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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL-APPLICATION-NO.233-of-1997

DATE-OF-ORDER:-10th-March,-1997

BETWEEN:

B.L.NARASIMHAM

.. APPLICANT

AND

The Regional Director (Estt.),
Employees State Insurance Corporation,
Hyderabad - 500 463.

.. RESPONDENT

COUNSEL FOR THE APPLICANT: Mr.P.NAVEEN RAO

COUNSEL FOR THE RESPONDENT: Mr.N.R.DEVARAJ, Sr.CGSC

CORAM:

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

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Shri P.Naveen Rao, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. The applicant in this OA was initially treated as a ST candidate and on that basis he was promoted as UDC in a vacancy reserved for ST on 22.1.1982. His seniority in the list of UDCs was also shown at higher place due to his earlier promotion on the basis of reservation. However, he was denied further promotion to the post of Assitant/Head Clerk and the persons shown below him in the seniority list were promoted. Questioning the said decision, the applicant had approached this Tribunal by filing OA No.

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1399/93. That OA was disposed of by the judgement of this Tribunal dated 21.12.95. The following order was passed in that OA:-

"The applicant has to progress along with the OCs and hence the date of promotion of the applicant to the post of UDC has to be refixed accordingly. If on the basis of such altered seniority position of the applicant, any junior OC was promoted to the next higher post of Assistant/Head Clerk, the case of the applicant has to be considered for the same. If he has to be promoted he has to be given promotion from the date on which his junior in OC was promoted, and his pay in that post has to be notionally fixed and the monetary benefit, if any, has to be given from one year prior to the date of filing of this OA".

3. It is stated that in pursuance of that order, Office Order No.390/1996 dated 22.10.1996 (Annexure A-6) was issued. As per this order, the applicant was deemed to have been promoted to the post of UDC only with effect from 3.4.89 and his seniority was to be fixed accordingly. Further it was also ordered by this impugned order, to refix his pay in the cadre of UDC on the premise that he was promoted as UDC only with effect from 3.4.89. The pay fixation cell was also further directed to declare the pay to be drawn by the applicant since 22.1.82 on year to year

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basis so as to enable for effecting recovery of excess paid pay and allowances. On the basis of the above direction contained in the order dated 22.10.96, the Office Order No.396/96 bearing No.52/A/27/17/2/95 Estt.I(A) dated 25.10.96 (Annexure A-VII at Page 16 of the OA) was also issued refixing his pay and indicating that the recovery of excess pay and allowances should be effected from 1982 to 1996.

4. Aggrieved by the above, this OA is filed to set-aside the proceedings dated 22.10.96 and 25.10.96 and for a further direction to grant consequential benefits.

5. There are two main contentions in this OA viz, (i) no notice was issued before refixation of his pay and ordering recovery thereon, and (ii) the applicant had performed higher duties of Senior Clerk. Hence the recovery is bad in law as he shouldered higher responsibilities.

6. We have heard both the sides. The impugned orders were issued in October 1996. No protest representation has been sent to the higher authorities by the applicant so far. Under these circumstances, we feel that justice will be done if the applicant is advised to file a representation to the authority higher to the Regional Director, ESIC, Hyderabad and that authority should dispose of that representation in accordance with law taking due note of the contentions made above.

7. Hence the following direction is given:-

The applicant may submit a detailed representation to the next higher authority higher to the Regional

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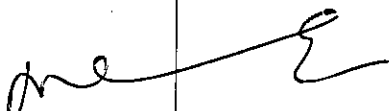
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Director, ESIC, Hyderabad if so advised, within a period of 15 days from the date of receipt of a copy of this order taking all available contentions. If such a representation is received by that authority, the same should be disposed of by a speaking order within a period of two months from the date of receipt of that representation.

8. It is needless to say that the proposed recovery should not be effected until the representation to be submitted by the applicant is disposed of.

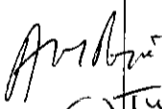
9. The OA is ordered accordingly at the admission stage itself. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
10.3.97


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 10th-March, -1997
Open court dictation.

vsn


D.R. (J) Tushar

SPK
25/4/97

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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: 10/3/97

ORDER/JUDGEMENT

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

D.A.No. 233/97 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

A/s M. J. G. S.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
ब्रेवत/DESPATCH
- 7 APR 1997
हैदराबाद न्यायपीठ
HYDERABAD BENCH