

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA

O.A. No. 240/1996

Date of order: 01.08.2002

Baidya Nath Singh S/o Late Shee Narain Singh, aged about 45 years, resident of village-Kalinjra, P.O. Jian, P.S. Siwan Muffasil, Dist.-Siwan and at present working as Insurance Inspector(Recovery) in the office of Employees' State Insurance Corporation, Panchdeep Bhawan, J.L. Nehru Marg, Patna-800001.

..... Applicant.

-By advocate Shri S.N. Tiwary.

- Versus -

1. Union of India through Secretary, Ministry of Labour, Govt. of India cum Chairman Standing Committee Employees' State Insurance Corporation, Shram Shakti Bhawan, New Delhi.
2. Director General, Employees' State Insurance Corporation, Panchdeep Bhawan, Kotla Marg, New Delhi.
3. Regional Director, Employees' State Insurance Corporation, Panchdeep Bhawan, J.L. Nehru Marg, Patna-800001.

..... Respondents.

- By advocate Shri S.N. Singh.

C O R A M

HON'BLE MR. L.R.K. PRASAD ..... MEMBER (ADMINISTRATIVE)  
HON'BLE SMT. SHYAMA DOGRA ..... MEMBER (JUDICIAL)

O R D E R

(Dictated in Court )

By Mr. L.R.K. Prasad, Member (A) :-

This application has been filed seeking the following reliefs:-

- (a) That, the orders as communicated by the Assistant, Regional Director vide letter No. 42-2-11/15/1/87-Estt.III dated 26.5.1995 (Annexure A-11) as well as the orders passed by the respondent no. 2 in annexure A-13 dated 20.10.1995 rejecting the

case of the applicant's ad-hoc promotion may be declared illegal and arbitrary and quashed.

(b) That the respondents be commanded to consider the case of ad-hoc promotion of the applicant and to promote him to the cadre of Assistant Regional Director etc. in the scale of Rs.2000/- to 3500/- from the date his juniors were promoted with all consequential reliefs.

(c) That, any other relief or reliefs as your lordships may deem fit and proper.

2. The applicant at the relevant point of time was working as Insurance Inspector under ESIC and posted at Patna. The immediate avenue <sup>for</sup> promotion for Inspector is Assistant Regional Director (Gazetted Group B). The promotion is required to be made on the basis of fitness-cum seniority. A gratiation ~~of~~ list of Insurance Inspector/Manager Gr. II ad corrected upto 1.1.1986 was circulated (Annexure A/1) in which the applicant is placed at Sl. No. 493. In the meantime, vide order dated 21.4.1994 (Annexure A/2), the respondents no. 2 promoted some Insurance Inspectors/ Manager Grade II to the post of Assistant Regional Director/Manager Gr. I in the higher scale of Rs.2000-Rs.3500 on ad-hoc basis. It is alleged that while several junior persons to applicant were promoted as Assistant Regional Director on ad-hoc basis, his case was ignored. While replying to the aforesaid allegations, the respondents have stated that the applicant could not get the ad-hoc promotion in 1994 since it was decided to initiate the disciplinary proceedings against him in 1993. As such, he was not considered fit. Therefore, he was not given ad-hoc promotion in 1994.

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3. It appears that a charge memo (Annexure A/3) dated 7.7.1994 was issued to the applicant (the details of charges given therein). The applicant sent his reply to the charged memo. The said proceeding was disposed of on 14th Sep.'1994 (A/6) by imposing ~~the~~ penalty of 'censure' on the applicant ~~and also to~~. It further appears that another order relating to ad-hoc promotion to the grade of Assistant Regional Director was issued on 11.11.1994 (Annexure A/8) and again the case of the applicant for such promotion was ignored. Therefore, it is the stand of the applicant that he is entitled for ad-hoc promotion to the post of Assistant Regional Director from the date his juniors have been promoted on the ground as stated in the OA. The same has been opposed by the respondents on the ground as stated in the W/s.

4. During the course of hearing, the learned counsel for the applicant Shri S.N. Tiwary stated that in view of new developments, the limited prayer of the applicant is to grant him ad-hoc promotion in the grade of Assistant Regional Director/equivalent rank from the date his juniors have been promoted to the said rank <sup>and also to</sup> by quashing ~~the~~ order dt. 26.5.1995 (Annexure A/11) and order dated 20.10.95 (Annexure A/13).

5. We have confined our consideration to this limited prayer only. It is observed from the record that certain new developments have taken place during the pendency of this OA. Vide order dated 21.08.1996 (Annexure 1 to W/s). The applicant has already been granted promotion on ad-hoc basis to the post of Assistant Regional Director/Manager Gr. I. Subsequently vide office order no. 638 of 1998 dated 26.11.98, the applicant has been promoted to the grade of Assistant Director/Manager Gr. I on regular basis on the

recommendations of the DPC/UPSC. In the said order, the name of the applicant is at Sl. No. 52.

6. We have considered the entire matter in the light of submission made on behalf of the parties and the limited prayer made on behalf of the applicant for his promotion on ad-hoc basis to the grade of Assistant Director/Manager Gr. I from the date his juniors have been promoted alongwith consequential benefits.

7. During the course of arguments, the learned counsel for the applicant has drawn our attention to the order of Hon'ble Supreme Court passed in the matter relating to U.O.I., etc. Vs. K.V. Janakiraman etc. (AIR 1991 Supreme Court 2010). The relevant portion of the order is reproduced below:-

" It is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. The plea that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion increment etc., would not be tenable. The preliminary investigations take an inordinate-ly long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are

keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits to resort to the sealed cover procedure. The authorities thus are not without a remedy.

The promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when Charge-memo/charge-sheet has already been issued to the employee. "

8. The learned counsel for the applicant has also relied on the order of Ernakulam Bench of C.A.T. (Full Bench Judgement of C.A.T.s 1991-1994) passed in OA 37/1991 on 10.06.1992. In the said OA it was held that consideration for promotion cannot be denied by mere 'censure'.

9. The case of the applicant is covered by the order passed by Hon'ble Supreme Court in K.V. Janakiraman case and the memo no. 22011/4/91 Estt.(A) dt. 14.9.1992 of DOP & Trg., Govt. of India (Annexure A-15). No


10. The matter relating to ad-hoc promotion to the post of Assistant Director/Manager Gr. I was taken up in 1994 and necessary order issued on 21.04.1994. No charge-sheet <sup>at that time</sup> had been served on the applicant. Infact, the charge-memo

*was* served only on 7.4.1994 and the proceeding was concluded in September 1994 with imposition of censure on the applicant, which normally should not stand in the way of promotion especially when ad-hoc promotion was granted to his juniors in April'1994 at the time when no charge-memo had been served on the applicant. In the absence of the charge-memo

at that time, his case should have also been considered for promotion to the post of Assistant Director. It is also observed that another batch of Insurance Inspectors were promoted in Nov., 1994 (Annexure A/8). Again the case of the applicant for ad-hoc promotion to the said post was not considered even though departmental proceedings had been concluded in September 1994 with imposition of censure on the applicant.

11. In view of the above position, we feel that the applicant is entitled for ad-hoc promotion alongwith consequential benefits as may be admissible under law from the date his juniors have been promoted especially in the light of DOP&Trg. memo no. 22011/4/91 Estt. (A) dt. 14.9.92 (Annexure A/15). Accordingly, respondents concerned is directed to pass appropriate order in the light of observation made by us herein above within a period of three months from the date of communication of this order. The OA is, accordingly, disposed of.

  
(SHYAMA DOGRA)  
MEMBER (J)

  
(L.R.K. PRASAD)  
MEMBER (A)

SRK/