA PRADESH
EMPLOYEES STATE INSURANCE CORPORATION

No. 52-A/27/17/92-Estt.I(A).

20.11.93
Dated: 20.11.93.

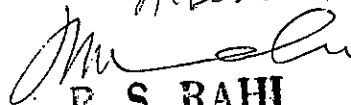
To
Sri/Smt D Vinodini, ASST.
E.S.I. Corporation,
Regional Office,
HYDERABAD.

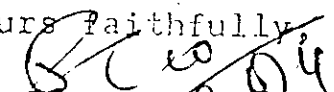
Impugned Order

Sir/Madam,

Sub: Stepping up of pay at par with juniours - Rec

With reference to your representation dt. 8-7-93 addressed to Director General, I am directed to inform that the judgement of C.A.T. is applicable to the petitioner only and as such the benefit of stepping up of pay cannot be granted univers

Attested

B. S. RAHI
B. A LL. B.
ADVOCATE.

Yours faithfully

P. CHANDRASEKHAR
(P. SREERAMULU)
REGIONAL DIRECTOR

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ANNEXURE A-4

REGIONAL OFFICE : ANDHRA PRADESH
EMPLOYEES' STATE INSURANCE CORPORATION

ISSUED IN CONTINUATION OF LIST AS ON 31-12-1976:

Gradation List of UDC-Incharge/UDC-Cashiers/U.D.Cs as on 31-1-1979 (Scale of pay-UDC-I/C:-Rs.425-15-530-EB-15-56 UDCs:-Rs.330-10-380-EB-12-500-EB-15-560. Cashiers:-same scale plus special pay fixed ~~at~~ L.O.wise. 20-600.

S.No.	Name & educational qualification.	Date of birth	Date of continu-ous se-vice.	Date of regula-r/appt/pro-motion in the grade.	Whether appoin-ted/promoted	Date of substa-ntive appoin-tment.	Pay & last date of increment.	Place of posting.	Remark
1	2	3	4	5	6	7	8	9	10
1.	M.Hasan Ali, P.U.C.	3-6-42	17-12-63	19-4-77	Promoted	Not con-firmed.	Rs.370/- 1-1-79	R.O.Hyd.	Offg.UDC w.e 3-1-77.
2.	P.A.Pramoda Rao, HS(M)LC	12-12-42	3-4-64	19-4-77	-do-	-do-	Rs.360/- 1-11-78	LO, Sanat-nagar.	Offg.UDC w.e 1-11-76.
3.	K.Ramjogaiyah, B.Sc., LDC	15-9-51	12-4-71	19-4-77	Appointed	-do-	Rs.350/- 1-11-78	RO.Hyd.	Offg.UDC w.e 1-11-76.
4.	A.V.Pratima, HS(M)LC	22-1-46	5-3-65	19-4-77	Promoted	-do-	Rs.360/- 1-4-78	RO.Hyd.	--
5.	S.Nusrat Aziz, HSC.	4-6-45	25-3-65	30-4-77	-do-	-do-	Rs.330/- 30-4-77	LO.Tarnaka.	Resigned on 30-7-77 AN.
6.	P.Vinodini, HS(M)LC.	7-3-44	1-3-65	19-4-77	-do-	-do-	Rs.360/- 1-1-79	RO.Hyd.	Offg.UDC w.e 3-1-77.
7.	Ch.Appala Raju, M.Com.	1-6-50	27-2-71	19-4-77	Appointed	-do-	Rs.350/- 1-11-78	RO.Hyd.	Offg.UDC w.e 1-11-76.
8.	R.Viswaroopachari, EUC	11-11-40	24-3-65	19-4-77	Promoted	-do-	Rs.404/- 1-2-78	LO.Sir-purK'nagar.	Offg.UDC w.e 16-2-72

B. S. RAHI
B. A LL. B.
ADVOCATE

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

O.A.No. 1595 of 1993

Between

D.Vinodini

..... APPLICANT

And

The Regional Director,
Employees' State Insurance Corporation,

I N D E X

Sl.No.	Description of the Document	Page Nos.
1.	Counter Affidavit	1 to 10
2.	Regional Office Memo.No.AP/Estt.4(b)/70 dt. 12.1.72 calling for willingness for	11

Recd
M. S. S. S.
18/1/94
Advocate

18.1.94

10/1/94
Counsel For Respondents

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No. 1595 OF 1993

Between:

D.Vinodini

..... APPLICANT

And

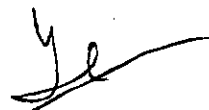
The Regional Director,
Employees' State Insurance Corporation,
5-9-23, Hill Fort Road,
Hyderabad.

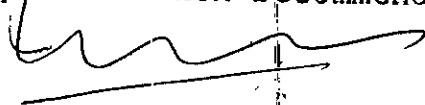
..... RESPONDENT

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENT

I, J.S.Murthy, S/o J.S. Rao, aged about 41 years
working as Asst.Regional Director, Employees' State Insurance
Corporation, Hyderabad and state
on oath as follows:

1. I am working as Asst.Regional Director's Office and as such I am well aware of the facts of the case. I am filing this counter affidavit on behalf of the respondent. I have read the O.A. filed by the applicant and submit that it does not disclose any valid or substantial grounds for the grant of relief prayed for. Section 21 of the Administrative Tribunal Act, 1985, the application is required to be filed within one year from the date the cause of action arose. In the present case the junior to the applicant Sri R.Viswaroopa Chary was promoted as UDC on adhoc basis from 16.2.72 onwards. The applicant did not make any grievance against the promotion on adhoc basis at that time or even after that. She has also not moved the Court even when her pay was fixed under Fourth Pay Commission recommendations. It is known to her that her junior was drawing more pay than her even before implementation of the Fourth Pay Commission recommendations,


Attestor


Deponent.

as the Regional Office has issued Gradation Lists from time to time and also in the year 1979 vide Regional Office Memorandum No.52.A/24/13/75.Estt"(UDC) dt.2.3.1979 in which the name of the applicant appears at Sl.No.6 and the name of Sri R.Viswaroop Chary at Sl.No. 8 clearly showing their pay as on that date. This is the same seniority list which was referred by the applicant at para 4(b) of O.A. as per which itself Sri R.Viswaroopa Chary was drawing more pay than the applicant. It was open to her to make a grievance and representation. The applicant never challenged at any stage the fixation of pay of her junior. She was fully aware of the fact that the anomaly in difference of pay is due to adhoc service rendered and subsequent increments got by the junior in the scale of UDC and therefore, the anomaly in difference of pay has not arisen as a result of application of F.R.22(C). Not making a representation and also not moving the Court for the redressal of grievances if any, in time amounts to waiver. More so, when it was in the full knowledge of the applicant that her junior was drawing more pay than herself. It is not open to the applicant to take stand that it is a continuous grievance and therefore she is entitled to ask a direction from this Hon'ble Tribunal whenever she chooses to approach against all provisions of the limitation. The fact is the applicant has never made any grievance so as to enable her to describe the situation as a 'continuous Grievance'. The fact is that what she was paid is less than her junior was in full knowledge of the applicant for more than two decades. If that being the position for two decades and she has never made an issue out of it, it is not open to her to say that it is a continuous grievance and hence entitled for the relief as prayed for. Every month when she draws less monthly pay than her junior, she never made any grievance acquiescenced

Ye
Attestor

[Signature]
Deponent.

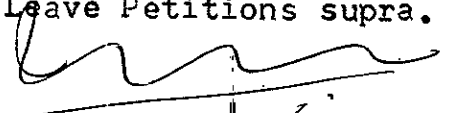
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to the position she place herself without making any grievance of it. Therefore the concept and ingredients of continuous grievance are not existing in this situation. If only she had made a representation or moved any court against less payment of her pay than her junior then only it comes under the concept of contiguous grievance. She submitted her request only on 30.6.1993 i.e., after more ~~extending~~ than 21 years of the adhoc promotion of her junior for stepping up at par with her junior Sri R.Viswaroopa Chary citing the judgement of C.A.T. Hyderabad in O.A.607/90 and some other cases. It is clearly evident that the applicant wants to derivate the benefit out of the judgement in O.A.No.607/90 for which she is not entitled. Since the applicant failed to move the Tribunal well within the prescribed limitation period, the O.A. is liable to be dismissed. Moreover, since the cause of action arose in 1972, the C.A.T. has no jurisdiction under the provisions of the C.A.T. Act.

3. Without prejudice to the above contention on limitation and jurisdiction. It is further submitted that the E.S.I. Corporation filed S.L.Ps in the Hon'ble Supreme Court against the orders of the Hon'ble C.A.T. Hyderabad in O.A. No.1030/90 and O.A.No.6/91. The Hon'ble C.A.T. Bangalore also noted the above fact while deciding its cases involving similar issue, holding that they are bound by their earlier decision, but the Supreme Court has since entertained Special Leave petitions in other matters bearing on the very controversy, they can find a way out of this impasse by making an order at the same time making it clear that the rights of the parties will always be regulated on the basis of whatever order is passed by the Supreme Court in the pending Special Leave Petitions supra.



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4. In reply to para-4(a) & (b) of O.A., it is submitted that the applicant was appointed as LDC in this corporation on 1.3.65. She was promoted as UDC on 3.1.77 onwards and on regular basis from 19.4.77, and later promoted as and on regular basis Assistant on 3.4.89 and on regular basis from 15.5.89. In the year 1972, a purely temporary vacancy of UDC arose at Local Office, sirpur-kagaznagar and in order to fill up the same, the respondent corporation issued a circular memo No.AP/Estt.4(6)/70, dt.12.1.72 calling for the willingness of the senior LDCs including Smt.D.Vindana the applicant, to be posted as Off. UDC at Local Office, Sirpur-kagaznagar. The applicant has also initiated said memorandum. In response to the above Regional Office Memo, nobody, including the applicant, submitted willingness. but one Sri R.Viswaroop chary, who was working as LDC at Regional Office Sirpur-kagaznagar, vide his letter dt.1.2.72. As such the temporary vacancy of UDC that arose at Local Office, Sirpur-kagaznagar was filled with by Sri R.Viswaroopa Chary. Subsequently, the applicant was also promoted as UDC at Local Office, on adhoc basis from 3.1.77 and on regular promotion. Her seniority was also not affected. The applicant has not disclosed all the above facts in her application, but only represented for stepping up of her pay at par with her junior. It is pertinent to mention here that the applicant has not given her willingness, for adhoc promotion at Local Office, Sirpur-Kagaznagar. If she had done that thing, she would have been certainly accommodated in promotion of her junior i.e., if the applicant had given her willingness for adhoc promotion at local office, Sirpur-kagaznagar, she would have been given adhoc promotion at

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Sirpur-kagaznagar in preference to Sri R.V.Chary.

5. This is, therefore, not a case of giving purely local promotions denying the claims of the seniors in the cadre.

It is made clear that all the incumbents in the cadre were given option and only senior most opties for a particular place were given adhoc promotion. Since the applicant has not given her option for adhoc promotion at Sirpur-kagaznagar, she alone is responsible for the consequences that flow and cannot make the grievance now that his junior is getting more pay and her pay should be stepped up. In view of the above the applicant has not right to claim equal drawing more pay by virtue of his officiating service in the cadre of UDC.

6. Consequent upon the implementation of the recommendations of Fourth pay commission, the pay of the applicant and her junior Sri R.V. Chary also have been fixed in the revised scales at the appropriate stages respectively to the pay in their pre-reivsed scales. The anomaly cited in the application is not due to implrementation of Fourth pay Commission recommendations. Since, Sri R.V.Chary was drawing more pay than the applicant even before the implementation of Fourth Pay Commission's recommendations, he is bound to get higher fixation than the official drawing less pay, though

7. It is also submitted that the conditions for stepping up of pay of the applicant with that of her junior's pay as prescribed in the Fourth Pay Commission Rules and also under Fundamental Rules are not fulfilled. Stepping up of pa y of the senior with that of her junior is possible only if the anomaly in the pay was directly as a result of application of the instructions of the Government of India as contained in Ministry of Finance O.A.No.


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F.2(78).E.III(A)/66, dt.4.2.66, the relevant portion of which is reproduced below:

"(10) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior".

(a) As a result of application of F.R.22(C): In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lowerrate of pay in the post than another government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as ~~drawn~~ ^{drawn} in that higher post.

The stepping up should be done with effect from the date of promotion or appointment of the junior ~~officer~~

under the following conditions namely:-

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they were promoted or appointed should be identical and in the same cadre;

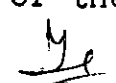
(b) The scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical.

... shall be directly as a result of application of F.R.22(C) for example, if even in the lower post the

senior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the

provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R.27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with


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effect from the date of refixation of pay.

8. In reply to para-6(c) it is submitted that the grounds and circumstances submitted by the applicant in O.A.No.607/90 (K.K.Kameswara Rao Vs. Regional Director, ESI Corporation, Hyderabad) are different with the present case. The applicant in O.A.No.607/90 has requested for his transfer to vizianagaram on his own cost, which could not be acceded to by the corporation and thereby he has forgone the change of getting officiating promotion at vizianagarm on local seniority basis. But in the present case the applicant has not opted for adhoc promotion at sirpurkagaznagar when dalled for options. As such there is no relevance and similarity of the present case with that of the case in O.A.No.607/90 and it is to be dealt on the merits of its own. Reliance on the judgement in O.A.No. 607/90 is neither conclusive nor exhaustive as the Hon'ble ~~Commissioner~~ ~~Inspector~~ arising out of O.A.607/90 has dismissed the same as confined to the facts and circumstances of the case. Hence the anology cannot be deduced from the facts of O.A.No.607/90.

9. Further in order to make it more clear regarding the seniority and promotion in this corporation, it is submitted that the following systems in the matter of seniority of the officials are followed:

(i) In respect of the ~~posts~~ ~~of~~ ~~inspectors~~ and above, seniority is maintained on All India basis.

(ii) For the officials upto the level of Head clerk, seniority is maintained on Regional Basis.

~~For the posts of insurance inspector~~
and above and for the post of Head clerk and below are therefore, done in the following manner.

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was resorted to with a view to carry on the work of Local Offices without causing any serious dislocation of work. Such officiating promotions were given with a clear intention that as and when the regular incumbents are available for filling up posts, the persons given officiating promotions would be reverted to the lower post. This would imply that the Head Clerks who were officiating as Insurance Inspectors would revert to Head Clerk and consequently the officiating Head Clerk would revert to UDC and UDC to LDC. Thus a chain of reversion would take place in the event of higher post being filled up on a regular basis.

In a particular local office if a Head clerk is temporarily promoted to the post of Insurance Inspector of UDC or acting cashier or if anybody proceeding on leave for a period exceeding 45 days etc., it is not always possible to fill up the short term vacancies by promoting a senior most person on the basis of regional seniority as this process would involve a chain of transfers of persons in all subsequent cadres. In other words to promote a person on adhoc basis to fill up a short term vacancy caused due to various reasons which could lead to shifting of staff on a mass scale is fraught with all its attendant administrative constraints. Since the Local Offices of the corporation are primarily meant for providing benefits to the workers covered under the scheme. It is desirable to encourage any administrative to the matter of filling up of short term vacancies. Nevertheless, the claim of all eligible officials are invariably considered at the time of the time of regular promotion against regular vacancies and for this purpose the seniority of the officials of the region


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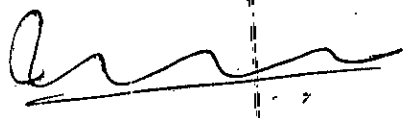

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as a whole is considered. For filling up of short term vacancies, the local seniority is taken into consideration since the promotion is for a brief period. Further, if a transfer is made for adhoc promotion to the local office it consumes a lot of time before the transferred employee joints the vacant post and thus, leads to administrative difficulties in the local offices. It is for these reasons that the corporation promotes on adhoc basis with a senior LDC available in a local office as and when adhoc promotion arises for the post of UDC in that local office. These adhoc promotions, however, do not curtail the rights of the seniors to be promoted in the event of regular vacancies.

11. The pay of the applicant cannot be stepped up at par with that of her junior Sri R.V. Ch... explained above. ... promotions given to a junior person would not by itself constitute a valid ground to step up the pay of senior as it would mean giving unintended benefit to the senior who has not performed duties in the higher posts.

12. For the reasons stated above, the applicant has not made out any case either on the facts or on law and there is no merit in the O.A. It is therefore prayed that this Hon'ble Court may be pleased to dismiss the O.A. with costs and pass such further and other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.



DEPONENT
जे. एस. मूर्ति
J. S. MURTHY
सहायक क्षेत्रीय निदेशक
Asst. Regional Director

Solemnly and sincerely affirmed
this 14th day of January, 1994
and signed his name in my presence.

Before
Attestor

के. एस. मूर्ति
K. S. MURTHY
उप क्षेत्रीय निदेशक
Dy Regional Director
क. रा. बी. नि. म., देवर बाद-४६३.
E S I. Corporation. Hyderabad-463

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(25)

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Dated: 1-1-1972

REGIONAL OFFICE, ANDHRA PRADESH
EMPLOYEES' STATE INSURANCE CORPORATION
5-2-23, HILL FORT ROAD, HYDERABAD-4.

No. AP/Estt. 1(3)/70

MEMORANDUM

Sub:- Calling for option for posting as U.D.C. at
Local Office Sirpur-Kagaznagar

Shri *M. S. below:-*

is requested to intimate this office as to whether he is willing to be considered for posting as U.D.C. on temporary, officiating and ad-hoc basis at local Office, Sirpur-Kagaznagar. His willingness or otherwise should reach this office by 17-1-1972, at the latest.

CC
12/1/72
REGIONAL DIRECTOR.

To

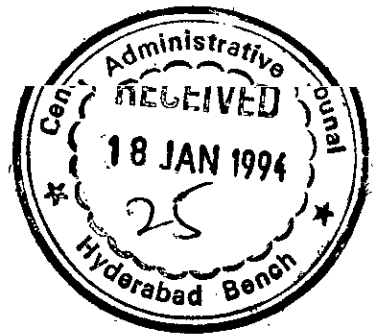
Shri.

- (A) M. A. Ranga Kumar *12/1/72*
 - (B) M. S. R. Venkateshwarlu *12/1/72*
 - (C) M. Hanumanth Reddy
 - (D) V. D. H. Srinivasulu
 - (E) M. B. Hanumanth Reddy *12/1/72*
- U.D.C. Sirpur-Kagaznagar*
12/1/72
TC

In the C.A.T.
Hyd Bench

04-1595/93

Counter Affidavit



B
19/1/94. may be filed
18/1/94

Filed by

N. R. DEVARAJ
Advocate &
Standing Counsel for Railways.
8, Lalitnagar,
Jama Masjid,
HYDERABAD-500 044

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(28)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH

O.A. No. 1595 of 1993

Smt. D. VINODINI

.. APPLICANT

VS.

THE REGIONAL DIRECTOR
EMPLOYEES' STATE INSURANCE CORPORATION,
HILL FORT ROAD, ADARSHNAGAR,
HYDERABAD.

.. RESPONDENT

RE-JOINDER IN REPLY TO COUNTER AFFIDAVIT FILED BY THE RESPONDENT

I, Smt. D. VINODINI w/o. Sri. D. Janardhan Rao, aged about 49 years, being the applicant in the above mentioned case do hereby solemnly affirm and state on oath as follows:

1. In reply to paras 1 and 2 of the counter affidavit I state that the contentions of the respondent are not correct. I am entitled to the reliefs prayed for as the grievance is of a continuous nature.
2. In reply to paras 3 and 4, I state that the Hon'ble Supreme Court has already decided the S.L.P. in O.A. No. 6/91 in favour of the employee/applicant in that case and the order has been received by the Honourable Tribunal. As regards the issue of a MEMO dt. 12-01-1972 by the respondent calling for willingness of the senior LDCs I say that I had not received any such memo. Moreover no proper offer for adhoc promotion such as the order of promotion was issued and conveyed to me before promoting my junior.
3. In reply to paras 5 and 6, I state that the contention of the respondent are not acceptable and I am entitled to stepping up of my pay equal to the pay of junior in question in the cadre of U.D.C. and the subsequent cadres.

Contd.....2

M. A. L.

In the CAT
Hyderabad.

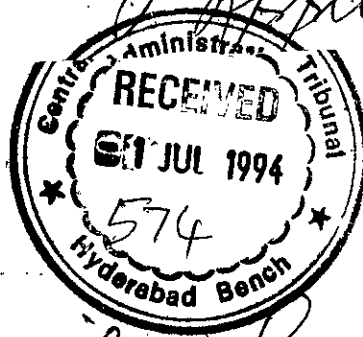
O.A. NO. 1595 of 1993

Smt. D. Vinodini,

vs.

Reg. Director, ESIC,

Rejoinder from the
Applicant.



RECEIVED COPY
N. R. Devaraj
Sr. CGSC
Allotted to:
19/7/94

Filed by:

B. S. RAHI

B. S. RAHI
B. A. LL. B.
ADVOCATE.

6
5/7/94

May be filed
on
1/7/94

(99)

4. In reply to paras 7 and 8, I say that the provisions contained in Govt. of India order Dt. 4-2-66 referred to by the respondent permit the stepping up of pay in my case. Further my case is similar to the case of the applicant in O.A. No. 607/1990.
5. In reply to paras 9 and 10, I say that the procedural difficulties enumerated by the respondent cannot be accepted as an excuse for ignoring the right of the senior employees to adhoc promotion when the same results in permanent benefit of increase in pay.
6. In reply to paras 11 and 12, I say that the respondent cannot deny the benefit of stepping up of pay to me by ignoring the provisions of Articles 14 and 16 of the constitution of India and the Judgements of various benches of the Honourable C.A.T. and Hon. Supreme Court of India.
7. I therefore pray that the reliefs as requested in my original petition please be granted.

D. Vinodini

DEPONENT / APPLICANT

SOLEMNLY AFFIRMED THIS 30th DAY OF June 1994, AND
SIGNED BEFORE ME, AT HYDERABAD.

[Signature]
ADVOCATE

[Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD, BENCH : HYDERABAD.

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

1595/97

ORIGINAL APPLICATION NO.

OF 1990

TRANSFER APPLICATION NO.

OLD PETN. NO.

CERTIFIED

CERTIFICATE

CERTIFIED that no further action is required to be taken and the case is fit for consignment to the Record Room(Decided).

Dated:

6/7/96

Counter Signed.

Court Officer/Section Officer.

Signature of the Dealing Asst.

30

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

O.A.No.1595/93.

Date: 11-4-1996.

BETWEEN:

Smt.D.Vinodini Applicant

And

Regional Director,
ESI Corporation,
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:

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

J U D G M E N T

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

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 the respondent Corporation at Hyderabad on 1.3.1965. He was promoted to officiate on adhoc basis as UDC on UDC were regularised with effect from 19.4.1977.

3. It is stated for the applicant that her junior Sri Viswaroopachari, who had also joined as LDC in ESIC on 24.3.1965 at Hyderabad was promoted on adhoc basis as UDC on 16.2.1972 at Sirpur, Kagaznagar and later on

AS UDC on 16.2.1972 at Sirpur, Kagaznagar and later on

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: 2 :

he was regularised in that post with effect from 19.4.1977. The applicant submits that in the gradation list of UDC of A.P.Region of ESI Corporation ~~xxxx~~ as on 31.1.1979 (Annexure A.4), the applicant was placed at Sl.No.6 and her junior Sri Viswaroopachary was placed at Sl.No.8. Because of adhoc promotion to her junior Sri Viswaroopachary, his pay was fixed at higher stage compared to the applicant when she was promoted as regular UDC.

4. The applicant herein filed a representation dt. 8.7.1993 (Annexure A.2) to the Director General, ESI Corporation for stepping up of her pay on par with her junior from the date when her junior was drawing more pay than her in the category of UDC. But, that 30.11.1993 bearing No.52-A/27/17/92-Estt.I(A) (Annexure A.3).

5. Aggrieved by the above rejection, the applicant respondents to step up her pay as UDC equal to the pay of her junior Sri Viswaroopachary from the date he was drawing more pay than her in the category of UDC in the ESI Corporation and for other consequential benefits.

6. The respondents submit that a Memorandum dt. 12.1.1972 bearing No.AP/Estt.4(6)70 was issued calling for options for posting at Sirpur-Kagaznagar on adhoc basis as UDC. The said memorandum was personally shown to both the applicant herein as well as Sri Viswaroopachary.

..3/-


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Though both of them have acknowledged the same, which is evident from the acknowledgement taken on the memorandum dt. 12.1.1972 which is enclosed as Annexure to the Reply Statement, the applicant did not submit her willingness. Whereas, the said Sri Viswaroopachary, her junior gave his willingness to go over to Sirpur-Kagaznagar to officiate on adhoc basis as UDC by his willingness letter dt.1.2.72.

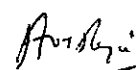
7. In the rejoinder, the applicant did not rebutt that she ^{did not give} ~~gave~~ her ^{own} willingness to go to Sirpur-Kagaznagar and hence it has to be construed that she did not give her willingness to take over as UDC on adhoc basis at Sirpur-Kagaznagar in terms of memorandum dt. 12.1.1972.

8. When the applicant failed to give her willingness to go to Sirpur-Kagaznagar to officiate as adhoc UDC and when her junior Sri Viswaroopachary gave his option to go to Sirpur-Kagaznagar, there is no reason for giving any benefit to the applicant for fixation of pay at higher stage on par with her junior Sri Viswaroopachary. For the reasons best known to her, she did not want to accept the adhoc posting. Hence, she cannot claim the advantage reaped by Sri Viswaroopachary due to his posting on adhoc basis as UDC at Sirpur-Kagaznagar, when she was promoted on regular basis as UDC. In view of the above, the OA lacks merits and liable to be dismissed.

9. Accordingly, the OA is dismissed. No costs.


(R. Rangarajan)
Member (Admn.)

Dated 11th April, 1996.
Dictated in open court.


7-5-96.
D. M. S.

Grh.

Copy to:-

1. The Regional Director, EST Corporation, Adarshnagar, Hyd.
2. One copy to Sri. B.S.Rahi, advocate, CAT, Hyd.
3. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
4. One copy to Library, CAT, Hyd.
5. One spare copy.

Rsm/-

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

TYPING

THE HON'BLE SHRI R. RANGARAJAN : (M.A)

DATED: 11/4/96

ORDER/JUDGEMENT

IN
B.A. NO. 1595/93

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED ✓
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO. ORDERS AS TO COSTS

No spare copy

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
ब्रेषण/DESPATCH
1-3 JUN 1996
HYDERABAD BENCH