

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.652/2013

Reserved on :18.03.2021
Pronounced on:25.03.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

1. Dharmendra Kumar Meena Son of Shri Ram Avtar Meena, aged about 30 years, resident of Plot No.85, Surya Nagar, Gopalpura Bye Pass, Jaipur and presently working as Nursing Sister, Employees State Insurance Corporation, Model Hospital, Laxmi Nagar, Ajmer Road, Jaipur-302006.
2. Madan Lal Meena Son of Shri Ram Niwas Meena, aged about 32 years, resident of 346, Brij Vihar, Jagatpura, Jaipur and presently working as Nursing Sister, Employees State Insurance Corporation, Model Hospital, Laxmi Nagar, Ajmer Road, Jaipur-302006.
3. Raj Rishi Meena Son of Shri Suresh Chand Meena, aged about 30 years, resident of Plot No.87, Shiv Nagar-II, Ram Nagaria, Jaipur and presently working as Nursing Sister, Employees State Insurance Corporation, Model Hospital, Laxmi Nagar, Ajmer Road, Jaipur-302006.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. The Union of India through Secretary, Department of Labour, Ministry of Labour, New Delhi.
2. Director General, Employees State Insurance Corporation, Panchdeep Bhawan, CIG Marg, New Delhi-110002.
3. Medical Commissioner, Employees State Insurance Corporation, Panchdeep Bhawan, CIG Marg, New Delhi-110002.

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4. Medical Superintendent, Employees State Insurance Corporation, Model Hospital, Laxmi Nagar, Ajmer Road, Jaipur-302006.

...Respondents.

(By Advocate: Shri T.P.Sharma)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicants have sought the following reliefs:-

"(i) That the respondents be directed to hold review DPC as convened in the cases of coworkers and to allow promotion to the post of Nursing Sister pay band Rs.9300-34800 with grade pay Rs.4800 from the date of completion of three years service in 2008 or from the date of vacancy to the applicants by modifying order dated 05.09.2011 at Annexure-A/7 by quashing orders dated 14.08.2013 (Annexure A/1, A/2 & A/3) with all consequential benefits including due fixation and arrears of pay & allowances.

(ii) That the respondents be further directed to give similar treatment as allowed to their coworkers after absorption in the matter of promotion from the date of vacancy instead of date of DPC an to extent similar benefits.

(iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.

(v) That the costs of this application also may be awarded."

2. Annexures A/1 to A/3 are office orders by Respondent No.4 rejecting the requests of the applicants for grant of reliefs (promotions with retrospective effect, as Nursing

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Sister from Staff Nurse, from the date of completion of 3 years of service or from the date of availability of vacancy). These orders were issued in compliance of a decision by this Tribunal dated 11.02.2013, in OA No.98/2013 by the same parties, directing the respondents to decide the representation of the applicants within prescribed time. Annexure A/7 is an order dated 05.09/2011 granting the applicants promotion (with prospective effect). The applicants are directly recruited employees of the Employees State Insurance Corporation (ESIC), who were recruited in the year 2005. They have come to the ESIC Hospital Jaipur, on transfer from Chennai, on their own request, in the years 2007-2008. The applicants claim that the respondents have violated their constitutional rights of equality by treating them differently from other employees working in similar capacity. These other employees were earlier with the State Government and were absorbed in ESIC, Jaipur upon their resignation from the State services (hereinafter referred to as "absorbees"). They have been given promotions with retrospective effect, first from the year 2009 and later from the year 2006 (Ref. Annexures A/8 and A/10). The applicants claim that they became eligible for promotion of completion of 3 years of service in the year 2008 and therefore, they should also be promoted retrospectively from that date of completion of 3 years, or, if no vacancies were

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available on that date, from the date of availability of vacancy after completion of 3 years. The applicants have also questioned the competence of Respondent No.4 to take decisions, which, they allege, should have been taken by Respondent No 2.

3. The respondents have replied denying the claim of the applicants. It is stated that as per the rules of the ESIC, promotions are given effect from the date of the DPC's decision to promote and thus are prospective in nature. The promotion with retrospective effect given to the absorbed employees was an exception made in their case, taking into account the special circumstances of their case (Ref. Annexure MA/1, allowed to be taken on record). The applicants are directly recruited employees of the ESIC, who came on their own will on their transfer from Chennai, accepting bottom seniority as per terms of this transfer. They cannot claim to be treated on the same footing as the absorbees, who have been given promotion with retrospective case by way of an exceptional case. The respondents have denied the claim of the applicants about lack of competence of Respondent No.4 to take decision in this matter.

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4. The matter was heard on 18.03.2021. The learned counsel for the applicants repeated the arguments mentioned in the OA and argued that not granting promotion to the applicants with retrospective effect was a violation of their fundamental right of equality. The learned counsel for the respondents argued that the applicants' status was different from that of the absorbed employees, and thus there was no violation of right of equality.

5. After going through the pleadings and hearing the arguments of the parties, it is clear that the only issue that needs to be decided in this matter is whether the applicants and the absorbed employees can be treated as equals and whether, for that reason, they should also be given retrospective promotions. The respondents have very clearly stated that their rules permit only prospective promotions as given to the absorbed employees. The respondents have stated, categorically, that the rule is to make prospective promotions and an exception was made, on account of special circumstances, in case of absorbed employees. They have filed a communication dated 11.07.2008 (Annexure MA/2) to support their contention that the absorption was under special situation where these employees were given choice to opt for institutional seniority or to opt for all India seniority. Para-3 of this letter clearly gives "first right of

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promotion to higher posts" to these employees. The applicants have not denied, either by way of filing a rejoinder, or during arguments at the time of hearing, the contention of the respondents that the promotions in the ESIC are with prospective effect, i.e from the date of DPC (as mentioned in Annexure M/1). They are seeking the exceptional treatment given to the absorbed employees, claiming that the applicants are also doing similar work, and have earned eligibility for promotion on completion of 3 years (in 2008 or from any past date when the vacancies arose). In this situation, we have to examine whether the applicants and the absorbed employees in ESIC, Jaipur can be said to be similarly placed. On comparing these two set of employees, we do not find merit in the claim made by the applicants. The absorbed employees have been given different treatment for seniority (optional institutional seniority restricting their chances of promotion to only one particular institution, ref. last paragraph of Annexure M/2). This fact, by itself, makes the prospects of promotion (even though admittedly by their own choice) different from that of the original employees of the ESIC who can claim to be promoted against a wider scope of vacancies. The same communication (in para-3) provides for first right of absorbed employees for promotion, which also makes them stand on a different footing from other employees. It would

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have been a totally different situation, if the employees, after absorption, were made part of a common cadre, with common seniority and common avenues of promotion. In that situation, grant of retrospective promotion to the absorbed employees and not to other employees, would have certainly attracted charge of violation of fundamental right of equality. This is not the situation before us. Therefore, we cannot ask the respondents to make an exception to the rule for the applicants, only because it has been done with respect to some other, very distinguishable set of employees, who (though may be doing similar type of job) have come through a different route and have prospects different from the applicants.

6. Due to the reasons mentioned above, the applicants have no right for grant of reliefs claimed in this OA . The OA is, therefore, dismissed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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