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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2014/99

New Delhi this the 14th day of February, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Dr. K.C. Tamaria,
S/o Sh. Latoor Mal Meena,
R/o 556, Sector IV,
R.K. Puram,
New Delhi-110 022.

...Applicant

(By Advocate Shri M.K. Gupta)

-Versus-

1. Employees State Insurance Corporation,
through its Director General,
Panchdeep Bhawan,
Kotla Road,
New Delhi-110 002.

2. Union of India, through
its Secretary,
Ministry of Labour,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110001.

...Respondents

(By Advocate Shri G.R. Nayyar)

ORDER

By Reddy, J.:

The applicant was appointed as Specialist Grade II in Paediatrics in the pay scale of Rs.3000-5000, in the Employees State Insurance Corporation (ESI Corporation) during 1991. The Central Government amended in 1994 the Central Health Service (CHS) Rules 1982, whereby the eligibility for promotion from Specialist Grade II (Junior Scale) to Specialist Grade II (Senior Scale) has been changed. As per the amendment Specialist Grade II officer in the scale of Rs.3000-5000 with two years service in the grade is eligible for promotion to the next higher scale of Rs.3700-5000. Under Section 17 (2) (a) of the ESIC Act, 1948, the method of recruitment, salary and allowances and other conditions of service of

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the members of the staff are enumerated. It was specifically stated thereunder that the Regulations made by the Corporation should be in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay. However, if a departure is sought to be made from the said rules in respect of any matters stated supra, the Corporation shall obtain the prior approval of the Central Government. The case of the applicant is that by virtue of Section 17 (2) (a) of the ESI Corporation Act the recruitment rules framed by the Government are applicable to the applicants mutatis-mutandis since the Corporation has not amended the rules and regulations of its staff, though it is enjoined upon the respondents to do so, to be in conformity with the rules and regulations of the Central Government. It is stated by the applicant that the post he was holding is analogous to the service/cadre in the CHS. As per the regulations of the Corporation the applicant was eligible for promotion only after completing 4 years of service, that is during 1995 whereas as per the amended rules of the Central Government he was entitled for the senior scale w.e.f. 4.2.94, as the period of eligibility was reduced to 2 years from 4 years.

2. The applicant, therefore, made representation in 1994 to consider him for promotion to senior scale w.e.f. 4.2.94. He has not received any response. The applicant tendered his resignation w.e.f. 30.11.95 on being appointed in CHS. Subsequently, the applicant was promoted on the basis of the recommendations of the DPC to the post of Specialist

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Grade II senior scale on regular basis w.e.f. 5.7.95 in the impugned order dated 2.6.98. The applicant aggrieved by his promotion w.e.f. 30.11.95 instead of 4.2.94 made a representation which has been rejected by the order dated 10.9.98. The O.A. is, therefore, filed seeking the relief of promotion w.e.f. 4.2.94.

3. Respondents raised a preliminary objection as to limitation. It is the case of the respondents on merits that the applicant is governed by the ESIC Recruitment Rules and Regulations. Though the ESIC has to frame its Recruitment rules in accordance with the recruitment rules framed by the Central Government to its employees of the corresponding scales of pay, the applicant cannot be considered for promotion unless the rules are actually amended. The ESIC has taken steps to amend the rules to be in conformity with the Rules pertaining to the employees of the Central Government and accordingly amended the rules in 1997 reducing the eligibility criteria for the purpose of promotion from four years to two years. After the rules have been amended the applicant has been considered and promoted.

4. We have given careful thought to the contentions raised by the learned counsel.

5. As the learned counsel for the applicant places strong reliance upon Section 17 (2) (a) of the ESI Corporation Act, 1948, it is extracted as follows:

"(2) (a) The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified

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in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay.

Provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government."

6. It only says that the method of recruitment and other conditions of service of the staff of the Corporation shall be as specified in the regulations made by the Corporation. It further states that the said regulations should be in accordance with the rules and orders applicable to the employees of the Central Government drawing corresponding scales of pay. But under the proviso it is open to the Corporation to make a departure from the above rule, but it shall be with the prior approval of the Central Government.

7. Under the ESIC Regulations as well as in the Central Government rules Specialist Grade II in the junior scale is eligible for consideration for promotion to Specialist Grade II senior scale after having a regular service of four years in the grade. But under the amended CHS Rules which are made in 1994 the length of service for promotion has been reduced to two years. The contention, therefore, of the learned counsel for the applicant Sh. M.K. Gupta is that by virtue of Section 17 (2) (a) the applicant is also entitled to be promoted after having two years of service. If that basis is taken, the applicant was eligible to be promoted w.e.f. 4.2.94. It was not the case of the respondents, however, that they have taken the approval of the Central

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Government as required under the proviso to Section (2) (a). But, it should be noticed that the ESI Corporation also amended its Regulations in the notification dated 17.5.97 in accordance with Government rules reducing the length of service from four years to two years. Thus, we do not find that there is any violation of Section 17 (2) (a) of the ESIC Act of 1948. It is not in dispute that the applicant is governed by the Regulations of the Corporation. It, therefore, follows that till the Corporation amended its Regulations, the applicant continues to be governed by ESI Corporation Regulations. He cannot seek to get the benefits of the Central Government Rules. Meanwhile, Section 17 (2) (a) only says that the Regulations of the Corporation should be in accordance with the Central Government Rules. In the absence of any clear provision in the Act the applicant cannot be given promotion in accordance with the Central Government Rules. It is true that there was some delay in amending the rules in accordance with the Central Government Rules. Immediately after the amendment was made the DPC was held and the applicant was given promotion with retrospective effect w.e.f. 1995. In the circumstances we do not see any infirmity in the impugned order of promotion.

8. We are, however of the view that the OA is not barred by limitation. Though the applicant submits that he was entitled to be considered for promotion in 1994 as per the Central Government Rules, mainly it is the case of the applicant that the Corporation's regulations should be amended simultaneously with the amendment made by the Central Government to the rules of

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its staff of corresponding scales of pay, it has to be seen that unless the Corporation seeks to fill up the post the applicant cannot get any cause of action. It is true that the applicant has resigned from service in 1995, but by that time the rules of the Corporation were still un-amended. His cause of action arose upon his promotion by the impugned order. The OA is filed within the period of limitation from that date. The preliminary objection, therefore, has no force and is rejected.

9. However, on merits, as we find that the applicant has no case the OA is liable to be dismissed. The O.A. is accordingly dismissed. No costs.

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(Smt. Shanta Shastry)

Member (Admnv)

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(V. Rajagopala Reddy)
Vice-Chairman(J)

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