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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 24th April, 2019

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W.P.(C) 2723/2014

UNION OF INDIA & ORS

..... Petitioners

Through:

Mr.Ripu Daman Bhardwaj,
CGSC with Mr.T.P.Singh,
Advocate.

Mr.Yakesh Anand, Ms.Sonam
Anand and Ms. Deepshikha
Sansanwal, Advocates for P-2.

versus

AWADESH PRASAD TRIPATHI & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (ORAL)

1. Respondent had approached the Central Administrative Tribunal (hereinafter referred to as "CAT") with several claims including a direction for grant of due service benefits for promotion under the then existing Employees' State Insurance Corporation (Regional Director Grade 'A'/Director) Recruitment Regulations, 2007, with all consequential benefits and also to count their *ad-hoc* service as Joint Director for all purposes. The Central Administrative Tribunal granted relief; as a result ESIC/Union of India instituted this proceedings under Article 226 of the Constitution.

2. The respondent officers joined ESIC on various dates as direct recruits to the post of Deputy Directors in the pay-scale of Rs.2200-4000 revised subsequently to Rs.8000-13500 after the 5th Central Pay Commission (CPC). They were promoted as Joint Director on *ad-hoc* basis in the pay scale of Rs.10000-15200 on various dates during the period 2005-2007. These pay-scales were then changed to PB-III with grade pay Rs.6600/- per month in the wake of implementation of 6th CPC. The respondents/applicants claim that they became eligible for the non-functional grade upon entering the 14th year of service in January, 2009 but were denied since the Departmental Promotion Committees (DPCs) were not set up in the timely manner. The ESIC in the proceedings before the CAT defended its position contending firstly, that the Rules relied upon by the respondents/applicants had changed and that accordingly, there were no vacancies at the relevant time. It was also contended that respondents/applicants could not have claimed to be in regular service as their period of ad-hoc service could not be counted towards eligibility of promotion as Joint Director/Regional Director.

3. The CAT, following the judgments of *Y.V. Rangaiah vs. J. Sreenivasa Rao*, (1983) 3 SCC 284 and also *S.Sumnyan & Ors. vs. Limi Niri & Ors.* (2010) 6 SCC 791, held that since the vacancies existed under that regime and though the nomenclature given for the previous 2½ years service is between 2005 and 2007 was “*ad-hoc*”, the respondents were entitled to claim it for the purpose of promotion given that DPCs were not held in timely manner, and that the vacancies had existed.

4. When this Court entertained the proceedings, the direction of CAT so far as it pertained to grant of promotion under the old Rules were not disturbed. Except for few employees, who were facing disciplinary proceedings, it is submitted before the Court that those entitled to be promoted were given that promotion from the dates they were eligible i.e. 2014 onwards. It is, however, contended on behalf of the ESIC that so far as grant of benefit from the anterior dates, this Court had suspended the operation of the CAT's impugned order. Thus, the period of ad-hoc service cannot be counted for the purpose of counting eligibility.

5. The eligibility criteria in this case is as follows:

SCHEDULE

RECRUITMENT RULES FOR THE POST OF REGIONAL DIRECTOR

GRADE 'A' DIRECTOR IN EMPLOYEES STATE INSURANCE CORPORATION

Name of post	Number of post	Classification	Scale of pay	Whether selection post or non-selection post	Whether benefit of added years of service admissible under Rule 30 of CCS (Pension) Rules, 1972	Age limit for direct recruits	Educational & other qualifications required for direct recruits	Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees	Period of probation, if any
1	2	3	4	5	6	7	8	9	10
Regional Director Grade 'A' / Director	34 (2007) (subject to variation dependent on work load)	Group 'A' Non-Ministrial	Rupees 12000-375-16500	Selection	No.	Not applicable	Not applicable	Not applicable	Not applicable
Promotion*** Note: Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period, for promotion to the next higher grade alongwith their juniors who have already completed such qualifying/eligibility service.									
Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and			In case of recruitment by promotion/deputation/absorption, grades from which			If a DPC exists, what is its composition			Circumstances in which

the percentage of the posts to be filed by various methods	promotion/deputation/absorption to be made		UPSC to be consulted in making recruitment
11	12	13	14
Promotion falling which by deputation	<u>Promotion :</u> Regional Director Grade 'B'/Joint Director in the Scale of pay of Rs.10000-15200 with 5 years regular service in the grade falling which Regional Director Grade 'B'/Joint Director with 10 years combined regular service in the grade of Regional Director Grade 'B'/Joint Director in the Scale of pay of Rs.10000-15200 and Deputy Director in the scale of pay of Rs.8000-13500 out of which minimum 2 years regular service should be in the grade of Regional Director Grade 'B'/Joint Director. Note : *** <u>DEPUTATION:</u> Officers under the Central Government: a. (i) Holding analogous posts on regular basis in the parent cadre/department; or (ii) With five years' service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs.10000-15200/-OR equivalent in the parent cadre/department; and b. Possessing 10 years' experience in administration/establishment/accounts matters. The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly deputationists shall not be eligible for consideration for appointment by promotion. (Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/department of the Central Government shall ordinarily not exceed 4 (four) years. The maximum age limit for appointment by deputation shall be not exceeding 56 years, as on the closing date of receipt of applications).	<u>Group 'A'</u> Departmental Promotion Committee (for considering promotion) 1. Chairman OR a Member of UPSC - Chairman 2. Director General, ESIC - Member 3. Insurance Commissioner/Financial Commissioner or Officer of equal rank looking after Human Resources Development, ESIC - Member.	Consultation with UPSC is not necessary.

6. Learned counsel relied upon several decisions of the Supreme Court such as *K.Madhavan & Anr. vs. Union of India & Ors.* (1987) 4 SCC 566, *State of Haryana vs. Haryana Veterinary & Ahts Association & Anr.* (2000) 8 SCC 4. These decisions highlighted two aspects; (1) that when the eligibility condition with respect to minimum experience speaks of regular service, the Court should not be swayed by sympathy and (2) that *ad-hoc* service *per se* cannot be counted or reckoned for the purpose of promotion. In this case, at the outset, the Court notices that the CAT's reasoning was not that the applicants were *per se* entitled to count their *ad-hoc* service as in the case of *K. Madhavan* (supra) and the other decisions. On the other hand, there can be no challenge to the finding that the regular vacancies existed in the cadre of Joint Director/Regional Director, under the pre-existing Rules, despite which DPCs were not held in a timely manner. Consequently, for the purpose of exigencies of service, the respondents/applicants were granted *ad-hoc* service benefits of promotion. Significantly, it is not the petitioner's case that after the CAT's impugned order any of the petitioners were found ineligible; rather all of them- save and except those who faced disciplinary proceedings, were in fact promoted on the strength of their entire record.

7. The CAT's findings are premised upon the fact that regular vacancies for the post of Regional Director/Joint Director in the pay scale of Rs.10000-15300/- were available at all relevant time. However, the DPC (indicated in column 13) was never set up for the relevant years. These kinds of facts do not appear to have existed in

the three judgments cited by the ESIC/UOI. Therefore, the CAT's findings cannot be characterised as unreasonable or contrary to principle. The ESIC was to blame itself for not holding the DPC at the relevant time. On the other hand, the corporation felt the need for services of the experienced personnel – the description that the respondents/applicants fulfilled, which resulted in their *ad-hoc* promotion. In these circumstances, to deny them the benefit of *ad-hoc* services and consequently, anterior dates of promotion, was unjust.

8. For the above reasons, this Court is of the opinion that there is no merit in the writ petition. The ESIC is directed to grant the consequential relief by way of promotion from the dates in accordance with the CAT's order within eight weeks from today, and also fix the differential pay at the relevant stage of the pay-scale and further grant revised pay-scale, pay fixation and pension fixation benefits to the respondents within the said period of eight weeks, and duly disburse the differential amount of pay/pension.

9. Writ petition is dismissed with above directions.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

APRIL 24, 2019

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