

PETITIONER:
E.S.I. CORPORATION & ANR.

Vs.

RESPONDENT:
P.K. SRINIVASMURTHY & ANR.

DATE OF JUDGMENT: 23/07/1997

BENCH:
SUJATA V. MANOHAR, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Mrs. Sujata V. Manohar, J.

This is an appeal filed by the Employees State Insurance Corporation against the judgment and order of the Central Administrative Tribunal, Bangalore Bench, dated 3.10.1991 in Application No.350 of 1990. The application was filed by respondent no.1 for enhancement of this pay.

The appellants have a cadre of Upper Division Clerks (hereinafter referred to as 'UDC') which has three categories - UDC Cashier, UDC Care-taker and UDC Incharge. While UDC Cashier and UDC Care-taker were normally posted in regional offices, UDC Incharge was posted in local offices. It was a normal practice of the appellant-corporation to ask the Upper Division Clerks to exercise their option to work in any of the three categories. At the material time the post of UDC Cashier carried certain allowance including a cash allowance based on the total disbursement made by the UDC Cashier to the insured persons per month. Hence the seniors generally opted for UDC Cashier's post. The pay-scales of all UDCs was Rs.330-560.

By memorandum dated 22.3.1978 the scale of pay of UDCs Incharge was revised on an ad hoc basis. It was also decided to allow this revised scale of pay to those who were actually working as UDCs Incharge on 1.1.1973 and afterwards either regularly or for broken periods irrespective of the fact that they were not the senior most to hold the post as a matter of right on temporary ad hoc basis. In 1986 the post of UDC Incharge was abolished.

The next promotional post for UDCs was the post of Head Clerk. Some employees of the appellant-corporation who has occupied the post of UDC Incharge after 1.1.1973 and who were subsequently promoted as Head Clerks had challenged the Fixation of their pay in the post of Head Clerks under Fundamental Rule 22-C on the basis of the regular pay-scale drawn by UDCs. They have contended that the ad hoc revised pay-scale of UDC Incharge under the memorandum of 22.3.1978 should be the basis for their pay fixation on promotion to the post of Head Clerk under Fundamental Rule 22-C. This contention was ultimately upheld by the Andhra Pradesh High Court in Writ Petition Nos.4529-4531/1983 (hereinafter

referred to as 'Gopala Sharma's case'). A special leave petition from this judgment was dismissed by this Court.

Respondent No.2 had opted for the post of UDC Incharge. Accordingly he worked as UDC Incharge till his promotion as a Head Clerk on 12.1.1979. He claimed the benefit of the decision in Gopala Sharma's case and was granted pay fixation on promotion to the post of Head Clerk on the basis of the revised scale of pay of UDCs Incharge under the memorandum of 22.3.1978. Respondent No.1 was senior to respondent No.2. He had however, opted for the post of UDC Cashier. Respondent No.1 was promoted as Head Clerk on 1.4.1978 earlier than respondent No.2. The pay fixation of respondent No. 1 as Head Clerk was done under Fundamental Rule 22-C on the basis of the last pay drawn by him as UDC Cashier. As a result, on the revised pay fixation of respondent No.2 on the basis of Gopala Sharma's case, although respondent No.1 was senior to respondent No.2 in the cadre of UDCs as well as Head Clerks, the pay fixed for respondent No. 1 in the post of Head Clerk was lower than the pay of respondent No.2 in the same cadre.

Respondent No.1 filed an application before the Central Administrative Tribunal, Bangalore Bench for stepping up of his pay on the basis of the pay fixation of his junior-respondent No.2. He made other alternative prayers for his deemed promotion as UDC Incharge and stepping up of his pay on that basis. The Tribunal by its impugned order has directed the appellants to step up the pay of the first respondent with effect from 12.1.1979 on a par with the second respondent on the refixation of the salary of the second respondent. The Tribunal, however, confined the arrears of pay and allowances only from one year prior to the date of filing of the application namely, 11.5.1989. Being aggrieved by these directions the appellants have filed the present appeal.

Fundamental Rule 22-C at the material time was as follows:-

"Notwithstanding anything contained in these rules, where a government servant holding a posts in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay nationally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued....."

The provision on which respondent No.1 relies is for removal of anomalies by stepping up of pay of a senior who, on promotion, draws less pay than his junior as a result of the application of Fundamental Rule 22-C. In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1.4.1961 drawing lower pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed

for the junior officer in that higher post (G.I., M.F., O.M. No.F.2(78)-E. III(A)-66 dated the 4th February, 1966). The stepping up should be done with effect from the date promotion of appointment of the junior officer and is subject to the following conditions:

"(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of F.R. 22-C. For example, if in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."

In the present case, respondent No.2 who is junior to respondent No.1 became entitled to a higher pay fixation on promotion as a Head Clerk than respondent No.1 because of the higher scale of pay to which he became entitled in the post of UDC Incharge by reason of the memorandum of 22.3.1978 as interpreted by the High Court in Gopala Sharma's case. Respondent No.1 never held the post of UDC Incharge. He had held the post of UDC Cashier. He was, therefore, not entitled to the benefit of the memorandum of 22.3.1978. As a result, the lower post held by respondent No.1 carried a different scale of pay than the lower post held by respondent No.2. Since the scales of pay in the lower post held by the two were not identical, the question of stepping up of pay for the purpose of removing any anomaly does not arise in the present case.

In the case of D.G. Employees' State Insurance Corporation and Anr. V. B. Raghava Shetty and Ors. (1995 Suppl.(2) SCC 681) which deals with a similar situation where the seniors have declined to be posted as UDCs Incharge and had preferred to remain in the regional office in order to have the benefit of house rent allowance and city compensatory allowance, this Court said that Fundamental Rule 22-C cannot be brought to help for stepping up the pay of the seniors. In the present case, since respondent No.1 did not work as UDC Incharge at any point of time before his promotion as Head Clerk, and has opted for the post for UDC Cashier, he is not entitled to have his pay stepped up on the basis of the pay fixed under F.R. 22-C in respect of respondent No. 2 on his promotion as Head Clerk on the basis of the pay earlier drawn by him as UDC Incharge.

In this view of the matter we need not examine the question of limitation since even on merit, respondent No.1 is not entitled to a higher pay fixation on the basis of the pay drawn by respondent No.2 on promotion to the post of Head Clerk. The appeal is, therefore, allowed and the impugned order of the Tribunal is set aside. There will, however, be no order as to costs.