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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1286/95.

Dt. of Decision : 17-11-95.

Ch. Balram

.. Applicant.

vs

1. The Regional Director,
A.P. Employees State Insurance Corporation,
Regional Office, Hill Port Road,
Hyderabad.
2. The Manager,
Local Office, A.P. Employees State
Insurance Corporation, Ranigunj,
Hyderabad. .. Respondents.

Counsel for the Applicant : Mr. Y. Suryanarayana

Counsel for the Respondents : Mr. N.R. Devaraj, Sr. CGS.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

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

JUDGMENT

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

Heard Sri Y.Suryanarayana, learned counsel for the applicant and Sri N.R.Devaraj, learned Standing Counsel for the respondents.

2. The applicant joined ESI Corporation as LDC on 5.1.1985 and was promoted as UDC on adhoc basis on 6.7.1993. His services were regularised in UDC cadre by order dt. 22.9.1995. Earlier, he was posted as UDC on adhoc basis in the local office at Patancheru, where he had met with an accident on 28.11.1994. As his eye was affected, he had submitted a representation for his transfer to local office at Kukatpally, Sanathagar, Balanagar vide Annexure A.I. On the basis of his representation, he was posted as UDC on adhoc basis in the local office at Ranigunj (Annexure A.II). When some posts were created, the applicant was regularised as UDC with effect from 20.9.1995. The cadre of ESI Corporation in Group 'C' and 'D' category consists of LDCs, UDCs, UDC-Cashier and Group 'D' staff depending on the volume of the work involved. The officials who are working as UDCs are posted as UDC-Cashiers with additional pay. The applicant herein was posted as UDC-Cashier at local office, Nizamabad by order dt.26.10.1995 (Annex.A.VII).

3. The applicant submits that he never asked for posting him as UDC-Cashier. He had been posted by the administration without obtaining his willingness. Even, when a circular was issued calling for volunteers to be

posted to work as UDC-Cashier at local office, Nizamabad, he had not given his option. He further contends that there are number of his juniors both regular as well as adhoc, who are retained at Hyderabad and he is singled out to be posted at Nizamabad. As he belongs to SC community, his posting to Nizamabad without his option is not tenable.

4. This OA is filed assailing the impugned office order No.498/95 bearing No.52.A/20/11/1143/86-Estt.I dt. 26.10.1995 (Annexure A-VII) and for a further consequential direction to the respondents to retain him at Hyderabad.

5. An interim order dt. 30.10.1995 was issued to the effect that "until further orders status-quo as on today has to be maintained."

6. ESI Corporation in Andhra Pradesh has got number of branches controlled by the Regional office to enforce the provisions of ESI Act in the State viz. collection of contributions, disbursement of cash benefits to insured workers etc. It is said that there are 38 local offices set up for this purpose. The Nizamabad local office was started in Nov., 94 with a staff strength of Manager, one UDC, one UDC-Cashier and one Group-D staff. Initially one Sri Vasudeva Murthy, an adhoc UDC, Regional office, Hyderabad was posted to Nizamabad on temporary transfer as UDC-Cashier. However, as he was suffering from T.B. he was replaced by one Sri Bhaskar Rao as UDC-Cashier, at Nizamabad. It was represented by Sri Bhaskar Rao that as he had worked outside Hyderabad for quite some time and that he was posted only recently to Hyderabad in the month of August, 1995 he requested for his transfer to Hyderabad. His request was accepted and

and he was posted to Ranigunj local office as UDC-Cashier transferring the applicant to Nizamabad by the impugned order.

7. The contentions of the respondents for sustaining the impugned order dt. 26.10.1995 are summarised as follows:

(1) No official of ESI Corporation is willing to go to Nizamabad. UDC-Cashier post is a responsible post handling money matters and hence only a permanent UDC can be posted as UDC Cashier at Nizamabad. The applicant having worked at Hyderabad for over 10 years, he cannot refuse to go to Nizamabad on the pretext that he had come to Hyderabad only recently from Patancheru.

(2) The UDC-Cashiers are necessarily to be permanent UDCs as it involves handling of cash. However, in exigencies of service adhoc UDCs are also posted as UDC-Cashier, but posting them as such is not resorted to as a matter of routine.

(3) The question of getting willingness letter before posting the staff as UDC-Cashier does not arise as if such practice is accepted, none will be willing to go to places like Nizamabad and hence, the local offices in those localities cannot function.

(4) The principle of transferring the junior-most is normally followed whenever transfer is to be effected. In the case of permanent UDCs, there are two officials junior to the applicant viz. Smt. Hema Malini and Sri K. Bhaskara Rao, who are working at Regional office, Hyderabad. Smt. Hema Malini, being a lady cannot be posted at Nizamabad and ~~as her~~ her husband is also working at Hyderabad. Though, Sri Bhaskar Rao, was initially

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posted, he has to be brought back to Hyderabad by the impugned order, as he had worked outside Hyderabad for over 10 years and he had come to Hyderabad only recently in August, 1995. He also belongs to reserved community. Giving due consideration to the fact that his wife is in the advance stage of pregnancy and his presence at Hyderabad is necessary and also the fact that he had worked outside Hyderabad eversince his joining in the Corporation in 1986, he was brought back to Hyderabad by the impugned order. There are no other permanent UDCs below the applicant to be posted as UDC-Cashier, at Nizamabad. Hence, the applicant has to be necessarily to be posted at Nizamabad in place of Sri Bhaskara Rao.

8. The learned counsel for the applicant submitted that there are number of adhoc UDCs available and they can be easily posted to Nizamabad as UDC-Cashier in place of the applicant and that there is no such rule that UDC-Cashiers posted must necessarily be permanent UDCs. In the additional reply filed by him, he gave the names of few adhoc UDCs.

9. The learned Standing Counsel submitted a list showing the sanctioned strength of UDCs/UDC-Cashiers in A.P. Region as on 30.10.1995. As per this, there are 159 posts of UDCs/UDC-Cashiers and there is only one leave vacancy at present existing. The names of the officials who are working as UDCs/UDC-Cashiers with their place of posting has also been indicated the



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in that list. From this list, it is seen that there are 122 permanent UDCs and UDC-Cashiers and the applicant is placed at Sl.No.120. There are 40 UDCs and UDC-Cashiers working on adhoc basis. There is a UDC-Cashier at Kukatpally working who is an ~~an~~ UDC adhoc. Similarly another adhoc UDC is working as UDC-Cashier at Tadepally. Though, it is vehemently argued that adhoc UDCs cannot be posted as UDC-Cashiers there are precedents in posting adhoc UDCs as adhoc UDC-Cashier as can be seen from the list quoted above. Though, it is stated that posting adhoc UDCs as adhoc UDC-Cashier is not a matter of routine and resorted to only in exigencies of service, the practice of posting adhoc UDC-Cashiers is not foreign to the ESI Corporation rules. Even the first UDC-Cashier posted to Nizamabad viz. Sri Vasudeva Murthy, is also an adhoc UDC.

The adhoc UDCs are not freshers appointed directly as adhoc UDCs. They are regular LDCs of the Corporation promoted on adhoc basis as UDCs after ascertaining their suitability. Though there may be some reservations to post them as UDC-Cashiers, in the present circumstances posting them as UDC-Cashier appears to be inevitable especially in view of the fact that two such adhoc UDCs are already functioning as UDC-Cashiers.

As there are number of adhoc UDCs in the staff strength in A.P. Region, the possibility of posting one of them as UDC-Cashier at Nizamabad has to be examined if the two juniors viz. Smt.Hema Malini and Sri Bhaskara Rao, permanent UDCs cannot be posted at Nizamabad as

UDC-Cashier for the reasons stated by the respondents.

The learned Standing Counsel submitted that there are no suitable LDCs who had completed probation are available for promotion as UDC as they have not fulfilled the conditions of 3 years service as LDCs, and also without any vigilance/disciplinary cases. Only 7 out of the LDCs list given by the Standing Counsel have fulfilled the conditions of 3 years service as LDC and having completed the probation. But, they cannot be promoted due to pending disciplinary cases/and/or for other reasons.

In view of the above circumstances, we feel that one of the adhoc UDCs presently working in A.P.Region has to be posted as UDC-Cashier at Nizamabad following the extant principle of transferring the staff. The transfer in the present case does not come under the purview of rotational transfer.

10. The learned Standing Counsel for the respondents submitted that Tribunal/Court should not interfere in the posting and transfers unless malafides are attributed in such transfers as directed by the apex court. He further submitted that this principle is strictly followed by this Tribunal in other transfer cases and giving a go-bye to that principle adopted by this Tribunal in the present case is not warranted. The above submission of the learned Standing Counsel is taken note of while observing as above in para-9 above.

To

- 1 The Regional Director,
A.P. Employees State Insurance Corporation,
Regional Office, Hill Port Road,
Hyderabad.
2. The Manager, Local Office,
A.P. Employees State Insurance Corporation,
Ranigunj, Hyderabad.
3. One copy to Mr Y.Suryanarayana, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Library,CAT.Hyd.
6. One spare copy.

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In the normal circumstances the court/Tribunal may not interfere with transfer orders. But, it does not mean the court/Tribunal has no powers to interfere in transfers on justified grounds. The present case is one such, as there are over 40 adhoc UDCs junior to the applicant & are working and two out of them are already working as UDC-Cashier. In an extraordinary situation similar to the present case, there is no bar for the Court/Tribunal to give suitable direction in regard to transfer cases.

In the facts and circumstances of this case, as discussed above, we feel that posting of an adhoc UDC as UDC-Cashier at Nizamabad in accordance with transfer rules of ESI Corporation will in no way set a precedence, but will only enable the Corporation authorities to post a suitable official in places like Nizamabad where the vacancy exists.

11. In the result, the impugned order dt. 26.10.1995 bearing Office Order No.498 of 1995 in proceedings No.52.A/20/11/1143/86-Estt.I is set aside. R-1 has to post a suitable adhoc UDC as UDC-Cashier at Nizamabad following the extant transfer policy.

12. The OA is ordered accordingly at the admission stage itself. No costs. /

.....
(R.Rangarajan)
Member(Admn.)

V.Neeladri Rao
(V.Neeladri Rao)
Vice Chairman

Dated 11th Nov., 1995.

Grh.

Amulya
11.11.95
Deputy Registrar (O) CC.

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELAKRISHNA
VICE CHAIRMAN

AND

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

DATED: 17-11-1995

ORDER/JUDGMENT

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

O.A.No. 1286 in 95

T.A.No. (W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

No Spare Copy

p.v.m.

