

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 516 OF 2012

MONDAY, this the 29th day of October, 2012

CORAM:

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.P. Appachan, Joint Director-in-charge,
Employees' State Insurance Corporation,
Divisional Office, Kozhikode, residing at ARSHA,
Puthenkandathil House, Maikav PO, Thamarassery,
Kozhikode, Pin-673 573.

... Applicant

[By Advocate Mr. P.P. Jacob]

Versus

1. The Director General, Headquarters,
Employees' State Insurance Corporation,
Panchdeep Bhavan, CIG Road, New Delhi, Pin-110 002.
2. The Secretary to the Government of India,
Ministry of Personnel, Public Grievances & Pension
(Department of Personnel & Training),
New Delhi, Pin-110 001.
3. The Union Public Service Commission,
New Delhi, Pin-110 002, Union Public Service Commission
Office, represented by its Secretary.
4. The Union of India, represented by Secretary to
Ministry of Labour, New Delhi, Pin-110 001. ... Respondents

[By Advocate Mr. T.V. Ajayakumar (R1-4)]

The application having been heard on 10.10.2012, the Tribunal on 29-10-12 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant is working as Joint Director-in-charge in the Divisional Office of the Employees State Insurance Corporation (ESIC), Kozhikode. The

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1st respondent had published final seniority list of Deputy Directors as per Annexure A-4 dated 23.01.2012 pursuant to disposal of O.A. No. 388/2011 and the observations made therein. In the said list, the persons at serial Nos.1 and 2 have retired and the applicant being at Sl. No. 3, is entitled to be promoted as Regional Director by issuing consequential list of seniority of joint Directors and Regional Directors. No action has been taken by the respondents on the representation submitted by the applicant to take necessary action to promote him to post of Regional Director by finalising the consequential publication of the seniority list of Joint Directors as well as Regional Directors effective from May, 2011. Hence this O.A is filed for the following reliefs:

- (i) Direct the respondents to finalise and publish the seniority list of joint Directors pursuant to Annexure A-4 seniority list of Deputy Directors and promote the applicant to the post of Regional Director immediately or within a time frame being fixed by this Hon'ble Tribunal;
- (ii) Direct the respondents to promote the applicant to the post of Regional Director considering the applicant being the senior most in Annexure A-4 list provisionally, taking note of the fact that juniors to the applicant vide Sl. No. 21 & 23 in Annexure A-4 list have already been promoted as Regional Directors as evidenced by Annexure A-2 order;
- (iii) Allow the cost of this petition;
- (iv) Pass such other orders and directions which may deem fit and proper in the facts and circumstances of the above Original Application.

2. The applicant contended that having published the Annexure A-4 seniority list of Deputy Directors, it is just and proper to implement the list by publishing consequential seniority list of Joint Directors and Regional Directors without delay. As per Annexure A-4, the applicant is senior most person to be promoted to the next higher post of Regional Director. The 2 persons who

got promotions as per Annexure A-2 as Regional Directors are enlisted at Sl. Nos. 21 and 23 in the Annexure A-4 list. Sl. No. 21 is even now working as Regional Director above the applicant inspite of his name at Sl. No.1. The denial of promotion to the applicant as Regional Director and allowing a junior employee to function as the Regional Director is illegal and arbitrary. In the event of publishing the seniority list of Joint Directors and Regional Directors, the applicant being senior most in Annexure A-4 list is entitled to be considered and promoted to the post of Regional Director. He is about to retire. There are more than 50 vacancies of Regional Directors available in the ESIC.

3. In the reply statement, the respondents submitted that 2 persons as per Annexure A-2 were promoted on 05.05.2011 on the basis of their seniority in the list of Joint Directors published on 31.07.2009, which was in existence at the time of issuance of promotion order. The action for revision of seniority list of joint Directors, which is the feeder category for promotion to the post of Director, is in progress, consequent upon the revision of seniority list of Deputy Directors on 23.01.2012. the amendment of the Recruitment Rules have also been initiated. Further necessary action regarding promotion can be taken on the basis of the relevant Recruitment Rules and as per the fulfilment of the eligibility conditions. The respondents submitted that in the Annexure A-4 seniority list of Deputy Directors, the applicant has been shown at Sl. No.3. As per Annexure R1(b) seniority list of the Regional Director Grade-B/Joint Director as on 01.04.2012 published on 30.8.12, the applicant is at Sl. No. 42 and Mr. M.S. Dahiya and Mr. L.K. Gupta are at Sl. Nos. 51 and 53 respectively. The applicant has not been denied his promotion to the post



of Director Grade-I/Regional Director. He is not eligible for promotion as prayed for as per the proposed rules. The Annexure R-1(b) memorandum dated 30.08.2012, seniority list can be finalised after duly considering the representations filed against the above list within 30 days. The final revised seniority list of joint Directors can be issued only thereafter and promotion can be effected subsequently pursuant to the issuance of the Recruitment Rules.

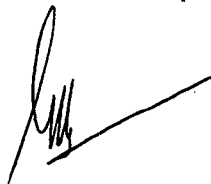
4. We have heard Mr. P.P. Jacob, learned counsel for the applicant and Mr. T.V. Ajayakumar, learned counsel for the respondents and perused the records.

5. The applicant is the senior most Deputy Director as per Annexure A-4 seniority list. He ranked at Serial No. 42 in Annexure R1(b) seniority list dated 30.08.2012, of the Regional Director Grade-B/Joint Director as on 01.04.2012. Those officials shown at Sl. Nos. 51 and 53 in the said seniority list have been promoted vide Annexure A-2 order dated 05.05.2011 on ad hoc basis as Regional Director Grade-A/Director. There is no reason why the applicant cannot be considered for promotion on ad hoc basis as Regional Director Grade-A/Director, like his juniors placed at Sl. Nos. 51 and 53 in the draft seniority list of Regional Director Grade-B/Joint Director at Annexure R1(b). The proposed Recruitment Rules can have generally speaking, only prospective effect. There is no illegality in promoting the applicant on ad hoc basis in accordance with existing rules. Waiting indefinitely for the revised Recruitment Rules and perhaps waiting for the retirement of the applicant, is arbitrary and discriminatory, when his juniors are promoted on ad hoc basis. In the facts and circumstances of this case, we are of the considered view that



Annexure R1(b) seniority list of Regional Director Grade-B/Joint Director should be finalised as early as possible, at any rate within 6 weeks from the date of receipt of a copy of this order. Thereafter, the claim of the applicant for promotion should be considered as per the existing rules if his juniors in the final seniority have already been promoted on ad hoc basis within a period of two weeks thereafter, in case the new Recruitment Rules are not made effective in the meanwhile. Ordered accordingly.

6. The O.A is disposed of as above with no order as to costs.



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE PR RAMAN
JUDICIAL MEMBER

CVT.