

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI -5.

O.A. NO. 128 of 1994.
T.A. NO. .

DATE OF DECISION 3-7-1995.

Shri Munindra Kalita.

PETITIONER(S)

Shri S. Sarma for Shri B.K. Sharma.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr G. Sarma & Mr M. Chanda.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE)

1. Whether Reposters of local papers may be allowed to see the Judgment? yes
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

yes

NO

Judgment delivered by Hon'ble Vice-Chairman. *M.G.Chaudhary*

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 128 of 1994.

Date of Order : This the 3rd Day of July, 1995.

Justice Shri M.G.Chaudhari, Vice-Chairman.

Shri G.L.Sanglyine, Member (Administrative)

Shri Munindra Kalita, Hindi Typist,
Employees State Insurance Corporation,
Regional Office, N.E.Region,
Guwahati-21.

... Applicant

By Advocate Shri S.Sarma for Shri B.K.Sharma.

- Vrs -

1. Union of India
represented by the Secretary,
Ministry of Labour, New Delhi.
2. The Director General,
Employees State Insurance Corporation,
Panchadeep Bhawan,
Kotla Marg, New Delhi-2.
3. The Regional Director,
Employees State Insurance Corporation,
Regional Office, N.E.Region,
Guwahati-21.
4. Shri P.D.Patgiri, UDC
5. Smt Anima Devi, UDC

Both in the office of the E.S.I.(C), Regional Office,
Guwahati-21.

By Advocate Shri G.Sarma, Addl.C.G.S.C.

O R D E R

CHAUDHARI J.(V.C)

The hearing of this O.A. was concluded on 30.6.95 when Mr S.Sarma holding for Mr B.K.Sharma appeared for the applicant and Mr G.Sarma, Addl.C.G.S.C. appeared for the respondents. As we were about to commence the judgment at the personal request of Mr S.Sarma that we may pass the order in the presence of Mr B.K.Sharma we adjourn the matter for orders till today treating it as part heard. Today

however, Mr B.K.Sharma has filed a leave note and Mr S.Sarma has not chosen to appear at all. Similarly today Mr M.Chanda who was not present on the last date has appeared. We did not dispose of the application on 30.6.95 for the reason mentioned above and no further hearing was contemplated. Curiously enough the applicant has today tendered an additional rejoinder purported to be filed on behalf of Mr B.K.Sharma. The applicant is present. Such rejoinders are not permissible to be filed without leave of the Tribunal after the hearing has concluded.

Obviously ^{if} these are taken on record the other side will have to be given an opportunity of hearing and that would indirectly ⁱⁿ resulting rehearing the O.A. which is not permissible.

However Mr M.Chanda states that he has been served with the copies and submits that these do not introduce any new point not covered by the written statement and even if we take cognizance of them he would have no objection. In the circumstances we proceed to deliver the judgment. We do not think that even though Mr B.K.Sharma has filed a leave note an adjournment ~~is called for~~ ^{never been justified}.

2. The applicant is employed as Hindi Typist in the office of the Regional Director, E.S.I.Corporation, North Eastern Region, Guwahati. His grievance is that he is being denied promotion to the grade of UDC which he claims to be eligible to get from the date when his juniors in the grade of LDC were so promoted with effect from 19.5.93. He has prayed for quashing the office order dated 5.4.94 by which his request for promotion was rejected and the order dated 19.5.93 whereunder the respondents 4 and 3 respectively have been promoted.

hsc

contd... 3/-

3. The applicant had earlier approached this Tribunal in O.A.45/88 which was decided on 30.3.90 and certain relief as we shall mention later on was granted to him. We have called for the record of that case and would be referring to the relevant Annexures as were filed alongwith that application as the applicant has not chosen to place on record all the relevant materials in the present application.

4. It appears that the applicant's name was sent by the Employment Exchange to the Regional office of E.S.I. Corporation for selection to the post of Hindi Typist on purely temporary and adhoc basis. An interview was held on 20.1.84 and on the basis of the same the applicant was appointed to the post of Hindi Typist on the initial pay of Rs.260/- in the scale of Rs.260-400/- plus other allowances as admissible under the rules by order issued by the Regional Director bearing No.43-a.12/16/79-Estt. dated 24.1.84. The orders stipulated that the appointment was made on purely temporary and adhoc basis and the services are liable to be terminated at any time without any notice or assigning any reasons thereof. The applicant accepted the appointment on those terms and conditions. He continued to hold the post with breaks in service given from time to time. After each break he was re-appointed. However, eventually by order dated 24.2.88 his services were terminated with effect from 23.3.88 i.e. after one month from the date of issue of the notice on the ground that he ~~did~~ ^{did} not qualify in the requisite test for the post. That order was challenged by the applicant in the previous case i.e. O.A.45/88. He had sought regularisation from the date of his initial

✓ appointment i.e. 25.1.84 and also claim quasi permanent status in the post of Hindi Typist. The contention of the respondents in that application in so far as the material for the present purpose was that under the E.S.I. Corporation Recruitment Regulation 1965 75% of the total vacancies in the cadre of LDC are required to be filled in by direct recruit~~s~~ by competitive test and remaining 25% are required to be filled by qualified Class-IV employees in a closed competitive examination and that the applicant was given a chance to appear in the open competitive test. Since he was not a departmental candidate and ~~he~~ could not qualify in the test held on 12.8.84 in the North Eastern Region and that only successful candidates who passed the competitive test ~~would~~ be appointed as Hindi Typist after qualifying at a different test, and that the question of appointment of the applicant as belonging to LDC cadre/ arise and therefore the order of termination was valid and was passed in accordance with the terms and conditions of appointment. It was also stated by them that the post of Hindi Typist ~~did~~ not exist in the Corporation since all Lower Division Clerks were required to pass the Typing test to earn the ~~second~~ ^{appointment} question. The Bench which decided the earlier application ~~were~~ however did not accept the aforesaid contention of the respondents but held on the question as to whether the applicant could be taken in the category of a LDC for which a test may be required, that the post of Hindi Typist was clearly distinct from the post/posts of LDC and was ~~a~~ separate from the post of LDC. The contention of the respondents that the Hindi post is to be borne from the cadre of LDC who are required under the

rules to undergo a test for confirmation or earning the increment ~~was~~ is negative. In that view of the matter it was held that as there was no justification on the part of the competent authority to terminate the services of the applicant on the ground that he could not qualify in the requisite test for the post the order of termination was set aside and it was directed that the applicant should be allowed to continue in service as Hindi Typist and his regularisation in service may also be considered. In pursuance of that order the respondents regularised the service of the applicant as, Hindi Typist and his service was made substantive in that post. It must be remember that the earlier stand of the respondents was that there was no sanction ^{ad} post of Hindi Typist and only qualified LDCs would be appointed to that post but in view of the earlier order of the Tribunal they appoint the applicant in the distinct post of Hindi Typist possibly after obtaining sanction for that post. The claim now made by the applicant in the instant application is in terms of the stand that was taken by the respondents but was negatived by the Tribunal and after having derived the advantage of continuation of service and regularisation (for otherwise ^{the} ^{his} order of termination would not have been ^{set aside} absent.) It is now the contention of the applicant that the post of Hindi Typist should be regarded as pertaining to the common cadre of LDC and Hindi Typist. On that footing he contends that he is eligible to be promoted to the grade of UDC which is the next higher post from the common cadre post of LDCs and Hindi Typist.

5. The respondents on the other hand contended in the written statement that the post of Hindi Typist is a distinct post as held earlier by the Tribunal and it does not form

hsl

contd... 6/-

✓ feeder cadre to the post of UDC as per recruitment ~~cadre~~ ^{rules} of the Corporation. They however contend that as the applicant did not qualify at the selection test he ~~was never~~ and could not be brought to the cadre of LDC so as to afford the avenue of promotion as UDC. The respondents rely on the regulation of the Corporation made for recruitment in terms of sub-section 4 of Section 97 read with Clause XXI of Sub-section 2 of Section 20 of the Employees State Insurance Act 1948.

6. We have carefully gone through the Annexures to the instant application produced by the applicant as well as to the Annexures that were produced alongwith previous O.A. We do not find any material to hold that the post of Hindi Typist exists as a common cadre of LDC so as to to form a feeder cadre for promotion to the post of UDC. We are also unable to find any material to show that the post of Hindi Typist apart from LDC cadre constitutes an independent cadre and operates as feeder cadre ^{for} promotion to the post of UDC. The applicant has not produced any Recruitment Rules or ^{any guideline issued by the} ~~also decision of the~~ respondents to show that he was eligible for being considered for promotion as UDC from the cadre of Hindi Typist.

7. It is contended by the applicant interalia that although he was borne in the cadre of Hindi Typist he was required to work in the assignment given to LDC. That he was even sent for functional training on office procedure meant for LDC only and also sent for training course ⁱⁿ Biscriptual Electronic Teleprinter Operation which training is imparted only to a LDC. That he is competent to handle telex machine. That the pay scale of LDCs and Hindi Typists ^{is} same and they are required to perform similar types of duties and treated

[Signature]

✓ equally for the promotion etc. and that ⁱⁿ several other Government departments the post of Hindi Typist and LDC are inter-related and the avenue of promotion to the cadre of UDC is open to both the categories of employees. The respondents cannot contend that ✓ he has no avenue of promotion as UDC open to him ~~and he should~~ ^{so that for} all the times to come to be stagnated in the post of Hindi Typist which is no ~~more~~^{way inferior to that of} better than LDC while persons junior to him in the LDC cadre would be promoted as UDC and ^{to} further ~~to~~ post.

8. We do see considerable force in the grievance of the applicant that having regard to the above mentioned aspects it is unfair to deny him any avenue of promotion either as UDC treating the cadre of Hindi Typist ^{as} the same as LDC or making available an avenue of promotion to any post equivalent to UDC. ~~in the post of Hindi Typist whether the work is to be carried out in Hindi~~. However, in the absence of any rule shown permitting such promotion we cannot give him the relief on, the basis of mere desirability of the E.S.I. Corporation to should fall in line with the practice followed in other departments. We also ^{appreciate} ~~share~~ the grievance of the applicant as there is no and avenue of promotion open to him under the existing pattern he ^{as} ~~the applicant~~ may be stagnated only in the Hindi Typist. Now so far as the ~~was however to thank himself for his situation created~~ grievance is concerned the applicant who have landed himself ^{got it earlier} by having declared that the post of Hindi Typist was distinct and separate from the cadre of LDC and having reaped the benefit thereof by getting regularisation of his service in the post of Hindi Typist, ~~although otherwise he had even to leave that job~~. The contention of the respondents that ~~such~~ could have permitted an inference to be drawn that the post

✓ of Hindi Typist was not different than the post of LDC cadre
✓ and on that basis ~~the applicant could have been~~
✓ ~~he could have considered eligible for~~
✓ ~~if qualified~~
✓ promotion to the post of UDC having been negative by the
✓ Tribunal on earlier occasion and it is not now open to the
✓ applicant to contend that the post of Hindi Typist and LDC
✓ should be treated as a common cadre as ~~is contended by him~~
✓ in para 4.10 of the application.

9. There are few other features which make it difficult to accept that contention. As stated earlier the applicant was sponsored for the post of Hindi Typist and was appointed against that post. Annexure-A shows that he completed the probation on 24.1.86, in the post of Hindi Typist. The orders marked as ~~allotted~~ Annexures 1, 2 and 3 show that he was ~~allowed~~ the duty in Receipt Section in addition to his duty as Hindi Typist. Annexure 6 dated 5.4.94 which the Memorandum issued by the Regional Director on the subject of maintenance of seniority and promotion stated that the post of Hindi Typist does not form feeder cadre of LDC and that on that ground the request of the applicant for promotion was not accepted. The gradation list as on 30.6.93 issued on 13.10.93 Annexure-11 placed the applicant under an independent heading of Hindi Typist in the scale of Rs.950-1500/- and only his name appears under that heading while ~~1 to 15~~ other employees figured under the heading Lower Division Clerk. The date of substantive appointment of applicant is shown as 6.8.90 and the date of his appointment in the cadre is shown as 25.1.84. Thus all along the applicant has been treated distinctly from the LDC.

10. For the aforesaid reasons we find it difficult to accept the contention of the applicant that he is eligible

hsl

contd... 9/-

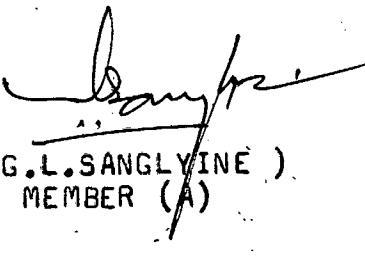
to be promoted as LDC treating him equivalent to LDC or independently under the Recruitment rules. With that conclusion the grievance against the private respondents cannot arise as they were not from the Hindi Typist cadre. We thus find that the application is liable to dismissed.

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 to enter the cadre of LDC after qualifying in the prescribed manner and then hope for promotion to the higher post. The applicant had himself ~~lose~~^{lost} that chance earlier. We would recommend to the respondents that if such an opportunity is still open and it is desired to be availed by the applicant ~~he~~ it 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 throughout his service career with the respondents. Some way is desirable to be seriously considered to be found out by the respondents. It may not be out of place to mention in this context that the applicant believes that avenue of promotion has been made available in other departments. If that be so ~~then~~ there is no reason as to why the respondents should not consider following that practice, ~~in other departments~~. The applicant points out that in the SISI, Postmaster General, CBI, All India Radio, Central Silk Board and Air force Eastern Zone the seniority of Hindi Typist and LDC is maintained in the common cadre of LDC/Hindi Typist and the avenue of promotion is open to

them as UDC. It is for the respondents to consider this aspect. We cannot however, make any such direction but to leave the question to the ~~appropriate~~ consideration ^{of} by the authorities of the respondents.

12. Before parting with the case it may be mentioned that in the application filed today the applicant has prayed for calling records and documents from the various departments in order to demonstrate that a common cadre is maintained by these departments and the avenue of promotion is available to Hindi Typist similar as to LDC. We reject that application firstly because such a request cannot be made after the hearing of the O.A. is completed and secondly because the applicant cannot be allowed to improve upon his case from stage to stage ^{He} and should have made such averment in the O.A. and should have moved for a direction to call for the records in support of that averment much earlier. For the same reason we are not inclined to place much reliance on the additional rejoinder filed today although we have considered the same. In our opinion the applicant should either fall or stand in his contention on the strength of the regulations and rules applicable to E.S.I.Corporation and will not be entitled to get a relief on the basis that some other departments are following a different practice.

13. In the result, subject to the observations made in the concluding part of the judgment the O.A. is dismissed. No order as to costs.


(G.L.SANGLYINE)
MEMBER (A)


(M.G.CHAUDHARI)
VICE-CHAIRMAN