

(48) (3)

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

O.A.No.1037/94.

Date: 16-4-1996.

Between:

M. Satyam Babu ..

Applicant

And

Regional Director,
ESI Corporation,

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

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

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

2. The applicant in this OA was appointed as LDC on adhoc basis from 10.9.1980 to 1.5.1982. He was made regular with effect from 1.5.1982 at Guntur local office. He was promoted on adhoc basis as UDC at Hyderabad from 10.10.1984 to 10.11.1988 and was made as regular UDC from 10.11.1988.

3. The applicant submits that his junior Sri K.M.G. Ali Hyder was getting more pay than him when Sri Ali Hyder was promoted as UDC on regular basis and hence, his pay also should be stepped up on par with Sri Ali Hyder.

4. Sri K.M.G.Ali Hyder also joined as L.D.C. at Hyderabad on 1.5.1982 on regular basis and later he was transferred to Kurnool. He worked on adhoc basis in the

(4)

: 2 :

cadre of UDC from 17.8.1983 to 9.8.1989 at Yemmiganur. Because of his working as adhoc UDC earlier to the applicant, his pay was fixed at higher stage compared to the applicant when Sri Ali Hyder was promoted regularly as UDC.

5. In view of the higher pay fixation in respect of Sri Ali Hyder in the cadre of UDC on his regular promotion as UDC, the applicant submitted a representation to the Director General, ESI Corporation, New Delhi vide his representation dt. 28.7.1993 for stepping up of his pay on par with his junior Sri Ali Hyder. But, that request was turned down by the impugned order No.52-A/27/17/92-Estt.I(A) dt. 27.12.1993 (Annexure A.4).

6. Aggrieved by the above, he has filed this OA praying for a direction to the respondents to step up his pay on par with his junior Sri Ali Hyder from the date Sri Ali Hyder was drawing more pay than him in the cadre of UDC.

7. The main contention of the respondent in not granting him stepping up of pay as prayed for by him is that the applicant did not respond to the memorandum dt. 16.7.1981 bearing No.52-A/22/12/76-Estt. when options were called for from the LDCs for adhoc promotion to the cadre of UDC. As the applicant failed to submit his option in terms of the above memorandum, the learned counsel for the respondent submits that, the applicant is not entitled for stepping up of pay.

..3/-



8. The learned counsel for the applicant submitted that he is not aware of the said memorandum and hence he cannot be blamed for not giving his option in terms of memorandum dt. 16.7.1981. As stated above, the applicant was working as LDC on adhoc basis from 10.9.1980 to 1.5.1982. At the time of issue of memorandum dt. 16.7.1981, the applicant was only ~~only~~ an adhoc LDC. He was not given the regular posting as LDC as on 16.7.1981. Even if he had submitted his option to go as adhoc UDC, it would ~~mean~~ ^{mean} that he will jump two steps in his career i.e. he will be counted as a regular LDC and promoted as adhoc UDC. Nobody can be promoted as a regular LDC unless he fulfills the required conditions prescribed in recruitment rules, and by a positive act of selection he has been found fit for holding the post of regular LDC. In Government departments, the first step for adhoc UDC is to become regular LDC and then only he can hope to become adhoc UDC. Whereas the applicant if promoted as adhoc UDC he would have secured two adhoc promotions viz. to the cadre of LDC and then to the cadre of UDC. Such promotions are not contemplated in service rules. In view of the above even if he had given his option for adhoc posting as UDC could not have been considered for promotion to the post of UDC on adhoc basis. Hence, the contention of the respondents that the request for stepping up of pay of the applicant is rejected in view of his failure to respond to the memorandum dt. 16.7.1981 is not tenable.

9. On 12.4.1996 when this OA came up for hearing, the case ~~x~~ was heard at full length. At that time the

(50) (6)

learned Standing counsel for the respondents contended that in view of the memorandum dt. 16.7.1981 the applicant cannot claim stepping up of pay. When the case was discussed threadbare as indicated in para-8 supra, the learned Standing Counsel fairly submitted that the applicant may have a case. But the judgment in this case was to be dictated immediately after the lunch recess on 12.4.1996. When the case was taken up for dictation, the learned Standing Counsel for the respondent was not present either by design or otherwise. Even his junior came late to the Court. One of the officials of the department simply stated that they want to appeal against the decision. It is not clear against what decision they are appealing when the judgment itself is not dictated. It is a sad commentary that without knowing the procedure, the official of the respondent Corporation made the statement as above without understanding the case in full. In spite of this lapse, I permitted him to give reasons in this connection. He immediately produced a memorandum dt. 21.7.1982 wherein options were called for for promotion as adhoc UDC. On the date of issue of the said letter the applicant was no doubt working as regular LDC. The departmental official submitted that as the applicant failed to submit his option in terms of memorandum dt. 21.7.1982, he is not eligible for stepping up of his pay.

10. The OA was filed on 19.8.1994 and the reply to that OA was filed by the respondents on 4.11.1994 and the OA was first taken up for final hearing on 12.4.1996. Till 1.30 P.M. on 12.4.1996, the department

is not aware of the existence of the letter dt. 21.7.1982. Though the learned Standing Counsel submitted that they made research to get that letter, it is very strange to note that the research was made from 1.30 P.M. of 12.4.1996 to 2.15 P.M. on the same day. The statement of Search as indicated above is not only strange but also raises a doubt. Principles of natural justice demands that the reasons advanced for denying the prayer of stepping up of pay should have been clearly indicated in the reply and sufficient opportunity should have been afforded to the applicant for filing rejoinder etc. on the basis of facts available with him. The applicant should have been given enough time to see the memorandum dt. 21.7.1982 for submitting his reply in this connection. But no such opportunity was given to the applicant. The memorandum dt. 21.7.1982 was shown in the court at the last minute and on that basis the learned Counsel for the respondent sought to deny the benefit to the applicant. It is definitely against the principles of natural justice. It was also stated that the additional counter was filed on 15.4.1996 indicating the issue of memorandum dt. 21.7.1982 and hence opportunity was given to the applicant submits the learned Standing Counsel. The case was heard on 16.4.1996. It is beyond anybody's reasoning whether the applicant who is away can give any reply to this affidavit dt. 15.4.1996 when it was served on the applicant's counsel in the last minute before hearing. Further, to file this additional counter. When an additional

counter ~~counter~~ is filed, the rules stipulate that the permission of the court has to be taken. In this case no permission was given by the Court to file additional counter.

11. From the foregoing paras, two important issues arise in this case. One is whether the memorandum dt. 21.7.1982 was circulated widely so as to bring it to the notice of the employees. A perusal of the office records from where the above memorandum was issued, indicates that it was circulated within the office at Hyderabad to various officials therein. Though, it is stated that it was circulated to the local offices in A.P. Region, no evidence has been produced to show that the memorandum was received by the local offices in A.P. region. In the absence of any records to this effect, I have to come to conclusion that this memorandum was issued and kept on the file of the headquarters without giving any publicity at all. Further, it is also to be pointed out that even the respondents themselves are not aware of the memorandum for about two years after the filing of this O.A. Somehow, this memorandum at eleventh hour was produced and it is beyond anybody's guess how far this memorandum which was not known even to the respondents till 1.30 P.M. of 12.4.1996 can be said to be circulated widely and on that basis deny the request of the applicant.

The second issue is in regard to the authenticity of the memorandum dt. 21.7.1982. The record shows that the designation 'LDC' is added at the bottom of the subject *matter*. It is not included in the subject along with UDC/UDC-Cashier and other relevant categories. This gives a suspicion that

(40) (9)

the word 'LDC' could have been added later for the reasons best known to the respondent Corporation. Hence, authenticity of this memorandum as I stated earlier, cannot be accepted in toto. Though the respondent's counsel states that it was issued on 21.7.1982, no satisfactory record is produced before me to show that such a circular calling for options from LDCs was issued on that date. In any case for reasons stated above, I am convinced that this circular produced at the last minute should not be taken note of to deny the prayer of the applicant. Hence, I outright reject this memorandum dt. 21.7.1982.

12. This Tribunal is ordering arrears in continuing causes one year prior to the filing of the OAs. As the grievance involved in this OA is of continuous nature, the arrears have to be allowed from one year prior to the date of filing of this OA as per the practice in vogue in this Tribunal.

13. In the result, the OA is allowed and the respondent corporation is directed to step up the pay of the applicant notionally on par with his junior Sri K.M.G.Ali Hyder from the date Sri Ali Hyder was drawing more pay than the applicant in the cadre of UDC. The arrears have to be paid from one year prior to the date of filing of this OA i.e. from 19.8.1993 (this OA was filed on 19.8.94).

14. Before I part with this case, I would like to express my anguish in respect of casual dealing of this

..8/-



case. If this circular dt. 21.7.1982 was on the file, the Section Incharge, who had prepared the para-wise remarks should have gone through the file completely and should have brought it to the notice of the concerned officer who signed the reply. But, it appears that no such proper scrutiny was carried out by the officials in the respondent corporation before filing the reply. Further, I also find that even the higher officials have not taken any care to examine this issue thoroughly before rejecting the case of the applicant. When official incharge of this file who prepared the para-wise remarks did not take pains to connect all the papers, it should be treated as a lapse on his part. Such lapses, if condoned will lead to a situation where employees will suffer. Such a situation cannot be allowed to creep in. Hence, it is for the respondent corporation to take corrective action to avoid such lapses in future. In view of what is stated above, I would suggest to the Regional Director, ESI Corporation, A.P. Region to enquire into the lapse and take remedial measure to avoid recurrence and also bring this to the notice of the Director General, ESIC for his perusal so as to keep the head of the organisation alerted as to the remedial action taken.

15. No costs.

(R.Rangarajan)
Member (Admn.)

Dated 16th April, 1996.
Dictated in the open court.

Grh.

Prithi
7/5/96
Dn. G.

(12) 17428N9

1037/07

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED: 16/4/00

ORDER/JUDGEMENT

M.A. NO./R.A./G.A. No.

IN
D.A. NO. 1037/07

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
प्रेषण/DESPATCH
- 3 JUN 1996
हैदराबाद न्यायपीठ
HYDERABAD BENCH