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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ **W.P.(C) 2725/2016 & CMs 22763/2018 and 39397/2018**

DIRECTOR GENERAL, ESIC & ANR ..... Petitioners

Through: Ms Biji Rajesh and Mr Aman S.  
Bakhshi, Advocates for Mr Gaurang  
Kanth, Advocate.

versus

SOMDUTTA SHARMA DADHICH AND ORS ..... Respondents

Through: Mr Soumyajit Pani, Advocate for  
Respondents.

Mr R.V. Sinha and Mr A.S. Singh,  
Advocates for UOI/R-3.

+ **W.P.(C) 10503/2017 & CM 42983/2017**

DIRECTOR GENERAL E.S.I.C. & ANR ..... Petitioners

Through: Ms Biji Rajesh and Mr Aman S.  
Bakhshi, Advocates for Mr Gaurang  
Kanth, Advocate.

versus

DEVENDER AND ORS. .... Respondents

Through: Mr Soumyajit Pani, Advocate.

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE TALWANT SINGH**

**ORDER**

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**09.10.2019**

1. These two petitions by the Employees State Insurance Corporation ('ESIC'), represented by its Director General ('DG') question the orders of the Central Administrative Tribunal ('CAT'), whereby the Petitioners had

been asked to prepare an All India seniority list of the Lower Division Clerks ('LDCs') cadre of the ESIC and on the basis of the said seniority list, give consequential benefits of further promotions to the Respondents in these petitions, within three months from the date of the order.

2. At the outset, it requires to be noticed that these petitions were being heard together with W.P.(C) No.2853/2015 (***Director General, E.S.I.C v. Saurabh Kumar***), which was a petition filed by the present Petitioners, against two Respondents i.e. Saurabh Kumar and Shashi Bhushan Kumar, who were the Applicants before the CAT in OA No.1427/2012. The said application had been allowed by the CAT by the order dated 5<sup>th</sup> September, 2014, giving the above directions. That judgment dated 5<sup>th</sup> September, 2014 of the CAT has been set aside by this Court by the detailed judgment dated 24<sup>th</sup> July, 2019.

3. Learned counsel for the Petitioners, at the outset, therefore, submitted that the present petitions, where the issues involved are identical, deserve to be allowed, on the strength of the aforesaid judgment dated 24<sup>th</sup> July, 2019. However, learned counsel for the Respondents in the present petitions, argued that the said judgment is distinguishable on facts and accordingly proceeded to address arguments in these two petitions as well.

4. As far as the present petitions are concerned, while W.P.(C) 2725/2016, filed by the ESIC is directed against an order dated 25<sup>th</sup> September, 2014 passed by the CAT in OA No.1777/2013 [filed by Som Dutt Sharma Dadhich (Respondent No.1 herein)] and Mahipal Singh (Respondent No.2 herein), W.P.(C) 10503/2017 is directed against an order dated 8<sup>th</sup>

September, 2014 passed by the CAT in OA No.157/2013 filed by Devender and four others, who are the Respondents in W.P.(C) 10503/2017.

5. In both sets of applications before the CAT, the reliefs sought by the Applicants (Respondents herein), were identical. The prayer was for setting aside an Office Order No.35/2010 dated 3<sup>rd</sup> December, 2010 and a subsequent Office Order No.14/2011 dated 18<sup>th</sup> March, 2011, whereby the names of 12 candidates, who had been selected for promotion as LDCs was published.

6. The grievance of both sets of Applicants before the CAT was that although the promotion as LDCs on the basis of the Limited Departmental Competitive Examination ('LDCE'), held on an all India basis, was based on the relative merit of the candidates region-wise, such promotions ought to have been made on an all India basis on the basis of the merit positions in the LDCE

7. For instance, it is contended that in the Delhi region, there are three offices, viz., the Regional Office ('RO'), Headquarters ('HQ') and the Directorate (Medical) ['D (M)']; that the promotion to the post of LDCs in each of these offices was not based on the All India merit position, but the merit position *inter se* in each of these offices. As a result, a person who may have been lower in the order of merit in the LDCE in the RO than the person who took such exam in the HQ, may have managed to get the promotion as LDC, whereas a person, higher in the merit list in the LDCE in HQ, would not have got such promotion for want of vacancy in the HQ in

the cadre of LDC.

8. On a perusal of the judgment dated 24<sup>th</sup> July 2019 of this Court, it is seen that the aforementioned issue has been squarely dealt with and the claim of the ESIC has been upheld by. In other words, this Court, on perusal of all the documents, came to the conclusion that “ESIC has always maintained separate cadres for LDCs region-wise”. This Court has also discussed the advertisement issued by the ESIC for recruitment to the posts of LDCs / Stenographers in 2007, which showed that the 600 vacancies in the posts of LDCs “had separate sanction strength for every State and Union Territory”. Clauses ‘C’ and ‘G’ of the advertisement further provided that “recruitment of region/State-wise basis” and the application forms for LDCs were also sent to the respective State/Regions, where the candidates were applying. A reference was also made to a communication dated 8<sup>th</sup> August, 2012 addressed by the HQ of ESIC to the Regional Director / Director (Medical), Delhi as well as the RO, on the subject of sanctioned strength of officers and staff, which contained the region/State-wise index, which has also been extracted in the judgment. On this basis, this Court has concluded that “not only the recruitment to the LDCs was undertaken on regional basis, even the sanctioned strength *inter alia* for the post of LDC was maintained region/State-wise”.

9. This Court in the judgment dated 34<sup>th</sup> July 2019 also referred to the relevant recruitment regulations for various posts and concluded that the demand that seniority in the cadre of LDCs has to be fixed on the basis of the merit position in the All India LDCE, was not acceptable since the post

of LDCs, UDCs and Head Clerks / Assistants were treated differently for that purpose. Since this was a consistent practice that was adopted by the ESIC, which was in conformity with the rules and regulations, the Court felt that there was no justification in any departure from the said practice, in respect of LDCs/UDCs and Assistants.

10. Having heard learned counsel for the Respondents in these writ petitions, the Court is unable to find any feature of the present cases that distinguish them from the case of ***Sourabh Kumar*** (*supra*), where this Court has accepted the submissions of the ESIC and set aside the impugned order dated 5<sup>th</sup> September, 2014 of the CAT in that case.

11. It may be noticed that in the impugned order dated 8<sup>th</sup> September, 2014 in OA No.157/2013, the CAT has expressly referred to its order dated 5<sup>th</sup> September, 2014 in OA No.1427/2012 (***Sourabh Kumar v. ESIC***), and on that basis had allowed the petition of the Respondents. Likewise, in the order dated 25<sup>th</sup> September, 2014 passed in OA No.1777/2013, the CAT again referred to its orders in OA No.157/2013 dated 8<sup>th</sup> September, 2014, which in turn, has followed the order dated 5<sup>th</sup> September, 2014 in OA No.1427/2012.

12. In that view of the matter, the present petitions are allowed and the impugned orders dated 8<sup>th</sup> September, 2014 passed by the CAT in OA No.157/2013 and 25<sup>th</sup> September, 2014 passed in OA No.1777/2013, are hereby set aside.

13. The petitions are allowed in the above terms. The pending applications are also disposed of. No costs.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**OCTOBER 09, 2019**  
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