

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1711/97.

Dt. of Decision : 10-03-99.

B.L.Narasimham

.. Applicant.

Vs

1. The Employee's State Insurance Corporation, Rep. by the Director (Admn.), Panchadeep Bhavan, Kotla Road, New Delhi-2.

2. The Regional Director (Estt.), Employees State Insurance Corporation, 5-9-23, Hill Fort Road, Hyderabad-463.

3. The Deputy Director, E.S.I. Corporation, Hyderabad.

.. Respondents.

Counsel for the applicant : Mr.P.Naveen Rao

Counsel for the respondents: Mr.N.R.Devaraj, Addl.CGSC.

CORAM:-

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

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

ORDER

ORAL ORDER (PER HON.Mr.B.S.JAI PARAMESHWAR : MEMBER (J))

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

2. The applicant was appointed as LDC against the reserved community quota on the ground that he belongs^{-ed} to



Vanjari caste and the caste ^{was} recognised as ST. He was appointed as LDC on 24-07-79. He was promoted as UDC against the reserved vacancy on 20-1-1982. He was found higher-up in the seniority list. However he was not promoted to the post of Assistant/Head Clerk. At that time the applicant approached this Tribunal in OA.1399/93. This Tribunal by its order dated 21-12-95 observed that the applicant had ^a ceased to be an ST candidate by the date of his appointment as LDC and hence he could not be treated as an ST candidate. Further, this Tribunal gave a direction to treat the applicant as OC ^{Candidate} since ^{the} beginning and grant him the consequential benefits such as promotion to UDC etc.

3. Thereafter, the respondent authorities issued the revised orders refixing the seniority of the applicant in the cadre of LDC and consequently his date of promotion was altered to 3-4-89 on adhoc basis and 15-5-89 on regular basis in modification of the earlier orders issued in the year 1982 and 1983. The applicant submits that till the date of those orders the applicant was discharging the duties of UDC on account of his promotion initially on adhoc basis and subsequently on regular basis. The applicant was further promoted as Assistant on adhoc basis w.e.f., 11-06-96.

4. The applicant submits that while fixing the seniority and revising the date of promotion the respondents decided to fix the pay and allowances payable to him and on account of such refixation there was certainly a difference of pay actually payable to the applicant ^{had he} if he was not promoted w.e.f., 1982 upto 2-4-89. The R-2 issued order in proceedings No.52/A/27/17/2/95-Estt.I(A) dated 25-10-96 to recover the difference of amounts paid to the applicant on account of revision of his



promotion as UDC from 20-1-82 to 3-4-89. The applicant challenging the action of the respondents approached this Tribunal in OA.233/97. That OA was disposed of directing the applicant to prefer an appeal to the next higher authority and granted the stay of recovery pending disposal of the appeal. Accordingly, the applicant submitted an appeal to R-1. The R-1 by his proceedings No.Estt./CAT/603/93 dated 1-10-97 rejected his prayer and confirming the order for recovery.

5. The applicant has filed this OA to call for the records relating to the order No.Estt./CAT/603/93 dated 01-10-97 of R-1 and the proceedings No.52.A/20/11/749/96-Estt. dated 22-10-96 consequential office order No.396/96 in proceedings No.52/A/27/17/2/95-Estt.I(A) dated 25-10-96 of R-2 and officer Order No.AP/Cash/Misc./Pay Bills/97-98 dated 15-12-97 issued by R-3 and quash the same and the decision to recover the pay and allowances paid to the applicant on the basis of pre-revised promotion as UDC and to grant all consequential benefits.

6. On 29-12-97 an interim order was passed suspending the recovery of Rs.18,024/- until further orders.

7. The respondents have filed reply justifying their action to recover the amount on the ground that the applicant got the benefit of promotion as UDC by misrepresentation, that as per the direction of this Tribunal in the earlier OA his date of promotion and fixation of pay was done and accordingly he is liable to pay the amount ordered by the respondent authorities. They submit that when the applicant ^{was} ~~is~~ not entitled to the promotion to the post of UDC for the period from 22-1-82 to 2-4-89, he is not entitled to any pay protection and his pay should be the same as what he would have got as OC candidate right

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from the date of joining as LDC.

8. It is clear that the applicant was promoted to UDC only against the reserved quota. But as per the direction given in OA he ^{ceased} to be a reserved ST candidate by the date of his appointment. Hence, the direction was given to treat him as OC candidate right from the date of his appointment and to progress in the cadre of UDC etc., ~~progress in the cadre as to treat him~~ ^{purely} as OC candidate.

9. Accordingly, the respondents refixed the seniority and also revised his pay and allowances and found that the applicant was not eligible for promotion to the post of UDC from 22-1-82 to 2-4-89. During this period the applicant as OC candidate, ~~he~~ was not eligible for promotion to UDC and that promotion was given to him only on the basis of mis-representation i.e., he belongs ^{ed} to reserved community. When the applicant was promoted on the basis of misrepresentation which representation was subsequently found to be not correct, The applicant cannot claim the benefit arising out of such representation. The respondent authorities as per the direction given by this Tribunal has ^{properly} ~~clearly~~ refixed the seniority in the LDC cadre as an OC candidate and revised his pay and allowances. They have formed the opinion that the applicant was not eligible for promotion from 22-1-82 to 2-4-89.

10. It is not the case of the applicant that he was promoted in accordance with the rules. When the respondents specifically state that he was promoted as UDC only on the basis of his misrepresentation the applicant cannot claim that recovery ordered by the respondents is not justified. Since the applicant was not eligible for the promotion during the said period the applicant cannot claim the pay and allowances as UDC for the said period.

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11. The main contention of the applicant in this OA is that the applicant having discharged the duties of UDC should be given the scale of pay of UDC. Because of the misrepresentation that he is an ST candidate his promotion to the UDC has been brought ^{down} ~~out~~ from 1982 to 1989 and his pay ^{was} ~~is~~ also fixed as if ^{he} ~~a~~ joined UDC in the year 1989. That itself is sufficient punishment for the applicant for the misrepresentation.

12. In the normal course if an employee is promoted in accordance with the rules and that period in the higher service has to be paid in accordance with the scales of pay of the higher cadre. In the present case the applicant got the promotion as UDC by misrepresentation. Such misrepresentation needs to be dealt with severely. However a lenient view was taken by this Bench in the earlier OA and directed the respondents to consider him as OC and promote him accordingly. Because of that direction it should be observed that the applicant got unintended benefit such as promotion as UDC from the date later i.e., from 1989 and not from 1982. That itself is a fair consideration given to the applicant. If the applicant demands ~~that~~ not to recover the excess payment made to ^{him} ~~that~~ ^{during} that period from 1982 to 1989 as UDC it will be unfair on the part of the applicant. We thought the applicant himself conceded ^{de it as} ~~to the~~ unfair. But unfortunately the applicant insists that he should be paid that money and it should not be recovered because he discharged the higher ^{-ies} ~~duty~~. We do not agree with that view. Further because of the promotion of the applicant against ST quota in the year 1982 an eligible candidate ^{actually} ~~when he~~ belongs ^{-ing} to ST or OC could not get the promotion in the year 1982. If the applicant is given further concession of non-recovery of

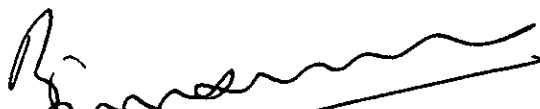
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the amount then it will ~~have~~ *create* a grouse which has to be accepted. In that view also the recovery cannot be stopped.

13. In view of what is stated above, we find absolutely no merits in this OA. Accordingly, the OA is dismissed. No costs.



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



(R. RANGARAJAN)
MEMBER (ADMN.)

11.3.99
Dated : The 11th March, 1999.
(Dictated in the Open Court)

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Copy to:

1. HDHNJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R. (A)
5. SPARE

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD:
MEMBER (A)

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

THE HON'BLE MR. B. S. JAI PARAMESWAR
MEMBER (J)

DATED:

10/3/99

ORDER / JUDGEMENT

MA. / RA. / CP. NO.

IN

O.A. NO.

1711/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

SRR

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