

(CP)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.664 of 1994

DATE OF ORDER:27.6.96

BETWEEN:

P.P.KAMESWARA RAO

.. Applicant

and

The Regional Director,
Employees' State Insurance Corporation,
Hill Fort Road, Adarshnagar,
Hyderabad 500 463.

.. Respondents

COUNSEL FOR THE APPLICANTS: Shri B.S.RAHI

COUNSEL FOR THE RESPONDENTS: SHRI N.R.DEVARAJ, Sr.CGSC

CORAM:

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

JUDGEMENT

(AS PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE))

applicant and Shri N.R.Devaraj, learned senior standing
counsel for the respondents.

2. The applicant in this OA was promoted as Head
Clerk on probation under respondent-organisation with
effect from 26.11.76 and he completed his probation on
3.3.79.

Yousuf (since retired) who was promoted as Head Clerk on
probation on 16.8.76 and completed his probation on

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13.8.77. It is further stated that the applicant was senior to Shri Syed Yusuf in the lower grade. The applicant was further promoted as Insurance Inspector/Manager Grade-II on adhoc basis with effect from 23.2.80 and his services were regularised in that capacity with effect from 4.9.81. Shri Syed Yusuf, the junior of the applicant, was promoted to the post of Manager Grade-II/Insurance Inspector on adhoc basis with effect from 12.12.77 and he was regularised in that post with effect from 1.12.82. As the junior Shri Syed Yousuf had worked on adhoc basis as Manager Grade-II earlier to the applicant, the pay of the applicant was less than that of Shri Syed Yousuf in the regular cadre of Manager Grade-II/Insurance Inspector. The applicant's request dated 19.8.93 (Annexure A-3 at page 9 of the OA) to the Director General for stepping up of his pay on par with his junior Shri Syed Yousuf ~~from the date of his regular promotion~~ from the date Shri Syed Yousuf was drawing more pay than him. But that request was not considered. The order No.52-A/27/17/92-Estt.I(A), dated 27.12.93 (Annexure A-4).

3. Aggrieved by the above, he has filed this OA praying for direction to the respondents to step up and refix his pay as Insurance Inspector/Manager Grade-II equal to the pay of his junior Shri Syed Yousuf within a specified period and for consequential direction to pay arrears accrued thereon due to the stepping up of the pay.

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4. A Reply has been filed in this connection. The main contention of the respondents in this case is that when Shri Syed Yousuf was promoted on adhoc basis on 12.12.77 as Insurance Inspector/Manager Grade-II, the applicant could not be considered for that adhoc promotion as he was under probation as Head Clerk which probation was terminated only on 5.3.79. In view of the fact that the applicant was undergoing probation when his junior was promoted to the post of Manager Grade-II, the applicant was not eligible for promotion even on adhoc basis to the post of Insurance Inspector/Manager Grade-II. In view of the above, the adhoc promotion perforce has to be offered to his junior and because of that his junior was drawing more pay than the applicant when he was regularly promoted to the post of Insurance Inspector/Manager Grade-II.

5. There is force in the contention of the respondents. When an employee has not completed his probation period, he cannot be considered for promotion to the higher grade even on adhoc basis. When there is need to fill up higher post and when senior employee is not eligible for promotion at that time when higher post has to be filled even on adhoc basis, the Government has left with no alternative except to promote the junior if he is otherwise eligible for such promotion. In this case when adhoc promotion to the post of Insurance Inspector/Manager Grade-II was made, the applicant who had not completed the probation was ineligible for consideration for promotion to that post on adhoc basis as he was under probation in the post of Head Clerk. Hence his junior Shri Syed Yusuf who was eligible for consideration for promotion

to the post of Insurance Inspector/Manager Grade-II was promoted on adhoc basis and because of that earlier adhoc promotion he gained higher fixation of pay when he was regularly promoted as Insurance Inspector/Manager Grade-II.

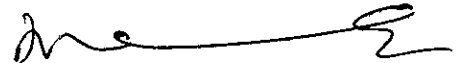
6. The learned counsel for the applicant submitted that even though the applicant was not promoted on 12.12.77 when his junior was promoted to the post of Insurance Inspector/Manager Grade-II, he should have been considered for promotion to the post of Insurance Inspector/Manager Grade-II immediately after his probation is completed and his pay should be fixed on par with his junior from that date. The above contention was considered. If the contention is favourably considered, it would mean reversion of an employee who had already been promoted, even reversion is not in order as the junior who had been promoted earlier to the senior, who was not eligible for promotion at that time, was promoted as he fulfilled all the conditions for adhoc promotion. When an employee is not eligible for promotion, he cannot ask for higher fixation with respect of his junior when he was promoted at a later date after he became eligible. ~~There is no rule or~~ instruction produced before me to show such contention is in order on the basis of the rules. The applicant can at best be promoted when a vacancy arises after his satisfactory completion of probation and his pay fixation is governed by that date.

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7. The applicant having failed to come up for consideration for promotion to the post of Insurance Inspector/Manager Grade-II due to his ineligibility cannot at a later date ask for higher fixation with respect of his junior since the junior was promoted earlier when he was ineligible for such consideration. He cannot also ask for higher fixation of pay at a later date on par with his junior when he was regularly promoted for reasons stated above. In view of the above, the contention of the applicant fails.

8. In the result, I find no merit in this OA. Hence the OA is dismissed. No costs.



(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 27th June, 1996
Open court dictation.

Arthi
3-7-96
D.R. (J)

vsn