

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.1059/95

DATE OF ORDER : 11-12-1996.

Between :-

1. M.Satyam Babu
2. J.Rama Jogi
3. P.Yadagiri Rao
4. Raja Chandra Sekhar
5. G.Mallesham

... Applicants

And

1. The Director General,
Employee's State Insurance Corporation,
Kotla Rd, New Delhi.
2. The Regional Director,
Employees' State Insurance Corporation,
Regional Office (AP), 5-9-23, Hill
Forte Rd, Hyd-463.
3. Md.Yousuf,
4. N.S.Sarada Devi
5. P.R.R.Krishna Rao
6. D.K.Santhosh

... Respondents

Counsel for the Applicants : Shri Y.Suryanarayana

Counsel for the Respondents : Shri NR Devaraj, CGSC for RR 1 & 2
Shri J.Sudheer for RR 3 to 6.

CORAM:

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

THE HON'BLE SHRI B.S.JAI PARAMESHWARAN : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

Heard Shri P.Naveen Rao for Shri Y.Suryanarayana

for the applicants, Shri N.R.Devaraj, Sr. Standing counsel

for Respondents 1 & 2 and Shri J.Sudheer, counsel for Res-
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pondents 3 to 6.

2. There are 5 applicants in this O.A. They are working as Upper Division Clerks under the control of Respondent No.2. Their next promotion is to the post of Head Clerk/Assistant. The private Respondents 3 to 6 are Stenographers under Respondent No.2. They are also aspirants to the posts of Head Clerk/Assistant.

3. The Recruitment Rule for the post of Head Clerk/Asst. are embodied in the Recruitment Rules called ^{The} "Employees State Insurance Corporation (Recruitment) Regulations, 1965" published in the year 1965. This has been Gazetted in the Gazette of India on 3-4-1965. The relevant Rule for the promotion to the post of Head Clerk/Asst. is indicated in Schedule-II of the above said regulation at Sl.No.3 which is captioned as "Class-III Ministerial". Column 6 of the above Schedule II shows the Grades/Sources from which promotion/deputation to be made for the post of Head Clerk/Asst. As per that Column the feeder categories indicated for the posts of Head Clerk/Asst. are UDCs/UDC incharge/Cashiers in UDC Scale. Stenographers may also be considered for promotion on merits but the promotion will not be in a direct line. This promotion of Stenographers to the post of Head Clerk/Asst has to be read ^{with} ~~in~~ the note 3 under Schedule-II. The Note-3 under this Schedule II reads as follows :-

"Stenographers may be posted to work as UDCs for 2 years before they are considered for promotion to higher grade in which case their promotion to the Higher Grade can be in a direct line."

4. Thus, from the above provisions in the Recruitment Rule, both the UDCs and the Stenographers are eligible to be

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considered for promotion to the post of Head Clerk/Asst. treating both the categories as feeder categories. But the promotion of Stenographers to the post of Head Clerk/Asst. will not be in a direct line. In order to make them eligible for consideration for the post of the Head Clerk/Asst. and also to enable them to acquire the knowledge in the ministerial work Note-3 under this schedule is added. As per this Note-3 the Stenographers should first be permitted to work as UDC for a period of 2 years before they are promoted as per rules to the post of Head Clerk/Asst. The above method of promotion of Stenographers by bringing them ^{first} ~~just~~ to UDC cadre is also ^{to} enable them to get the promotion as if they are in the direct line of the promotion.

5. It is stated that recruitment rule for the post of Head Clerk/Asst. issued in the year 1965 was modified and a notification No.7(3)-16/72-Estt dt.28-6-74 was issued for promotion to the post of Head Clerk/Asst. As per this notification once again both the UDCs and Stenographers are eligible for promotion to the post of Head Clerk/Asst. But in 1974 notification ~~to~~ Note-3 in Schedule-II of 1965 Recruitment Rule Regulation has been ~~deleted~~. Hence the Stenographers need ^{now} not be posted as UDCs before ^{they} being considered for promotion to the post of Head Clerk/Asst.

6. From the above 2 notifications it is very clear that ^{both} the UDCs and Stenographers are eligible to be considered for promotion to the post of Head Clerk/Asst. But the Stenographers need not be brought to the cadre of UDCs for being considered for promotion to the post of Head Clerk/Asst. after the issuance of notification dt.28-6-74. Thus there is no doubt that the Stenographers are eligible for promotion to the post of Head Clerk/Asst.

Asst. along with the UDCs on the basis of inter-se-seniority drawn between UDCs/Cashiers (Those who are in the scale of UDCs)/Stenographers following the other extant rules.

7. Even in 1965 Recruitment Rules (Regulations), the Stenographers can be considered for the post of Personal Assistant. In 1994 a memorandum was issued on 3-8-94 for recruitment to the post of Personal Assistant and above and this memorandum talks of recruitment regulations for the post of Stenographers/Personal Assistants/Sr. Personal Assistant etc.,. As per this memorandum the Stenographers have a channel of promotion to the post of Personal Assistant and above in addition to their channel of promotion to the post of Head Clerk/Assistant. Thus the Stenographers have two channels of promotion one to the post of Head Clerk/Assistant and the second is to the post of Personal Assistant/Sr. Personal Assistant etc.,. The Stenographers have to be considered in accordance with their seniority and fulfilling the other conditions of recruitment rule for promotion in both the channels. Memorandum dt. 3-8-94 (page 17 of the OA) ~~is~~ issued in pursuance of the notification dt. 19-4-94 by Respondent No. 1 does not prohibit the Stenographers/being considered for promotion to the post of Head Clerk/Asst. Hence there should be no blockade in the minds of the respondents-authorities in considering the Stenographers for promotion in both the channels.

8. In spite of the clear provisions for promotion of the Stenographers to the post of Head Clerk/Asst. without being posted first as UDC, a one time exception to Stenographers to join as UDC was given on 30-6-95 (Annexure-II to the application). In view of

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the clear provisions of the recruitment rule of 1965 read with notification dt.28-6-74 there is no need for the Stenographers to come to the cadre of UDC before being considered for promotion to the post of Head Clerk/Asst. Hence in our opinion the one time option as indicated in the letter dt.30-6-95 is uncalled for and is not warranted in view of the clear cut provisions of the Recruitment Rules. Executive Instructions cannot/^{over}ride the recruitment rules framed under Article 309 of the constitution. If such executive instructions are contrary to the recruitment rule. But the executive instructions can clarify certain issues. But in this case the executive instructions are against the spirit of the recruitment rule and hence this letter dt.30-6-95⁵ is liable to be set aside.

9. In pursuance of that letter 4 Stenographers as indicated in office Order No.380/95 bearing No.52.A/22/15/95-Estt.I dt.23-08-95 were transferred and posted as UDCs. In view of what is stated above we are convinced that this order also has to be set aside as there is no need for Stenographers to be brought as UDCs.

10. This OA is filed for setting aside the circular No.A-33/11/1/88-E.I(B) dt.30-6-95 and proceedings No.52.A/22/15/95-Estt.I dt.23-8-95 (Office Order No.380/95) of Respondent No.2 and for a consequential direction to official respondents to treat the respondents 3 to 6 as Stenographers only.

11. There is no need to further analyse the reply of the respondents as the rule is clear and the respondents cannot act beyond and in dis regard to the rules.

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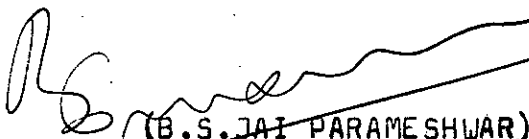
12. After hearing all the parties concerned we come to the conclusion that the prayer in this O.A. is justified. However it is to be emphasised that the Stenographers should also be considered for Head Clerk/Asst. without bringing them to the cadre of UDCs, along with the eligible candidates in the UDCs to the higher post in accordance with the rules for selection.


13. It is also noted in this connection that the Stenographers are also entitled for promotion to the higher grades of Personal Asst./Sr.P.A. in accordance with the recruitment rules following selection procedure to that category.

14. In the result the following direction is given:

"The letter dt.30-6-95, whereby the Stenographers are to be posted as UDC as one time exception and posting of four Stenographers as UDCs by letter dt.30-8-95 are set aside. The promotions of UDCs and Stenographers are to be regulated as observed above.

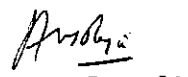
15. The Original Application is ordered accordingly with no order as to costs.


(B.S. JAI PARAMESHWAR)
Member (J)
11/12/96


(R. RANGARAJAN)
Member (A)

Dated: 11th December, 1996.
Dictated in Open Court.

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23-12-96
DNC

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O.A.NO.1059/95

Copy to:

1. The Director General, Employee's State Insurance Corporation, Kotla Road, New Delhi.
2. The Regional Director, Employees State Insurance Corporation, Regional Officer, (A.P) 5-9-23, Hill Fort Road, Hyderabad.
3. One copy to Mr. Y. Suryanarayana, Advocate, CAT, Hyderabad.
4. One copy to Mr. N.R. Devraj, Sr. CGSC, CAT, Hyderabad.
5. One copy to Library, CAT, Hyderabad.
6. One duplicate copy.
7. one copy to Mr. J. Sudheer, Advocate, CAT, Hyd.

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2/11/97

TYPED BY

CHECKED BY

COMPILED BY

APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI. B.S. JAI PARAMESHWAR:
M(J)

DATED: 11.12.96

ORDER/JUDGEMENT

R.A./C.P/M.A.No.

O.A.NO. 1059/95 in

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS.

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/~~REJECTED~~

NO ORDER AS TO COSTS.

II COURT

YLKR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

1 JAN 1997

हैदराबाद न्यायपीठ
HYDERABAD BENCH