

CENTRAL ADMINISTRATIVE TRIBUNAL

(OA) Original Appl./4167/2012

JUDGEMENT

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-4167/2012
MA-3498/2012

Reserved on : 03.10.2013.

Pronounced on :29.10.2013.

Hon ble Mr. G. George Paracken, Member (J)
Hon ble Mr. Shekhar Agarwal, Member (A)

1. Awadesh Prasad Tripathi,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.
2. Soumyendu Biswas,
Joint Director,
Employees State Insurance Corporation,
Sub Regional Office, Thane, Mumbai.
3. Sanjay Kumar Sinha,
Joint Director,
Employees State Insurance Corporation,
Sub-Regional Office, Pune, Maharashtra.
4. S. Ravichandran,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.
5. Arvind Kumar,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.
6. Arun Pandey,
Joint Director,
Employees State Insurance Corporation,
Sub-Regional Office, Durgapur,
At Regional Office, Kolkata, West Bengal.
7. S. V. Krishankumar,
Joint Director,

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Employees State Insurance Corporation,
Sub-Regional Office, Kollam, Kerala.

8. Raj Kanwal,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.

9. C. V. Joseph,
Regional Director,
Grade B , Employees State Insurance Corporation,
Regional Office, Goa.

10. R. Keshavdas,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.

11. R. Gunasekaran,
Joint Director,
Employees State Insurance Corporation,
Regional Office, Chennai, Tamil Nadu.

12. Harbir Singh,
Joint Director,
Employees State Insurance Corporation Hospital,
Jhilmil, New Delhi-02.

13. D. K. Mishra,
Joint Director,
Employees State Insurance Corporation,
Sub-Regional Office, Lucknow, U.P.

14. K. S. Dhaliwal,
Joint Director,
Employees State Insurance Corporation,
Sub-Regional Office, Ludhiana, Punjab.

15. Bharat Bhushan Arora,
Joint Director,
Employees State Insurance Corporation Hospital,
Basaidarapur, New Delhi.

16. B. K. Srivastava,
Joint Director,
Employees State Insurance Corporation,
Sub-Regional Office, Vijaywada,

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Andhra Pradesh.

17. N. K. Tiwari,
Joint Director,
Employees State Insurance Corporation,
Sub-Regional Office, Surat, Gujarat.

18. Surjit Das,
Joint Director,
Employees State Insurance Corporation,
Regional Office, Kolkata, West Bengal.

19. R. Anil Chandra Bhat,
Joint Director,
Employees State Insurance Corporation,
Hospital, Kerala.

20. Deokinandan,
Joint Director,
Employees State Insurance Corporation,
Sub-Regional Office, Ambala, Haryana.

21. Anil Kumar,
Joint Director,
Employees State Insurance Corporation,
Sub-Regional Office, Varanasi, U.P.

22. V. Dasu,
Joint Director,
Employees State Insurance Corporation,
Regional Office, Mumbai,
Maharashtra.

23. B. Ramakoti,
Joint Director,
Employees State Insurance Corporation,
Hospital, Nacharam, Hyderabad, Andhra Pradesh.

24. Amarnath Prasad,
Joint Director,
Employees State Insurance Corporation,
Hospital, Okhla, New Delhi.

25. Ramji Lal Meena,
Joint Director,
Employees State Insurance Corporation,
Regional Office, Bangalore, Karnataka.

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26. T. T. M. Tharakan,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.

27. Sunil Taneja,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.

28. Rati Kant Choudhary,
Joint Director,
Employees State Insurance Corporation,
Divisional Office, Nasik, Maharashtra.

29. Priyadarshan Dash,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.

30. Mohd. Irfan,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.

31. Udai Singh,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.

32. G. S. Giri,
Joint Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-02.

33. R. P. Gupta,
Joint Director,
Zonal Training Institute (East),
Employees State Insurance Corporation,
Regional Office, Kolkata, West Bengal.

34. R. S. Chauhan,
Regional Director,
Employees State Insurance Corporation,
Headquarters Office, New Delhi-110 002.

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35. R. K. Kaim,
Joint Director,
Employees State Insurance Corporation,
Sub-Regional Office, Vadodara,
Gujarat. .Applicants

(through Sh. S.M. Arif, Advocate)

Versus

1. Union of India
(Through Secretary),
Ministry of Labour & Employment,
Government of India, Shram Shakti Bhawan,
Rafi Marg, Delhi-110 001.

2. Employees State Insurance Corporation (ESIC)
(Through Director General),
Headquarters Office (HO),
Panchdeep Bhawan,
C. I.G. Road, New Delhi 110 002.

3. Secretary,
Department of Personnel & Training,
Govt. of India, (DOPT)
North Block, New Delhi 110 001.

4. Secretary,
Union Public Service Commission,
Dholpur House,
Shahjehan Road, New Delhi 110 001. Respondents

(through Ms. Rekha Palli, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

Following relief has been sought in this O.A.:-

(a) Direct the respondents to grant due service benefits of promotion to the applicants under existing ESIC Regional Directors/Directors Grade A Recruitment Regulations, 2007 with all consequential benefits w.e.f. the date (s) on which, vacancies arose for individual applicant(s) on regular basis from due dates, when the vacancies became available with all consequential benefits.

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(b) Direct the respondents to count the Ad-hoc service of the applicants as Joint Director(s) also as regular for any subsequent benefit where period of service as Joint Director would be material for consideration of further promotion(s).

(c) Any other orders as this Hon ble Tribunal may deem fit in matter in the light of aforesaid rules, instructions, and laws, etc in the circumstances of the case.

2. The applicants were appointed in ESIC after passing examination conducted by UPSC for direct recruitment to the post of Dy. Director. They joined on various dates all over India in the pay scale of Rs.2200-4000 (Revised to Rs.8000-13500 after 5th Central Pay Commission). They were promoted to the posts of Joint Director on ad hoc basis in pre-revised pay scale of Rs. 10000-15300 during the period 2005 to 2007. This was later changed to PB-3 with grade pay of Rs.6600/- after the implementation of 6th CPC. According to the applicants they had become due for grant of non-functional selection grade after they had entered into 14th year of service in January 2009 but the same has so far not been granted to them. Applicants have contended that due to lethargic attitude of the respondents, DPCs are not being held for several years thereby denying regular promotion to them in the grade of Joint Director as well as further promotion as Director. They have cited mainly following grounds in support of their case:-

(i) In the case of UOI Vs. Hemraj Singh Chauhan & Ors. (Civil Appeal No. 2651-52 of 2010 arising out of SLP(C) No. 6758-6759 of 2009) the Apex Court has held that it is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution.

(ii) In the case of Y.V. Rangaiah Vs. J. Sreenivasa Rao, AIR SC 852 the Apex Court has laid down that the vacancies are governed by the Recruitment Rules in force as on the date of occurrence of vacancies and that vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules.

(iii) In view of the established practice followed by respondent No.2 for various cadres such as Doctors, Specialists and Personal Secretaries the applicants also deserve upgradation from retrospective due dates.

(iv) If the Senior Time Scale could be granted to one section of officers, denial of due service benefits such as NFSG and promotion to the applicants is unjust, unfair and patently discriminatory.

(v) Under the existing Rules officers have been promoted from Director to Additional Commissioner and from Additional Commissioner to Commissioner after issue of letter dated 01.06.2011 and letter dated 22.06.2011.

(vi) In view of Hon ble Supreme Court s judgment in the case of S. Sumnyan & Ors. Vs. Limi Niri & Ors., 2010 SC 292 the ad hoc period of service as Joint Director of the applicants ought to be treated as regular period in law, since the applicants were promoted to Joint Directors from time to time on ad hoc basis due to failure of respondents in conducting DPC as per schedule.

3. Respondents No.1 to 4 have filed reply in which they have stated that Recruitment Rules for the posts of Director were notified on 15.12.2007. According to these the post of Director is in the pay scale of PB-3 with Grade Pay of Rs.7600 and the feeder cadre for the said post is Joint Director which is in the Pay Band-3 with Grade Pay of Rs.6600. It is provided in the Recruitment Rules that for promotion from Joint Director to Director five years regular service in the grade of Joint Director or 10 years service as Joint Director plus Dy. Director out of which minimum 2 years service should be as Joint Director, is required. The Ministry of Labour and Employment issued a letter dated 01.06.2011 by which the pay scale/grade pay of Joint Director had been enhanced to PB-3 plus Grade Pay of Rs.7600 which was the scale of Director in the old Recruitment

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Rules. The pay of Director has been enhanced to PB-4 with grade pay of Rs.8700. In the aforesaid letter, it is also provided that the pay band/grade pay of Joint Director and Director are being enhanced with the stipulation that the qualifying service for promotion to the post of Director would not be less than 5 years as Joint Director.

3.1 The respondents have further stated that in view of the change of pay and grade pay the respondent No.1 i.e. Ministry of Labour have issued another letter No. A-12018/04/2012-SS.I dated 22.06.2012 by which they have stated that the old Recruitment Rules for the post of Additional Commissioner, Director, Joint Director are no longer operative since Recruitment Rules are under process of amendment in consultation with UPSC to incorporate enhancement of grade pay/pay and revision of qualifying service. Thus, the respondents have contended that the applicants cannot be given promotion in accordance with the old Recruitment Rules on regular basis till new Recruitment Rules are notified. However, in accordance with decision taken by Respondent No.1 and conveyed to Respondent No. 2 vide letter dated 07.03.2012 one time ad hoc promotion is being granted on the basis of qualifying service prescribed in the new Recruitment Rules till the new Rules are notified.

4. We have heard both sides and have perused the material on record. It appears that the process of regular promotions in the respondents organization has come to a halt on account of the letter dated 22.06.2012 issued by Respondent No.1 by which it has been stated that old Recruitment Rules are no longer operative and that steps are being taken to amend the Recruitment Rules in consultation with UPSC. Thus, after issue of that letter the Respondent No.2 has not conducted any DPC for regular promotion to the post of Joint Director or Director. The applicants have contended that there are about 40 accumulated vacancies for the year 2011 & 2012 in the grade of Director but they are not being filled by the respondents.

4.1 In our considered opinion the stand taken by the respondents is totally unacceptable. They had no authority to declare that the old Recruitment Rules are no longer operative by issue of their letter dated 22.06.2012. This is because the Statutory Recruitment Rules cannot be made inoperative by issue of Executive Instructions. They could have been rescinded only after issue of Statutory Notification to that effect. Since such a Notification has never been issued the inevitable conclusion is that old Recruitment Rules continue to remain operative. Thus, the stand taken by the respondents that regular promotions cannot be made on the basis of these Recruitment Rules is not tenable. Executive Instructions cannot override statutory rules.

4.2 Moreover, as rightly contended by the applicants Apex Court in the case of Y.V. Rangaiah (supra) has clearly held that vacancies are governed by the Recruitment Rules that were in force as on the date of occurrence of vacancies. Thus, even after Notification of new Recruitment Rules, as far as vacancies that have arisen in the years 2011 or 2012 or those arising till the new Recruitment Rules are notified will all be governed by the old Recruitment Rules. Hence even after Notification of new Recruitment Rules the respondents will be required to conduct DPCs for filling up all these vacancies only as per old Recruitment Rules. Therefore, the stand taken by the respondents to wait for Notification of new Recruitment Rules before conducting DPCs is unjustified.

4.3 The respondents have also contended that since the benefit of enhanced pay for the post of Joint Director has already been granted, the applicants are drawing the pay of Director as was admissible before enhancement. In our opinion this can hardly be a ground for denying regular promotion to the applicants. Enhanced pay cannot compensate for the benefits that would accrue to the applicants if they are regularly promoted as this would not only enhance their status but also give them opportunity to work on post carrying

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higher responsibilities.

4.4 Keeping in view the above facts and circumstances, this O.A. is allowed. We quash the letter dated 22.06.2012 of the respondents and direct them to hold regular DPCs for promotions to the post of Joint Directors as well as Directors without waiting for the Notification of new Recruitment Rules. They will hold all the DPCs which have become over due within a period of three months from the date of receipt of a certified copy of this order. They will also pass appropriate orders regarding regularization of ad hoc service of the applicants as joint Directors after such DPCs have been held. No costs.

(Shekhar Agarwal) (G. George Paracken)
Member (A) Member (J)

/Vinita/