

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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In case

SECTION OFFICER (JUDL.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

1. Original Application No: 221 / 2009
2. Miscellaneous Petition No
3. Contempt Petition No
4. Review Application No

Applicant(S) Munindra Kalita

Respondant(S) Union of India & Ors.

Advocate for the Applicant(S): Mr. M. Chandra,
Mr. S. Nath &
Mrs. U. Dutta

Advocate for the Respondant(S): 6
CGSC.

Notes of the Registrar	Date	Order of the Tribunal
<p>Application is in form is filed/C. F. for Rs. 50/- deposited vide IPO/BD No. <u>396</u> <u>424449</u> Dated <u>16.9.09</u> <i>N. S. M.</i> 27.10.09 Dy. Registrar</p> <p>Steps taken for issue of Notices along with envelops. Copy served.</p> <p><i>27.10.09</i></p>	<p>28.10.2009</p>	<p>Mrs U.Dutta, learned counsel appearing for the applicant is present. The grievance of the applicant is that respondents vide communication dated 17.9.09 has offered for his absorption as LDC with immediate effect though he is entitled to such absorption with effect from 1.11.1996. He also approached this Tribunal by O.A.311/1999. The Tribunal vide order dated 14.6.01 held that the scale of pay of LDC and Hindi Typist are same. The said judgment has already attained finality.</p> <p>In view of the above issue notice to the Respondents. Mrs M.Das accepts notice on behalf of the respondents. Service is complete.</p>

28.10.09

Memo of appearance
filed Ms. M. Das, Sr. CSE
for Respondents.

28/10/09

K Das

5.11.09

stay order issue
urgently and issue
notice only.

[Signature]
5/11/09

Copy ready

M. Kalita

5/11/09

(Applicant)

Received copy

on behalf of

Ms. M. Das
Sr. C.G.S.C.

[Signature]
5.11.09

Copies of notices along
with order dated 28/10/09
sent to D/Sec. for
issuing to the respondents
by regd. A/D post.

Copies of this order
also handed over to the
applicant and L/counsel
for respondents.

D/No-12396-99

6/11/09. DT = 10/11/09.

No w/s filed.

[Signature]

2.12.09

28.10.09

It is contended that operation
of the impugned order dated 17.9.2009
be stayed. On examination of the
matter we find that this order ^{relates to} is not only
for applicant but also some other
employees. It is accordingly ordered
that any order passed by the
respondents shall be subject to the
outcome of the present O.A.

List on 5.12.2009.

[Signature]
(Madan Kr. Chaturvedi)
Member (A)

[Signature]
(Mukesh Kr. Gupta)
Member (J)

/pg/

03.12.2009

Enabling the advocates for the
Respondents to file reply within four weeks
time, case is adjourned to 5th January, 2010.

List on 05.01.2010.

[Signature]
(Madan Kumar Chaturvedi)
Member (A)

[Signature]
(Mukesh Kumar Gupta)
Member (J)

/pb/

- 3 -
O.A. No. 221/2009

Issue Notice

R.No.

O.A. No. 221 of 09

5.1.2010

Rejoinder has been filed. Pleadings are complete.

Admit. Subject to legal pleas, if any, to be examined at the time of final hearing.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

5.1.2010

Time is extended to file reply as prayed for.

List the matter 1.2.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

01.02.2010

On the request of Mrs.M.Das, learned Sr.C.G.S.C., last opportunity is granted to Respondents to file reply within extended period of four weeks.

List on 02.03.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

02.03.2010

Proxy counsel for Respondents states that reply is being filed during course of the day with copy to the Applicant, who in turn would be at liberty to file rejoinder, if any before the next date of hearing.

List on 19.03.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

14.12.2009

No W/S filed.
4.1.2010

No W/S filed.
29.1.2010

No W/S filed.
26.2.2010

① W/S filed.
② No rejoinder filed.
18.3.2010

No rejoinder filed.
8.4.2010

19.03.2010

This being a Division Bench matter,
adjourned to 09.04.2010.

No rejoinder filed.

8.4.2010

/bb/

(Madan Kr. Chaturvedi)
Member (A)

8.4.2010

09.04.2010

On the request of Mrs. M. Das,
learned Sr. CGSC for Respondents,
adjourned to 29th April 2010.

*Rejoinder has
been filed by the
Applicant. Copy
served.*

8/4/2010

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/pb/

29.04.2010

After arguing for some time, Mrs U.
Dutta, learned Counsel for applicant seeks
three days time to make ^{further} submissions.

*The case is ready
for hearing.*

28.4.2010

List on 03.05.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

03.05.2010

Heard Mrs.U.Dutta, learned counsel for
applicant and Mrs.M.Das, learned counsel for
the respondents.

Hearing concluded. Reserved for
orders.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

7.5.2010

Judgment pronounced in open Court.

Kept in separate sheets. Application is dismissed.

Received for
Mrs. M. Das, Sr. C.G.S.C.
N. Varshum (Adv.)
18/5/10

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

Im

Received for the applicant
A. Goswami, Advocate
25.05.2010.

1-7-2010
Judgment / Final order
dated 7.5.2010 prepared
order sent to A/Serhim
for wiring to the by post
Vied No — 1450 to 1461
dated — 7-7-2010

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 221 of 2009

DATE OF DECISION: 7.05.2010

Shri Munindra Kalita

.....Applicant/s.

Mrs.U.Dutta

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Mrs. M.Das.

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

THE HON'BLE MR.MADAN KUMAR CHATURVEDI, MEMBER (A)

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Judgment delivered by

Hon'ble Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 221 of 2009 .

Date of Decision: This, the 7th Day of May, 2010.

HON'BLE SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER

HON'BLE SHRI MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

Shri Munindra Kalita
Hindi Typist
Employees State Insurance Corporation
Regional Office, N.E.Region
Guwahati-781 021.

...Applicant

By Advocate: Mrs.U.Dutta.

-Versus-

1. The Union of India
Represented by Secretary
to the Ministry of Labour
New Delhi-110 001.
2. The Director General
Employees State Insurance Corporation
Panchdeep Bhawan, C.I.G. Road
New Delhi – 110 002.
3. The Joint Director
Employees State Insurance Corporation
Panchdeep Bhawan, C.I.G. Road
New Delhi – 110 002.
4. The Regional Director
Employees State Insurance Corporation
Corporation Regional Office
N.E.Region, Assam, Bamunimaidan
Guwahati-781 021.

...Respondents

By Advocate: Mrs. M. Das, Sr. CGSC.

ORDER

MUKESH KUMAR GUPTA, MEMBER (J):

Shri Munindra Kalita, Hindi Typist, Employees State Insurance Corporation (hereinafter referred to as ESIC), Regional Office, N.E.Region,

Guwahati in this application challenges validity of communication dated 17.09.2009 (Annexure-16) so far it relates to him. He also seeks declaration that he is entitled to be absorbed in the cadre of LDC w.e.f. 01.11.1996 and consequent seniority in said cadre of LDC from said date in the light of ESIC headquarters letter dated 01.11.1996 and order dated 14.06.2001 passed by this Tribunal in O.A. No.311/1999. He also seeks direction to respondents to consider him for promotion to the next higher post of UDC.

2. On examination of pleadings raised by both sides, records referred thereto, admitted facts are that on being sponsored by the Employment Exchange and selection made by the department concerned, on 25.01.1984 he was appointed as Hindi Typist, though termed as "ad hoc", but later on eventually regularized from said date. He initially filed O.A. No.45/1988 challenging his termination. Said O.A. was allowed vide order dated 30.03.1990. One of the question considered by said order as revealed from para 8 thereof had been that: **"whether the petitioner could be taken in the category of an LDC for which a test may be required"**, and on examination of the matter, it was held that: **"the post of Hindi Typist is completely distinct and separate from the post of LDC and in such circumstances we cannot persuade ourselves to rely upon the averments found in the counter that the Hindi Typist is to be drawn from the cadre of LDCs"**.

Thereafter, he preferred another O.A. No.128/1994, wherein he had challenged order dated 05.04.1994 rejecting his representation seeking promotion as UDC. One of the specific relief sought reads as under:-

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- "(ii) To issue a direction to the respondents to promote the applicant to the grade of U.D.C. w.e.f. a date when his juniors in the grade of L.D.C. were so promoted, i.e. w.e.f. 19.5.93 and alternatively to set aside and quash the orders dt 19.5.93 (Annexure 9) and 1.7.93 (Annexure 10)."

19.05.1993 was an order, vide which two LDCs were promoted. Similarly, vide order dated 01.07.1993, based on recommendation of Screening Committee, some officials, one Head Clerk, UDC and LDC each were promoted to next higher post purely on ad hoc and temporary basis. Said O.A. was dismissed vide order dated 03.07.1995 with specific observation that on earlier occasion, it was observed that post of Hindi Typist was distinct and separate from the cadre of LDC and having reaped the benefit thereof by getting regularization of service in the post of Hindi Typist, it was not open to the applicant to contend that the post of Hindi Typist and LDC should be treated as a common cadre.

Yet subsequently, another proceedings, namely O.A. 311/1999 had been preferred whereby three different reliefs were sought, namely (i) direction to the respondents to provide at least two promotional avenues in the cadre of Hindi Typist; (ii) direction to consider him for promotion from the date his immediate juniors were promoted from the cadre of LDC with all consequential benefits, and; (iii) the order dated 12.05.2000 granting pay scale of Rs.3200-4590/- be modified and he be granted pay scale of Rs.4000-6000/-. On examination of the matter, said O.A. was partly allowed vide order dated 14.06.2001 with the following observations:-

"6. The Ahmedabad Bench of this Tribunal vide its order dated 9.1.1998 has held that scales of pay of LDCs and Hindi Typists are same and they are entitled to be considered for promotion to the post of UDC. The aforesaid order of the Ahmedabad Bench, though

could not be applicable to the applicant before 1.11.1996, but after the aforesaid order (Annexure 6) the applicant has become part of the cadre of LDC and we find support that the applicant is entitled for the next higher grade in the existing hierarchy, which is Rs.4000-6000.

7. For the reasons stated above, this O.A. is allowed in part. The order dated 12.5.2000 shall stand modified to the extent that in column 6 the scale of pay of financial upgradation mentioned as 3285-4950, shall stand substituted by the scale of pay of Rs.4000-100-6000. The applicant shall be entitled for financial benefit under this order, which shall be paid to him within a period of three months from the date of a copy of this order is received by the respondents."

In compliance of aforesaid directions, applicant had been allowed the pay scale of Rs.4000-6000/-. Thus, on the face of it, present proceeding is the fourth round of litigation virtually on the same lines.

3. Mrs.U.Dutta, learned counsel appearing for the applicant, raised the following contentions:-

- (i) Vide communication dated 01.11.1996 (Annexure-4), it was conveyed that the word "Typist" will be substituted by the word "LDC (Hindi Typist)". Furthermore, this Tribunal vide para 4 of order dated 14.06.2001 passed in O.A.311/1999 observed that after order dated 01.11.1996 the post of Hindi Typist could not be termed as an isolated post and it became a part of LDC, a feeder cadre for UDC. Furthermore, Ahmedabad Bench of this Tribunal in its order dated 09.01.1998, in Guda B.R. vs. Union of India & Ors. (August 1998, Swamy's News 109) has held that scales of pay of both Hindi Typist and LDC are same and they are entitled to be considered for promotion to the post of UDC. Though the same cannot be made applicable



before 01.11.1996, and after said order applicant became part of LDC's cadre. The findings recorded by this Tribunal in aforementioned order dated 14.06.2001 had attained finality, as said order had not been challenged before any higher court. Respondents cannot be allowed to take stand which is contrary to the findings recorded therein.

- (ii) Since 1982 the respondents were maintaining common seniority list of LDCs and Hindi Typist. However, vide gradation list issued vide memorandum dated 11.04.2002 (Annexure-9) his name was shown in the separate cadre of "Hindi Typist" immediately below LDC's cadre.
- (iii) Educational qualification prescribed, mode of recruitment, duties and functions discharged by both i.e. LDC as well as Hindi Typist are same. They have been placed in the same pay scale.
- (iv) Placing strong reliance in **(1999) 1 SCC 273, V.S.Charati vs. Hussein Nhanu Jamadar (Dead) by Lrs.** it was emphasized that a decision rendered by Tribunal/Court in absence of challenge becomes final and binding on both parties and merely because it may be wrong, it would not become nullity. The order of the Tribunal, having not been challenged by the respondents, became final and binding on both parties. It would continue to bind the parties unless set aside. Effect of the decision on their part, therefore, cannot be ignored. Absorbing the applicant w.e.f. 25.08.2009, vide order dated

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17.09.2009, the respondents have virtually negated findings recorded by this Tribunal in O.A.311/1999, which also carries civil consequences like losing seniority. Vide the impugned order, applicant has been placed at the bottom of LDC's cadre and granted seniority with reference to date of absorption in 2009-10 though he is entitled to said seniority w.e.f. 01.11.1996.

In the above backdrop, learned counsel for applicant, contended that he is entitled to reliefs, as prayed for, and furthermore, the impugned order gives him a fresh cause of action.

4. Contesting the matter and by filing reply, it was stated that although educational qualification and scales of pay of both Hindi Typist and LDC are same, nature of work/job is different, and therefore, there is a distinction between LDC and Hindi Typist and they are treated as separate cadre. A Hindi Typist is to perform only typing in Hindi but an LDC is to perform various different job and also deals with different official works in different branches. They are not treated as part of combined cadre. No artificial distinction between the two categories has been made by the respondents merely to affect applicant's promotional avenues, as projected. Hindi Typist is not eligible for promotion to UDC as per Recruitment Regulation of said post. As per Recruitment Regulation, only LDC is eligible for promotion to UDC. Thus, promotion of Hindi Typist to the post of UDC will be in violation of ESIC Recruitment Regulation. Letter dated 01.11.1996 did in fact change the nomenclature of post from 'Typist' to 'LDC' (Hindi Typist) and said letter does not by itself make it evident that Hindi Typist is included in the cadre of LDC itself, as projected. Applicant,

on completion of 24 years of regular service had already been granted two financial upgradations in terms of DOP&T O.M. dated 09.08.1999. As per judgment of this Tribunal in O.A.311/1999, the first financial upgradation was granted to the applicant from Rs.3050-4950/- to Rs.4000-6000/- vide order dated 18.09.2001 and second financial upgradation had been given to him in the pay scale of Rs.5000-8000/- w.e.f.25.01.2008 vide order dated 02.05.2008.

5. Mrs.M.Das, learned counsel appearing for the respondents, vehemently contended that present application is barred by principle of *res judicata*. Our attention was drawn to findings recorded in O.A.45/1988 whereby, vide para 10 it was observed that applicant should be allowed to continue in service as a Hindi Typist. At this late stage, it was urged, that applicant cannot be allowed to approbate and reprobate in the same breath.

6. We have heard, learned counsel for the parties at great length, perused the pleadings and other material placed on record including the judgments and orders cited before us, as noticed hereinabove.

7. First legal issue which, requires consideration, is whether the principles laid under Order II, Rule 2 as well as Section 11 of the Code of Civil Procedure, 1908 are applicable in the peculiar facts of present case or not. Order II Rule 2 of said CPC reads as under:-

"2 **Suit to include the whole claim.**-(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

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(2) **Relinquishment of part of claim.**- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) **Omission to sue for one of several reliefs.**- A person entitled to more than one relief in respect of the same cause of action may sue for all or any such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

(emphasis supplied)

Examining the case from this angle, particularly in the light of principles laid down under Order II, Rule 2 of CPC, which required that every suit shall include whole of the claim, which one is entitled to and where a plaintiff/petitioner omits to sue or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

8. On giving our thoughtful consideration and the ruling cited in O.A.311/1999, we are of the considered opinion that when a person seeks direction to the respondents to provide at least two promotional avenues but does not seek a direction either to the effect that he is deemed to be a part of feeder category i.e., LDC or he should be deemed absorbed in the said feeder cadre, he virtually intentionally relinquishes that portion of the claim. Promotion to the next cadre presupposes that a person is a part and parcel of feeder category. As already noticed hereinabove, he had already preferred O.A. No.128/1994 seeking a relief, which in unambiguous term, as already extracted hereinabove, namely direction to promote him to the grade of UDC, which relief has, in specific, been rejected. It is not the case of applicant that said O.A., which has been dismissed vide order dated 03.07.1995, was either challenged before any higher court or set



aside in any manner. Thus, said findings have attained finality. We may further observe that said order had been pronounced in July, 1995 much prior to the judgment in **L. Chandra Kumar vs. Union of India & Ors, (1997) 3 SCC 261** whereby and whereunder the High Court was introduced as forum to challenge the order of this Tribunal. Filing of successive petitions/applications on the same ground has to be strongly deprecated. Unfortunately, applicant has misused the judicial forum by seeking same very relief by filing successive petitions on said subject, namely, promotion to the cadre of UDC either or indirectly.

9. Another principle, which in our considered opinion, also gets attracted is as prescribed under Section 11, explanation IV thereof of the C.P.C. Said Section 11, explanation IV reads as under:-

"Explanation IV. Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue such suit."

It is well settled law that though the provisions of C.P.C. are not applicable to the proceedings before this Tribunal, but principles laid down therein are squarely applicable to prevent the abuse of judicial forum so that litigant is not permitted to file successive petitions on the same matter and subject.

10. As far as merits of the case are concerned, we may observe that applicant's case centers around communication dated 01.11.1996. Therefore, it would be expedient to notice its contend, which reads as under:-

"Subject:- Continuance of Hindi Posts from 1.10.96 to 31.3.97 – correction letter.

Sir,



With reference to this office letter of even no. dated 24.10.96, it is informed that the word "Typist" will be substituted by the word "L.D.C." (Hindi Typist) at Cl. No.7 of page No.2.

Please acknowledge receipt."

Reference has been made therein to communication dated 24.10.1996, which deals with post related to Hindi subject under different groups, which are required to be continued for a period from 01.10.1996 to 31.03.1997. For the State of Assam, only one post each for Jr./Sr. Translator as well as Hindi Typist had been provided. In our considered opinion when aforesaid communications are read in its entirety, it would be revealed that certain posts related to Hindi subject were allowed to continue under feeder category only for a short duration. Thus, communication dated 01.11.1996, on which much reliance has been placed, would not be of any assistance. It nowhere provides that the post of Hindi Typist would either be merged with the cadre of LDC or a common seniority list of said posts are required to be maintained.

11. Examining the case from either angle, we are of the considered opinion that there is no substance and justification in the contentions raised by the applicant. Furthermore, we may note that if the applicant seeks absorption in the cadre of LDC, persons, who were appointed to said grade after so-called cut off date, namely, 01.11.1996 till 25.08.2009, were required to be impleaded. Perusal of gradation list issued vide O.M. dated 11.04.2002 (Annexure-9) would reveal that as many as three persons, namely, Sri K.Guite, Ms. C. Das and Sri T. Sarkar were appointed on 19.08.1998, 14.06.2000 and 01.06.2000 respectively. If the applicant is deemed to be part of LDC cadre w.e.f. 01.11.1996, aforesaid

officials' seniority would directly be affected, and as such, their right would be infringed. Without impleading said officials applicant's seniority cannot be determined. Thus, present application suffered from another infirmity - non-impleadment of necessary parties.

We may note another aspect, namely, that vide the aforesaid gradation/seniority list dated 11.04.2002, applicant had been shown in the category of Hindi Typist, validity of said memorandum, had not been challenged at any point of time including in present proceedings.

12. We may also observe that the applicant is basically relying on some stray observations made by this Tribunal in earlier proceedings. The order and judgment of Tribunal/Court cannot be read in isolation and it has to be read in its entirety. Specific reliefs sought vide O.A.311/1999, namely, to provide him at least two promotional avenues as well as to consider him for promotion to the post of UDC had not been acceded to. A relief, which is sought but not granted in specific, has to be treated as deemed rejected.

13. In this view of the matter, applicant is estopped from contending that he should be treated as part of LDC cadre, which indirectly had been the relief sought in earlier proceedings, and not granted. Thus, taking a cumulative view of the matter and keeping the entire conspectus of case, we do not find any merit in the claim laid. Accordingly, O.A. is dismissed. No costs.


(MADAN KUMAR CHATURVEDI)
MEMBER (A)


(MUKESH KUMAR GUPTA)
MEMBER (J)

/BB/

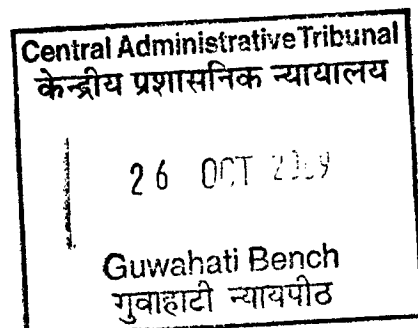
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 221 /2009

Shri Munindra Kalita
-Vs-
Union of India and Others.



SYNOPSIS OF THE APPLICATION

Applicant is working as Hindi Typist in the department of Employees State Insurance Corporation (for short ESIC) in the Regional Office, Guwahati. He was initially appointed as Hindi Typist in the respondent department on 25.01.84. It is stated that post of Hindi typist is analogous to that of LDC in the respondent department since the mode of recruitment, educational qualification, nature of job and even the scale of pay for both the posts are identical. However, respondents are treating the post of Hindi Typist as different category than the LDC, as a result juniors to the applicant who were working as LDC got their promotion to the post of UDC but the same has been denied to the applicant. Applicant earlier approached this Hon'ble Tribunal in O.A No. 311/1999 for denial of scale of pay of Rs. 4000-6000 to him. Hon'ble Tribunal disposed of the said O.A on 14.06.01 and held that applicant is entitled to scale of pay of Rs. 4000-6000/- in place of Rs. 3200-4900/-. It was also held by the Hon'ble Tribunal that applicant has become part of the cadre of LDC w.e.f. 01.11.1996 pursuant to the order dated 01.11.1996 issued by the Headquarter Office, ESIC, New Delhi. Applicant submitted series of representations for correct fixation of his seniority and for placing him in the cadre of LDC above his juniors i.e. in the appropriate position of the seniority list and also prayed for consideration of his promotion to the cadre of UDC. But to no result. However, respondent No. 3 most surprisingly issued the impugned letter dated 17.09.2009 (Annexure- 16) seeking written consent from the applicant to the effect that he has no objection for being absorbed and placed as junior most in the LDC cadre with reference to the date of absorption in the year 2009-10. Hence this Original Application.

LIST OF DATES

- 01.04.1982- ESIC published a common gradation list of LDC and Hindi Typist.
(Annexure- 8)
- 25.01.1984- Applicant joined in the department of ESIC as Hindi Typist in the pay scale of Rs. 950-1500/-.
- 16.02.1990- Govt. of India, Ministry of Industry, department of Company Affairs decided to group the posts of Hindi Typists in various region offices with the post of LDC.
(Annexure- 1)
- January, 1991- Central Water Commission issued seniority list of Hindi Typist/L.D.C. It is evident that other Central Govt. departments maintain common seniority in respect of Hindi Typists and LDC's for the purpose of promotion to the next higher grade.
(Annexure- 2)
- 24.10.1996- ESIC, New Delhi issued an order intimating the decision regarding extension of the period of Hindi posts.
(Annexure- 3)
- 01.11.1996- ESIC, New Delhi intimated that in the order dated 24.10.1996, the word 'Typist' shall be read as 'LDC/Hindi Typist'. It is evident that Hindi Typists are included in the cadre of LDC.
(Annexure- 4)
- 09.01.1998- Ahmedabad Bench of the Hon'ble CAT in its judgment and order passed in O.A. No. 422/90 held that Hindi Typist should be considered for promotion along with L.D.C to the cadre of U.D.C.
(Annexure- 5)
- 06.10.1998- Applicant submitted representation praying for his promotion to the post of U.D.C treating him at par with LDC. But to no result.
(Annexure- 6)
- 09.09.1999- Juniors of the applicant was promoted to the cadre of UDC.
(Annexure- 15)
- 14.06.2001- Hon'ble CAT in O.A No. 311/1999 held that applicant is entitled to scale of pay of Rs. 4000-6000/- in place of Rs. 3200-4900/-. Hon'ble Tribunal specifically declared that applicant has become part of the cadre of LDC w.e.f. 01.11.1996 pursuant to the order dated 01.11.1996 issued by the Headquarter Office, ESIC, New Delhi.
(Annexure- 7)
- 26.11.2001- Regional Director, Guwahati sought clarification from Director, HQ, New Delhi regarding inclusion of name of the applicant to the cadre of LDC and his promotion to the cadre of UDC.
(Annexure- 10)
- 11.04.2002- Respondents published gradation/seniority list of the employees of ESIC, wherein LDC and Hindi Typist have been shown as separate cadre.
(Annexure- 9)
- 28.08.2006- Applicant submitted representation for correct fixation of seniority in the cadre of LDC in the appropriate position of the seniority list

and also prayed for consideration of his promotion to the cadre of UDC. But to no result. (Annexure- 13)

30.11.2006- Regional Office Guwahati sought clarification from the Headquarter, New Delhi regarding fixation of seniority of the applicant to the cadre of LDC. (Annexure- 11)

16.07.2007/21.11.07- Regional Director, Guwahati intimated the HQ office, New Delhi that no decision regarding fixation of seniority of the applicant to the cadre of LDC has not received. (Annexure- 12 and 14)

17.09.2009- Respondent No. 3 issued the impugned order dated 17.07.09 seeking written consent from the applicant to the effect that he has no objection for being absorbed and his seniority is fixed at the bottom of the LDC with reference to the date of absorption in the 2009-10. (Annexure- 16)

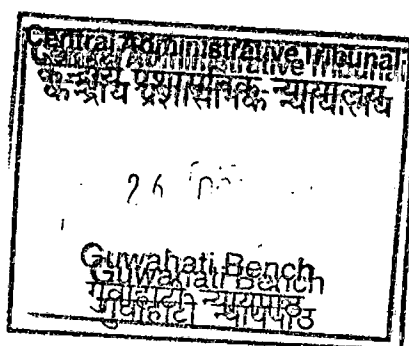
PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the condition laid down in the impugned letter dated 17.09.2009 (Annexure- 16) so far the applicant is concerned.
2. That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to be absorbed to the cadre of LDC w.e.f. 01.11.1996.
3. That the Hon'ble Tribunal be pleased to direct the respondents to fix the seniority of the applicant in the cadre of LDC treating his date of absorption as LDC w.e.f. 01.11.1996 in the light of ESIC Headquarter letter dated 01.11.1996 and also in terms of the judgment and order dated 14.06.2001 passed in OA No. 311/1999.
4. That the Hon'ble Tribunal be pleased to direct the respondents to consider promotion of the applicant to the cadre of UDC after fixation of his seniority in terms of prayer No. 3.
5. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to stay operation of the impugned letter dated 17.09.2009 (Annexure- 16) so far it is concerned to the applicant till disposal of the Original Application.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O.A.No. 221/2009

Shri Munindra Chandra Kalita. : Applicant.

-Versus-

Union of India : Respondents.

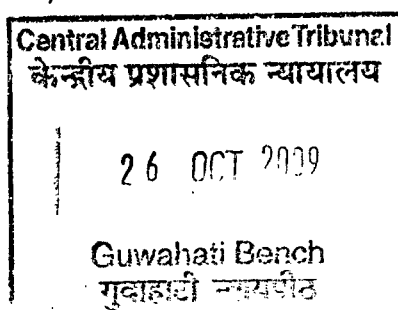
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19.
20.

W/S
Ref: order

47-75
76-84



Date: - 26.10.09

Filed By:

Butta
Advocate

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

(An application under Section 19 of the Administrative Tribunals Act, 1985)

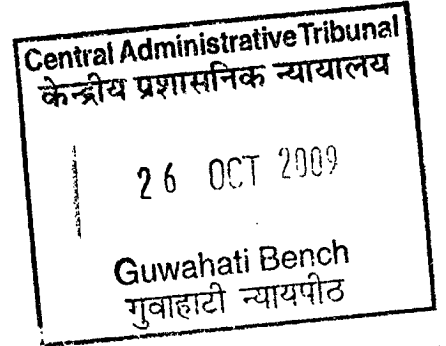
O.A. No. 221 /2009

BETWEEN:

Shri Munindra Kalita,

Hindi Typist,

Employees State Insurance Corporation,
Regional Office, N.E. Region,
Guwahati- 781021.



Applicant.

-AND-

1. The Union of India,
Represented by Secretary to the
Government of India,
Ministry of Labour,
New Delhi- 110001.
2. The Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan,
C.I.G. Road, New Delhi- 110002.
3. The Joint Director,
Employees State Insurance Corporation,
Panchdeep Bhawan,
C.I.G. Road, New Delhi- 110002.
4. The Regional Director,
Employees State Insurance Corporation,
Corporation Regional Office, N.E. Region,
Assam, Bamunimaidan, Guwahati- 781021.

..... Respondents.

DETAILS OF THE APPLICATION

1. **Particulars of the order (s) against which this application is made:**

This application is made against the impugned letter No.A-24/13/2/2007-E.II dated 17.09.2009 (Annexure- 16) issued by Employee State Insurance Corporation (for short ESIC), New Delhi, whereby a fresh proposal has been issued to absorb the applicant as Hindi Typist to the cadre of L.D.C, whereas by the judgment and order dated 14.06.2001 passed in O.A.No.

Sri Munindra Kalita

Filed by the applicant through U. Dula, advocate on 26.10.09

311/1999, the applicant has already been declare as LDC/Hindi Typist i.e. the post of Hindi Typist holding by the applicant has been merged with L.D.C w.e.f 01.11.1996, as such applicant by operation of law have already been merged with the cadre of L.D.C w.e.f. 01.11.1996. Therefore the impugned order dtd. 17.09.2009 is contrary to the judgment and order dated 14.06.2001 passed in O.A. No. 311/1999, hence the present application.

2. Jurisdiction of the Tribunal:

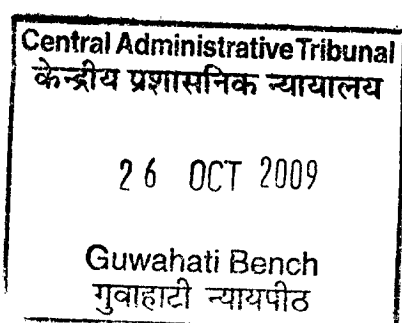
The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation:

The applicant further declares that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act' 1985.

4. Facts of the case:

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That the applicant joined under the respondents on 25.01.1984 as Hindi Typist after being sponsored by the local Employment Exchange, Guwahati along with other six candidates and having been duly selected by the departmental recruitment aforesaid was initially termed as ad hoc but eventually he was regularized as Hindi Typist w.e.f the date of his joining i.e. 25.01.1984.
- 4.3 That the post of Hindi typist is squarely analogues to that of LDC since the mode of recruitment, educational qualification, nature of job and even the scale of pay for both the posts are identical. The pay scale of Hindi Typist as well as LDC are Rs. 950-1500/-, finally revised to Rs. 3050-4590/- and the required qualification for both the posts are as follows:-



Sri Mumbra Kalita

Sl. No.	Hindi Typist	Lower Division Clerk
1.	Matriculation or equivalent with typing @ 30 words per minute in Hindi.	Matriculation or equivalent with typing speed @ 30 words per minute in English.

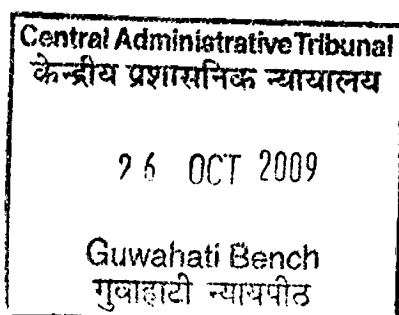
From above it is abundantly clear that the post of Hindi Typist and LDC are at par and there is no distinction between the two whatsoever.

- 4.4 That the humble applicant begs to submit that apart from the fact that the post of Hindi Typist and LDC are analogous. In all respects viz, educational qualification, scale of pay, nature of job etc. they are treated as combined cadre since inception for all purposes but the respondents herein have drawn an artificial distinction between those two categories of posts treating the post of Hindi Typist as a lone category and keeping aside the incumbent from the normal promotional avenue thus depriving the applicant of his legitimate promotion to the cadre of U.D.C as have been given to the L.D.C.

It is pertinent to mention here that in other Central Government organization like the Central Water Commission, All India radio, central Silk Board, EPF (a sister concern of ESIC) SISI etc. common seniority list are being maintained in respect of Hindi Typists and LDC's for the purpose of promotion to the next higher grade. In this context, relevant letter dated 16.02.1990 issued by the department of company affairs and another letter dated January, 1991 issued by the Central Water Commission pertaining to the seniority and grouping of Hindi Typist/L.D.C are self evident and self contained.

Copy of letter dated 16.02.1990 and letter dated January, 1991 are annexed hereto and marked as Annexure- 1 and 2 respectively.

- 4.5 That being highly aggrieved at such discriminatory treatment in respect of promotion, the applicant approached the Hon'ble Central Administrative Tribunal (C.A.T), Guwahati Bench through O.A. No. 128/1994 seeking justice and praying for promotion to the cadre of U.D.C from the date of promotion of his juniors serving in the cadre of L.D.C. The Hon'ble Tribunal was pleased to dismiss the O.A vide its judgment and order dated



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03.07.1995 passed in O.A. No. 128/1994 but making some observations. The extract of which are reproduced under:-

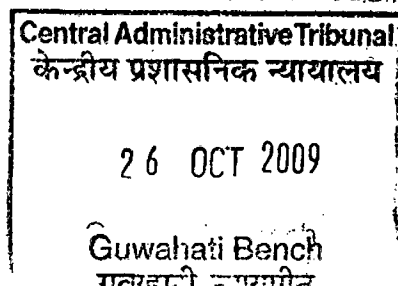
"11. We however find it difficult to appreciate that a person appointed to the post of Hindi Typist should not have any avenue of promotion open. One way for such a person would be enter the cadre of LDC after qualifying in the prescribed manner and then hope of promotion to the higher post. The applicant had himself lost that chance earlier. We would recommend to the respondents that if such a opportunity is still open and it is desired to be availed by the applicant he may be considered for giving him that opportunity. We also hope that the respondents will consider whether any avenue of promotion should be opened up for the incumbent of the post of Hindi Typist. As the situation stands at present it will be unfortunate that the applicant will have to remain glued to the same post all through out his service career with the respondents. Some way is desirable to be seriously considered to be found out by the respondents".

The applicant urge to produce the copy of the judgment and order dated 03.07.1995 at the time of hearing.

- 4.6 That it is stated that the ESIC, New Delhi vide letter bearing No. A-49/12/8/96-Hindi dated 01.11.1996 addressed to all the Regional Directors and other concerned authorities intimated that in the order dated 24.10.1996, the word 'Typist' shall be read as 'LDC/Hindi Typist'. Thus from the letter dated 01.11.1996 it is evident that Hindi Typist are included in the cadre of LDC. Therefore there is no scope on the part of the respondents to treat the Hindi Typists as isolated cadre.

Copy of the letter dated 24.10.1996 and 01.11.96 are enclosed herewith and marked as Annexure- 3 and 4 respectively.

- 4.7 That the Hon'ble Supreme Court while passing its judgment in the case of Raghunath Prasad -Vs- Secretary, Home Political Department was pleased to make specific observation that reasonable promotional opportunities should be available in every wing of public service and directed the state of



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Bihar to provide at least two promotion opportunities to the officers of the state police wireless organization. The same ratio applies in case of the instant applicant also.

In a similar manner, the Ahmedabad Bench of the Hon'ble CAT vide its judgment and order passed on 09.01.1998 in O.A. No. 422/1990 (Guda B.R -Vs- Union of India and Ors) was pleased to hold specifically that Hindi Typist should be considered for promotion along with L.D.C to the cadre of U.D.C.

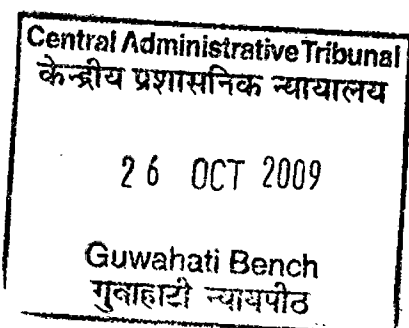
Copy of the judgment dated 09.01.1998 in O.A. No. 422/1990 is annexed hereto and marked as Annexure- 5.

- 4.8 That the applicant had since submitted number of representations to the respondents citing various judicial decisions and the latest position of law in this matter and praying for his promotion to the post of U.D.C treating him at par with LDC but the same were not considered on the pretext that the post of Hindi Typist is an independent and lone category having no promotional avenue, thereby treating the case of the applicant most mechanically and without any application of mind.

Copy of one representation dated 06.10.1998 is annexed hereto and marked as Annexure- 6.

- 4.9 That following the instructions laid down in the Govt. of India's O.M No. 35034/1/97-Estt.(D) dated 09.08.1999, the respondents eventually granted one financial upgradation under assured career progression (ACP) scheme to the stagnating employees including the applicant. There also, the applicant was discriminated upon whereby his pay scale was upgraded from Rs. 3050-4590/- to Rs. 3200-4900/-, whereas his pay scale was upgraded from Rs. 3050-4590/- to Rs. 3200-4900/- whereas in case of L.D.C, the corresponding scale of Rs. 3050-4590/- was upgraded to Rs. 4000-6000/- violating the instructions laid down in the said O.M dated 09.08.1999.

- 4.10 That the applicant being aggrieved at such discriminatory treatment meted out to him, approached the Hon'ble Central Administrative Tribunal (CAT), Guwahati by filing O.A. No. 311/1999 with the following prayers:



Sri Mumindra Kalita

"8.1 That the Hon'ble Tribunal be pleased to direct the respondents to provide at least two promotional avenues for the cadre of Hindi Typist in the ESI Corporation.

8.2 That in terms of prayer no. 8.1 respondents be directed to consider the promotion of the applicant at least from the date of promotion of his immediate juniors who joined subsequently in the cadre of LDC with all consequential service benefits including monetary benefits alternatively; to create promotional avenue for the serving Hindi Typist at par with serving LDC of the ESI Corporation with all consequential service benefits at least from the date of promotion of his immediate juniors in the cadre of UDC including seniority.

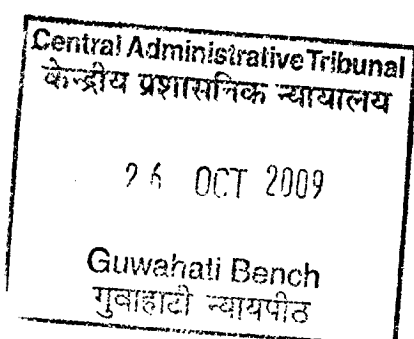
8.3 Cost of the application

8.4 Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case as may be deemed fit and proper by the Hon'ble Tribunal."

4.11 That the Hon'ble Tribunal decided the O.A No. 311/1999 and passed its judgment and order dated 14.06.2001. In the said judgment, although the Hon'ble Tribunal allowed the O.A in part by modifying the scale of financial up gradation in respect of the applicant as Rs. 4000-6000/- in place of Rs. 3200-4900/- granted earlier by the respondents.

It is evident from the judgment and order dated 14.06.2001 in O.A. No. 311/1999 that the applicant has become a part of the cadre of LDC w.e.f. 01.11.1996 and such decision of the Hon'ble Tribunal was based on the letter dated 01.11.1996 issued by the respondents amending the nomenclature of Hindi Typist in the ESI Corporation as "Lower Division Clerk (Hindi Typist)". The judgment and order dated 14.06.2001 in OA No. 311/1999 has not carried on appeal by the respondents, as such said judgment has attained it's finality.

Copy of the judgment and order dated 14.06.2001 is annexed hereto as Annexure- 7.

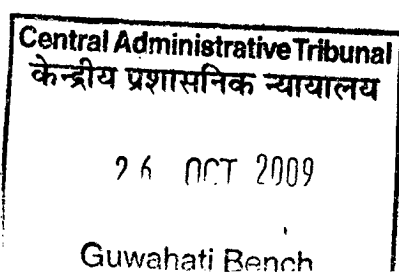


Sri Mumbindra Lealita

4.12 That in spite of similarities in all respects, the respondents have made an artificial distinction between the Hindi Typist and the LDC thereby keeping promotional avenues from the post of LDC to UDC etc. but deprived the Hindi Typist of any promotional avenue treating the Hindi Typist as an independent lone category and as such the Hindi Typist has to suffer a stagnation in the same post for the whole life. Consequently, the present applicant has been serving in the post of Hindi Typist for more than 24 years by now without any promotion whereas his other counterparts who were working as LDC have been promoted to the posts of UDC and even Assistants through their normal promotional avenue. Although they have been doing the same works, having same qualifications as that of the applicant and some of them are even junior to the applicant in respect of their joining in the regular post of LDC. Juniors of the applicant under the respondent department as LDC who joined much later than the present applicant in service have been promoted to the post of UDC as back as in the year 1993 i.e. even before completing 10 years of service as LDC as evident from the gradation/seniority lists of the employees of the ESI corporation published on 11.04.2002. It is further stated that in the gradation list dated 01.04.1982 it is evident that the ESIC maintained common gradation/seniority list for the post of LDC and Hindi Typist but all of a sudden without any cogent reason in the gradation list dated 11.04.02 the post of Hindi Typist and LDC have been shown as separate categories.

Copy of the gradation list dated 01.04.1982 and 11.04.2002 are annexed hereto and marked as Annexure- 8 and 9.

4.13 That pursuant to the judgment and order dated 14.06.2001 aforesaid the respondents have modified their earlier order relating to financial up gradation in respect of the applicant and have granted the upgraded scale of Rs. 4000-6000/- in place of Rs. 3200-4900/- granted earlier to the applicant. The modified scale of Rs. 4000-6000/- was granted to the applicant vide office order no. 77 of 2001 issued on 10.09.2001 and the said scale was made effective from 09.08.1999. But the basic grievance of the applicant i.e. to treat him at par with the L.D.C w.e.f the very date of his joining as Hindi Typist on 25.01.1984 and to grant him subsequent

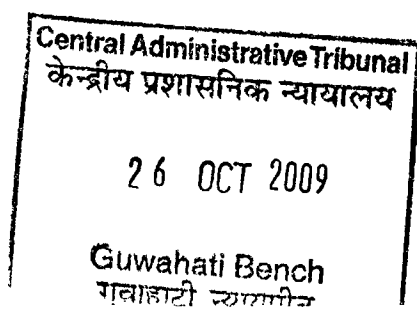


Sri Munindra Kalita

promotion to the cadre of UDC from the date of promotion of those LDC's who were junior to him has not been considered as yet.

4.14 That the applicant begs to state that the Hon'ble Tribunal in its judgment and order dated 14.06.2001 in O.A. No. 311/1999 held that the applicant is a part of the cadre of LDC w.e.f. 01.11.1996 on the basis of the letter dated 01.11.1996 issued by the respondents (Annexure- 4 herein) although the applicant is a part of the cadre of LDC w.e.f. the very date of his appointment as Hindi Typist i.e. with effect from 25.01.1984. It is worth mentioning that the factum of common cadre of Hindi Typist and LDC as an integrated one has been held time and again by various judicial decisions as stated in the foregoing paragraphs and such a system of joint seniority of both the posts for the purpose of promotion to the next higher post is in practice in other central organizations which existed even in the respondent organization i.e. ESIC as well as illustrated in the foregoing paragraphs. As such there is no reason of denying the promotion of the applicant from the cadre of Hindi Typist to the cadre of UDC on an untenable and unjustified plea that the cadre of Hindi Typist is an isolated one and hence out of any promotional avenue. In view of this, the decision of the Hon'ble Tribunal that the applicant is a part of the cadre of LDC w.e.f. 01.11.1996.

4.15 That it is stated that although the Ld. Tribunal vide its judgment and order dated 14.06.2001 declared that the post of Hindi Typist as part and parcel of LDC cadre w.e.f. 01.11.1996 and the applicant thereafter submitted several representations to the Regional Director for correct fixation of his seniority, placing him in the cadre of LDC above his juniors i.e. in the appropriate position of the seniority list and also prayed for consideration of his promotion to the cadre of UDC. Applicant submitted representation on 28.08.2006 to that effect. It is relevant to mention here that earlier also the matter was taken up by the Regional Director with the Headquarter office vide letter bearing No. 43-A.20/11/143/84-Estt. dated 21.11.2007, letter No. 43-A.20/11/143/84-Estt. dated 30.11.2006, letter No. 43-A.20/11/143/84-Estt. Dated 16.07.2007 and letter bearing No. 43-A.20/11/143/84-Estt. dated 26.11.2001, whereby the Regional office of the ESIC sought specific



Sri Mumbra Kalita

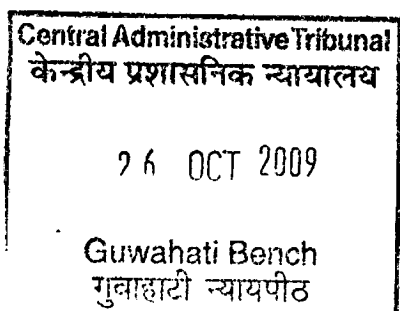
clarification from the office of the DG regarding inclusion of the name of the applicant in the gradation/seniority list of LDC after 01.11.1996 and also sought clarification regarding consideration of promotion of the applicant to the cadre of UDC but the HQ office deliberately did not give any clarification either regarding fixation of seniority of the applicant in the cadre of LDC or regarding promotion of the applicant to the cadre of UDC. The regional Director vide his communication dated 16.07.2007 addressed to DG, New Delhi requested to expedite the decision of the HQ office with respect to the regional office letter dated 26.11.01, 30.11.06, 11.01.07, 12.02.07 and 14.05.07. But the HQ office remained silent and deliberately ignored compliance of the judgment and order dated 14.06.2001 passed in OA No. 311/1999.

Copy of the letter dated 26.11.01, 30.11.06, 16.07.07, representation dated 28.08.06 and letter dated 21.11.07 are enclosed herewith and marked as Annexure- 10, 11, 12, 13 and 14.

- 4.16 That it is stated that vide office order No. 65/99 dated 09.09.1999 as many as two juniors, namely; Sri Susen Kalita and Sri Arabinda Das have been promoted to the cadre of the cadre of UDC without considering the case of the applicant. As such the Regional Office after receipt of the representation from the applicant and judgment and order dated 14.06.2001 in OA No. 311/99 repeatedly took up the matter with the Headquarter office for fixation of seniority of the applicant in the cadre of LDC and also for promotion to the cadre of UDC. But the Headquarter office willfully and deliberately remained silent in order to deny the benefit of seniority and promotion to the applicant.

Copy of the promotion order dated 09.09.99 is enclosed herewith and marked as Annexure- 15.

- 4.17 That most surprisingly while the case of the applicant is pending with the Headquarter office, New Delhi the respondent No. 3 vide his impugned letter No. A-24/13/12/2007-E.II dated 17.09.09 issued a proposal in respect of the applicant along with others for absorption to the post of LDC with respect to the decision rendered in the 147th meeting of the FSIC held on 25.08.2009. By the said impugned letter dated 17.09.09 it was further



Sri Munindra Kalita

directed to take written consent of the official concerned to the effect that they have no objection for being absorbed and placed as junior most in the cadre subject to the following conditions:

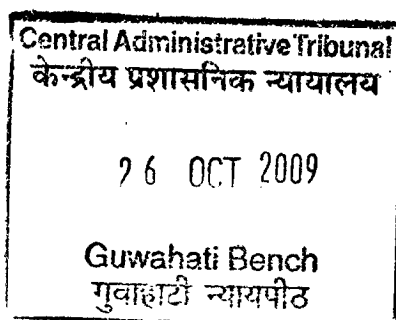
- 1) Post of Hindi Typist/Telex Operator may be merged with LDC w.e.f. 25.08.2009.
- 2) Existing incumbent holding the post of Hindi Typist/Telex operator may be treated on par with LDC in the matter of promotion to the conditions incorporated in the RRs of LDC.
- 3) Seniority of the incumbents of Hindi Typist/Telex Operator should be fixed at the bottom of the LDC with reference to the date of absorption in the 2009-10.

Copy of the impugned letter dated 17.09.09 is enclosed herewith and marked as Annexure- 16.

4.18 That it is stated that by the impugned order dated 17.09.2009, the Headquarter Office, ESIC, New Delhi seeking consent of the Hindi Typist including the applicant for merger of the cadre of Hindi Typist/Telex Operator with the LDC w.e.f. 25.08.2009. Whereas by the judgment and order dated 14.06.2001 passed in OA No. 311/1999 it is specifically declared by the learned Tribunal that applicant has become part of the cadre of LDC w.e.f. 01.11.1996 pursuant to the order dated 01.11.1996 issued by the Headquarter Office, ESIC, New Delhi wherein the Corporation declared that Typists should be treated as LDC Hindi Typist. Therefore it is abundantly clear that the post of Hindi Typist in fact merged with the cadre of LDC at least w.e.f. 01.11.1996 in view of declaration made by the Hon'ble Tribunal in the judgment and order dated 14.06.2001 passed in OA No. 311/99. The relevant portion of the said judgment is quoted below:

In the judgment and order aforesaid the Hon'ble Tribunal in para 4 has categorically held as follows:

"4. We have carefully considered the submission of the learned counsel for the parties. In our opinion after the order dated 01.11.1996 the post of Hindi Typist could not be termed as an isolated post. It became part of LDC, a feeder cadre of UDC..."



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Again in para 6 of the aforesaid judgment the Hon'ble Tribunal held as follows:

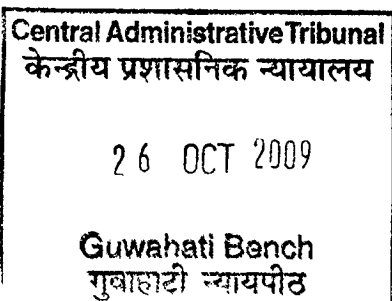
"6. The Ahmedabad Bench of this Tribunal vide its order dated 9.1.1998 has held that scales of pay of LDCs and Hindi Typists are same and they are entitled to be considered for promotion to the post of UDC. The aforesaid order of the Ahmedabad Bench, though could not be applicable to the Applicant before 1.11.1996, but after the aforesaid order (Annexure- 6) the applicant has become part of the cadre of LDC and we find support that the applicant is entitled for the next higher grade in the existing hierarchy, which is Rs. 4000-6000."

7. For the reasons stated above, this O.A. is allowed in part. The order dated 12.5.2000 shall stand modified to the extent that in column 6 the scale of pay of financial upgradation mentioned as 3285-4950 shall stand substituted by the scale of pay of Rs. 4000-100-6000. The applicant shall be entitled for financial benefit under this order, which shall be paid to him within a period of three months from the date a copy of this order is received by the respondents."

In view of the above declaration, the question of further absorption of the applicant w.e.f. 25.08.2009 in the cadre of LDC does not arise.

In the impugned letter dated 17.09.2009, it was further contended that existing incumbents holding the post of Hindi Typist/Telex Operator may be treated at par with LDC in the matter of promotion to the conditions incorporated in the RRs of LDC. As a result of the 2nd condition imposed in the letter dated 17.09.2009, it would adversely effect the prospect of promotion of the applicant to the cadre of UDC, as because he would be treated as LDC w.e.f. 25.08.2009.

Thirdly, the arbitrary condition imposed in the impugned letter dated 17.09.2009 so far the applicant is concerned is highly prejudicial to the right and interest of the applicant, as because it has been specified and indicated that the seniority of the incumbents of Hindi Typist/Telex Operator should be fixed at the bottom of LDC with respect to the date of absorption in 2009-10. Moreover the conditions laid at para 1, 2 and 3 in fact



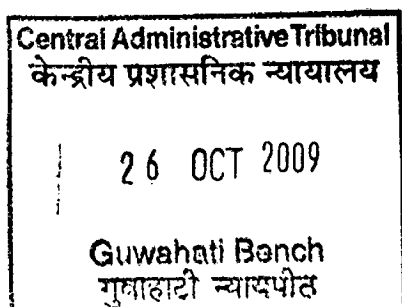
Sri Mumindra Kalita

contrary to the contention of the 1st para of the impugned letter dated 17.09.2009 wherein it is stated as follows:

"The Corporation has agreed to the proposal for absorption of official holding the post of Hindi Typist/Telex Operator to the post of LDC. This would however be with retrospective effect."

Therefore the condition laid down in the impugned letter dated 17.09.2009 are prejudicial to the right, interest and promotion prospect of the applicant to the cadre of UDC. As such the condition laid down in the impugned letter dated 17.09.09 is liable to be set aside and quashed so far the applicant is concerned.

- 4.19 That your applicant further begs to say that he has acquired a valuable legal right to be treated as LDC w.e.f. 01.11.1996 in terms of the HQ office, ESIC letter dated 01.11.1996 and also in view of the declaration made by the Hon'ble Tribunal vide judgment and order dated 14.06.2001 passed in O.A No. 311/1999. Therefore in the event of submission of consent/option in terms of the letter dated 17.09.09 the present applicant shall suffer irreparable loss and injury in the matter of seniority and promotion prospect in the cadre of LDC/UDC.
- 4.20 That it is stated that the applicant after receipt of the order dated 14.06.2001 submitted several representations before the authorities which are still pending with the authority for fixation of seniority in the cadre of LDC as well as for consideration of his case for promotion to the cadre of UDC. But surprisingly the authority did not pass any formal order for fixing of seniority in the cadre of LDC. But when those representations are pending with the authorities the respondent No. 3 has issued the impugned letter dated 17.09.09 which has adversely affected the right and interest of the applicant so far the seniority and promotion is concerned.
- 4.21 That it is stated that pursuant to the impugned order dated 17.09.09, the applicant has been directed to submit his consent by the Regional office, ESIC, Guwahati. But the applicant after going through the contents of the letter dated 17.09.09, finding no other alternative but approaching this Hon'ble Tribunal for a direction upon the respondents that the condition



Sd/- Munindra Kalita

laid down in the impugned letter dated 17.09.09 should not be made applicable in respect of the applicant and also for a direction that the seniority of the applicant in the cadre of LDC be fixed at least w.e.f. 01.11.1996 in the light of the ESIC Headquarter letter dated 01.11.96 and also in terms of the judgment and order dated 14.06.01 passed in OA No. 311/99.

4.22 That the Hon'ble Tribunal be pleased to pass an appropriate interim order staying operation of the impugned letter dated 17.09.2009 so far it is concerned to the applicant till disposal of the Original Application.

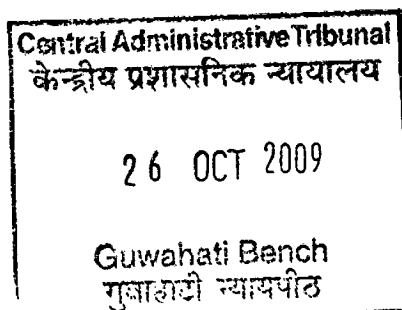
4.23 That this application is made bonafide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

5.1 For that, the Hon'ble Tribunal by the judgment and order dated 14.06.2001 passed in OA No. 311/1999 has specifically declared that the applicant has become part of the cadre of LDC w.e.f. 01.11.1996 pursuant to the order dated 01.11.1996 issued by the Headquarter Office, ESIC, New Delhi. As such seeking consent of the applicant for merger of the cadre of Hindi Typist/Telex Operator and to fix his seniority at the bottom of the LDC with reference to the date of absorption in the 2009-10 is arbitrary hence the condition laid down in the impugned letter dated 17.09.09 is liable to be set aside and quashed so far the applicant is concerned.

5.2 For that, the conditions laid down in the impugned letter dated 17.09.2009 are prejudicial to the right, interest and promotion prospect of the applicant to the cadre of UDC.

5.3 For that, applicant has acquired a valuable legal right to be treated as LDC w.e.f. 01.11.1996 in terms of the HQ office, ESIC letter dated 01.11.1996 and also in view of the declaration made by the Hon'ble Tribunal vide judgment and order dated 14.06.2001 passed in O.A No. 311/1999. Therefore in the event of submission of consent/option in terms of the letter dated 17.09.09 the present applicant shall suffer irreparable loss and injury in the matter of seniority and promotion prospect in the cadre of LDC/UDC.



Sri Munindra Kalita

5.4 For that, the applicant after receipt of the judgment and order dated 14.06.2001 passed in O.A No. 311/1999 submitted several representations before the authorities which are still pending with the authority for fixation of seniority in the cadre of LDC as well as for consideration of his case for promotion to the cadre of UDC. While those representations are pending the authorities issued the impugned letter dated 17.09.09 which has adversely affected the right and interest of the applicant so far the seniority and promotion are concerned.

5.5 For that, the judgment and order dated 14.06.2001 passed in O.A No. 311/1999 has attained its finality.

5.6 For that the impugned letter dated 17.09.2009 is contrary to the order dated 01.11.1996 and judgment and order dated 14.06.01 in OA No. 311/99 so far the applicant is concerned, as such the impugned letter dated 17.09.09 is liable to be set aside and quashed so far applicant is concerned.

6. Details of remedies exhausted.

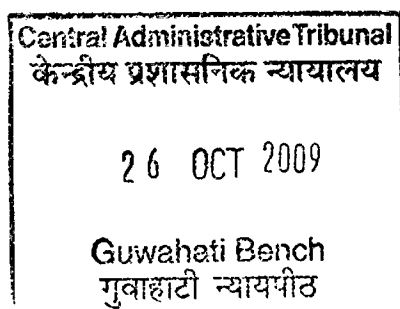
That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that saves and except filing of OA No. 311/1999 he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):



Sri Mummindra Leakta

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the condition laid down in the impugned letter dated 17.09.2009 (Annexure- 16) so far the applicant is concerned.
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to be absorbed to the cadre of LDC w.e.f. 01.11.1996.
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents to fix the seniority of the applicant in the cadre of LDC treating his date of absorption as LDC w.e.f. 01.11.1996 in the light of ESIC Headquarter letter dated 01.11.1996 and also in terms of the judgment and order dated 14.06.2001 passed in OA No. 311/1999.
- 8.4 That the Hon'ble Tribunal be pleased to direct the respondents to consider promotion of the applicant to the cadre of UDC after fixation of his seniority in terms of prayer No. 3.
- 8.5 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

- 9.1 That the Hon'ble Tribunal be pleased to stay operation of the impugned letter dated 17.09.2009 (Annexure- 16) so far it is concerned to the applicant till disposal of the Original Application.

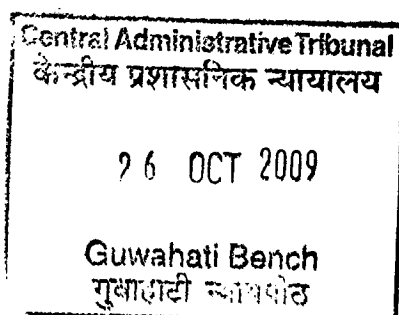
10.

11. Particulars of the I.P.O

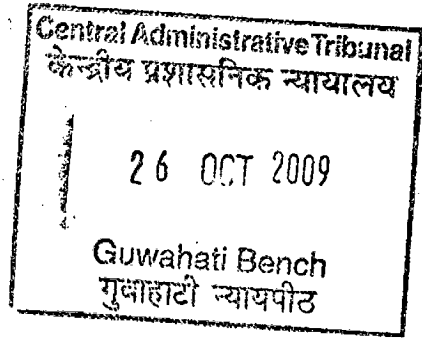
- | | | |
|------|---------------|----------------------|
| i) | I.P.O No. | : 39G 42 4449. |
| ii) | Date of issue | : 16. 09. 09. |
| iii) | Issued from | : G. P. O. Guwahati. |
| iv) | Payable at | : G. P. O. Guwahati. |

12. List of enclosures:

As given in the index.



Sri Munindra Kalita



VERIFICATION

I Shri Munindra Kalita, son of Shri Pritambar Kalita, aged about 48 years, working as Hindi Typist, in the Employees State Insurance Corporation, Regional Office, N.E. Region, Guwahati, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 10th day of October, 2009.

Shri Munindra Kalita

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
26 OCT 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

No.A-14913/1/09-AD.II
Government of India
Ministry of Industry
Department of Company Affairs

Shantari Bhawan, 5th floor, 1A Wing,
New Delhi 110 001, the 16th Feb., 1990

The Regional Director,
Department of Company Affairs,
Kolkata/Bombay/Mumbai/Chennai.

Subject: Grouping of the post of Hindi Typist with
that of LDC.

Sir,

I am directed to say that a reference was
received from office of Regional Director, Madras for
grouping of solitary post of Hindi Typist with that
of LDCs. On receipt of the same the matter was referred
to Department of Personnel & Training for their approval.
It has now been decided in consultation with Deptt to
group the posts of Hindi Typists in various regional offices
with those of LDCs in the regional offices. The grouping
will be applicable only when the post is filled by P.R.

You may kindly maintain Roster accordingly.

Yours faithfully,

(J. L. SAHAI)
UNDER SECRETARY TO THE GOVERNMENT OF INDIA
TELE 1-307705

Attested
Date
16/2/90

3/90

DDA

DA (P)

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

(Typed copy)

ANNEXURE-1

No. A-14913/1/89-AD.II
Government of India
Ministry of Industry
Department of Company Affairs

Shastri Bhavan, 5th floor, 'A' Wing,
New Delhi 110 001, the 16th Feb, 1990

To,

The Regional Director,
Department of Company Affairs,

Subject: Grouping of the post of Hindi Typist with that of LDC.

Sir,

I am directed to say that a reference was received from office of Regional Director, Madras for grouping of solitary post of Hindi Typist with that of LDCs. On receipt of the same the matter was referred to Department of Personnel & Training for their approval. It has now been decided in consultation with DOP&T to group the posts of Hindi Typists in various region (Office with those of LDCs in the regional offices). The grouping will be applicable only when the post is filled by D.R.

You may kindly maintain roster accordingly.

Yours faithfully

(J.L. JAIN)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA
TELE: 20309785

*Whtsted
Butta
Asw*

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

18-
ANNEXURE-2
No. 83022/1/80-3000, VII
Government of India
Central Water Commission
.....

Room No. 806, Sewa Bhawan,
R.K. Puram, New Delhi-66.

Dated the January, 1991.

To

All Superintending Engineers/
Executive Engineers

Subject:- Seniority List of LDCs/Hindi Typists borne on
the ministerial cadre of subordinate offices of
CWC as on 1.1.1991.

A Seniority List of LDCs/Hindi Typists working
in the sub.offices of CWC as on 1.1.1991 has been drawn up in
accordance with instructions contained in MHA O.M.No.9/11/55-RPS
dated the 22/12/1959 as amended from time to time.

It is requested that the contents thereof may
please be brought to the notice of the concerned officials,
and errors/omissions if any, noticed in the list, may be
communicated to the Head Quarters within one month from the
date of issue of this communication.

Yours faithfully,

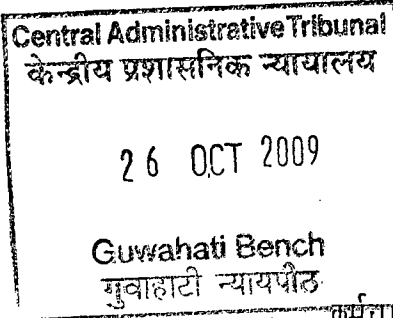
Encl: Seniority List.

B.R. Sharma
(B.R. SHARMA)
SECTION OFFICER
TELE: 607801.

Copy to:-

1. Pay & Accounts Officer, CWC, Sewa Bhawan, New Delhi.
2. The Deputy Director, NWDA, New Delhi/Trivandrum/Hyderabad.
3. The Section Officer, C.R. Section, CWC, Sewa Bhawan,
R.K. Puram, New Delhi.
4. Spare copies - 10

*Attached
Dutta
Ash*



-19-

ANNEXURE-3

कर्मचारी राज्य बीमा निगम
"पंचदीप" प्लॉट कॉन्क्ला मार्ग, नई दिल्ली

संख्या: ए-49/12/8/96-हिन्दी

दिनांक: 24.10.96

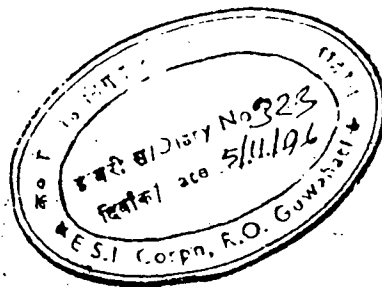
सेवा में,

1. सभी क्षेत्रीय निदेशक
2. निदेशक § धि 0 § दिल्ली
3. चिकित्सा अधीक्षक, क. रा. बी. अस्पताल, बसईदारापुर/झिलमिल।
4. निदेशक, क. रा. बी. अस्पताल, नौखटा।
5. संयुक्त क्षेत्रीय निदेशक, उष क्षेत्रीय कार्यालय, पूना/नागपुर/मद्रुरै/कोयम्बतूर।
6. संयुक्त निदेशक § प्रशासन §/स्थ. 1 § क §/स्था. 1 § ख §/स्था. 2/स्था. 3, मुख्यालय।

विषय: - निगम कार्यालयों में हिन्दी कार्मिकों के पदों को 1.10.96 से 31.3.97 तक जारी रखना - पदों का कार्यालयवार आवंटन।

महोदय,

उपर्युक्त विषय पर इस कार्यालय के पत्र संख्या ए-49/12/12/94-हिन्दी दिनांक 17.10.95 के क्रम में यह सूचित किया जाता है कि निगम कार्यालयों में हिन्दी कार्मिकों के विभिन्न श्रेणी के पदों को 1.10.96 से 31.3.97 तक जारी रखने के लिए मंजूरी प्रदान कर दी गई है। विभिन्न श्रेणियों के अंतर्गत हिन्दी कार्मिकों के पदों का कार्यालयवार विवरण संलग्न है।



भवदीय,

§ विनोद कुमार महाजन §
हिन्दी अधिकारी

प्रतिलिपि: - निम्नलिखित को सूचना तथा आवश्यक कार्रवाई के लिए प्रेषित: -

1. सभी क्षेत्रीय संयुक्त/उष निदेशक § वित्त §
2. सभी क्षेत्रीय हिन्दी अधिकारी।

collected
Mutha
Adv

हिन्दी अधिकारी

निम्न श्रेणी लिफ्टः
हिंदी टाइप

20 -

क्र.सं.	कार्यालय का नाम	उप निदेशक	हिन्दी अधिकारी	कनिष्ठ/वरिष्ठ अनुवादक	आशुलिपिक	टाइपिस्ट
1.	मुख्यालय	-	-	5	3	6
2.	क्षेत्र 0, उत्तर प्रदेश	-	-	2	1	1
3.	" " दिल्ली	-	-	2	1	2
4.	" " बिहार	-	-	2	1	1
5.	" " मध्य प्रदेश	-	-	2	1	1
6.	" " राजस्थान	-	-	2	1	1
7.	" " हरियाणा	-	-	2	1	3
8.	" " पंजाब	-	-	4	1	1
9.	" " गुजरात	-	-	4	1	1
10.	" " मुंबई	-	-	5	1	2
11.	" " उड़ीसा	-	-	2	1	1
12.	" " आंध्र प्रदेश	-	-	4	-	1
13.	" " बेंगलूर	-	-	4	-	1
14.	" " पश्चिम बंगाल	-	-	4	-	1
15.	" " केरल	-	-	4	-	1
16.	" " तमिलनाडु	-	-	4	-	1
17.	" " असम	-	-	1	-	1
18.	" " गोवा	-	-	1	-	1
19.	उप क्षेत्र 0, पूना	-	-	4	1	1
20.	" " नागपुर	-	-	2	-	1
21.	" " मद्रास	-	-	2	-	-
22.	" " कोयंबतूर	-	-	2	-	-
23.	निदेश 0, चि 0, दिल्ली	-	-	2	1	1
24.	क. रा. बी. अस्पताल, बसईदारापुर	-	-	1	-	1
25.	क. रा. बी. अस्पताल, झिलमिल	-	-	1	-	-
26.	क. रा. बी. अस्पताल, नौस्टा	-	-	1	-	1
जोड़.		1	17	69	16	31

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

संख्या : ए-49/12/8/96-हिन्दी

दिनांक : 1.11.1996

सेवा में,

1. सभी क्षेत्रीय निदेशक ।
2. निदेशक चिकित्सा दिल्ली ।
3. चिकित्सा अधीक्षक, क०रा०बी०अस्पताल,
बसईदारापुर/झिलमिल ।
4. निदेशक, क०रा०बी०अस्पताल, नौसडा ।
5. संयुक्त क्षेत्रीय निदेशक, उप क्षेत्रीय कार्यालय,
पुना/नागपुर/मदुरै/कोयम्बतूर ।
6. संयुक्त निदेशक प्रशासन/स्था०-1/क/स्था०-1/ख/
स्था०-2/स्था०-3, मुख्यालय ।



विषय : निगम कार्यालयों में हिन्दी कार्डिनों के पदों को 1.10.96 से
31.3.97 तक जारी रखना - शुद्धि पत्र ।

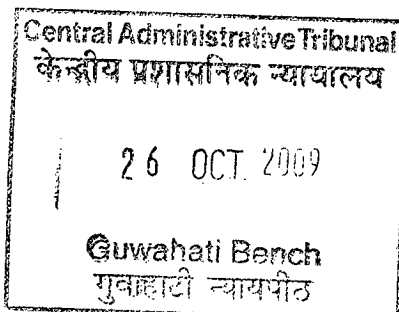
महोदय,

उपर्युक्त विषय पर इस कार्यालय के समसंख्यक पत्र दिनांक 24.10.96
के क्रम में यह सूचित किया जाता है कि संदर्भित पत्र के पृष्ठ-2 पर कालम
संख्या 7 में "टाइपिस्ट" शब्द के स्थान पर "निम्न श्रेणी लिपिक हिन्दी टाइप"
पढ़ा जाये ।

कृपया पावती भेजें ।

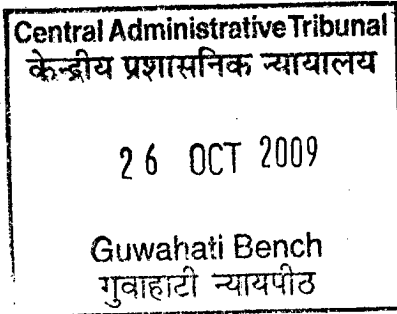
भवदीय,

*Attested
Dutta
Adv*



विनोद कुमार महाजन ।
हिन्दी अधिकारी

AL 96111.



- 21 A -

ANNEXURE- 4

(Translated from Hindi)

EMPLOYEES STATE INSURANCE CORPORATION
"PANCH DEEP" BHAVAN, KOTLA ROAD,
NEW DELHI

No. A-49/12/8/96-Hindi

Dated. 1.11.1996

To,

1. All Regional Director.
2. Director (Medical) Delhi.
3. Medical Supdt. ESIC Hospital
4. Director, ESIC Hospital, Beltola
5. Jt. Regional Director, Dy. Regional Office.
Puna/Nagpur/Madurai/Koimbatour.
6. Jt. Director (Adm.)/Estt.-1 (A)/Estt.- 1 (B)/Estt.- 2/Estt. -3, Hqrs.

Subject:- Continuance of Hindi Posts from 1.10.96 to 31.3.97-correction letter.

Sir,

With reference to this office letter of even no. dated 24.10.96, it is informed that the word "Typist" will be substituted by the word "L.D.C. (Hindi Typist)" at Cl. No. 7 of page No. 2

Please acknowledge receipt.

Yours faithfully

Sd/-

(B.K. MAHAJAN)
HINDI OFFICER

Collected
Walter
sdw

-22-
(Typed copy)

ANNEXURE - 5

Swamynews

109

August, 1998

177

Since pay scales of LDC and Hindi Typist are same, Hindi Typists are eligible for promotion as UDCs on par with LDCs.

Facts: the applicant was initially appointed as Hindi Typist in the office of R 3 on 16-3-1983. She has stated that she was regularized in the post in December, 1984. The post of Hindi Typist and LDC carry the same scales of pay. The next promotional post is UDC. According to the applicant she is eligible for promotion after completion of five years as LDC. But, the R 1 was appointed as UDC overlooking the applicants's claim. The applicant represented to the respondents for her promotion as UDC. But she has not been considered for promotion to the post of UDC even though she has completed the required number of years service. Therefore, the applicant has approached the Tribunal praying for a direction to the respondents to declare and hold that the posting/shifting of R 4 is illegal and to promote the applicant to the post of UDC with effect from 15-03-1988, the date on which she become due and eligible.

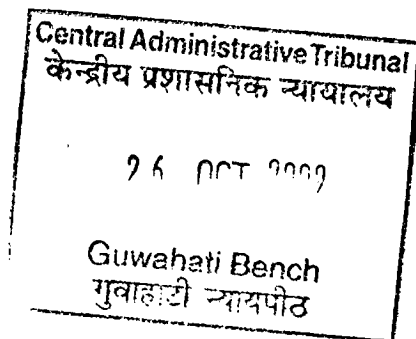
Field: The scales of pay of LDC and Hindi Typist are same. It is not clear as to how the post of Hindi Typist has been left out from the field of selection in the post UDC. Perhaps, it may due to oversight. It is seen that the field of recruitment of LDC/ Hindi Typist is from the same source with similar qualification. If that is so leaving out the post of Hindi Typist in the field of selection to the post of UDC appears to unjust and discriminatory. The respondents have not given any valid reason for omitting the Hindi Typist from the field of selection. Accordingly, we feel that the applicants working as Hindi Typist on regular basis is entitled for being considered for promotion to the post of UDC. In her turn. The respondents are directed to hold a review DPC to consider the case of the applicant for the post of UDC and if she is found eligible, she may be given promotion from the date she has completed the required number of years service or from the date the vacancy become available and that date will be reckoned for counting her seniority as UDC and she will be eligible for financial benefits as UDC from due date she assumes charge of the post.

With the above observation and directions O.A stands disposed of.

(Guda B.R. V. Union of India and others, 8/98 Swamynews 109, (Ahmedabad) date of judgment 9-1-1998)

O.A No.422 of 1990

Accepted
Mita
Adv



To

The Director General,
E.S.I. Corporation
New Delhi-110002

Through the Regional Director E.S.I. Corporation, Guwahati-21

Subject:- Promotion of self from Hindi Typist to UDC as per
O.A.No.422 of 1990 (Ahmedabad)

Sir,

Most respectfully I beg to state that I have been appointed on 25.1.1984 as Hindi Typist in the Regional Office, E.S.I. Corporation Guwahati. After completion of my probation period I have not been promoted to UDC and so long I was not allowed to appear in the departmental test for LDC, for promotion to UDC, whereas my juniors are promoted to UDC.

I have to request you kindly to look into the matter sympathetically and consider me for promotion to UDC in the light of O.A.No.422 of 1990 (Ahmedabad) copy of judgement enclosed for ready reference and oblige.

Yours faithfully,

Dated. 6-10-98

Encl: Copy of judgement of

O.A.No.422 of 1990

(MUNINDRA KALITA)

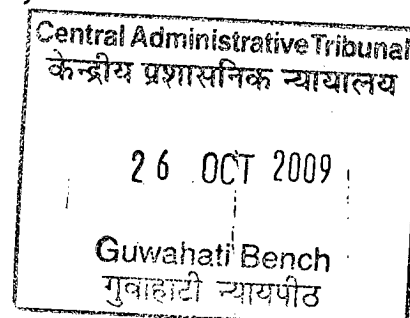
HINDI TYPIST

REGIONAL OFFICE

GUWAHATI-21

4751
7/10/98

Attested
Dutta
Adv.



- 24 -

ANNEXURE - 7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.311 of 1999

Date of decision: This the 14th day of June 2001

The Hon'ble Mr Justice R.R.K. Trivedi, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Munindra Kalita,
Hindi Typist,
Employees State Insurance Corporation,
Regional Office, N.E. Region,
Guwahati.

.....Applicant

By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs U. Dutta and Mr G.N. Chakrabarty.

- versus -

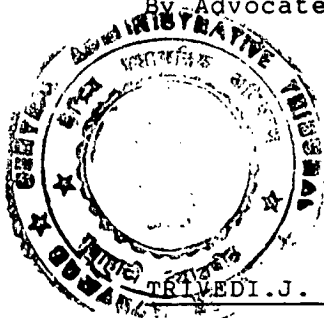
1. The Union of India, represented by the
Secretary,
Ministry of Labour,
New Delhi.
2. The Director General,
Employees State Insurance Corporation,
New Delhi.
3. The Regional Director,
Employees State Insurance Corporation,
Regional Office, N.E. Region,
Guwahati.
4. Shri P.D. Patgiri,
Upper Division Clerk,
Employees State Insurance Corporation,
Regional Office, Guwahati.
5. Smt Anima Devi,
Upper Division Clerk,
Regional Office,
N.E. Region, Guwahati.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

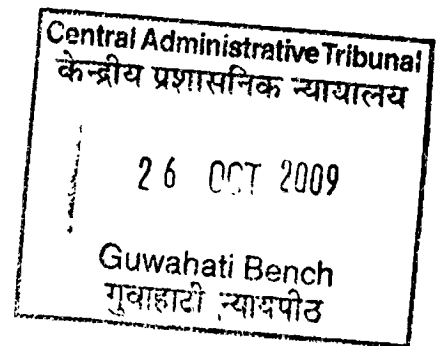
O R D E R (ORAL)



By this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has
prayed for a direction to the respondents to provide at
least two promotional avenues for the cadre of Hindi
Typist in the Employees State Insurance Corporation

*Attached
adutta
for*

R. J. Chakrabarty



26 OCT 2000

Guwahati Bench

: 2 :

-25-

(hereinafter referred to as the Corporation). It has been further prayed that the respondents be directed to consider the promotion of the applicant from the date his immediate juniors were promoted from the cadre of LDC with all consequential benefits. Lastly, it has been prayed that the order dated 12.5.2000 granting pay scale of Rs.3200-85-4950 be modified and the applicant may be granted pay scale of Rs.4000-100-6000.

2. The facts, in short, giving rise to this dispute are: that:

The applicant joined as Hindi Typist on 25.1.1984 in the Corporation. Initially, his appointment was on ad hoc basis, but by a subsequent order he was regularised in the post with effect from the date of appointment, which position is not disputed. However, by order dated 24.2.1988 the services of the applicant were terminated with effect from 23.3.1988 by serving one months notice. Aggrieved by this order the applicant filed O.A.No.45 of 1988 before the Tribunal, which was allowed by order dated 30.3.1990. The direction given in the judgment contained in para 10 is being reproduced below:

"In view of the aforesaid discussions we are of opinion that Annexure '16' dated 24.2.1988, terminating the services of the petitioner for not having qualified in the requisite test cannot be sustained and it is, therefore, quashed. The petitioner should be allowed to continue in service as a Hindi Typist. We further direct that the opposite parties should consider regularisation of the services of the petitioner with effect from his date of appointment and we expect the appropriate authority to pass orders according to law without any unreasonable delay."

In the aforesaid order, this Tribunal also recorded the finding that the applicant was appointed as Hindi Typist, which could not be a part of the regular cadre of

LDC.....

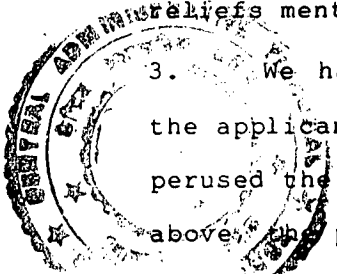
26-

26 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

LDC. The applicant again felt aggrieved in 1995 as he was not promoted to the next post of UDC alongwith others. The applicant filed O.A.No.128 of 1994, which was dismissed by order dated 3.7.1995. This Tribunal found that as the applicant was appointed as Hindi Typist and does not form a feeder cadre of LDC, it is difficult to accept the contention that he is eligible to be promoted as UDC, treating him equivalent to LDC or independently under the recruitment rules. However, the Tribunal made observations favourable to the applicant and expected from the respondents to take some steps so that the applicant may get some promotion during his service period. The Government by order dated 1.11.1996 issued a direction that in the order dated 24.10.1996, the word 'Typist' shall be read as 'LDC/Hindi Typist'. Thus with effect from 1.11.1996 it may be said that Hindi Typists were also included in the cadre of LDC. By order dated 12.5.2000, the applicant was given a financial upgradation in the pay under the Assured Career Progression Scheme (ACP Scheme for short). The existing pay scale of the applicant of Rs.3050-75-3950-80-4590 was enhanced to Rs.3200-85-4950. Aggrieved by this the applicant has approached this Tribunal by filing the present O.A. and has claimed the reliefs mentioned above.

3. We have heard Mr J.L. Sarkar, learned counsel for the applicant, and Mr A. Deb Roy, learned Sr. C.G.S.C. and perused the materials on record. On material facts, stated above, the parties are not in dispute. The learned counsel for the applicant has submitted that the grade of Rs.3200-4950 has been wrongly given to the applicant. In fact, he is entitled for the grade of Rs.4000-6000, given to UDC. For this purpose, he has placed reliance on the order dated 30.3.2000 filed at Annexure 8/A, by which Smt



2

Rosnara Begum, LDC, was given the scale of Rs.4000-100-6000 under the same scheme, namely, ACP. The learned counsel has also placed reliance on the order of the Ahmedabad Bench of this Tribunal dated 9.1.1998 in the case of Guda B.R. vs. Union of India and others (August 1998, Swamy's News 109). The learned Sr. C.G.S.C., on the other hand, placed before us the condition for grant of benefits under the ACP Scheme. The learned counsel has placed reliance on para 7 of the conditions which has been filed as Annexure I to the written statement. It has been submitted that as the post of Hindi Typist was an isolated post the applicant has rightly been granted the scale mentioned at serial No.6 shown in the Annexure I to the Scheme. It is submitted that the applicant is not entitled for any relief.

4. We have carefully considered the submissions of the learned counsel for the parties. In our opinion after the order dated 1.11.1996 the post of Hindi Typist could not be termed as an isolated post. It became part of LDC, a feeder cadre for WDC. Para 7 of the ACP Scheme reads as under:

"Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure II, which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure)....."

Thus, the question for consideration is whether the post of Hindi Typist has been rightly treated as an isolated post by the respondents for granting the next higher scale of.....

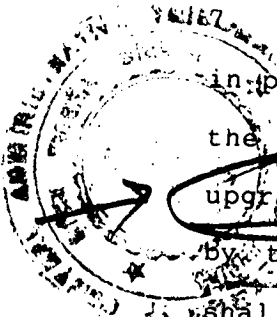
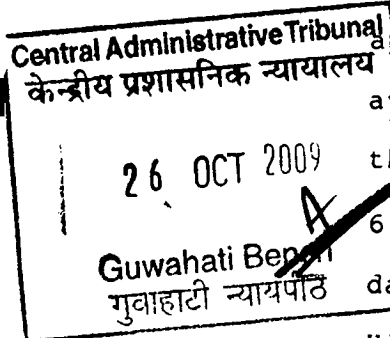
of Rs.3200-4950. From perusal of para 7 mentioned above it is clear that the financial upgradation under the Scheme shall be given to the next higher grade in the existing hierarchy in cadre/category. The next existing hierarchy for LDC was UDC for giving effect to the Scheme. In such a case pay scales mentioned against S.5 and S.6 could not be applicable. The applicant being part of the cadre of LDC was directly entitled for the upgradation to the scale of Rs.4000-6000 mentioned against S.7. It was probably for this reason that Smt Rosnara Begum, LDC, was given the scale of pay of Rs.4000-6000 by order dated 30.3.2000 (Annexure 8). This order was specifically relied on by the

applicant, but the respondents have explained or not controverted the averments. In our opinion this order further corroborates the claim of the applicant.

6. The Ahmedabad Bench of this Tribunal vide its order dated 9.1.1998 has held that scales of pay of LDCs and Hindi Typists are same and they are entitled to be considered for promotion to the post of UDC. The aforesaid order of the Ahmedabad Bench, though could not be applicable to the applicant before 1.11.1996, but after the aforesaid order (Annexure 6) the applicant has become part of the cadre of LDC and we find support that the applicant is entitled for the next higher grade in the existing hierarchy, which is Rs.4000-6000.

For the reasons stated above, this O.A. is allowed in-part. The order dated 12.5.2000 shall stand modified to the extent that in column 6 the scale of pay of financial upgradation mentioned as 3285-4950, shall stand substituted by the scale of pay of Rs.4000-100-6000. The applicant shall be entitled for financial benefit under this order,

which.....



which shall be paid to him within a period of three months from the date a copy of this order is received by the respondents.



No order as to costs.

Sd/VICE CHAIRMAN
Sd/MEMBER (Adm)

TRUE COPY
प्रतिनिधि

[Signature]
21/6/2007
Duction Officer
शुभम शर्मा
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench, Guwahati
गुवाहाटी - बेंच, गुवाहाटी

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
26 OCT 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

ANNEXURE - 8

GRADUATION LISTS OF THE EMPLOYEES IN THE E.S.I. CORPORATION ASSAM REGION AS ON 1.4.82

Sl.No. (in order of merit)	Name and Qualification.	Date of birth	D. of service in Corpn.	Date of regular appoint- ment in the Corpn.	Date of promotion in the Corpn.	Date of appointment/ promotion	Date of sub app- ointment.	Present office of posting	Remarks
1	2	3	4	5	6	7	8	9	

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

Head Clerk/Manager Gr. III/Assistant
Sc 1- Rs. 425-15-500-EB-15-560-20-700/-

/Shri

K. Datta	B.A.	1-3-37	3.5.60	8.1.81	Promoted	-	Guwahati	Subs.UDC	Off. I.I.
B. K. Dey	B.A.	1-1-40	3.5.60	8.1.81	"	-	Tsk.	Subs.UDC	Off. I.I.
K.C. Ghosh	B.A.	1-10-45	26.10.64	8.1.81	"	-	R.O.	Subs.UDC	Ins. Inspector from 26.12.81
S.K. Chakravarty	Matric	31-1-34	20.8.59	13.1.81	"	-	R.O.	Subs.JDC	
H. Ali	B.A.	1-8-37	15.4.61	8.1.81	"	-	R.O.	Subs.LDC	
J.C. Das	Matric	1-4-37	3.10.58	8.1.81	"	-	R.O.	Subs.LDC	
U.R. Chakravarty	Matric	1-6-38	6.10.58	26.3.82	"	-	R.O.	Subs.UDC	
D. Singha	Matric	1-11-43	19-11.63	26.3.82	"	-	Silghat	Subs.LDC	
D.N. Das	B.A.	1-3-54	4.3.74	26.3.82	"	-	Sillong	Subs.LDC	
							R.O.	-	(S/C)

Attended
Datta
for

1	2	3	4	5	6	7	8	9
19. B.K. Das	B.A. (Hons.)	1.1.53	1.3.74	15.1.81	Promoted	.	R.O.	Central Administrative Tribunal
20. S.K. Sarma	B.Sc	1.3.53	11.6.74	26.6.81	"	-	Jorhat	केन्द्रीय प्रशासनिक न्यायालय
21. P.K. Sarma	B.A.	1.3.55	29.11.77	26.6.81	"	-	Charduar	26 OCT 2009
Lower Division Clerk / Hindi Typist ..								
Scale Rs. 260-6-290-EB-6-326-3-366-EB-8-390-10-400/-								
1. H. Ali	B.A.	1.8.37	15.4.61	15.4.61	Appointed	15.5.63	R.O.	Guwahati Bench
2. U.R. Chakravarty	Matric	1.6.33	6.10.53	21.9.63	Promoted	2.2.66	UDC from 19.11.63	गुवाहाटी न्यायपीठ
3. D. Singha	Matric	1.11.43	19.11.63	19.11.63	Appointed	1.1.70	Bilghat UDC from 19.3.77	
4. Mrs. B. Nag	B.A.	24.11.43	1.3.68	1.3.68	"	17.10.70	Sillong UDC from 19.3.77	
5. M.C. Na	Matric	1.11.47	10.3.69	10.3.69	"	16.4.71	R.O. UDC from 6.3.77	
6. A. Hossain	PJ Cou	1.5.50	4.2.70	4.2.70	"	23.3.73	Charduar UDC from 19.2.30	
7. T.C. Das	B.A. (Hons.)	B.T. 31.3.49	4.2.70	4.2.70	"	23.3.72	Gauhati UDC from 15.1.81	
8. C.K. Bora	Matric	1.4.49	10.7.70	10.7.70	"	-	Jogighpa UDC from 15.1.81	
9. R. Deka	Matric	1.4.49	15.9.70	15.9.70	"	-	Jorhat UDC from 15.1.81	
10. A. Haque	B.Sc	1.6.52	1.3.74	1.3.74	"	-	Dhubri UDC from 15.1.81	
11. S.K. Das	B.A. (Hons.)	1.1.53	1.3.74	1.3.74	"	-	Gauhati UDC from 15.1.81	
12. I. Ali. BK	B.A.	2.2.53	1.3.74	1.3.74	"	-	R.O. UDC from 15.1.81	
13. D.N. Das	B.A.	1.3.54	4.3.74	4.3.74	"	-	Dhubri UDC from 15.1.81	
14. S.K. Sarma	B.Sc	1.3.53	11.6.74	11.6.74	"	-	R.O. UDC from 6.3.77 (S/C)	
15. P.K. Sarma	B.A.	1.3.55	29.11.77	29.11.77	"	-	Jorhat UDC from 26.6.81	
16. L.R. Kalita	Class-X	24.3.40	30.9.53	1.3.77	Promoted	-	Charduar UDC from 26.6.81	
17. S.C. Sarma	B.Sc	1.4.53	1.1.79	1.1.79	Appointed	-	R.O. Subs. Record Sorter.	
18. C.J. Kalita	B.A.	1.7.56	12.3.79	12.3.79	"	-	R.O. Offg. UDC	
						-	R.O. Offg. UDC	

32-

Page 7

1	2	3	4	5	6	7	8	9
17. U.C. Das.	Class-VII	30.6.61	1.12.31	1.12.51	"	-	R.O.	-

FARASH/CHOWKIDAR

Scale Rs. 195-3-220-RB-3-232/-

1. Man Bhandari	Knows to sign.	17.2.33	14.7.59	14.7.59	Appointed 1.1.63	Guwahati	Peon from 12.12.79
2. B.C. Mahanta	Class-VI	1.9.56	5.6.76	5.6.76	"	--	R.O.
3. M.S. Barua	Class-VIII	31.7.53	2.4.80	2.4.80	"	--	R.O.
4. S.D. Barua	Class (EX)	31.5.43	19.8.80	19.8.80	"	--	R.O.
5. B.C. Deka	Class-IV	20.9.60	23.1.81	23.1.81	"	--	R.O.
6. Anil Das	Class-VII	31.7.61	1.4.82	1.4.82	"	--	R.O.

Peon from 12.12.79

R.O. Peon from 2.4.80 (3/T)

R.O. Farash

R.O. Ex-Serviceman Rejoined on 1.3.82

R.O. Chowkidar/Mali

R.O. Chowkidar

SWEEPER

Scale Rs. 195-3-220-RB-3-232/-

1. Rup Singh	Knows to sign.	1.3.81	3.9.80	3.9.80	Appointed --	R.O.	(S/C).
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Guwahati

(S.N. SINHA)
REGIONAL DIRECTOR

-33-

EMPLOYEES STATE INSURANCE CORPORATION
REGIONAL OFFICE: NORTH EASTERN REGION
GUWAHATI-21

ANNEXURE-9

No. 43-424/14/83-Estt.

Dated 11-4-2002

MEMORANDUM

Subject : The compilation of gradation/seniority lists of the employees of the Corporation, N.E. Region as on 1.4.2002.

.....

The gradation/seniority lists compiled according to seniority in respect of the employees, E.S.I. Corporation in N.E. Region as on 1-4-2002 are sent herewith. The lists may be circulated among all concerned for comments and objection, if any. In case no objection is received in this office on or before 10-6-2002, it will be presumed that the persons concerned agree with their seniority.

All Local Office Managers are advised to acknowledge the receipt of this Memo. and confirm 10-5-2002 that the lists have been circulated under date initials of the persons attached to that office.

Encls. as above

(K.C. GHOSH)
ASSISTANT DIRECTOR
FOR REGIONAL DIRECTOR

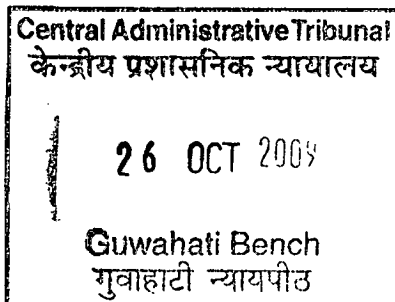
To

1. All Local Office Managers, N.E. Region.

Copy to:-

1. The staff Members, Regional Office, Guwahati.
2. All Branches, R.O. Guwahati
3. The Dy. Director (Finance), ESIC, R.O. Guwahati
4. The ~~Exec~~ General Secretary, ESIC Employees Union, Guwahati

*Attended
Mitra
4/4*



ASSISTANT DIRECTOR
FOR REGIONAL DIRECTOR

34

GRADATION/SENIORITY LIST OF THE EMPLOYEES IN THE E.S.I. CORPORATION, N.E. REGION AS ON 1.4.2002

S.No. (In order of Merit)	Name & Educational qualification	Date of birth	Date of conti- nuous service in the Corpora- tion.	Date of regular promotion/ appointment in the cadre	Whether appointed/ promoted	Date of substantive of appointment	Present place of posting	Remarks
1	2	3	4	5	6	7	8	9
HEAD CLERK/ASSISTANT (Scale of pay Rs.5500-175-9000/-Provisional)								
1.	Md.A.Hussain, P.U(Com.)	1.5.1950	1.2.1970	5.8.1988	Promoted	16.1.1981	Dismissed on 20.10.99- Case pending in High Court.	
2.	Sri P.K.Sarma, B.A	1.3.1955	29.11.77	15.5.89	Promoted	1.1.81	L.O.Guwahati	Offg.Mgr.II/I.I
3.	Sri C.D.Kalita, B.A, LLB	1.7.1956	12.3.79	15.5.89	Promoted	1.1.81	R.O.Guwahati	
4.	Sri P.Goswami, B.A	27.5.1956	1.1.79	19.10.90	Promoted	15.1.81	R.O.Guwahati	Offg.Mgr.II/I.I
5.	Mrs R.R.Kalita, B.A	1.3.1959 (1.3.1959)	2.1.82	27.4.94	Promoted	1.4.88	R.O.Guwahati	
6.	Sri R.R.Phockan, B.SC	1.8.1956	1.6.79	26.4.94	Promoted	1.4.88	R.C.Guwahati	
7.	Sri S.Das, B.SC	1.3.1958	4.11.82	11.12.95	Promoted	1.4.88	R.O.Guwahati	S/C
8.	Mrs S.Khatun, B.A	26.2.1956	9.1.80	1.7.99	Promoted	1.4.88	R.O.Guwahati	
9.	Sri B.C.Sarma, M.A	1.3.1958	6.1.82	1.7.99	Promoted	1.4.88	R.O.Guwahati	
10.	Sri B.Goswami, B.Com	1.9.1959	8.1.80	1.7.99	Promoted	1.4.88	R.O.Guwahati	
11.	Sri N.C.Sarma, B.A	1.5.1960	2.1.82	1.7.99	Promoted	1.4.88	R.O.Guwahati	
12.	Sri T.C.Deka, B.A	1.12.1956	5.1.82	1.7.99	Promoted	1.4.88	R.O.Guwahati	
13.	Sri M.N.Haque, B.A	1.2.1959	4.1.82	1.7.99	Promoted	1.4.88	R.O.Guwahati	

PERSONAL ASSISTANT (SCALE OF PAY Rs.5500-175-9000/-Provisional) .

1.	Sri K.B.Koiri, P.U Arts.	30.6.1958	13.7.89	25.1.2001	Promoted	13.7.91	R.O.Guwahati	Contd...2
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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

*Submitted
with
Aen*

26 OCT 2009

9 Guwahati Bench
गुवाहाटी न्यायपीठ

1	2	3	4	5	6	7	8
JUNIOR HINDI TRANSLATOR (SCALE OF PAY Rs. 5000-150-7000/-)							

VACANT

INTERVIEW

UPPER DIVISION CLERK (SCALE OF PAY Rs. 4000-100-6000/-)

1. Sri N.K. Bora, B.Com.	1.7.1959	2.1.1982	15.5.1989	Promoted	1.4.1988	R.O. Guwahati	Offg. Assistant.
2. Sri S.R. Kalita, M.A.	1.7.1957	2.1.82	15.5.89	Promoted	1.4.88	R.O. Guwahati	Offg. Assistant
3. Sri D.N. Bora, P.U.	5.11.1959	3.5.82	15.5.89	Promoted	1.4.88	R.O. Guwahati	Offg. Asstt.-ST.
4. Mrs K. Ojah Choudhury, B.A.	1.1.1956	2.1.82	19.10.90	Promoted	1.4.88	R.O. Guwahati	Offg. Asstt.
5. Mrs S. Devi, B.A.	1.1.1959	1.4.82	19.10.90	Promoted	1.4.88	R.O. Guwahati	Offg. Asstt.
6. Sri A.K. Baruah, B.A.	5.11.1957	27.4.82	25.11.91	Promoted	1.4.88	L.O. Tinsukia	
7. Sri B.C. Bora, B.SC	21.11.1957	2.11.82	25.11.92	Promoted	1.4.88	R.O. Guwahati	
8. Sri C.K. Baruah, B.SC	3.7.1959	3.11.82	2.9.93	Promoted	1.4.88	R.O. Guwahati	
9. Mrs D. Pegu, P.U.	1.1.1959	4.7.84	9.5.94	Promoted	6.8.90	R.O. Guwahati	ST
✓ 10. Sri P.D. Patgiri, L.SC	1.1.1959	25.7.83	25.11.94	Promoted	1.4.88	R.O. Guwahati	
11. Sri P.K. Samra, B.A.	3.2.1959	2.11.82	25.11.94	Promoted	1.4.88	L.O. Guwahati	
12. Sri B.C. Das, P.U. (Com.)	1.7.1961	19.7.83	20.9.95	Promoted	6.8.90	L.O. Tezpur	
13. Sri J.R. Mahanta, B.A.	1.1.1959	2.11.82	24.11.95	Promoted	1.4.88	R.O. Guwahati	
14. Mrs B.D. Choudhury, M.A.	22.12.1958	4.2.83	24.11.95	Promoted	1.4.88	L.O. Guwahati	
15. Mrs Z. Kalita, B.A.	1.7.1959	2.11.82	9.9.99	Promoted	1.4.88	R.O. Guwahati	
16. Mrs Pranati Samra, P.U.	31.8.1958	3.6.83	9.9.99	Promoted	1.4.88	R.O. Guwahati	
17. Sri Susen Kalita, HSLC	1.3.1973	31.7.95	9.9.99	Promoted	31.7.97	R.O. Guwahati	
18. Sri Arabinda Das, HSLC	1.3.1960	26.7.80	9.9.99	Promoted	1.4.88	L.O. Bongaigaon	

STENOGRAPHER (SCALE OF PAY Rs. 4000-100-6000/-)

VACANT

Contd. 32

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(2)

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
26 OCT 2009
Guwahati Bench
गुवाहाटी न्यायापीठ

1	2	3	4	5	6	7	8	9
STAFF CAR DRIVER (Scale of pay Rs.4000-100-6000/-)								
1. Sri S. Hazarika, Class-VIII	24-2-1956	3-10-85	1-8-1995	Promoted	1-4-1988	R.O. Guwahati		

1	2	3	4	5	6	7	8	9
LOWER DIVISION CLERK (SCALE OF PAY Rs.3050-75-3950-80-4590/-)								
1. Sri N. Deka, Class-X	1-3-1954	2-9-1974	21-7-1982	Promoted	1-1-1981	L.O. Guwahati		
2. Sri H. Rahman, Class-X	31-5-1952	17-10-1977	5-8-1988	Promoted	15-1-1981	R.O. Guwahati		
3. Sri Mrs A. Devi, M.A	1-6-1960	22-8-1983	6-8-1988	Appointed	6-8-1990	R.O. Guwahati Offg. UDC		
4. Sri H.K. Das, Class-X	1-1-1950	22-5-1973	1-12-1995	Promoted	1-1-1981	R.O. Guwahati		
5. Sri K. Guite, HSLC	1-2-1974	19-8-1998	19-8-1998	Appointed	19-8-2000	R.O. Guwahati .. ST Offg. UDC		
6. Miss C. Das, B. SC	1-1-1973	14-6-2000	14-6-2000	Appointed	-	R.O. Guwahati-Transferred to W.B.		
7. Sri T. Sarkar, B. Com (H)	5-1-1973	1-6-2000	1-6-2000	Appointed	-	R.O. Guwahati		

~~Mixd~~ HINDI TYPIST (SCALE OF PAY Rs.3050-75-3950-80-4590)

1. Sri M. Kalita, B.A	1-9-1961	25-1-1984	25-1-1984	Appointed	6-8-1990	R.O. Guwahati		
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RECORD SORTER (SCALE OF PAY Rs.2650-65-3300-70-4000/-)

1. Sri T. Hazarika, Class-X	1-8-1944	4-10-1963	1-8-1972	Promoted	1-1-1977	L.O. Tinsukia	S/C
2. Sri L. Baruah, Class.X	1-7-1944	1-10-1963	6-2-1975	Promoted	1-1-1979	L.O. Chandrapur	
3. Sri S. R. Das, Class-X	1-11-1952	11-9-1975	21-9-1979	Promoted	1-1-1979	R.O. Guwahati	
4. Sri N.C. Das, Class-X	1-3-1957	7-6-1976	13-12-1979	Promoted	1-1-1979	R.O. Guwahati	
5. Sri P.K. Gohain, Class-X	26-6-1955	22-3-1980	1-8-1991	Promoted	1-4-1988	L.O. Jorhat	
6. Sri U.C. Das (1) Class-VII	30-6-1961	1-12-1981	11-12-1991	Promoted	1-4-1988	R.O. Guwahati	
7. Sri M. Saharia, HSLC pass	31-7-1958	2-4-1982	26-4-1994	Promoted	1-4-1988	L.O. Tezpur	
8. Sri B. Islam, Class-X	11-7-1964	1-10-1982	26-4-1994	Promoted	1-4-1988	L.O. Bongaigaon	
9. Mrs R.M. Sohtun, Class-X	25-2-1968	10-8-1988	16-10-1995	Promoted	10-8-1990	L.O. Shillong ... ST	
10. Sri B. R. Das, Class-X	1-3-1960	1-10-1982	24-11-1995	Promoted	1-4-1988	R.O. Guwahati	
11. Sri N.C. Kalita, Class-X	1-3-1961	1-10-1982	1-12-1995	Promoted	1-4-1988	R.O. Guwahati	
12. Sri U.C. Das (ID), Class-X	1-12-1961	1-10-1982	30.11.2001	Promoted	1-4-1988	R.O. Guwahati	

Contd...4.

(4) -37-

1	2	3	4	5	6	7	8
<u>PECH/FARASH (SCALE OF PAY Rs. 2550-55-2660-60-3200/-)</u>							
1. Sri B.C. Deka, Class-IV	20-9-1960	28-1-1981	20-9-1988	Posted	1-4-1988	R.C. Guwahati	Offg. R/S
2. Sri Anil Das, Class-IX	31-7-1961	28 1-4-1982	22-9-1988	Posted	1-4-1988	L.C. Dhubri	
3. Sri T. Bezbaruah, Class-X	1-1-1959	19-9-1982	4-10-1988	Posted	1-4-1988	L.C. Silchar	
4. Sri P.C. Rajbongshi, Class-X	1-5-64	29-9-1988	19-9-1988 3-4-1989	Posted	19-9-1990	R.C. Guwahati	
5. Sri J.C. Das, Class-IX (Farash)	20-1-64	27-9-88	27-9-1988	Appointed	27-9-1990	R.C. Guwahati	
6. Sri Balen Rabha, Class-X	1-5-1970	29-7-1991	29-7-1991	Appointed	29-7-1993	R.C. Guwahati	...S/T
7. Sri Deepak Sarma, HSLC	5-7-1966	25-7-1991	25-7-1991	Appointed	25-7-1993	L.C. Nagarn	
8. Sri L. Das, Class-VIII	1-11-1966	26-7-1991	26-7-1991	Appointed	26-7-1993	L.C. Guwahati	

<u>CHCWKIDAR SCALE OF PAY Rs. 2550-55-2660-60-3200/-)</u>							
1. Sri Gukul Das, Class-IX	30-6-1964	22-9-1988	22-9-1988	Appointed	22-9-1990	R.C. Guwahati	
2. Sri B.C. Maloi, Class-IX	16-7-1965	3-4-1989	3-4-1989	Appointed	3-4-1991	R.C. Guwahati	
3. Sri S.C. Mali, Class-V	5-1-1965	28-10-1994	28-10-1994	Appointed	28-10-1996	R.C. Guwahati	S/C.

<u>SWEeper (Scale of pay Rs. 2550-55-2660-60-3200/-)</u>							
1. Sri Rup Singh, Known to sign.	1-6-1961	8-9-1980	8-9-1980	Appointed	1-4-1988	R.C. Guwahati...	S/C.

(K.C. GHOSH)
ASSISTANT DIRECTOR
FOR REGIONAL DIRECTOR



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ANNEXURE-10

कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE: N.E. REGION
GUWAHATI-21

No.43-A.20/11/143/84-Estt.

Dated 26-11-2001

To

The Director General (E.I.B.),
E.S.I. Corporation,
Kotla Road,
New Delhi-110002

Subject: Case of Shri M. Kalita, Hindi Typist O.A No.311/1999.
.....

Sir,

Kindly refer to the Hqrs. Office letter No.A.24/13/2/90-E.I.(B) dated 14-9-2001 on the above subject and in continuation of this office letter of even No. dated 3-7-2001 and 17-8-2001, I am to request you kindly to examine the following points and intimate the Hqrs. office decision at an early date.

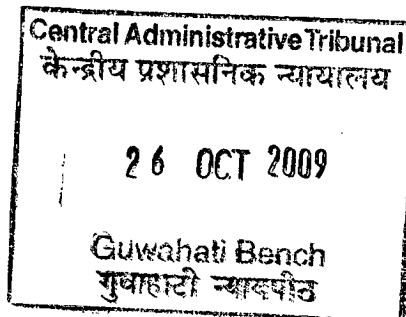
1. As per mentioned at para-6 of the judgement of CAT dated 14-6-2001 in O.A No.311/1999, whether Sri M. Kalita, Hindi Typist will become part of L.D.C after 1-11-1996 and the name of Sri Kalita will be entered in the gradation/seniority list of L.D.C.
2. If so, whether the seniority of Sri M. Kalita will be fixed below the L.D.C prior to 1-11-1996 in the cadre of L.D.C.
3. If his seniority is fixed in the cadre of L.D.C, whether his name will be considered for promotion to the post of U.D.C as per the seniority list of L.D.C fixed including his name.

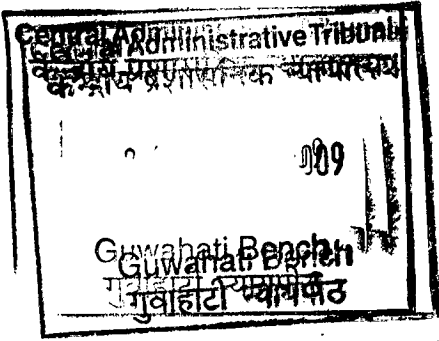
In this connection, the representation dated 5-10-2001 received from Sri M. Kalita, Hindi Typist is enclosed for necessary action.

Enclo. as above

Yours faithfully

(D.N. PEGCO)
REGIONAL DIRECTOR





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ANNEXURE-11



**EMPLOYEES STATE INSURANCE CORPORATION
REGIONAL OFFICE N.E. REGION, GUWAHATI-21**

No.43-A.20/11/143/84-Estt.

Date:30.11.06

To,

The Director General(Estt-1)
E.S.I. Corporation]
Panchdeep Bhavan]
C.I.G. Marg, New Deldi-2

Subject:- Case of Sri Munindra Kalita, L.D.C. (Hindi Typist), O.A. No. 311/1996

Sir,

Kindly refer to Hqrs. Office letter No.A-24/13/2/90-E.I.(B) dated. 14.09.2004(Fax) on the above subject:

In this connection, I am directed to inform you that in compliance with the order of Hon'ble CAT, Guwahati Bench, in the above noted case. The financial benefit has been given to Sri Munindra Kalita, Hindi Typist under the A C P Scheme with the pay scale of Rs.4000-100-6000/-PM vide Regional Office order No.86 of 2001 dated 06.10.2001. But the service seniority of Sri Munindra Kalita with effect from 01.11.1996 as per Para 6 of the order of Hon'ble CAT could not be fixed for want of specific clarification from Hqrs. Office as sought by this office vide letter of even No, dated 03.07.2001 followed by reminder dated 02.08.2001. (copy enclosed)

Now, Sri Munindra Kalita, Hindi Typist has submitted another application with a request to refix his service in the cadre of LDC-Hindi Typist from the date of his appointment From 25.01.1984 instead of 01.11.1996. (Copy of the application dated 28.08.2006 is enclosed herewith.)

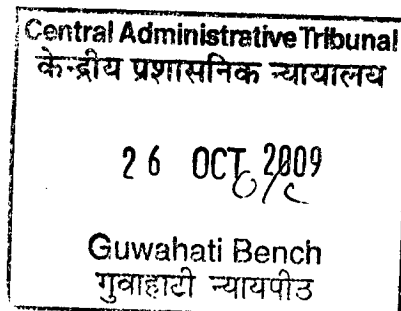
In view of the above. I would like to request you kindly to communicate the decision of Hqrs. regarding date of fixation of seniority of service of Sri Munindra Kalita. The representation received from Sri Kalita is inclosed.
Enclosed: As above.

Yours faithfully,

[Signature]
30/11/06

(P.SUTRADHAR)
ASSTT. DIRECTOR
FOR REGIONAL DIRECTOR

*affected
with
Adv*



-40-

ANNEXURE-12

REMINDER

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE: NORTH EASTERN REGION
SAMUNIMAIDAM :: GUWAHATI-21

No: 43-A. 20/11/143/84-Extt.

Date: 16-7-2007

To;

The Director General (E.II)
ESI Corporation,
CIG Mar, New Delhi-2

Subject: Case of Sri Manindra Kalita (Hindi Typist) O.A No 311/99,

.....

Sir,

Kindly refer to Mqrs. Office letter No; A-24/13/2/90-E.II dated 14-9-2001 on the subject cited above and in continuation of this office letter of even no; dated 26-11-2001, 30-11-2006, 11-01-2007 12-2-2007 and 14-5-07

In this connection, I am to inform you that the Mqrs. decision/communication in this regard has not been received so far.

In view of above, I am to request you kindly to expedite the Mqrs. Office decision in this regard at an early dates

Yours faithfully,

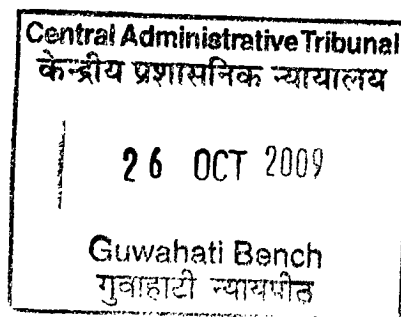
16/7/07

(P.SUTRADHAR)
ASST. DIRECTOR
For, REGIONAL DIRECTOR

17/7

16/7/07
16/7/07
16/7/07

16/7/07



- 41 - 1. 24/8

ANNEXURE-13

Bo (Adm)
21/10/08

24/8
Supd. (Adm)
No enclosures found.
P. put-up.
1/11
30/8/08

To

The Regional Director
Employees State Insurance Corporation,
N.E. Region, Regional Office,
Guwahati-21

(Through Proper Channel)

Subject:- Re-fixation of Seniority

Sir,

Most humbly and respectfully I beg to lay the following few lines before you for your kind and sympathetic consideration.

That Sir, I was initially appointed as Hindi Typist in this department on 25.1.1984. Although I was appointed through a formal selection process, but my appointment was termed as ad-hoc appointment. However, I was subsequently regularized as Hindi Typist w.e.f. from the date of my joining i.e. 25.1.1984.

That Sir, the post of Hindi Typist is squarely analogous to that of L.D.C. since it carries the same qualification, pay scale, nature of job and entails the same mode of recruitment. But inspite of that the post of Hindi Typist has been allegedly considered as on ex-cadre post which does not form the feeder cadre for normal promotion to the next higher cadre of U.D.C.

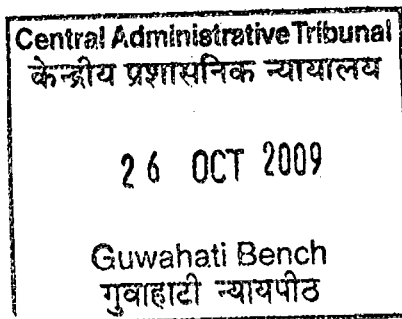
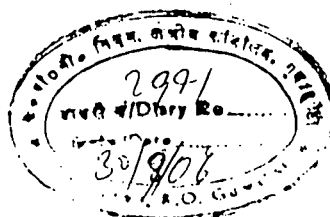
That Sir, vide communication No.A-49/12/8/96-Hindi dtd. 01.11.1996, the post of Hindi Typist has been re-designated as L.D.C. Hindi Typist, which means that the L.D.C. and the L.D.C. Hindi Typist are at par, forming a common cadre for all purposes.

That Sir, pursuant to the aforesaid communication dtd.01.11.96, my seniority has been fixed in the cadre of L.D.C Hindi Typist, reckoning my joining in the re-designated cadre w.e.f. 01.11.96 which means that my past services for more than 12(twelve) years as Hindi Typist w.e.f. 25.1.1984 have been ignored, leading to civil consequences of serious nature in terms of my service prospects.

That Sir, since I was serving in an identical post since 25.1.1984 prior to my re-designation /merger in the cadre of L.D.C. Hindi Typist, my seniority ought to have been fixed in the new cadre with reference to my date of initial appointment i.e. 25.1.1984 and my name ought to have been placed appropriate position in the seniority list accordingly.

Cont....2/-

Noted
Mitta
Adm



42

That Sir, vide judgment and order dtd.14.06.2001 in O.A.No.311/1999 the Honorable CAT erroneously held that the post of Hindi Typist became a part of L.D.C (a feeder cadre for promotion to the post of UDC) w.e.f. 01.11.1996 which ought to have been w.e.f. 25.01.1984. The said judgment was challenged before the Honorable Guwahati High court through writ petition No.WP(C) 4456/2002 but the same has subsequently been withdrawn with the prayer of liberty to approach the learned CAT byway of review application which has been granted by the Honorable High court vide its order dtd.26.07.06 in WP (C) No.4456/2002. But at this stage I am not inclined to file the review application before the CAT since my seniority has not yet been fixed .Hence I am submitting this application before you for fixation of seniority.

(Copy of the order dtd.26.07.06 is annexed hereto as Annexure- "A")

That Sir, in the Department of posts under the Govt. of India , a similar question of seniority arose when the posts of Hindi Typists were merged with the posts of Postal Assistant/Sorting Assistant. The Department of post, in consultation with the ministry of Finance (Department of Expenditure), Govt. of India examination the question of common seniority and decided as follows:-

"Inter-Se-Seniority of the incumbents of Hindi Typists in the cadre of Postal Assistant/Sorting Assistant should be fixed at the bottom of the PAs / SAs With reference to the years of the recruitment"

The above decision has been implemented vide order No. G.I. Dept. of Post. Lr.No.7-3/200-P.E.II, dtd. 26.3.2003. on the same analogy, my seniority after being merged to the cadre of L.D.C. Hindi Typist ought to have been fixed with reference to my year of recruitment ie 1984 . as per the settled position , in the light of the Govt. order.

(Copy of order dtd. 26.3.2003 is annexed hereto as annexure- "B").

That Sir,due to wrong fixation of my inter-Se-Seniority w.e.f. 01.11.96 instead of 25.1.84, my promotion and service prospects have been seriously affected and my regular service for more then 12 years have been wiped out leading to my irreparable losses, which is against the principles of natural justice.

Under the circumstances stated above, I would earnestly pray honour kindly to re-fix my seniority in the cadre of L.D.C. Hindi Typist with reference to my initial date of appointment ie 25.1.1984 instead of 01.11.96, fitting my name above that of my juniours in the appropriate position in the seniority list and for this act of your kindness I shall remain ever grateful to you.

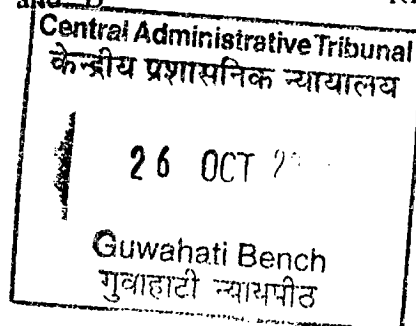
Yours faithfully,

28/8/06
(MUNINDRA KALITA)
L.D.C. HINDI TYPIST.
REGIONAL OFFICE CUWAHATI

Date 28.8.06.....

Encl:-

Annexure "A" and "B"



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ANNEXURE-14

EMPLOYEES STATE INSURANCE CORPORATION
REGIONAL OFFICE N.E.R. REGION, GUWANATI-21

No. 43-A.20/11/143/84-Estt.

Date 21.11.2007

To,
The Director General(E-II)
ESI Corporation.
GIG Marg New Delhi-2

Subject: Case of Sri Munindra Kalita, (Hindi Typist) O.A.No.311/99.

Sir,

Kindly refer to Hrs. Office letter No A-24/13/2/90-E.I.B dated 14.9.2001 on the subject cited above and in continuation of this office letter of even no dated 26.11.2001, 30.11.2006, 11.01.2007, 12.2.2007, 14.5.2007 and 16.7.2007.

In this connection, I am to inform you that the Hrs. decision/communication in this regard has not been received so far.

In view of above, I am to request you kindly to expedite the Hrs. Office decision in this regard at an early date.

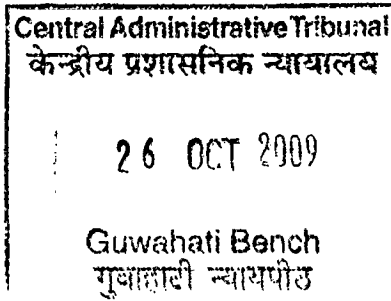
Yours faithfully,

*Attested
Dutta
don*

(D.N. PEGOO)
-27/11/07
(D.N. PEGOO)
ADDL. COMMISSIONER &
REGIONAL DIRECTOR

Enclosed:-As above

o/c



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EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE, NORTH EASTERN REGION
GUWAHATI-21

ANNEXURE-15

No. 43-A.22/15/96-Estt.

Dated 9-9-1999

OFFICE ORDER NO 65 of 1999/

On the recommendation of the D.P.C held on 1-9-1999, the Regional Director has ordered the promotion of the following officials to the post of, Upper Division Clerk on regular basis and posted as shown against each.

S.No.	Name of officials	Present posting	Promotion/ posting now ordered
1.	Mrs Pranati Sarmah	Offg. U.D.C, R.O. Guwahati	U.D.C, R.O. Guwahati
2.	Sri Susen Kalita	Offg. U.D.C- Cashier, L.O., Jorhat	U.D.C- Cashier, L.O. Jorhat
3.	Sri Arabinda Das	Offg. U.D.C- Cashier, L.O., Bongaigaon	U.D.C- Cashier, L.O., Bongaigaon

The regular promotion in the cadre of U.D.C in respect of the above officials will effect from the date of issue of this order as they are already officiating in the cadre of U.D.C.

They will draw their present pay in the scale of Rs. 4000-100- 6000/- subject to fixation of pay where necessary and other allowances as admissible under the rules.

They may furnish their option for fixation of pay in the scale of Rs. 4000-100-6000/- from the date of their continuous service in the cadre within one month from the date of ~~their~~ issue of this order.

Necessary joining report may be submitted.

(C.R. PAUL)
DEPUTY DIRECTOR
FOR REGIONAL DIRECTOR

To

1. The officials concerned.
2. The Dy. Director (Finance), ESIC, R.O. Guwahati.
3. The Manager, L.O. Jorhat/Bongaigaon
4. All Branches, R.O. Guwahati.
5. Cash Br. R.O. Guwahati.
6. Office Order Register.
7. Personal file concerned.
8. ~~Hindi~~ Hindi Cell, R.O. Guwahati.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 OCT 2009

Guwahati Bench
গুৱাহাটী ন্যায়াপীঠ

*Requested
Wanta
A.W.*



45-
HEADQUARTERS OFFICE
EMPLOYEES' STATE INSURANCE CORPORATION

PANCHDEEP BHAWAN, C.I.G. ROAD, NEW DELHI-2

(AN ISO 9001-2000 QMS CERTIFIED ORGANISATION)

E-mail: jd-admin@esic.nic.in Fax No: 011-23210646

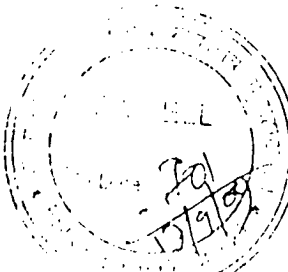
ANNEXURE-16

No.A-24/13/2/2007-E.II

Dated: - 17/09/2009

To,

The Regional Director,
Regional Office,
ESI Corporation,
Assam/Orissa/West Bengal.



Sub: Absorption of officials holding the post of Hindi Typist/Telex Operator to the post of LDC-regarding.

Sir,

A proposal for absorption of Shri Hasan Iniam Khan, WB Region, Shri Anirudh Bakshi, WB Region, Shri S.K. Rautray, Orissa Region & Shri M. Kalita, Assam Region holding the post of Hindi Typist/Telex Operator to the post of LDC was placed before the 147th meeting of the ESI Corporation held on 25/8/09 considering the fact that inspite of their regular appointments in the relevant cadre for long time, they have been continuing to work in the same post owing to absence of promotional avenues in these cadres. The Corporation has agreed to the proposal for absorption of official holding the post of Hindi Typist/Telex Operator to the post of LDC. This would however be with retrospective effect.

Accordingly, a written consent may be obtained from these officials of Hindi Typist/Telex Operator in the proforma enclosed within a period of one month stating that they have no objection for being absorbed and placed as junior most in the LDC cadre.

Subject to the consent of the officials:-

- 1) Post of Hindi Typist/Telex Operator may be merged with LDC w.e.f. 25/8/09.
- 2) Existing incumbent holding the post of Hindi Typist/Telex Operator may be treated on par with LDC in the matter of promotion to the conditions incorporated in the RRs of LDC.
- 3) Seniority of the incumbents of Hindi Typist/Telex Operator should be fixed at the bottom of the LDC with reference to date of absorption in the 2009-10.

Further it is also informed that the post of Hindi Typist/Telex Operator may not be filled up hitherto.

These orders may please be brought to the notice of the official concerned immediately under proper acknowledgement and further necessary action may be taken accordingly.

Yours faithfully,

(R. KESHAVDAS)
JOINT DIRECTOR-II

Copy to All the Regional Directors, Regional Office, ESI Corporation/All the Medical Supdts, ESI Hospital/D(M)D/JD-I, JD-III, JD-V, JD(Recruitment), Hqrs. Office for information.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 OCT 2009

Guwahati Bench

JOINT DIRECTOR-II

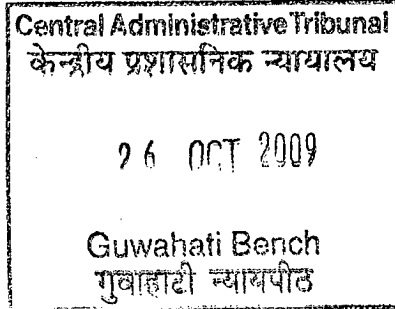
- 46 -

CONSENT

I, the undersigned, _____ S/O Shri _____ working as Hindi Typist/Telex Operator in the ESI Corporation hereby give my consent to my absorption to the cadre of LDC as per conditions stipulated in the Hqrs. letter No.A-24/13/2/2007-E.II dated 16/9/09. I further understand and agree to the conditions that I will be placed junior-most in the seniority list in respect of LDCs for the year 2009-10 and will not be entitled for any seniority/promotion for the past period of my service as Hindi Typist/Telex Operator.

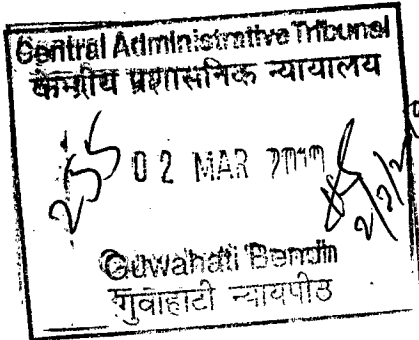
Dated:-

(Signature of the Official)



Filed by:-
Manglu Das
Sr. L.S. C
eAT
24/3/2010

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH



IN THE MATTER OF:

In O.A. No. 221/09

Sri Munindra Kalita

.....Applicant

-VS.-

Union of India and others

.....Respondents

-AND-

IN THE MATTER OF:

Written statement on behalf of the respondents.

Romen Saikia

রমেন সাইকিয়া / Romen Saikia
কেন্দ্রীয় নিदेशक / Regional Director
क.सा.बी.नि. / E.S.I. Corporation
उ.पु.क्षे. / N. E. Region
गुवाहाटी-२१ / Guwahati-21

(WRITTEN STATEMENT ON BEHALF OF RESPONDENTS)

I, Sri. Romen Saikia, S/o Late Pradyumn Chandra Saikia,

aged about 59 years, presently working as the Regional Director, Employees State Insurance Corporation, Regional Office, North East Region, Panchdeep Bhawan, Bamunimaidan, Guwahati, do hereby solemnly affirm and state as follows:-

1. That I am the Regional Director, Employees State Insurance Corporation, Regional Office, North East Region, Panchdeep Bhawan, Bamunimaidan, Guwahati. I have been impleaded as party respondent no 4. I have gone through the Original Application and have understood the contents thereof. I am conversant with the facts and circumstances of the case. I have been authorized to file this written statement on behalf of all respondents.

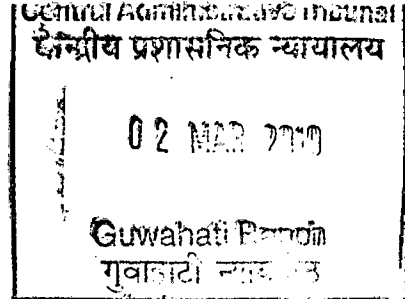
2. That I do not admit any of the averments except which are specifically admitted hereinafter and the same are deemed as denied.

3. That before traversing various paragraphs of the present Original Application, the answering respondent would like to place the brief facts of the case.

BRIEF FACTS OF THE CASE:

3.1 That the applicant joined the respondents on 25.01.84 as Hindi Typist on ad hoc basis and after a bout of litigation, being O.A. No. 45/88, he was regularized with effect from the said date.

Reviewed
M. Dutta
02/03/10



Roman Saikia
 रमन साइकिया / Roman Saikia
 क्षेत्रीय निदेशक / Regional Director
 क.स.सी.नि. / E.S.I. Corporation
 उ.पू.क्ष. / N. E. Region
 गुवाहाटी-२१ / Guwahati-21

3.2 That the applicant again approached the Hon'ble Tribunal by filing an O.A. being No. 128/94 alleging discriminatory treatment in respect of promotion and seeking promotion to the post of UDC which the Hon'ble Tribunal was pleased to dismiss vide its judgement and order dated 03.07.95.

3.3 That the ESIC, New Delhi vide letter dated 01.11.96 (Annexure 4 to the O.A.) intimated that in the order dated 24.10.96 (Annexure 3 to the O.A.), the word 'Typist' shall be read as 'LDC/Hindi Typist'.

3.4 That the respondent authority has accepted/adopted the ACP Scheme provided vide Govt. of India O.M. no. 35034/1/97-Estt (D) dated 09.08.99. And based on this scheme, two financial upgradations have already been given to the applicant on completion of 24 years. Despite this the applicant felt aggrieved and approached the Hon'ble Tribunal again by filing another O.A. being no. 311/99 wherein the Hon'ble Tribunal was pleased to partially allow the O.A. by modifying the scale of financial upgradation in respect of the applicant as Rs. 4000-6000 in place of Rs. 3200-4900. In pursuance of the said order, financial upgradation has also been granted in the scale of Rs. 4000-6000 by the respondent authority.

3.5 That meanwhile noticing that Hindi Typist and Telex Operator have been continuing to work in the same post owing to the absence of promotional avenue to the cadres inspite of their regular appointment in the relevant cadre for a long time, the respondent authority placed a proposal for absorption of the applicant and some other officials and the respondent authority in its 147th meeting dated 25.08.09 has agreed to the proposal for absorption of the officials holding the post of Hindi Typist and telex Operator to the post of LDC with retrospective effect.

3.6 That the Head Quarters vide their letter dated A.24/13/2/2007-E.II dated 17.09.09 has sought the consent from these officials including the applicant that they have no objection for being absorbed and placed as junior-most in the LDC cadre.

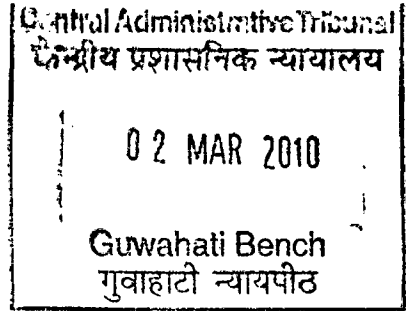
3.7 The consent was required to be given within one month but instead of giving his consent, the applicant has chosen to indulge in another round of litigation by filing this instant O.A.

4. REPLY TO THE FACTS:

4.1 That with regards to the statements made in paragraph 4.1 of the Original Application, the humble answering respondent has no comment to offer.

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रमेश कुमार / Regional Director
क्षेत्रीय निदेशक / Regional Director
क.प.सी.नि. / E.S.I. Corporation
उ.पू.क्ष. / N. E. Region
गुवाहाटी-२१ / Guwahati-21

4.2 That with regards to the statements made in paragraph 4.2 of the Original Application, the humble answering respondent begs to state that in pursuance of the Hon'ble Tribunal's order dated 30.03.90 in O.A. No.45/88 filed by the applicant, the applicant has been appointed as Hindi Typist on regular basis with effect from 25.01.84 (FN) vide this Office Order No.2 of 1991 dated 18.01.91.

Copy of office order dated 18.01.91 is annexed herewith and annexed as Annexure 1.

4.3 That with regards to the statements made in paragraphs 4.3 and 4.4 of the Original Application, the humble answering respondent begs to state that although educational qualification, scale of pay of both the posts i.e. Hindi Typist and LDC are same, the nature of wok/job is different. Therefore there is a distinction between LDC and Hindi Typist and they are treated as separate cadre. A Hindi Typist is to perform only Typing in Hindi but an LDC is to perform the job and also deals with different official works in different branches.

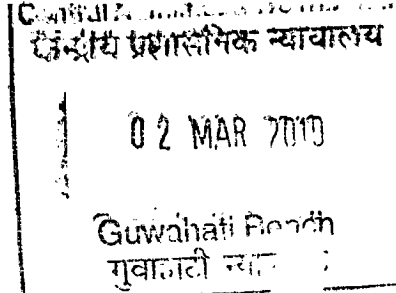
Since the nature of job of Hindi Typist and LDC in the Corporation are not the same, they are not treated as combined cadre. No artificial distinction between the two categories has been made by the respondents to keep aside the applicant from promotional avenue. Since LDC and Hindi Typist are separate categories, Hindi Typist is not eligible for promotion to UDC as per the recruitment Regulations of UDC. As per Recruitment Regulation, LDC is eligible for promotion to UDC. As per the said Recruitment Regulations of UDC, the following posts are to be considered for promotion to the post of UDC- LDC/Adrema Operator/Telephone/Computer Operator. The Recruitment Rules for UDC do not provide for promotion to the officials holding the post of Hindi Typist.

Thus, promotion from Hindi Typist to the post of UDC will be violation of E.S.I. Corporation Recruitment Regulation of UDC. The Corporation does not have to follow the practice of other departments.

4.4 That with regards to the statements made in paragraph 4.5 of the Original Application, the humble answering respondent begs to state that the Hon'ble Tribunal had in fact dismissed the application being O.A. No. 128/94 filed by the applicant vide judgment and order dated 03.07.95.

4.5 That with regards to the statements made in paragraph 4.6 of the Original Application, the humble answering respondent begs to state that while the letter dated 01.11.96 did in fact change the nomenclature of the post from 'Typist' to 'LDC (Hindi Typist)', but that does not by itself make it

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Romen Saikia
রমেন সাইকিয়া / Romen Saikia
Regional Director
কেন্দ্রীয় পরিচালক / Regional Director
E.S.I. Corporation
উ.পু.কো. / N.E. Region
গুৱাহাটী-২৭ / Guwahati-21

evident that Hindi Typist are included in the cadre of LDC itself. In fact this was just a change of nomenclature and it is to be noted that the letter dated 01.11.96 did not give any indication that Typists were now to be treated as LDCs or give any reason why Typists and LDCs are similar. In fact the very nomenclature 'LDC (Hindi Typist)' is different from the nomenclature 'LDC' i.e. LDC (Hindi Typist) is separate from LDC simpliciter which means that they belong to different streams.

4.6 That with regards to the statements made in paragraphs 4.7 and 4.8 of the Original Application, the humble answering respondent begs to state that due to non-availability of promotional avenue of Hindi Typist, the Corporation has accepted/adopted the ACP Scheme provided vide Govt. Of India O.M. No.35034/1/97-Estt(D) dated 09.08.99. Accordingly due to completion of 24 years regular services by the applicant, two financial upgradations under the above mentioned scheme has already been given/ granted to the applicant. 1st financial upgradation has been granted to him vide office order no. 77 of 2001 issued under letter No. 43.A.20/11/143/84-Estt. dated 18.09.01 in the scale of pay of Rs. 3050-4590 to Rs. 4000-100-6000 w.e.f. 09.08.99 .The 2nd financial upgradation was done vide office order No. 36 of 2008 issued under No. 43.A.27/17/2/97-Estt. dated 02.05.08 from the scale of pay Rs.5000-150-9000 w.e.f. 25.01.08.

Copies of the offices letters dated 18.09.01 and 02.05.08 are annexed herewith and marked as Annexure 2 and 3 respectively.

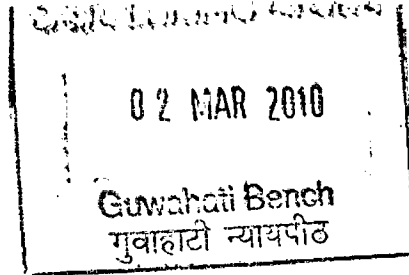
4.7 That with regards to the statements made in paragraph 4.9 of the Original Application, the humble answering respondent begs to state that in pursuance of the Hon'ble Tribunal's judgment and order dated 14.06.01 in O.A. No. 311/99, the first financial upgradation has been granted to the applicant in the scale of pay of Rs.4000-6000/- vide Office Order No.77 of 2001 issued under No. 43-A.20/11/143/84-Estt dated 18.09.01 (Annexure 2 to the instant Written Statement).

4.8 That with regards to the statements made in paragraph 4.10 of the Original Application, the humble answering respondent has no comment to offer.

4.9 That with regards to the statements made in paragraph 4.11 of the Original Application, the humble answering respondent begs to state that in pursuance of the Hon'ble Tribunal's order dated 14.06.01 in O.A. No.311/99, financial upgradation has been granted to the applicant in the

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रमेश साहिकिया / Romen Saikia
क्षेत्रीय निदेशक / Regional Director
क.स.सी. लि. / E.S.I. Corporation
उ.पु.क्ष. / N. E. Region
गुवाहाटी-२१ / Guwahati-21

scale of pay of Rs.4000-6000/- vide Office Order No.77 of 2001 dated 18.09.01 (Annexure 2 to the instant Written Statement).

Furthermore, it is to be noted that in the judgment and order dated 14.06.01 in O.A. No. 311/99, the observation made by the Hon'ble Tribunal at paragraph 6 of the judgement amounts to a mere observation /obiter dicta of the Hon'ble Tribunal and in fact the actual order of the Hon'ble Tribunal was limited only to the modification/substitution of the column 6 in the scale of pay upgradation from Rs.3285-4950 to Rs.4000-100-6000 which has been accepted by the respondent Corporation and benefit has been given accordingly. In fact, there was no explicit direction of the Hon'ble Tribunal to treat the Hindi Typist as LDC in matters relating to promotion to UDC from the feeder cadre of LDC.

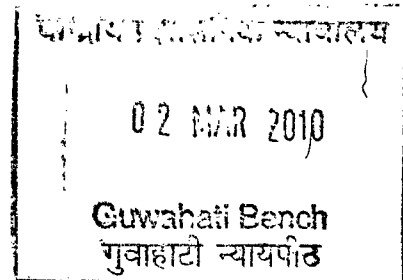
In fact, it is pertinent to note that in the first bout of litigation itself, being O.A. No. 45/88, the applicant had in fact brought out the distinction between the Hindi Typist and LDC and the Hon'ble Tribunal has accepted this distinction and the applicant had reaped the benefit of that distinction and got favorable judgment from the Hon'ble Tribunal. This Hon'ble Tribunal had particularly highlighted this distinction at paragraph 8 of the judgement and order dated 30.03.90 in O.A. No. 45/88.

Copy of the judgement and order dated 30.03.90 in O.A. No.45/88 is annexed herewith and marked as Annexure-4.

4.10 That with regards to the statements made in paragraph 4.12 of the Original Application, the humble answering respondent begs to state that as per the Recruitment Regulation, LDC is the feeder cadre for promotion to the post of UDC. Therefore, LDC who joined after the appointment of the applicant as Hindi Typist promoted to UDC as eligible as per the recruitment regulation. There is also no bar that the LDC cannot be given promotion to the post of UDC before completion of 10 years service as LDC. As per recruitment Regulation LDC with 3 years services in the grade is eligible for consideration for promotion to the post of UDC.

Further, the respondent Corporation has no common gradation list for UDC/Hindi Typist. The name of the applicant was not furnished in any common gradation list of LDC/Hindi Typist. So the question of segregation does not arise. Moreover, his name was furnished in the gradation list issued on 29.07.91 under nomenclature 'Hindi Typist'. As regards the gradation list shown by the applicant in the O.A. in Annexure 8, it is to be noted that there is in fact no person holding the post of Hindi Typist under the heading "Lower Division Clerk/Hindi Typist" as easily seen from column 9 of the said list.

A copy of the gradation list dated 29.07.91 is annexed herewith and marked as Annexure-5.



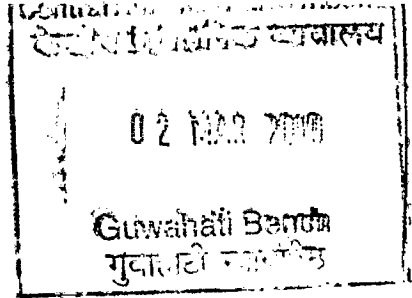
Romen Saikia
रमेन साइकिया / Romen Saikia
क्षेत्रीय निदेशक / Regional Director
क.रा.ग.नि. / E.S.I. Corporation
उ.पू.क्षे. / N. E. Region
गंगाधरी-११ / G/wahati-21

4.11 That with regards to the statements made in paragraph 4.13 of the Original Application, the humble answering respondent begs to state that as per the judgment and order dated 14.06.01, it is apparent that the Hon'ble Tribunal has not directed the respondents to treat the applicant at par with the LDC with effect from the very date of his joining as Hindi Typist on 25.01.84 and to grant him subsequent promotion to the cadre of UDC fixing combined seniority of LDC and Hindi Typist. Hence the applicant cannot claim that the LDC who was appointed after the appointment of the applicant as Hindi Typist is junior to him. Accordingly no junior to the applicant has been promoted to the post of UDC.

4.12 That with regards to the statements made in paragraph 4.14 of the Original Application, the humble answering respondent begs to state that in the judgment and order dated 14.06.01 in O.A. No. 311/99, the observation made by the Hon'ble Tribunal at paragraph 6 of the judgement amounts to a mere observation /obiter dicta of the Hon'ble Tribunal and in fact the actual order of the Hon'ble Tribunal was limited only to the modification/substitution of the column 6 in the scale of pay upgradation from Rs.3285-4950 to Rs.4000-100-6000 which has been accepted by the respondent Corporation and benefit has been given accordingly. In fact, there was no explicit direction of the Hon'ble Tribunal to treat the Hindi Typist as LDC in matters relating to promotion of UDC from the feeder cadre of LDC. The O.A. No. 311/99 was a matter relating to pay parity but not with promotion from the feeder cadre and the same reasoning cannot be utilized here also as the job profiles of the LDC and Hindi Typist are different in the respondent Corporation.

4.13 That with regards to the statements made in paragraph 4.15 of the Original Application, the humble answering respondent begs to state that some clarification has been sought from the Head Quarters of the Corporation at New Delhi after the judgment and order of the Hon'ble Tribunal in O.A. No.311/99 and the matter is under process.

Further, there is no deliberate attempt made by anyone against the applicant. The judgement and order in O.A.311/99 was delivered by the Hon'ble Tribunal on 14.06.01. Thereafter the applicant filed representation 05.10.01 and promptly thereafter on 26.11.01, the Regional Director, E.S.I. Corporation, Guwahati, sought clarification from the Director General (EIB), ESI Corporation, New Delhi. But thereafter, the applicant himself made another representation changing his request to re-fix his service in the cadre of LDC-Hindi Typist from the date of his appointment from 25.01.84 instead of 01.11.96. This is clearly seen in Annexure 11 and 13 of the O.A. itself. Therefore, this sudden change is also a factor for any delay on the part of the



Romen Salkia
 रमेन साईकिया / Romen Salkia
 क्षेत्रीय निदेशक / Regional Director
 क.रा.सी.नि. / E.S.I. Corporation
 उ.पू.क्ष. / N. E. Region
 गारमपति-29 / Guwahati-21

respondents to tackle his case. The applicant, therefore, now cannot claim that the respondents are somehow responsible for delay, if any, when he himself was responsible for the same by suddenly changing his stance mid-course.

4.14 That with regards to the statements made in paragraph 4.16 the Original Application, the humble answering respondent begs to reiterate and reaffirm the statements made in paragraph 4.13 of the instant Written Statement.

Moreover, as per Recruitment Regulations, Sri Susen Kalita and Sri Arabinda Das were eligible for promotion to the UDC as they were holding the post of LDC which is feeder cadre of UDC. They have also completed more than three years regular service in the cadre of LDC which is also required for promotion to UDC. Since all norms as required for promotion to the post of UDC as per recruitment Regulation has been fulfilled by Sri Susen Kalita and Sri Arabinda Das, they have been promoted to UDC. But the applicant is holding the post of Hindi Typist and as per Recruitment Regulation, Hindi Typist is not a feeder cadre for promotion to UDC and hence his case has not been considered for the same. Since LDC and Hindi Typist are separate cadres, combined seniority cannot be made. Hence seniority of applicant with the LDC Sri Susen Kalita and Sri Arabinda Das cannot be compared. The question of willfully and deliberately remaining silent in order to deny the benefit of seniority and promotion to the applicant by the Head Quarters Office does not arise as the same is not entitled to the applicant as per instruction and Rules.

4.15 That with regards to the statements made in paragraphs 4.17 to 4.19 of the Original Application, the humble answering respondent begs to state that in the judgment and order dated 14.06.01 in O.A. No. 311/99, the observation made by the Hon'ble Tribunal at paragraph 6 of the judgement amounts to a mere observation /obiter dicta of the Hon'ble Tribunal and in fact the actual order of the Hon'ble Tribunal was limited only to the modification/substitution of the column 6 in the scale of pay upgradation from Rs.3285-4950 to Rs.4000-100-6000 which has been accepted by the respondent Corporation and benefit has been given accordingly. In fact, there was no explicit direction of the Hon'ble Tribunal to treat the Hindi Typist as LDC in matters relating to promotion of UDC from the feeder cadre of LDC.

In fact, it is pertinent to note that in the first bout of litigation itself, being O.A. No. 45/88, the applicant had in fact brought out the distinction between the Hindi Typist and LDC and the Hon'ble Tribunal has accepted this distinction and the applicant had reaped the benefit of that distinction and got favorable judgment from the Hon'ble Tribunal. This

02 MAR 2010

Romen Saiked.
रमन साईकिया / Romen Saikia
क्षेत्रीय निदेशक / Regional Director
क.रा.श्री.नि. / E.S.I. Corporation
उप क्षेत्र / N. E. Region
गयालाटी-२९ / गिवाहाटी-२९

Hon'ble Tribunal had particularly highlighted this distinction at paragraph 8 of the judgement and order dated 30.03.90 in O.A. No. 45/88.

Furthermore, as regards the action on the part of the respondents, since the Hindi Typist and Telex Operator had been continuing to work in the same post owing to absence of promotional avenue in the cadres inspite of their regular appointment in the relevant cadre for long time, the Corporation has placed a proposal for absorption of the applicant alongwith Sri Hassan Iman Khan, W.B. Region, Sri Anniruddha Bakshi, W.B. Region and S.K. Routray, Orissa to the post of LDC in the 147th Meeting of the ESI Corporation held on 25.08.09 and the Corporation in its said meeting has agreed to the proposal for absorption of the officials holding the Hindi Typist and Telex Operator to the post of LDC with retrospective effect. Therefore the Head Quarters office vide letter no. A.24/13/2/2007-E.II dated 17.09.09 has sought consent from the officials of Hindi Typist and Telex Operator including the applicant that they have no objection of being absorbed and placed as junior-most in the LDC cadre subject to consent on the following:

- i) Post of Hindi Typist/Telex Operator may be merged with LDC w.e.f 25.08.09.
- ii) Existing incumbent holding the post of Hindi Typist/Telex Operator maybe treated at par with LDC in the matter of promotion to the conditions incorporated in the Recruitment Rules of LDCs.
- iii) Seniority of the incumbent of Hindi Typist/Telex Operator should be fixed at the bottom of the LDC w.r.t. date of absorption in 2009-2010.

Accordingly, the applicant was requested to furnish his consent within a period of one month vide office letter dated 24.09.09 but no consent has been received from the applicant yet. If the applicant furnished consent for merger him as LDC as per Head Quarter office letter mentioned above, the applicant will get scope for promotion to UDC, etc. in future.

It is also submitted before the Hon'ble Tribunal that in a merger, it is settled proposition that the candidates in the merged cadre i.e. the cadre which has lost its existence gets bottom seniority.

4.16 That with regards to the statements made in paragraph 4.20 of the Original Application, the humble answering respondent begs to state that in pursuance of Hon'ble Tribunal's order dated 14.06.01 financial upgradation has been given to the applicant in the scale of pay Rs.4000-6000/- vide office order no. 77 of 2001 dated 18.09.01. It is seen that the Hon'ble Tribunal has not directed the respondents to fix the seniority in the cadre of LDC and to consider his promotion to the post of UDC. Due to non-availability of promotional avenue of Hindi Typist, the Corporation vide its meeting held on 25.08.09, has decided to absorb the applicant in the cadre of LDC so that the applicant gets scope of promotion in future and accordingly consent of the

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02 MAR 2010

Guwahati Bench
গুৱাহাটী জাজপীঠ

Romen Saikia
রমেন সাইকিয়া / Romen Saikia
क्षेत्रीय निदेशक / Regional Director
क.स.बी.नि. / E.S.I. Corporation
उ.पु.क्ष. / N. E. Region
गुवाहाटी-२९ / Guwahati-21

applicant was sought vide Head Quarters letter dated 17.09.09 on the basis of decision of Corporation's meeting but the consent has not been received from the applicant yet.

4.17 That with regards to the statements made in paragraph 4.21 of the Original Application, the humble answering respondent begs to state that since the Hon'ble Tribunal vide judgment and order dated 14.06.01 in O.A. No.311/99 has not directed the respondents to fix the seniority of the applicant w.e.f. 01.11.96 combined with LDC in light of the Head Quarters letter dated 01.11.96, the seniority of the applicant shall not be fixed w.e.f. 01.11.06. in response to the proposal for absorption of official holding the post of Hindi Typist/Telex Operator, the Corporation, more particularly, the respondent no.3 vide his letter dated 19.09.09 (Annexure 16 to the O.A) agreed to the proposal made by the respondent no. 4 in the case of the applicant. Accordingly, it was directed to obtain the written consent from the concerned employees, including the applicant, that they have no objection for being absorbed and placed as junior most in the LDC cadre and his seniority will be fixed at the bottom of the LDC w.r.t. the date of absorption in 2009-10 and will be treated on par with LDC in the matter of promotion to the conditions incorporated in the Recruitment Regulations of LDC, if the applicant furnished his consent as sought vide Head Quarters officer letter dated 17.09.09. In pursuance of the said letter dated 17.09.09, the applicant will be merged with LDC w.e.f. 25.08.09.

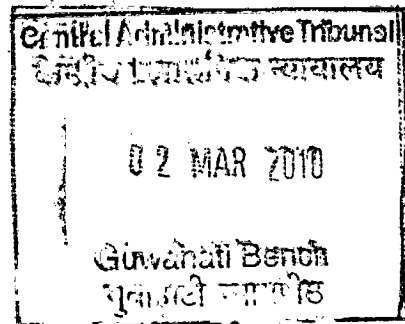
4.18 That with regards to the statements made in paragraph 4.22 of the Original Application, the humble answering respondent begs to state that it is a mere prayer of the applicant which the Hon'ble Tribunal may be pleased to reject.

4.19 That it is humbly submitted that as there was no promotional avenue for Hindi Typist, hence financial upgradation was granted to the applicant. As far as the LDCs are concerned, there was already promotional avenue for them and therefore the persons borne in the LDC cadre was promoted as per seniority. Hence, even if Hindi Typists are treated as at par with the LDC so far as scale of pay is concerned, but so far as promotional avenue/stream is concerned, they are not equal.

4.20 That this instant original application has no merit at all and is liable to be dismissed.

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VERIFICATION

I, Sri. Romen Saikia, Sho Sri Late Wilhaminda Saikia, aged about 59 years presently working as the Regional Director, Employees State Insurance Corporation, Regional Office, North East Region, Panchdeep Bhawan, Bamunimaidan, Guwahati do hereby solemnly verify and state that the statements made in paragraphs 1, 2, 4.1, 4.8, 4.11 to 4.14, 4.16 and 4.18 are true to my knowledge and belief, those made in paragraphs 3.1 to 3.7, 4.2 to 4.7, 4.9, 4.10, 4.15 and 4.17 being matters of records of the case, are true to my information derived therefrom which I believe to be true and the rests are my humble submission before the Hon'ble Tribunal.

And I sign this verification on the 2nd day of March, 2010 at Guwahati

Romen Saikia

SIGNATURE

रमेन साईकिया / Romen Saikia
क्षेत्रीय निदेशक / Regional Director
क.रा.सी.नि. / E.S.I. Corporation
उ.पू.क्षे. / N. E. Region
गुवाहाटी-२१ / Guwahati-21

Annexure

EMPLOYEES' SURANCE CORPORATION
REGIONAL OFFICE - 4TH EASTERN REGION
GUWAHATI-21

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

No. 43-11/143/84-2 Estt.

Dated 18-1-1991

OFFICE ORDER NO 2 of 1991

Guwahati Bench
गुवाहाटी न्यायपीठ

In pursuance of the judgment of Central Administrative Tribunal, Guwahati Bench dated 30.3.1990 in case No. CC-45/88 filed by Shri Munindra Kalita, Hindi Typist and P.O. Office letter No. Estt./G.T/139/89 dated 6.12.89, Shri Munindra Kalita who was appointed as Hindi Typist on purely temporary and adhoc basis vide this office order No. 7 of 1984 dated 24.1.84 and joined on 25.1.84 vide this office order No. 11 of 1984 dated 1.2.84 is hereby appointed as Hindi Typist on Regular basis with effect from 25.1.1984 (FN) in the scale of B.268-629-325-C-366-325-393-19-400/.

He was deemed to be on probation for a period of two years from his date of appointment on regular basis.

The appointment has been made on temporary basis and his services are liable to be terminated during the temporary tenure of his appointment on one month's notice in writing or either side.

He will be governed by such terms & conditions of services as laid down in the E.S.I. Corporation (Staff and conditions of service) Regulations.

(B.C. JINDAL)
REGIONAL DIRECTOR

To,
Shri Munindra Kalita,
Hindi Typist, Regional Office,
E.S.I. Corporation,
Guwahati.

- Copy to:-
1. The Regional Accounts Officer, ESIC, R.O. Guwahati.
 2. The Cash Br. R.O. Guwahati (2 copies)
 3. Office order Register.
 4. Personal file concerned.
 5. Service Book Cell.

REGIONAL DIRECTOR

वर्तमान न्यायालय
कोर्ट ऑफ अपील
पुणे
गुवाहाटी-21

**EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE, NORTH EASTERN REGION
GUWAHATI-21**

No. 43-A.23/12/102/84-Estt.

Dated 28-3-2001

OFFICE ORDER NO 77 OF 2001

On the basis of Hon'ble C.A. Guwahati Bench judgement dated 14-6-01 against O.A No. 311 of 1999 filed by Sri M. Kalita, Hindi Typist, Regional Office, Guwahati and Hqs. Office letter No. A.14/12/270-A.21/9 dated 14-9-2001, the Regional Director has ordered to substitute/modify the column No. 6 of scale of pay for financial upgradation of this office order No. 31 of 2000 issued under No. 43-A.27/17/2/97-Estt. dated 12-5-2000 from Rs. 3200-45-6000/- to Rs. 3750-50-6500/- in respect of Sri M. Kalita, Hindi Typist, A.C. Guwahati, accordingly, the same has been substituted/modified as under, from 9-8-99.

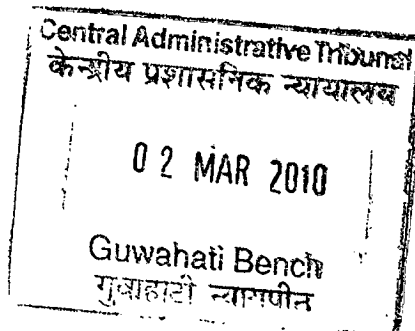
S.No.	Name of employee	Date of appointment.	Date of completion of 15 years service	Present pay scale	Scale of pay for financial upgradation.
1.	Sri M. Kalita, Hindi Typist	25-1-1986	24-1-96	B. 3750-75- 3950-80- 4500/-	B. 6000-120- 6200/-

The other conditions of the office order No. 31 of 2000 dated 12-5-2000 will remain unchanged.

(R. C. GUHA)
ASSISTANT DIRECTOR
FOR REGIONAL DIRECTOR

1. Person concerned (M. Kalita)
2. The Dy. Director Finance, ASIC, A.C. Guwahati
3. Cash Bn, A.C. Guwahati
4. Office ORDER Register
5. File No. 43-A.27/17/2/97-Estt.
6. Hindi Call, A.C. Guwahati.

18/9/2001



23/6
बहुला कर्मचारी
2001-2002
रा. प्र. वि.
गुवाहाटी
P. P. Regional
Guwahati 21

**EMPLOYEES STATE INSURANCE CORPORATION
REGIONAL OFFICE, GUWAHATI EASTERN REGION
GUWAHATI - 21**

No. 3-127/17/2/77-Dt.

Dated 2-5-2008

OFFICE ORDER NO 36 of 2008.

In pursuance of Order India O M No. 3203/1/77-Dt (B) dated 9-8-1999 and on recommendation of the Honoring Committee held on 23-4-2008, the Adm. Officer, Guwahati, Gu. E. R. has ordered and sanctioned up-gradation of pay in respect of Mr. H. K. Bhatia, Head, 2nd, Regional Office, Guwahati from the Pay Band of Rs. 400-100-600/- to the pay scale of Rs. 500-150-800/- with effect from 25-1-2008 (H).

2. The financial up-gradation under the above Order proposed to be (H) shall be subject to the terms and conditions mentioned in the Order of India O M No. 3203/1/77-Dt (B) dated 9-8-1999.

3. The pay on up-gradation shall be fixed as per para 9 of the Annexure-1 to the above referred O M dated 9-8-1999.

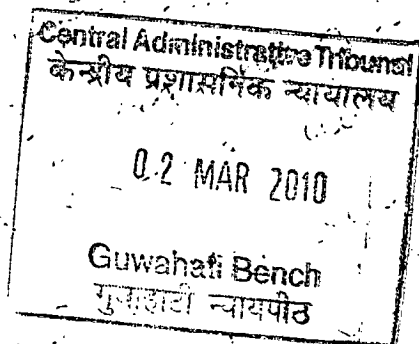
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(P. SUBASH)

REGIONAL MANAGER

FOR M/L, GUWAHATI, GU. E. R.

1. Official sanctioned (H. K. Bhatia).
2. The Joint Director (Finance), E. R. & Guwahati.
3. Gen. Dy. R.O. Guwahati.
4. Office Order Register.
5. Personal file concerned.



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राष्ट्रीय न्यायालय
कोर्ट ऑफ अपील
प. ए. ए. गुवाहाटी
गुवाहाटी - 21

-14-
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Annexure 4

Original Application No. 45 of 1988.

Date of decision: The 30th day of March, 1990.

Shri Munindra Kalita, son of Shri Pitambar Kalita, aged about 26 years, working as Hindi Typist in the office of the Employees State Insurance Corporation, Regional Office, N.E. Region, Guwahati-21. ... Applicant.

Versus

1. Union of India, represented by the Secretary, Ministry of Labour, New Delhi.
2. Director General, E.S.I., Corporation, Panchadip Bhavan, Kotla Marg, New Delhi-110 002.
3. Regional Director, E.S.I., Corporation, Regional Office, N.E. Region, Guwahati-21.
4. Secretary, Ministry of Home Affairs, Department of Official Language, Loknayak Bhavan, Khan Market, New Delhi.

For the applicant

... M/S B.K.Sharma &
B.M.Buzarbaruah,
Advocates.

For the respondents

... Mr.G.Sarma, Addl.C.G.S.C.

C O R A M:

THE HON'BLE SHRI K.P. ACHARYA, VICE-CHAIRMAN

A N D

THE HON'BLE SHRI J.C. ROY, ADMINISTRATIVE MEMBER

Whether reporters of local newspapers should be permitted to report the judgment?

To be referred to the Reporters or not? No

Whether Their Lordships wish to see the fair copy of the judgment?

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ACHARYA.J.

JUDGMENT

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Guwahati Bench

In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order contained in Annexure '16' dated 24.2.1988, terminating the services of the petitioner with effect from the afternoon of 23.3.1988.

2. Shortly stated, the case of the petitioner is that vide office order No.7 dated 24.1.1984, the petitioner was appointed as a Hindi Typist in the scale of Rs.260 - Rs.480/- in the office of the Regional Director, Employees State Insurance Corporation, North Eastern Region, Guwahati, and this appointment was in pursuance to his success in a selection held by the appropriate authority. The petitioner had been sponsored by the Employment Exchange. On receipt of the order of appointment, the petitioner joined the post in question on 25.1.1984. From such date till the date of issue of Annexure '16' dated 24.2.1988 the services of the petitioner had been terminated intermittently and within a couple of days from such order of termination the petitioner was re-appointed as Hindi Typist and on receipt of such re-appointment order, the petitioner again joined services and this practice was carried on till the issue of Annexure '16', when services of the petitioner was finally terminated with effect from 23.3.1988 and no re-appointment order was issued. Being aggrieved by this order of termination of the services of the petitioner, this application has been filed with the aforesaid prayer and while the case came up for admission a prayer was made by the petitioner for issuance of interim orders. In the prayer for issuance of interim orders it was mentioned that operation of

Annexure '16'...

Regional

Annexure '16' be stayed and accordingly vide order dated 21.3.1988 a Division Bench stayed operation of the order contained in Annexure '16' and by virtue of the stay order the petitioner is continuing as a Hindi Typist in the said office till date.

3. Written statement has been filed on behalf of O.P.Nos. 2 and 3, namely, Director General, Employees State Insurance Corporation, New Delhi (O.P.Nos2) and Regional Director, Employees State Insurance Corporation, Regional Office, North Eastern Region, Guwahati (O.P.No.1).

In paragraph 6 of the counter, it is maintained that as per Regulation 3(2) read with Regulation 21 of the Employees State Insurance Corporation Recruitment Regulations 1965, 75% of the total vacancies in the cadre of LDC must be filled in by direct recruitment after holding a competitive test and remaining 25% to be filled by qualified Class IV employees in a closed competitive examination. According to the opposite parties a competitive test was held on 12.8.1984 and the petitioner who was a direct recruit not having been successful in the said test, the only successful candidates who passed the competitive test held for the LDC posts are specifically appointed as English or Hindi Typist and that too after qualifying a departmental typing test. Further, it is maintained by the opposite parties that the petitioner having been given a chance to appear in the open competitive test held for the LDCs on 12.8.1984 and the petitioner not having qualified himself, he was not entitled to be appointed as a regular LDC or as a regular typist.

Therefore, the defence taken by the opposite parties is

that the petitioner not having been successful in the test.....

RECORDED
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Guwahati 21

test is not eligible to continue in service and, the
his services were rightly terminated.

4. We have heard Mr. B.X. Sharma, the learned counsel for the petitioner, and Mr. G. Sarma, the learned Addl. C.G.S.C., at some length. Before we deal with the contention put forward on behalf of the petitioner that Annexure '16' should be quashed, it is worthwhile to dispose of the preliminary objection raised by the learned Addl. C.G.S.C., Mr. G. Sarma. It was contended by Mr. G. Sarma that the case is barred by limitation and, therefore, on the question of limitation the petition should be dismissed ~~illuminil~~. It was further contended by Mr. G. Sarma that the competitive examination in which the petitioner could not be successful having been held on 12.8.1984, the petitioner should have sought his remedy in the appropriate court of law soon thereafter and the petitioner having invoked the jurisdiction of this Bench as late as 15th March, 1988, the case should be held to be barred by limitation. We are unable to accept this contention of Mr. G. Sarma because from the different Annexures filed by the petitioner beginning from Annexure '2' dated 24.1.1984, relating to his initial appointment as a Hindi Typist till Annexure '16' was issued, the petitioner has been re-appointed soon after his services were terminated with effect from particular dates. Vide Annexure '4' dated 31.12.1984 the services of the petitioner was terminated with effect from such date and he was re-appointed vide Annexure '5' dated 2.1.1985. Again on 31.12.1985 vide Annexure '6' the services of the petitioner was terminated with effect from the afternoon of 31.12.1985 and again he was re-appointed vide Annexure '7' dated 2.1.1986. Similarly, vide Annexure '8' dated 25.6.1986....

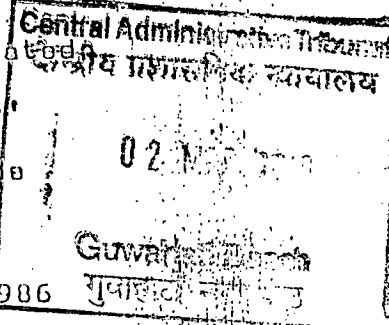
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25.6.1986 the services of the petitioner was terminated and with effect from 30.6.1986 and vide Annexure '9' dated 9.7.1986 the petitioner was re-appointed. Vide Annexure '10' dated 26.12.1986 the services of the petitioner was terminated with effect from 27.12.1986 and vide Annexure '11' dated 29.12.1986 the petitioner was re-appointed. Vide Annexure '12' dated 23.6.1987 the services of the petitioner was terminated with effect from the same date and vide Annexure '13' dated 25.6.1987 the petitioner was re-appointed. Vide Annexure '14' dated 16.12.1987 services of the petitioner was terminated with effect from the same date and vide Annexure '15' dated 18.12.1987 the petitioner was re-appointed. Vide Annexure '16' dated 24.2.1988, finally, the services of the petitioner was terminated with effect from 23.3.1988 and no re-appointment order was issued thereafter. In view of the dates quoted above, cause of action arose in favour of the petitioner only on 23.3.1988, when his services were terminated. No cause of action had arisen in favour of the petitioner when he could not become successful in the test especially when it is found from records that thereafter, he has been re-appointed as Hindi Typist and has worked as such till 23.3.1988.

Therefore, in such circumstances, there would have been no justification on the part of the petitioner to seek redress in the appropriate form soon after he could not be successful in the test. In this connection it may also be stated that at the appropriate place we shall also express our opinion if there is any necessity under the

rule for one to qualify in the test in respect of the post of a Hindi Typist. But, for the present, while

answering.....



answering this issue we would hold that the case is at all barred by limitation - rather it is within limitation. This issue, is therefore, answered against the opposite parties.

5. From the records we find that the services of the petitioner was terminated at different intervals creating an artificial gap, which is not justified under the law. Mr. B.K. Sharma, the learned counsel for the petitioner, relied upon a judgment of the Hon'ble Supreme Court reported in 1985(4) SCC 43 (Ratan Lal & Ors -Vs- State of Haryana and Ors.). Hon'ble Mrs. Justice Venkataramaia (as His Lordship then was) speaking for the court was pleased to observe as follows:

"The State Government of Haryana has failed to discharge their duty in those cases. It has been appointing teachers for quite some time on adhoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana, who are those appointed on such adhoc basis is very large indeed. If the teachers had been appointed regularly they would have been entitled to the benefits of the summer vacation along with the salary and allowances payable in respect of that period and all other privileges such as Casual leave, Medical leave, Maternity leave etc. available to all the Government servants. These benefits are denied to these adhoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These adhoc teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on adhoc basis with miserable conditions of service. The Government appears to be exploiting this situation. It is not a sound personnel policy. It is bound to have serious repurcation on the educational institution and children studying there. The policy of 'ad hocism' followed by the State Government for a long period has led to the prejudice of Article 14 and 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer."

6. Applying the principles laid down by Their Lordships in the above mentioned judgment it would be found that some 'hire and fire' policy has been adopted in this case because from Annexure '23' dated 14.12.1987 (letter sent by the Regional Director to the Director General, Employees State Insurance Corporation, New Delhi) it is stated as follows:

" Although Shri Kalita is working as Hindi Typist his services are being terminated from time to time and he is never allowed to exceed 180 days as per Headquarter's instructions."

Being bound by the observations of the Hon'ble Supreme Court (quoted above), we would say that this policy adopted by the Corporation is not at all justified under the law.

7. The admitted fact is that the petitioner has put in services as Hindi Typist in the Corporation for more than three years with some breaks in service which is not only to be found from the different orders of appointments and orders of termination of service annexed to this application, but this fact is also admitted in Annexure '23' dated 14.12.1987 - the same letter which is addressed to the Director General, Employees State Insurance Corporation, New Delhi, by the Regional Director. Admittedly no test has been held since 1985 to give a second opportunity to the petitioner to qualify himself. After the petitioner rendered service for a little more than three years and without sufficient opportunity being given to the petitioner to appear at a second test (if required under the rules), it was most

unjustifiable on the part of the Departmental Authorities to terminate his services.

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8. Now the next question which arises is whether the petitioner could be taken in the category of an LDC for which a test may be required from the beginning, i.e. from the date of appointment of the petitioner, with effect from Annexure dated 12.1.1984 ending with Annexure '16' dated 24.1.1984 the petitioner has been designated as a Hindi Typist. In Annexure '1' dated 12.1.1984 (which is a letter addressed to seven different persons), it has been stated that names of those candidates have been sent by the Employment Exchange for selection to the post of Hindi Typist and they should appear in the interview for the post of Hindi Typist in the office of the Employees State Insurance Corporation. The first letter of appointment vide Annexure '2' dated 24.1.1984, it is stated that the petitioner is appointed as Hindi Typist in the Regional Office. In all other documents beginning from Annexure '3' to Annexure '16' the petitioner has been designated as Hindi Typist and it has been clearly mentioned that his appointment is for the post of Hindi Typist. In our opinion the post of a Hindi Typist is completely distinct from the post/posts of LDCs. Our opinion stands fortified from the contents of Annexure '18' which is a statement showing the staff position of the Assam Region for the month of February, 1988, and also the sanctioned strength at the end of the month. This statement has been submitted to the Director General, Employees State Insurance Corporation, by the Regional Director. on 2.3.1988. From the contents of Annexure '18' it is seen that there are nine sanctioned posts of LDCs and one sanctioned post of Hindi Typist. Therefore, we have no doubt in our mind that the post of Hindi Typist is completely distinct and separate from the post of LDC and in such circumstances we cannot persuade...

pursuade ourselves to rely upon the averments found in the counter that the Hindi Typist is to be drawn from the cadre of LDCs, who are required under the rules, to undergo a test for confirmation or for earning the increment. We had called upon Mr. G. Sarma, the learned Additional C.G.S.C., to satisfy us on the basis of the rules that for a Hindi Typist a test is mandatory. Besides the arguments advanced by Mr. G. Sarma that for the LDCs a test is mandatory, no rules could be placed by Mr. G. Sarma to indicate that a test has to be undertaken by a Hindi Typist. In such circumstances we find no merit in the contention advanced on behalf of the opposite parties, that the petitioner could not be allowed to continue and could not be regularised because he could not be successful in the test held in 1985. It was further submitted by Mr. G. Sarma that once the petitioner had stood the test in the year 1985, it is no longer open to him to challenge that aspect. We also do not find any merit in this contention because once there is no provision in the rules laying down any test to be held in respect of Hindi Typist, the mere fact that an obedient servant has obeyed his authority to undergo the test without any specific provision does not create a stopple against him to challenge a particular matter, which is not contemplated under the rules. Therefore, we further find that there was no justification on the part of the competent authority to terminate the services of the petitioner on the ground that he could not qualify in the requisite test for the post.

9. As a last straw on the camel's back, Mr. G. Sarma submitted that the department is prepared to hold a special test....

02 MAR 1986
Guwahati Bench
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test and the petitioner be directed to appear in the test and in case he is successful his services will be regularised. We cannot accept the submission of Mr. G. Sarma because once we have held that there is no provision in the rules laying down that a Hindi Typist has to stand such a test, we are not permitted under the law to give any such direction to the petitioner.

10. In view of the aforesaid discussions we are of opinion that Annexure '16' dated 24.2.1980, terminating the services of the petitioner for not having qualified in the requisite test cannot be sustained and it is, therefore, quashed. The petitioner should be allowed to continue in service as a Hindi Typist. We further direct that the opposite parties should consider regularisation of the services of the petitioner with effect from his date of appointment and we expect the appropriate authority to pass orders according to law without any unreasonable delay.

11. Thus the application stands allowed leaving the parties to bear their own costs.

Sd/-
(J.C. ROY)
30.3.90
MEMBER

Sd/-
(K.P. ACHARYA)
30.3.90
VICE-CHAIRMAN

TRUE COPY
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10/4/90

Administrative Tribunal
विशाद्वैत न्यायालय
2010

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Guwahati 21

Guwahati Bench

-24-

Annexure-5

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE : NORTH EASTERN REGION
BAMUNIMAIDAN :::: GUWAHATI-21.

NO. A, 24/14/75-Estt.

Dated : 29.7.1991 1. (29.7.91)

M E M O

Sub: The compilation of gradation lists of the employees of the Corporation, N. E. Region as on 30.6.91.

The gradation lists compiled according to seniority in respect of the employees of ESI Corporation in N.E. Region as on 30.6.91 are sent herewith. These lists may be circulated among all concerned for comments and objection, if any. In case no objection is received in this on or before 29.8.1991 it will be presumed that the persons concerned agreed with their seniority.

All Local Office Managers are advised to acknowledge the receipt of this memo and confirm by 29.8.91 that the lists have been circulated under dated initials of the persons attached to that Office.

Encls: as above.

(B. C. BHARDWAJ)
REGIONAL DIRECTOR

In

All Local Office Managers, N. E. Region.

Copy to :

1. The staff members Regional Office, Guwahati.
2. All Head Clerks, Regional Office, Guwahati.
3. Dy. Regional Director, Regional Office, Guwahati.
4. Regional Accounts Officer, Regional Office, Guwahati.
5. General Secretary, ESIC Employees' Union, Guwahati.

REGIONAL DIRECTOR.

参考文献

कांग्रेस प्रशासनिक न्यायालय

02 MAR 2010

Gurukul Bench
सुप्रीम न्यायपीठ

2025-01-01

~~7/ - 30.6.1991.~~

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2. J. C. Das, Matric								
3. U. R. Chakraborty, Matric								
4. D. Singh, IA								
5. Mrs. B. Nag, BA								
6. M. C. Nag, Matric								
7. A. Hussain, IU(Com.)								
8. T. C. Das, BA(Hons) BT.								
9. Assistant								
10. C. K. Bora, Matric								
11. R. Deka, Matric								
12. A. Haque, BSc.								
13. I. Ali Sk, PA								
14. C. K. Bora, Matric								
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95. R. Deka, Matric								
96. A. Haque, BSc.								
97. I. Ali Sk, PA								
98. C. K. Bora, Matric								
99. R. Deka, Matric								
100. A. Haque, BSc.								
101. I. Ali Sk, PA								
102. C. K. Bora, Matric								
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107. R. Deka, Matric								
108. A. Haque, BSc.								
109. I. Ali Sk, PA								
110. C. K. Bora, Matric								
111. R. Deka, Matric								
112. A. Haque, BSc.								
113. I. Ali Sk, PA								
114. C. K. Bora, Matric								
115. R. Deka, Matric								
116. A. Haque, BSc.								

ASSTANT

9. C. K. Bora, Matric

10. R. Deka, Matric

11. A. Haque, BSc.

12. I. Al i Sk, PA

१. केन्द्रीय प्रशासनिक महासचिव

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General Branch

Contd. 2/-

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	5	6	7	8
13. S. K. Das, BA(Hons)	1.1.53			
14. S. K. Sarma, BSc.	1.3.53	11.11.77	15.5.89	Promoted 1.1.79 R.O.
15. F. K. Sarma, BA	1.3.55	29.11.77	15.5.89	" 1.1.81 "
16. C. D. Kalita, BA A & B	1.7.56	12.3.79	15.5.89	" 1.1.81 "
17. S. C. Deka, HSCC	1.9.50	1.1.79	15.5.89	" 1.1.81 "
18. J. Boro, Matric	1.2.53	16.1.76	1.6.89	" 15.1.81 " (S/C)
19. P. Goswami, BA	27.5.56	1.1.79	19-10-90	" 15.1.81 " (S/T)

ULTR DIVISION CLERK / UDC-CASHIER
Scale R. 1200-30-1560-EB-40-2040/-

Office No. 1200-30-1560-EB-40-2040/-									
1. C. R. Das, IA	1.12.34	1.6.59	1.5.66	Promoted	1.1.70	Retired voluntarily as on 30.6.1990.			
2. S. C. Sarmah, BSc.	1.4.53	1.1.79	2.8.82	"	1.1.81	R.O.			
3. J. Baruah, BCom.	30.1.56	5.3.79	17.8.83	"	18.3.81	" Promoted as transferred to Region.			
4. N. R. Ijukan, BSc.	1.8.56	1.6.79	17.8.83	"	-	"			
5. Mrs. S. Khatun, BA	26.2.56	9.1.80	17.8.83	"	-	"			
6. B. C. Sarmah, MA	2.3.58	6.1.82	13.9.85	"	-	I.O. Napaon.			
7. B. Goswami, ECom.	1.9.59	8.1.80	5.8.88	"	-	L.O. Chandrapur.			
8. N. C. Sarmah, BA.	1.5.60	2.1.82	5.8.88	"	-	P.O.			
9. T. C. Deka, BA	1.12.56	5.1.82	5.8.88	"	-	"			
10. K. K. Boro, IU.	31.12.58	1.5.82	7.11.88	"	-	I.O. Dhubri. (S/T)			
11. M. N. Haque, BA	1.2.59	4.1.82	15.5.89	"	-	L.O. Shillong.			
12. N. K. Bora, B.Com.	1.7.59	2.1.82	15.5.89	"	-	I.O. Guwahati.			
13. S. R. Kalita, BA	1.7.57	2.1.82	15.5.89	"	-	R.O.			
14. D. N. Boro, IU.	5.11.59	3.5.82	15.5.89	"	-	L.O. Jorhat (S/T)			
15. B. C. Boro, IU.	24.12.53	1.5.82	15.5.89	"	-	L.O. Charduar (S/T)			
02 MAR 2010 Censor Bench									
Contd.									

Chen, L. H.

Contd. 2/4

16. S. Das, BSc.	1.1.59	4.11.82	30.5.89	Promoted	-	L.O. Bongaigaon (S/G)
17. Mrs. K. Chha, Choudhury, BA.	1.1.59	2.1.82	19.10.90	"	-	L.O. Guwahati.
18. Mrs. S. Devi, BA.	1.1.59	1.4.82	19.10.90	"	-	R.O.

STENOGRAPHER

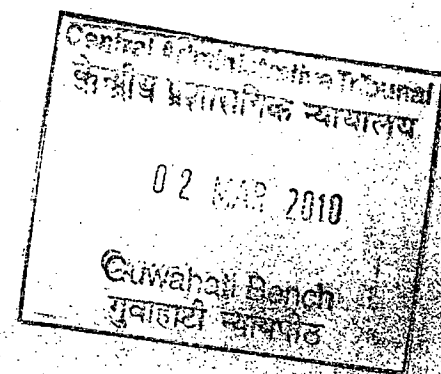
1. Mrs. Rita Rani Kalita, BA	1.3.59	2.1.82	25.5.83	"	-	R.O.
2. K. B. Koiri, IU(Arts)	30.6.58	13.7.89	13.7.89	Appointed	-	"

LOWER DIVISION CLERK

Scale Rs. 950-20-1150-EB-25-1500/-

1. L. R. Kalita, Class X	24.8.40	30.9.58	1.3.77	Promoted	1.1.81	R.O.
2. P. R. Das, Class X	1.4.46	25.2.65	1.3.77	"	15.1.81	"
3. S. Kalita, Class X	1.10.40	24.5.61	24.6.80	"	12.9.65	I.C. Guwahati.
4. A. K. Baruah, BA.	5.1.57	27.4.82	27.4.82	Appointed	-	I.C. Tinsukia (Offg.UDC)
5. B. C. Bora, BSc.	21.1.57	2.11.82	2.11.82	"	-	R.O. (Offg.UDC)
6. E. K. Baruah, BSc.	3.7.59	3.11.82	3.11.82	"	-	"
7. Mrs. Z. Kalita, BA	1.1.59	2.11.82	2.11.82	"	-	"
8. W. Deka, Class X	1.3.54	2.9.74	21.7.82	Promoted R/S	1.1.81	L.O. Tinsukia.
9. J. R. Mahanta, BA.	1.1.59	2.11.82	2.11.82	Appointed	-	R.O.
10. I. K. Sarmah, BA.	3.2.59	2.11.82	2.11.82	"	-	"
11. Mrs. B. Choudhury, MA.	22.12.58	4.2.83	4.2.83	"	-	"
12. Mrs. I. Sarmah, IU.	31.8.58	3.6.83	3.6.83	"	-	"
13. T. D. Patgiri, B.Sc.	1.1.59	25.7.83	5.8.83	"	-	"
14. Rahman, Class X	31.5.82	17.10.77	5.8.88	Promoted.	15.1.81	"
15. Driver.	24.5.56	3.10.85	3.10.85	Appointed	-	"

Contd.. 4/-



Hindi Typist

Scale Rs. 950-20-1150-EB-25-1500/-

1. M. Kalita, IU(Arts)	1.7.62	25.1.84	25.1.84	Appointed	-	R.C. Guwahati.
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RECORD SORTER

Scale Rs. 800-15-1010-EB-20-1150/-

1. G. C. Sarma, Class X	1.9.38	3.10.58	24.4.62	Promoted	10.7.64	L.C. Charduar.
2. B. N. Kalita, Class X	17.8.41	1.8.60	21.9.63	"	1.1.86	Expired on 6.6.1991.
3. T. Hazarika, Class X	1.8.44	4.10.63	1.8.72	"	1.1.77	L.C. Tinsukia (S/C)
4. L. Baruah, Class X	1.7.44	1.10.63	6.2.75	"	1.1.79	L.C. Guwahati.
5. H. K. Das, Class X	1.1.50	22.5.73	17.1.76	"	1.1.81	L.C. Mubri.
6. S. K. Das, Class X	1.11.52	11.9.75	21.9.79	"	1.1.79	L.C. Chandrapur.
7. N. C. Das, Class X	1.3.57	7.6.76	13.12.79	"	1.1.79	R.C.

ENTRY

Scale Rs. 775-12-955-EB-14-1025/-

1. L. Dharali, Class X	8.2.54	10.3.77	5.7.80	1.4.80	R.C.
2. I. K. Gohain, Class X	26.6.55	22.3.80	12.9.88	-	L.C. Tinsukia.
3. Arabinda Das, Class X	1.3.60	26.7.80	3.10.88	-	L.C. Jorighopa.
4. Umesh Das (i) Class XII	30.6.61	1.12.81	3.11.88	-	L.C. Nagaon.

IEON / PARASH Scale Rs. 750-12-80-EB-14-940/-

1. R. C. Murari, Class VI	1.9.56	5.6.76	2.4.80	Issued	-	R.C. (S/T) Retired voluntarily on 31.9.90.
2. P. Chakrabarti, Class VIII	31.7.58	2.4.82	2.4.82	Appointed	-	R.C.
3. B. Islam, Class VIII	31.7.64	1.10.82	1.10.82	"	-	"
4. D. K. Das, Class IX	1.3.60	1.10.82	1.10.82	"	-	L.C. Guwahati.
5. N. C. Kalita, Class IX	31.2.61	1.10.82	1.10.82	"	-	R.C.
6. U. C. Das (II), Class IX	1.12.61	1.10.82	1.10.82	"	-	

Contd.. 5/-

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1	2	3	4	5	6	7	8	9
7. B. C. Ieka, Class IV	20.9.60	28.1.81	20.9.88	Fostered			R.C.	
8. Anil Chandra Das, Class VII.	31.7.61	1.4.82	22.9.88	"			L.C. Dhubri.	
9. T. Bezbaruah, Class X	1.1.59	19.9.82	4.10.88	"			L.C. Tinsukia.	
10. Mrs. R. M. Saktun, Class X	25.2.68	10.8.88	10.8.88	Appointed			L.C. Shillong.	
11. I. C. Rajbongshi, Class X	1.5.64	19.9.88	3.4.89	Fostered			R.C.	
12. J. C. Das, Class IX	20.1.64	27.9.88	27.9.88	Appointed			R.C.	

CHICWF IDAR

Scale No. 750-12-870-EB-14-940/-

1. G. C. Das, Class IX	30.6.64	22.9.83	22.9.88	Appointed		R.C.
2. N. C. Haloi, Class X	16.7.65	3.4.89	3.4.89	"		"
1. Rup Singh, knows to sign.	1.6.61	8.9.80	8.9.80	"		" (S/C)

SWIFT ER

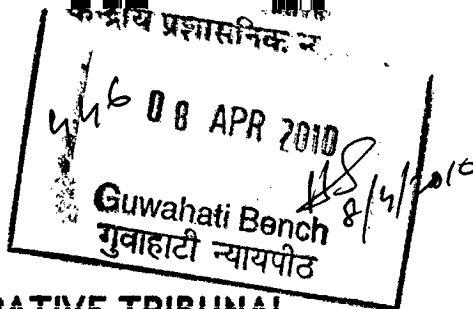
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(B. C. BHARDWAJ)
REGIONAL DIRECTOR.

Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय
 02 MAR 2010
 Guwahati Bench
 गुवाहाटी न्यायालय

- 76 -

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Filed by the applicant
through U. Datta, advocate
on 08.04.2010

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

In the matter of: -

O.A. No. 221 of 2009

Shri Munindra Kalita.

..... Applicant.

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of: -

Rejoinder submitted by the applicant in reply to the written statements submitted by the Respondents.

The humble applicant above named most humbly and respectfully state as under; -

1. That the applicant has carefully gone through the written statement filed by the respondents and understood the contents thereof. The applicant denies all the averments made therein save and except which are borne out of records.
2. That, with regard to the statements made in paragraph 3.1, 3.2, 3.3 and 3.4 of the written statement, the humble applicant does not have any comment to offer since the same are matters of records.
3. That, in reply to the statements made in paragraphs 3.5, 3.6 and 3.7 of the written statements, the applicant begs to submit that this Hon'ble Tribunal vide its judgment and order dated 14.06.2001 in O.A.No. 311/1999 has discussed in details the various judicial pronouncements and departmental orders, more particularly the order dtd. 01.11.1996 (Annexure-4 to the instant O.A) issued by the ESIC Headquarters Office, New Delhi and has categorically held that the applicant has become a part of the cadre of LDC, a feeder cadre for UDC at least from 01.11.1996 and

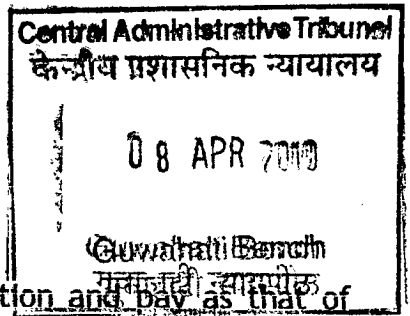
Received
on behalf of
Mrs. H. Das,
Dr. C. S. C.,
CS Nagarika
8.4.10

Sri Munindra Kalita

the post of Hindi Typist cannot be termed as an isolated post. The said order of the Tribunal attained finality and thereafter, the issuance of the letter dtd. 17.09.2009 by the ESIC headquarter communicating a decision of the 147th meeting of the respondents and seeking to absorb the applicant in the cadre of LDC w.e.f 25.08.2009 and that too by placing him at the bottom of the seniority list of the LDC's is a gross violation of the judgment and order dated 14.06.2001 of this Hon'ble Tribunal and such action of the respondents lacks jurisdiction and authority. As such the so called decision of the respondents in their 147th meeting held on 25.08.2009 and their consequential letter dtd. 17.09.2009 are unsustainable and void.

4. That, the applicant categorically denies the statements made in para 4.2, 4.3, 4.4 and 4.5 of the written statement and begs to submit that the appointment of the applicant as Hindi Typist on regular basis w.e.f 25.01.1984 was made in accordance with the order dtd. 30.03.1990 of this Hon'ble Tribunal in O.A.No. 45/1988 and the said appointment does not disentitle the applicant from his promotion to the next higher cadre of UDC. The contention of the respondents that the post of Hindi Typist is different from LDC and that the nature of job for those two posts are different have already been examined by this Hon'ble Tribunal and vide order dtd. 14.06.2001 in O.A.No. 311/1999, this Hon'ble Tribunal has categorically held that the post of Hindi Typist has become a part of the cadre of LDC, a feeder cadre of UDC. After the pronouncement of the said judgment and order dtd. 14.06.2001, the respondents do not have any right to adhere to their misconception and cannot say that the post of Hindi Typist is not a part of the cadre of LDC. The statement that the nature of job of Hindi Typist is different from that of LDC cannot stand on its leg since the respondents themselves have contradicted the same by their own statement in para 4.3. In para 4.3, the respondents have stated that the posts of LDC/Adrema operator/Telephone operator/computer operator etc. are considered for promotion to the post of UDC. Admittedly, the nature of jobs/works of Adrema operator, Telephone operator or computer operator are not similar to that of LDC, but even thereafter when the said operators could be treated as a part LDC for promotion to the post of UDC, the applicant who is a designated LDC

Sri Munindra Kishore



(Hindi Typist) having same educational qualification and pay as that of LDC is evidently a part of the cadre of LDC, which the respondents cannot deny.

Further, the letter dtd. 01.11.1996 issued by the respondents, has confirmed beyond any doubt that the applicant having been designated as LDC (Hindi Typist) is very much a part of the cadre of LDC and in the said letter it has nowhere been mentioned that the post of LDC(Hindi Typist) is not a part of LDC. The respondents have therefore sought to make an artificial and unreasonable classification by a mere stretch of their own imagination, contending that the post of LDC (Hindi Typist) is distinct from the cadre of LDC, which is arbitrary, malafide, unfair and ill-motivated.

5. That, the applicant emphatically denies the statements made in para 4.6, 4.7, 4.9, 4.11, 4.12, 4.13, 4.14 and 4.19 of the written statement and begs to submit that the grant of financial upgradation under ACP scheme in respect of the applicant is entirely a different issue cannot be equated with regular promotion and which cannot be taken as a plea for denying regular promotion of the applicant from the post of LDC (Hindi Typist) to the post of UDC, which the applicant is legitimately entitled to get.

This Hon'ble Tribunal in its judgment and order dated 14.06.2001 has discussed in details about its earlier judgments in the matter and has finally held that the applicant has become part of the cadre of LDC at least from 01.11.1996 and declared that the applicant is entitled for the next higher grade in the existing hierarchy. The Hon'ble Tribunal in its said judgment did nowhere direct for grant of financial upgradation under the ACP scheme to the applicant but simply confined to modification/substitution of the pay scale from Rs. 3285-4950/- to Rs. 4000-6000/- in favour of the applicant just to correct the errors in the pay scale granted to the applicant and this fact has fairly been admitted by the respondents in para 4.9 of their written statement. Further, the decision contained in para 6 of the judgment and order dated 14.06.2001 of this Hon'ble Tribunal is not a mere observation/obiter dicta of the Hon'ble Tribunal as misconstrued by the respondents but it has been a categorical declaration by the Hon'ble Tribunal that the applicant is a

Sri Mumbra Kalita

08 APR 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

part of the cadre of LDC, a feeder cadre for the post of UDC at least w.e.f 01.11.1996. It was therefore implicit that the respondents ought to have treated the applicant as a part of LDC at least w.e.f 01.11.1996 and refixed his seniority and consider his promotion to the grade of UDC accordingly, and non compliance of the same amounts to gross violation of the judgment and order dtd. 14.06.2001 of this Hon'ble Tribunal. After pronouncement of the judgment and order dtd. 14.06.2001 of this Hon'ble Tribunal, the respondents do not have any right to rely on any of the previous judgments of this Tribunal including the one dtd. 30.03.2009 in O.A.No. 45/1988, which the Hon'ble Tribunal has already discussed before passing the order dtd. 14.06.2001 in O.A.No. 311/1999.

It is relevant to mention here that pursuant to the implementation of its policy on official language, the Govt. of India, Deptt. Of official language vide its O.M No. 13035/3/88-O.L (c) dtd. 05.04.1989 and O.M No. 13015/1/90- O.L (d) dtd. 17.07.1990 designated the Hindi Typist as LDC (Hindi Typist). This is evident from page no. 19 (para 11 and foot note therein) of the Inspection Questionnaire dtd. 14.01.2003 of the Committee of parliament on official language in respect of N.E. Regional office of ESI corporation. This clearly evidences that the Hindi Typist appointed under the regional office, N.E. Region, ESI corporation is designated as LDC (Hindi Typist) even since 1989 and hence the post of Hindi Typist is very much a part of the cadre of LDC and the respondents cannot exclude the post of LDC (Hindi Typist) from the cadre of LDC on the basis of an unreasonable classification of their own.

Copy of page 19 of the inspection questionnaire of committee of parliament on official language is annexed hereto and marked as Annexure-A.

That from the above stated facts, it is abundantly clear that the applicant is deemed to have been appointed as LDC (Hindi Typist) w.e.f 25.01.1984 and he is very much a part of the cadre of LDC since his date of appointment i.e 25.01.1984. as such he is entitled for regular promotion i.e 25.01.1984. As such he is entitled for regular promotion to the post of UDC w.e.f the date the other LDCs, more particularly those who joined after him as LDC, are promoted as UDC. The respondents do not have any right to deny promotion to the applicant to the cadre of UDC.

Sri Munindra Leahita

when his juniors were promoted vide office order No. 65/99 dtd. 09.09.1999 even after he was held to be part of LDC from very date of his initial appointment as per the official language policy launched by the Govt. of India and thereafter declared again by this Hon'ble Tribunal that the applicant was a part of LDC at least w.e.f 01.11.1996. The action of the respondents is therefore, malafide, unfair, illegal and opposed to the Government of Policy and against the settled position of law.

6. That in reply to the statements made in para 4.10, 4.16 and 4.17 of the written statement, the applicant begs to state that it is evident from the facts stated in the preceding paragraphs hereinabove that the applicant has been a part of LDC since his initial appointment and stood entitled for promotion to the cadre of UDC along with other LDCs who were promoted as UDC in 1999 and in all fitness of the things, he ought to have been promoted from the post of LDC (Hindi Typist) to the post of UDC. The gradation list annexed as Annexure-8 to the instant O.A clearly indicates that the post of LDC and Hindi Typist were clubbed posts and there had been a common gradation list for both the posts which formed the feeder cadre for promotion to the cadre of UDC, and the contentions other wise of the respondents are their after thoughts and hence not sustainable.

Further, the admitted fact being that the applicant was already a part of LDC, the so called decision dtd. 25.08.2009 of the respondent corporation to absorb the applicant in the cadre of LDC and its proposal to obtain consent of the application thereto, lacks jurisdiction and authority and amounts to a uncalled for superfluous exercise, which is liable to be ignored.

7. That the applicant categorically denies the statements made in para 4.15 of the written statement and begs to submit that this Hon'ble Tribunal in its judgment and order dtd. 14.06.2001 in O.A.No. 311/1999 categorically declared that the applicant has been a part of LDC, the feeder cadre for promotion to the post of UDC. It is not a mere observation or obiter dicta of the Hon'ble Tribunal as misconstrued by the respondents. The follow-up actions, consequential to the judgment aforesaid were implicit in the judgment itself for which no separate direction for treating the applicant

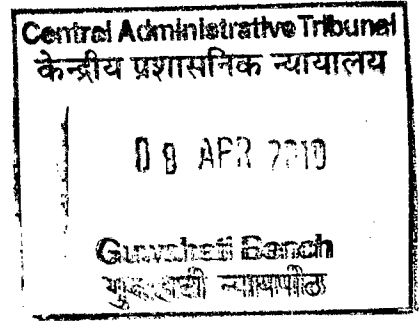
Sd/- Muralidra Beahra

as LDC or to promote him to UDC is required and such a plea by the respondents is unsustainable.

Further, the admitted fact being that the applicant was already a part of LDC, the so called decision dtd. 25.08.2009 of the respondent corporation to absorb the applicant in the cadre of LDC afresh and to impose some conditions thereof lacks jurisdiction and authority of the respondents which amounts to an unauthorized superfluous exercise. As such the said decision and the so called letter dtd. 17.09.2009 issued by the respondents seeking consent of the applicant for his proposed absorption to the cadre of LDC is illegal and liable to be declared as void.

8. That the applicant categorically denies the statements made in para 4.18 and 4.20 of the written statement and begs to state that this O.A is full of merit and has been filed bonafide and deserves to be allowed with costs.
9. That in the facts and circumstances, the applicant humbly submits that he is entitled to the reliefs prayed for in the O.A. deserves to be allowed with costs.

Sri Minindra Kalita



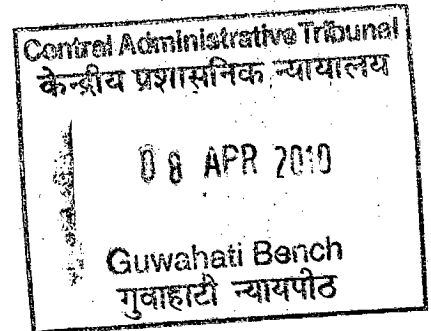
VERIFICATION

I, Shri Munindra Kalita, son of Shri Pritambar Kalita, aged about 49 years, working as Hindi Typist, in the Employees State Insurance Corporation, Regional Office, N.E. Region, Guwahati applicant in the instant rejoinder, do hereby verify that the statements made in Paragraph 1 to 8 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 4th day of April, 2010.

Shri Munindra Kalita

संसदीय राजभाषा समिति
COMMITTEE OF PARLIAMENT ON
OFFICIAL LANGUAGE



निरीक्षण प्रश्नावली

केन्द्र सरकार के मंत्रालयों/विभागों/सम्बद्ध और अधीनस्थ कार्यालयों/
उपक्रमों/संस्थानों आदि में हिन्दी के प्रयोग से संबंधित

INSPECTION QUESTIONNAIRE

Regarding use of Hindi in Ministries/Departments/Attached and
Subordinate Offices/Undertakings/Institutes etc. of the
Central Government

निरीक्षण किए जाने वाले कार्यालय
का नाम व पूरा पता :

Name and full address
of the office to be inspected :

निरीक्षण की तिथि :
Date of Inspection :

क्षेत्रीय कार्यालय
कर्मचारी राज्य बोनस निगम
पूर्वोत्तर क्षेत्र, गुवाहाटी - 781 021
Regional Office
E.S.I. Corporation
N.E. Region, Guwahati - 781 021

14-01-2003.

Attested
Mulla
Ahn

9. (i) Whether the services of Hindi knowing clerks/stenographers are being utilised fully for Hindi stenography / typing as per the directives * issued by the Deptt. of Official Language ?

YES

- (ii) If not, give the reasons thereof ?

Not applicable

10. Has any programme been prepared for the training of the remaining employees shown in Item Nos. 7 and 8 above ? If so, give details thereof.

Yes, actions are being taken first to impart them Hindi training.

11. Information regarding full time officers / employees who are engaged on Implementation of the Official Language policy and translation work etc.

Designation	Pay Scale	No. of Posts	
		Sanctioned	Vacant (With Date)
LDC (Hindi Typist)	4000-100-6000	1	0
Jr. Hindi Translator	5000-150-8000	1	1 (11-05-2000)

- a) Details of full time officers/ employees regarding above.

Action is being taken by the Hqrs. Office.

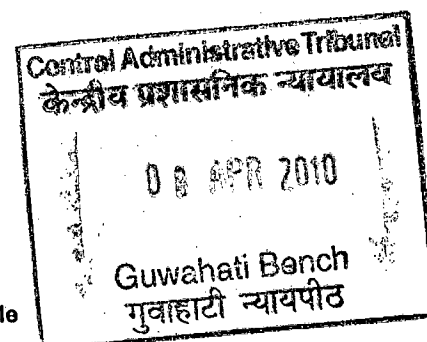
- b) Details of action taken for filling up the above vacant posts.

- c) Whether the existing posts are in accordance with the norms ** laid down by the Deptt. of Official Language ?

Yes.

- d) If not, what action is being taken in this regard ?

Not applicable



* Ref. Department of Official Language O. M. No. 13015/1/90- O.L. (d) dated 17th July 1990.
** Ref. Department of Official Language O. M. No. 13035/3/88- O.L. (C) dated 5th April 1999.