

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12631 of 2014

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1. The Regional Director Employees State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800001.
 2. The Assistant Director (Administration), Employee's State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 8000001.
 3. The Joint Director (Recruitment) ESIC, CIG Marg, New Delhi- 110001.
 4. The Union of India through its Director General, ESIC, Panchdeep Bhawan, CIG Road, New Delhi.

.... Petitioners

Versus

Vidya Nand Das, S/o Sri Sant Lal Das, Record Keeper under Employees State Insurance, Patna (Bihar)

.... Respondent

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Appearance :

For the Petitioners	:	Mr. (Dr.) Anshuman, Advocate
For the Respondent	:	Mr. M.P. Dixit, Advocate
		Mr. Sanjay Kr. Dixit, Advocate
		Mr. Sanjay Kumar Choubey, Advocate
		Mr. Shailendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 09-01-2017

Employees State Insurance Corporation is before this High Court challenging the order dated 27.02.2014, passed in O.A. No. 203 of 2010 by Central Administrative Tribunal, Patna Bench, Patna. By virtue of this order a direction has been issued by the Tribunal after quashing order dated 30.10.2009/ 03.11.2009 to consider the name of the applicant for inclusion in the final result dated 16.03.2009 considering the private respondent to be eligible for



notional promotion from the date other candidates were empanelled and promoted in the panel dated 16.03.2009 by passing a necessary speaking order in this regard. The post in question is known as LDCE for which an all India examination was held by the petitioners of the present writ application.

Even though the sole private respondent had participated and cleared the examination for promotion to the next higher post from a Class-IV post to Class-III post, his claim for promotion to the next higher post was negated on the ground that there was no adequate vacancy available against the quota for the Patna region, against which the promotion could be granted.

The private respondent managed to bring evidence before the Tribunal that the exercise was done for filling of backlog vacancy on all India basis. The examination was conducted on an all India basis and despite several indulgences granted to the petitioners herein they failed to produce any clear evidence to show that the promotion was required to be given on the available vacancy, on a regional basis.

In fact, the piece of evidence, which was produced by the petitioners before the Tribunal, has also been reproduced and taken note of as part of the order which was minutes dated 07.08.2008, which reads as under :



“In the LDCE for promotion to the post of LDC 138 candidates have obtained qualifying marks, however, on strictly considering region wise vacancy, only 72 candidates could be declared pass and promoted. The same has been the practice in the past since the LDC is a regional cadre.

Since the number of candidates obtaining qualifying marks is more than the vacancy region wise, in consultation with the AC (P&A), it has been decided to include unfilled vacancies of other regions also, to the extent, it does not suffer the interest of the regions concerned.

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By above, we have been able to get 49 vacancy and accordingly a merit list of remaining 49 candidates has been drawn and the candidates have been allocated regions/ nearest Region in order of merit. Such transfer on promotion is incidental to the above scheme for which the Employees’ federation has already given their unconditional willingness Flag ‘B’

In view of above –

- (i) We may declare the result of 72 candidates to be promoted in their respective regions.
- (ii) We may declare the result of above 49 candidates also with the stipulation that the R.D. concerned shall offer promotion only after the unconditional option is obtained from the official.”



After considering all these materials including what has been quoted above, the Tribunal came to a considered opinion that the plea taken by the petitioners to defeat the right of the private respondent to get benefit of promotion after successfully passing the examination was not based on any rationality, rule or directive of the organization. It was in this regard that the Tribunal decided to give a direction to grant benefit of promotion to the private respondent on the basis of the final result and the panel created on 16.03.2009, notionally.

In the opinion of the Court, the Tribunal was quite indulgent by not giving any substantive relief with regard to other consequential benefit, to the private respondent and limited it to notional benefit for such promotion.

Since the order of the Tribunal does not suffer from any vice, the writ application is dismissed being devoid of any merit.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Sudha/Rajesh

AFR/NAFR	AFR
CAV DATE	
Uploading Date	12.01.2017
Transmission Date	

