

FORM NO. @
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 5/2006

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) Jagul Boruah

Respondent(s) U. O. I Gous

Advocate for the Applicants. M. Chanda, S. Nath
C. N. Chakrabarty

Advocate for the Respondent(s) Ms. U. Das ✓ CGSC
Rly. St. Counsel

Notes of the Registry Date

Order of the Tribunal

06.01.2006

Present : Hon'ble Mr. Justice G.
Sivarajan, Vice-Chairman.

Hon'ble Mr. N.D. Dayal,
Administrative Member.

Heard Mr. M. Chanda, learned
counsel for the applicant and Ms. U.
Das, learned Addl. C.G.S.C. for the
respondents.

The 3rd respondent in this
application has issued an Office Order
No. 500 of 2005 dated 19.10.2005
(Annexure - 1) promoting 170 officers in
the grade of Insurance Inspector to the
grade of Assistant Director/Manager Gr.
I/Section Officer in the pay scale of Rs.
6500 - 10500/- on ad hoc basis and
posted them to various places. One of
such person (Sl. No. 169 in annexure - 1
list) approached this Tribunal by filing
O.A. No. 3/2006 stating that he has

This application is in form
is filed/C. F. for Rs. 50/-

deposited vide P. BD

No. 266312295

Dated 23.12.05

gaur
Dy. Registrar

steps not taken

Contd/-
6.1.2006

made representation forgoing his ad hoc promotion in view of his personal difficulties. We have disposed of the said application by directing the 2nd respondent therein to pass orders on the representation filed by him. We also directed the respondents to maintain status quo in the meantime.

This application is filed by another person (Sl. No. 6 in the annexure - 1 list) stating that the representation filed by him forgoing his ad hoc promotion was rejected by a common order dated 30.12.2005 (Annexure - 4).

Mr. M. Chanda, counsel for the applicant submits that the applicant's children are studying in school and ~~are~~^{the} studying in the mid way. Counsel submits that it is in the above circumstances, the applicant has decided to forgo his ad hoc promotion. Ms. U. Das, Addl. C.G.S.C. for the respondents submits that the representations filed by the officers involved in the annexure - 1 list were rejected due to administrative exigencies. She submits that she will get instructions from the respondents in the meantime.

We notice that an officer who is promoted either on ad hoc basis or on regular basis is entitled to forgo his promotion, which ordinarily cannot be refused by the respondents. In this application, it is stated that such request is rejected due to administrative exigencies. Ordinarily when senior persons ~~were~~ promoted, refused to

Contd/-

Contd/-
6.1.2006

accept the promotion order, his juniors can be given promotion. It is not clear as to why it is said there is administrative exigency.

In the circumstances, we direct the 3rd respondent to file an affidavit explaining particular administrative exigencies in the light of what is stated hereinabove. This will be done within two weeks from the date of receipt of this order. Status quo as on today in so far as the applicant is concerned will maintain till the next posting.

Post. on 23.01.2006. Issue urgent copy of this order to the counsel for the parties.

[Signature]
Member

[Signature]
Vice-Chairman

Received
Applicant
6/1/06

Received
Shri Das
Addl C.S.C.
6/1/05

Order dt. 6/1/05
issuing to both
the parties.

/mb/

23.1.2006

Ms. U. Das, learned Addl. C.G.S.C. for the respondents requested for four weeks time for getting instruction as to the administrative exigency that existed in this promotion case. Let it be done. Ms. Das is also directed to file a statement as to the position whether a person promoted on adhoc basis can be insisted on accepting the same and how the public interest intervened in the said case.

post on 24.2.2006. Interim order will continue till the next date.

Vice-Chairman

bb

6/1/06

20.1.06

No affidavit filed.

Re. currency order
dated 23.1.06.

23.1.06

Order dt. 23/1/06
sent to D/Section
for issuing to
learned advocate's
for both the parties.

27/1/06 D/No = 136
D/ 30/1/06.

23-2-06

NO W/S filed.

24.2.2006

Ms.U.Das, learned Addl.C.G.S.C. for the respondents submits that she has filed a reply affidavit today. The applicant is at liberty to file rejoinder, if any.

Considering the issue involved, the O.A. is admitted. Rejoinder, if any, will be filed within two weeks. post the case on 20.3.2006.

Interim order will continue till the next date.

Vice-Chairman

bb

20.03.2006

The matter has already admitted. Learned counsel for the respondent has filed reply statement. Learned counsel for the applicant sought for time to rejoinder.

Post on 06.04.2006. Interim order will continue till the next date.

Vice-Chairman

Learned counsel for the applicant wanted to file rejoinder.

Post on 10.5.06 for order.

It is made clear that immediately on completion of the pleadings the matter will proceed for hearing.

Interim order shall continue.

Vice-Chairman

pg

27.2.06

Respondent No. 5 has filed the counter affidavit.

Pl.

Pl. comply order dated 24.2.06

NS
27.2.06.

17-3-06

W/S filed by 1st Respondent.

by

Pl. comply order dated 20.3.06.

NS
21/3/06

Order dt-20/3/06
is issued
mb
21/3/06

order dt-20/03/06 6.4.06
issuing to learned
advocate's for both
the parties.

21/3.

W/S filed by the
respondents.

NS
5.4.06

Received
Alka Das
Addl Cse
10/4/06

W/S has been filed.

NS
9.5.06

-5-

O.A. 5/2006

118106

Response filed
by the Applicant.

Di

The case is ready
for hearing.

Di
1.8.06.

10.05.2006

When the matter came up for hearing, Mr. S. Nath, learned counsel for the applicant submitted that though it is a Single Bench matter, it is concerning about the ad hoc promotion which was compelled to be accepted. The applicant and legal position is that if a person is appointed on ad hoc basis, he need not accept it. Since larger issue is involved in this case, post before the next Division Bench.

Vice-Chairman

/mb/

02.08.2006

Post on 18.08.2006 alongwith O.A.

No. 32/2006. Interim order shall continue till the next date.

The case is ready
for hearing.

Di
Member

Vice-Chairman

mb

Di
17.8.06.

18.8.2006

Let this case also be clubbed with ~~O.A. 32/06~~ O.A. 32/06 on 20.9.2006.

The case is ready
for hearing.

Di
19.9.06.

bb

Vice-Chairman

20.09.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

Division Bench matter, post before the next Division Bench.

Interim order will continue till the next date.

Vice-Chairman

/mb/

order dt. 20/9/06
issuing to learned
advocate's for both
the parties.

Di
25/9/06.

14.3.07.

Judgment delivered in open Court. Kept in separate sheets. Application is disposed of as intruc-tuous.

Vice-Chairman

Di
Member

Received
Usha Das.
Addl CHSE
20/3/07

lm

20.3.07

Copy of the
budget has been
sent to the office
for review the
same to the applicant
H.S.

X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 5 of 2006

DATE OF DECISION : 14.03.2007

Sri Jugal Baruah

Applicant/s

Mr. Mr.M.Chanda

Advocate for the
Applicant/s.

- Versus -

U.O.I & Others

Respondent/s

Ms.U.Das, Addl, C.G.S.C

Advocate for the
Respondents

CORAM

HON'BLE MR K.V. SACHIDANANDAN, VICE-CHAIRMAN

HON'BLE MR TARSEM LAL, ADMINISTRATIVE MEMBER

- | | | |
|----|---|--------|
| 1. | Whether reporters of local newspapers may be allowed to see the Judgment ? | Yes/No |
| 2. | Whether to be referred to the Reporter or not ? | Yes/No |
| 3. | Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench & Other Benches ? | Yes/No |
| 4. | Whether their Lordships wish to see the fair copy of the Judgment ? | Yes/No |

Vice-Chairman/Admn. Member

14/3/07

2

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 5 of 2006

Date of Order: This the 14th Day of March, 2007.

HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN.

HON'BLE MR.TARSEM LAL, ADMINISTRATIVE MEMBER

Shri Jugal Baruah,
S/O.Late Kula Chandra Baruah
Superintendent
Regional Office,
Employees State Insurance Corporation
Bamunimaidan
Guwahati-781021

Applicant

By Advocate Mr.M.Chanda, Mr.S.Nath, Mr.G.N.Chakraborty.

-Versus-

1. The Union of India,
Represented by Secretary to the
Government of India,
Ministry of Labour and Employment,
New Delhi-110001.
2. The Director General,
Employees State Insurance Corporation
Panchdeep Bhawan,
C.I.G Road,
New Delhi-110002.
3. The Joint Director, E-1
Employees State Insurance Corporation,
Panchdeep Bhawan
C.I.G Road,
New Delhi-110002.
4. The Regional Director,
Employees State Insurance Corporation,
Assam, Bamunimaidan,
Guwahati-781021.
5. Shri R.Natarajan,
The Joint Director, E-1,
Employees State Insurance Corporation
Panchdeep Bhawan
C.I.G Road,
New Delhi-110002. ... Respondents.

By Advocate Ms. U.Das, Addl.C.G.S.C.

ORDER(ORAL)



K.V.SACHIDANANDAN: V.C:

The applicant is presently working as Superintendent at Regional Office, Guwahati in the department of Employees State Insurance Corporation (for short ESIC). The applicant has been promoted to the post of Asstt. Director on adhoc basis and now sought to be transferred to West Bengal without considering the representation of the applicant dated 26.10.2005, whereby applicant surrendered his conditional adhoc promotion. Without considering his representation the respondents issued the rejection order dated 30.12.2005 which is challenged in this O.A. The applicant has filed this O. A. seeking the following reliefs:-

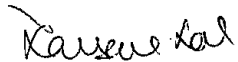
- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order No.500 of 2005, bearing letter No.A33/12/1/97-E.I Col.II dated 19.10.2005 (Annexure 1) as well as the rejection order dated 30.12.2005 and the consequential order dated 03.01.2006 so far the applicant is concerned.
- 8.2. That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in the present post of posting in the same capacity."

2. We have heard Mr.M.Chanda learned counsel for the applicant and Ms. U.Das learned Addl.C.G.S.C. for the respondents. The respondents have filed their written statement and the counsel for the applicant has also submitted that the rejoinder has already been filed. When the matter came up for hearing the learned counsel for the applicant has submitted that the O.A. has become infructuous. Ms. U.Das learned counsel for the respondents has produced a letter dated 15.12.2006 contending that this order has been passed granting regular



promotion to the applicant which will be kept on record for future records.

O.A. is dismissed as infructuous accordingly. There will be no order as to costs.



(TARSEM LAL)
ADMINISTRATIVE MEMBER

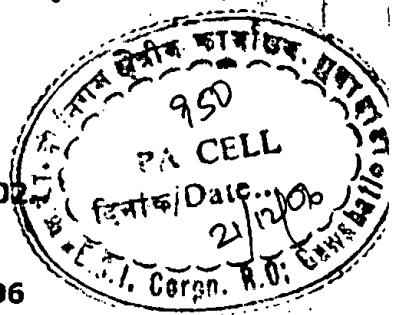


(K.V.SACHIDANANDAN)
VICE-CHAIRMAN

LM



HEADQUARTERS
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAVAN: C.I.G. ROAD: NEW DELHI-110002
<http://esic.nic.in>



No. A-33(13)1/2003-E.I

Dated: 15.12.2006

OFFICE ORDER NO. 137 OF 2006

The Director General is pleased to order the promotion of the following officers in the cadre of Insurance Inspectors/ Branch Managers-Gr.II / Superintendents (in the pay scale of Rs. 5500 - 175 - 9000) to the cadre of Assistant Directors / Branch Managers Gr.I / Section Officers (in the pay scale of Rs. 6500-200-10500) on regular basis on the recommendations of the Departmental Promotion Committee / Union Public Service Commission and post them to the regions shown against each:-

Sl. No.	Name of Officer S/Sh./Ms	Present Region of posting	Region to which posted now on promotion
1	2	3	4
1.	VM Kalia	Jammu & Kashmir	Jammu & Kashmir
2.	Dinesh Sethi	Haryana	Haryana
3.	V.R. Nagaraj	Karnataka	Karnataka
4.	S.T. Krishnaram	Maharashtra	Maharashtra
5.	S. Krishnamurthy	Andhra Pradesh	Andhra Pradesh
6.	Haridas Menon	Kerala	Kerala
7.	Ashok Kumar Parida	Karnataka	Karnataka
8.	W. Suresh Manuel	Coimbatore Sub-Region	Coimbatore Sub-Region
9.	S. Kumar	Tamilnadu	Tamilnadu
10.	V Sreedharan	Kerala	Kerala
11.	Subhash Kumar Sinha	Bihar	Bihar
12.	Promila Suresh Roy	Pune Sub-Region	Pune Sub-Region
13.	DN Das	SC ESIC Model Hospital, Beltola	ESIC Model Hospital, Beltola
14.	RN Bahera	SC Orissa	Orissa
15.	Muralidharan Nair KP	Hubli Sub-Region	Hubli Sub-Region
16.	Nizamuddin	Andhra Pradesh	Andhra Pradesh
17.	K. Venkataramana	Vijayawada Sub-Region	Vijayawada Sub-Region
18.	B Umakanth	Vijayawada Sub-Region	Vijayawada Sub-Region
19.	Mohd. Safiul Samad	West Bengal	West Bengal
20.	Sushil Kumar Srivastava	Uttar Pradesh	Uttar Pradesh
21.	Ashok Kumar	Hqrs.	Hqrs.
22.	K Ramajogaiah	Andhra Pradesh	Andhra Pradesh
23.	M Ganesan	Tamilnadu	Tamilnadu
24.	Lajpat Rai Sharma	Hqrs.	Hqrs.
25.	PK Sudeshan	Kerala	Kerala
26.	Anil Kumar Srivastava	D(M)D, Delhi	D(M)D, Delhi
27.	GV Rao	Vijayawada Sub-Region	Vijayawada Sub-Region
28.	MM Bhauskute	Pune Sub-Region	Pune Sub-Region
29.	Damodar Prashad	D(M)D, Delhi	D(M)D, Delhi
30.	RN Kumar	Delhi	Delhi
31.	Kumar Raju Janardhana Rao (K.J. Rao)	Andhra Pradesh	Andhra Pradesh
32.	Chandrasekharan KK	Kerala	Kerala
33.	Patted Babasaonnappa Dyanappa (B.D. Patted)	Hubli Sub-Region	Hubli Sub-Region
34.	PG Narvankar	Maharashtra	Maharashtra

*Attested
by
Addl Secy*

1) In the case of the '1970' and '1971' years, the '1970' and '1971' years are the same.

92.	K.N.Vikraman		Kerala	Kerala
93.	Anand Kumar		Haryana	Haryana
94.	Sharda Manjunath		Andhra Pradesh	Andhra Pradesh
95.	Pankaj Kumar		Hqrs.	Hqrs.
96.	T.E.Venkatesan		Tamilnadu	Tamilnadu
97.	R.Velu		Tamilnadu	Tamilnadu
98.	Ravish Chandra Mandloi		ESIC Model Hospital, Nagda	ESIC Model Hospital, Nagda
99.	C.N.Raji		Coimbatore Sub-Region	Coimbatore Sub-Region
100.	M.Rajendran	SC	Madurai Sub-Region	Madurai Sub-Region
101.	Vasudev Parwani		ESIC Hospital, Nagda	Rajasthan
102.	Rajinder Prasad Sharma		Madhya Pradesh	Madhya Pradesh
103.	Boben Rapheal		Kerala	Kerala
104.	K.Santhalakshmi		Tamilnadu	Tamilnadu
105.	K.N.Radhakrishnan		Kerala	Kerala
106.	S.Pysane Gnanaraj		Tirunelveli Sub-Region	Tirunelveli Sub-Region
107.	S.Thaulath Khan		Pudhucherry	Pudhucherry
108.	K.Sasidharan		Kerala	Kerala
109.	K.G.Venugopal		Kerala	Kerala
110.	J.Karunanidhi		Vijayawada Sub-Region	Vijayawada Sub-Region
111.	J.Shiva Shankar	SC	Andhra Pradesh	Andhra Pradesh
112.	G.Kuruppan		Kerala	Kerala
113.	Praveen Kumar		NTA, Delhi	NTA, Delhi
114.	Bandaru Subba Rao		Maharashtra	Maharashtra
115.	S.Ganesan		Madurai Sub-Region	Madurai Sub-Region
116.	J.Verghese		Kerala	Kerala
117.	Tessy Franco		Kerala	Kerala
118.	Debabrata Pramanik		West Bengal	West Bengal
119.	P.R.Vaishampayan		Maharashtra	Maharashtra
120.	Baldev Raj	SC	Uttar Pradesh	Uttar Pradesh
121.	Yashwant Rai	SC	Punjab	Punjab
122.	Ravinder Singh	SC	Uttar Pradesh	Uttar Pradesh
123.	G.Vasantha Kumari	SC	Madurai Sub-Region	Madurai Sub-Region
124.	Ram Sudhar Ram	SC	Uttar Pradesh	Uttar Pradesh
125.	G.Selvakumar	SC	Tamilnadu	Tamilnadu
126.	P.Sutradhar	SC	Assam	Assam
127.	Subodh Kr. Sasmal	SC	West Bengal	West Bengal
128.	E.D.Ravindran	SC	Kerala	Kerala
129.	Sindoo Ram	SC	Jammu & Kashmir	Jammu & Kashmir
130.	A.K.Nim	SC	Hqrs.	Hqrs.
131.	Bihari Ram	SC	Gujarat	Gujarat
132.	P.Kamaraj	SC	Tamilnadu	Tamilnadu
133.	M.Koodalingam	SC	Kerala	Kerala
134.	Anal Kumar Pal	SC	Jharkhand	Jharkhand
135.	M.Dorai		Goa	Goa
136.	Chander Singh	SC	Haryana	Haryana
137.	Mohinder Singh	SC	Hqrs.	Hqrs.
138.	B.C.Boro	ST	West Bengal	West Bengal
139.	N.N.Singh	ST	Uttar Pradesh	Uttar Pradesh
140.	Babu Lal	ST	Vijayawada Sub-Region	Vijayawada Sub-Region
141.	R.B.Rai	ST	Hqrs.	Hqrs.
142.	P.K. Gupta		Gujarat	Gujarat
143.	M.Laxaminarayana	S.C.	Andhra Pradesh	Andhra Pradesh
144.	Gurbachan Dass	S.C.	Haryana	Haryana
145.	B.Balakrishnan	S.C.	Andhra Pradesh	Andhra Pradesh
146.	D.S.Poonya	S.C.	Maharashtra	Maharashtra
147.	Ramulu	S.C.	Andhra Pradesh	Andhra Pradesh

148.	Nathu Ram S/o Sardar Singh	S.C.	Haryana	Haryana
149.	Madan Lal Singh	S.T.	Rajasthan	Rajasthan
150.	M.Siddarama	S.T.	Karnataka	Karnataka
151.	D. S. Bhandari,		Maharashtra	Maharashtra
152.	Kanwal Nain		Punjab	Punjab
153.	Bhagirathi Nayak,	S.T.	Orissa	Orissa
154.	R. Ramesh	S.T.	Karantaka	Karantaka
155.	Arjun Chatter	S.T.	Baroda Sub-Region	Baroda Sub-Region
156.	S.C. Mondal	S.C.	West Bengal	West Bengal
157.	G.Chandrasekhar	SC	Karnataka	Karnataka
158.	T.Santhamma	SC	Karnataka	Karnataka
159.	D.Sugumaran	SC	Karnataka	Karnataka
160.	Rajbir Singh	SC	Hqrs.	Hqrs.
161.	Ram Swaroop Kunharya	SC	Madhya Pradesh	Madhya Pradesh
162.	N.Janu Naik	ST	Pune Sub-Region	Pune Sub-Region
163.	P.Venkatachalam	ST	Tamilnadu	Tamilnadu
164.	Chhering Negi	ST	Himachal Pradesh	Himachal Pradesh
165.	J.Padmavathy	ST	Vijayawada Sub-Region	Vijayawada Sub-Region
166.	T.R.Narasing Rao	ST	Andhra Pradesh	Andhra Pradesh
167.	V.K.Narayanan	ST	Kerala	Kerala
168.	Nalini	SC	Hqrs.	Hqrs.
169.	Kanhaiya Lal	SC	Delhi	Delhi
170.	Chander Sen	SC	D(M)D, Delhi	D(M)D, Delhi
171.	K.Devraj	SC	Karnataka	Karnataka
172.	Har Sahai	S.C.	Uttar Pradesh	Uttar Pradesh
173.	P.K.Pappu	S.C.	Kerala	Kerala
174.	N.Loganathan	ST	Kerala	Kerala
175.	J.Boro	ST	West Bengal	West Bengal
176.	R.Raju	ST	Karnataka	Karnataka
177.	N.M.Ramaiah,	ST	Karnataka	Karnataka
178.	Jai Narain Meena	ST	ESIC Model Hospital, Jaipur	ESIC Model Hospital, Jaipur
179.	Kikumba Longchar	ST	West Bengal	West Bengal
180.	Harsharan Meena	ST	Delhi	Delhi
181.	Ramesh M. Mugdur	ST	Karnataka	Karnataka
182.	Ramesh Chander-II	SC	Hqrs.	Hqrs.
183.	Rohtas Singh	SC	West Bengal	West Bengal
184.	Saheb Ram Singh	SC	Hqrs.	Hqrs.
185.	Anita Sonkar,	SC	Uttar Pradesh	Uttar Pradesh

The promotees who are already officiating as Assistant Directors / Branch Managers Gr.I / Section Officers in the pay scale of Rs. 6500-200-10500 on 8.11.2006, the date of communication of the UPSC, will be deemed to have been promoted on regular basis with effect from 8.11.2006.

In respect of others who are still working in the cadre of Insurance Inspectors/ Managers Gr.II/ Superintendents, they are to be relieved as per this order to assume charge of their promoted post and their promotion, will take effect from the date on which they assume charge as Assistant Directors/ Branch Managers Gr. I / Section Officers on the basis of this order. The controlling authorities will ensure that the procedure regarding vigilance clearance with reference to para 17.9 of the DOPT O.M. No. 22011/5/91 Estt(D) dated 27.3.1997 is followed before the relief of such officials from the cadre of Insurance Inspectors/Branch Managers Gr.II/ Superintendents.

The pay on promotion will be fixed as per rules in the scale of Rs.6500 -200-10500 as per the provisions of FR 22(I)(a) (1) in respect of all the promotees. The promotees shall exercise their option for fixation within one month from the date of their promotion as per the saving clause under FR 22(I) (a)(1).

All the promotees will be on probation for a period of two years from the date of their regular promotion in terms of Reg. 5 of the ESIC (Staff & Conditions of Service) Regulations, 1959.

The promotion and posting of all these officers are ordered in public interest and they are entitled to TA, TTA, DA and Joining Time as per rules, wherever admissible. In the case of promotees who are transferred from their present regions and posted to other regions, their present controlling authorities will relieve them, immediately, with the direction to report to the concerned Regional Director/ Director / Joint Director I/c / Medical Superintendent / Director (Medical) Delhi as the case may be. However, the promotees will claim their Transfer T.A. and Joining Time only with reference to their ultimate place of posting in the region to which they are posted on promotion.

The Regional Directors/ Heads of offices are requested to intimate this office the **exact** dates on which the promotees (including those who are already officiating) assumed charge of the promoted post on regular basis. This information is essential for maintenance of rosters in this office and for other allied official purposes.

The places of postings in respect of the promotees who are posted in the same regions in which they are working at present will be changed in the month of April 2007, in terms of the Transfer Policy.

Hindi version follows.

3/10/06
(R. NATARAJAN)
JOINT DIRECTOR-E.I

To

1. The persons concerned through their controlling officers.
2. All the officers of the Hqrs.
3. All the Regional Directors / Director
4. All the Joint Directors I/c of the SROs / Joint Director-V Hqrs. Office
5. D(M)Delhi/ D(M) Noida/ Director ESI Hospital K.K. Nagar/ Director (Family Welfare)
6. All the Medical Superintendents of ESIC Hospitals and ESIC Model Hospitals
7. The concerned Joint Directors (Fin.) and Deputy Directors (Fin.)
8. The Librarian, Hqrs. Office.
9. The Official Language Division, Hqrs. Office for Hindi version.
10. Copy for personal file(s)/Guard file/spare copy.

Before CAT. Criminals Bench.

Criminal. ✓

It is prayed that the following
case may be allowed -
to move as undisturbed
O.A. due to urgency of the
matter.

① O.A. /2006.

Shri Jugal Banerjee -

- VS -

Union of India & others

Manish Kumar

D.V.

6/1/06.

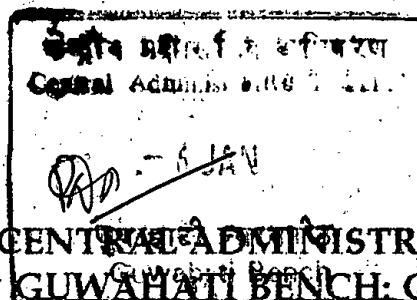
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

Original Application No. 5/106

1. a) Name of the Applicant:- J. Boruah
b) Respondants:- Union of India & Ors.
c) No. of Applicant(S):-
2. Is the application is the proper form:- Yes / No.
3. Whether name & description and address of the all the papers been furnished in cause title :- Yes / No.
4. Has the application been duly signed and verified :- Yes / No.
5. Have the copies duly signed :- Yes / No.
6. Have sufficient number of copies of the application been filed :- Yes / No.
7. Whether all the annexure ~~parties~~ are impleaded :- Yes / No.
8. Whether ~~English~~ translation of documents in the Language:- Yes / No.
9. Has the application is in time :- Yes / No.
10. Has the Vokatlatnama/Memo of appearance /Authorisation is filed:- Yes / No.
11. Is the application by IPO/BD/for Rs.50/- 266317295
12. Has the application is maintainable : Yes / No.
13. Has the Impugned order original duly attested been filed:- Yes / No.
14. Has the legible copies of the annexurea duly attested filed:- Yes / No.
15. Has the Index of the documents been filed all available :- Yes / No.
16. Has the required number of enveloped bearing full address of the respondents been filed:- Yes / No.
17. Has the declaration as required by item 17 of the form:- Yes / No.
18. Whether the relief sought for arises out of the Single: Yes / No.
19. Whether interim relief is prayed for :- Yes / No.
20. Is case of Condonation of delay is filed is it Supported :- Yes / No.
21. Whether this Case can be heard by Single Bench/Division Bench:
22. Any other pointd :-
23. Result of the Scrutiny with initial of the Scrutiny Clerk:

SECTION OFFICER (6/1106)

DEPUTY REGISTRAR



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 5 /2006

Shri Jugal Baruah.

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 19.10.2005- Impugned order of adhoc promotion has been passed by the respondent Corporation, whereby applicant is promoted to the post of Manager Gr. I/Section Officer/Asstt. Director on adhoc basis with the specific condition that in the event of availing adhoc promotion seniority benefit in the promotional grade shall not be conferred. Name of the applicant is placed at Sl. No. 6 of the said impugned order. (Annexure-1)
- 26.10.2005- Impugned promotion order dated 19.10.2005 has been communicated to the applicant through Regional Director's letter dated 26.10.05. (Annexure-2)
- 26.10.2005- Applicant submitted representation surrendering his adhoc promotion on the ground that Son of the applicant is prosecuting his study in School and he is going to appear in the final examination in the month of February/March 2006 and as such transfer on adhoc promotion will cause irreparable loss and injury during the middle of academic session. (Annexure-3)
- 30.12.2005- Respondent No. 3 vide his impugned order dated 30.12.05 informed all Regional Directors, Directors/ Joint Directors etc. that the representations received from the officials, requesting for cancellation/modification of the order of adhoc promotion to the cadre of Asstt. Director/Section Officer/Manager Gr. I has been considered but could not be accepted due to administrative exigencies and therefore their representations have been rejected. It is further directed that the officials may be relieved on 06.01.2006 (A/N) with their present charge with the direction for report for duty at the new place of posting as per office order No. 500/2005 dated 19.10.2005. (Annexure-4)
- 03.01.2006- Consequential impugned order dated 03.01.2005 has been issued by respondents, whereby it is informed to the applicant and the other

similarly situated employees that their representations could not be accepted due to administrative exigencies. (Annexure-5)

03.01.2006- Applicant submitted another representation addressed to the Respondent No. 2. In the said representation applicant interalia stated that he is willing to accept the promotion to the post Asstt. Director if the same is made on regular basis, however, even if the regular promotion is offered to the applicant then also the same will be availed by him after the academic session is over.

(Annexure-6)

Hence this application.

P R A Y E R S

Relief (s) sought for:

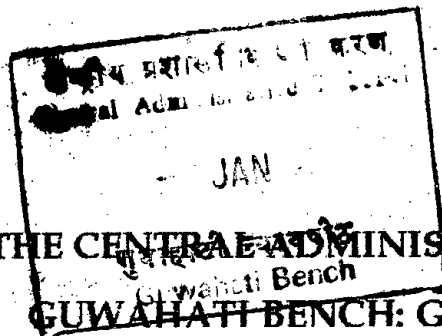
Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned order No. 500 of 2005, bearing letter No. A33/12/1/97-E. I Col. II dated 19.10.2005 (Annexure-1) as well as the rejection order dated 30.12.2005 and the consequential order dated 03.01.2006 so far the applicant is concerned.
2. That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in the present post of posting in the same capacity.
3. Costs of the application.
4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to stay operation of the impugned order No. 500 of 2005, bearing letter No. A33/12/1/97-E.I Col. II dated 19.10.2005 (Annexure- 1) as well as the rejection order dated 30.12.2005 and the consequential order dated 03.01.2006 so far the applicant is concerned till disposal of this application.
-



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O.A.No 5 /2006

Shri Jugal Baruah. : Applicant.

-Versus-

Union of India & Ors. : Respondents.

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Filed By:

Date: -

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O.A. No. 5/2006

BETWEEN:

Shri Jugal Baruah, *

S/o- Late Kula Chandra Baruah,
Superintendent,
Regional Office,
Employees State Insurance Corporation,
Bamunimaidan,
Guwahati- 781021.

Applicant.

-AND-

1. The Union of India,
Represented by Secretary to the
Government of India,
Ministry of Labour and Employment,
New Delhi- 110001.
2. The Director General,
Employees State Insurance Corporation
Panchdeep Bhawan,
C.I.G. Road,
New Delhi- 110002.
3. The Joint Director, E-I,
Employees State Insurance Corporation,
Panchdeep Bhawan,
C.I.G. Road,
New Delhi- 110002.
4. The Regional Director,
Employees State Insurance Corporation,
Assam, Bamunimaidan,
Guwahati- 781021.
5. Shri R. Natarajan,
The Joint Director, E-I,

Jugal Baruah

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Filed by me applicant-
through: Subrata Nath.
Advocate.
06.07.2006.

21 2

Employees State Insurance Corporation,
Panchdeep Bhawan,
C.I.G. Road,
New Delhi- 110002.

..... Respondents.

DETAILS OF THE APPLICATION

1. **Particulars of the order (s) against which this application is made:**

This application is made against the impugned order No. 500 of 2005, bearing letter No. A33/12/1/97-E.I Col. II dated 19.10.2005, so far the applicant is concerned whereby the applicant has been promoted to the post of Asstt. Director on adhoc basis and now sought to be transferred to West Bengal without considering the representation of the applicant dated 26.10.2005, whereby applicant surrendered his conditional adhoc promotion due to domestic problems of the applicant without considering his representation and also against the impugned, cryptic, mechanical rejection order dated 30.12.2005 as well as order dated 03.01.2006.

2. **Jurisdiction of the Tribunal:**

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. **Limitation:**

The applicant further declares that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act 1985.

4. **Facts of the case:**

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

Jugal Baruah

4.2 That the applicant was initially appointed in the department of Employees State Insurance Corporation in the year 1990 as Insurance Inspector and he was posted at Regional Office at Calcutta, however after serving for a period of about 3 years the applicant was transferred and posted at Dhubri in the state of Assam, thereafter he was again posted to Chandrapur ESIC local office in the same capacity as Manager Gr. II and subsequently the applicant was again transferred to Regional Office, Guwahati as Insurance Inspector and at present he is working as Superintendent at Regional Office, Guwahati in the department of Employees State Insurance Corporation (for short ESIC).

4.3 That the respondent No. 3 issued the impugned office Order No. 500 of 2005 bearing letter No. A33/12/1/97-E.I Col. II dated 19.10.2005, whereby officers working in the grade of Insurance Inspector/Manager Gr. II/ Superintendent have been promoted to the grade of Assistant Director/ Manager Gr. I/Section Officer on adhoc basis. In the said office order dated 19.10.2005 the applicant has been placed at Sl. No. 6 and he has been ordered for posting on the basis of adhoc promotion in the state of West Bengal from the state of Assam. The order of adhoc promotion is conditional.

Copy of the impugned order dated 19.10.2005 is enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 1.

4.4 That it is stated that in the impugned promotion order dated 19.10.2005 the applicant along with others is promoted on adhoc basis to the post of Manager Gr. I and most surprisingly some conditions have been imposed in the impugned promotion order dated 19.10.2005, which are as follows:

"The promotion of all the above mentioned officers is ordered purely on temporary and adhoc basis. They may be reverted to their lower post without any notice or assigning any reason

Jugal Barnah

therefore. The adhoc promotion shall not confer on them any right to continue in the post or for regular promotion in future. The period of service rendered by them on adhoc basis in the grade/cadre will count neither for seniority in the grade/ cadre nor for eligibility for promotion to the next higher grade/cadre."

From the conditions imposed above it is quite clear that in the impugned order dated 19.10.2005 the promotion of the applicant to the grade of Manager Gr. I is purely on temporary and adhoc basis and the applicant may be reverted to lower post without any notice or assigning any reason thereof further applicant is not entitled to the benefit of seniority even.

It is relevant to mention here that on a mere reading of the promotion order it appears that large numbers of posts are available in the department to the cadre of Manager Gr. I/Section Officer/ Asstt. Director in the scale of Rs. 6,500-10,500/- but even then the respondents Union of India resorted to adhoc promotion policy against the large scale vacancies with the clear terms that no seniority benefit will be conferred to the adhoc promotees and on the other hand they are being ordered for transfer from one state to another state in a most arbitrary manner. The practice of adhoc promotion is being always discouraged by the Govt. of India by issuing necessary instructions from time to time. Moreover, while issuing the adhoc promotion order no option was sought for from the applicant.

- 4.5 That your applicant after receipt of the impugned office order dated 19.10.2005 communicated through Regional Director's letter bearing No. 43-A 22/15/2004-Estt. dated 26.10.2005, wherein the name of the applicant is placed at Sl. No. 6 of the adhoc promotion order dated 19.10.2005, after receipt of the promotion order the applicant submitted a representation on 26.10.2005 addressed to the Director General, ESIC, New Delhi (Respondent No. 2) and in the said representation the applicant has

Jugal Barnah

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surrendered his adhoc promotion in a clear term "kindly allow me to forgo the promotion at present on the ground cited above". Be it stated that the applicant in his representation dated 26.10.2005 specifically stated that his son Shri Banjeet Baruah is a final year candidate of Class XII standard and currently studying in a local educational institution affiliated to State Higher Secondary Council. However, the final examination of his son is scheduled to be held in the month of February/March 2006. Besides the applicant pointed that he has got aged mother of 86 years old and there is none except him to look after his aged mother in this critical juncture and two of his brother have already died due to cancer and wife is also suffering from medical problem. The applicant also categorically submitted that he should be allowed to forgo the promotion.

In such compelling circumstances stated above the applicant has decided to forgo his adhoc promotion and accordingly submitted his representation on 26.10.2005.

Copy of the communication letter dated 26.10.2005 and representation dated 26.10.2005 are enclosed herewith for perusal of Hon'ble Court as Annexure- 2 and 3 respectively.

- 4.6 That your applicant begs to say that he has every right to refuse a conditional adhoc promotion order and accordingly he has submitted his representation assigning valid reasons for surrendering his promotion as such the authority cannot compel the applicant to accept a conditional promotion order.

Most surprisingly Shri R. Natarajan, Joint Director-I for and on behalf Director General, ESIC vide his letter bearing No. A-32/12/1/97-E.I dated 30.12.2005, it is informed to all Regional Directors, Directors/Joint Directors etc. that the representations received from the officials, requesting for cancellation/modification of the order of adhoc promotion to the cadre of Asslt. Director/Section Officer/Manager Gr. I has been

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considered but could not been accepted due to administrative exigencies and therefore their representations have been rejected. It is further directed that the officials may be relieved on 06.01.2006 (A/N) with their present charge with the direction for report for duty at the new place of posting as per office order No. 500/2005 dated 19.10.2005, pursuant to the impugned order dated 30.12.2005 another consequential impugned order has been issued through memorandum bearing letter No. 43-A.22/15/2004-Estt. dated 03.01.2005, whereby it is informed to the applicant and the other similarly situated employees that their representations could not be accepted due to administrative exigencies. In this connection it may be stated that the representation of the applicant and other employees have been rejected in a most casual manner, without application of mind and also without disclosing any valid reason. It is relevant to mention here that in one hand the order of promotion has been issued on adhoc basis inspite of existence of large number of regular vacancies on the other hand it is specifically mentioned in the adhoc promotion order that no benefit of seniority will be conferred to the adhoc promotees and the adhoc period of service shall also not be counted towards future promotion. When sufficient numbers of vacancies are available there is no justification to deny the seniority benefit to the applicant and there is also no justification for the respondent Corporation to resort to adhoc promotion. Moreover, no option was taken from the applicant at any point of time before issuing of impugned order of adhoc promotion. As per Govt. instruction promotion shall be made only in the exceptional and in an emergent situation but the authority in the instant case the respondents have resorted to such practice against large scale vacancies in the cadre of Manager Gr.I/ Asstt. Director/Section Officer to deny the benefit of seniority and service prospects of the applicant and other similarly situated employees. Besides the son of the applicant is now going to be appeared in the H.S final examination under the state Board during the month of February/March 2006 as such posting on adhoc

Jugal Barnah

promotion in the state of West Bengal will cause and injury to the education of his son, more particularly in view of the fact that posting order has been issued in the middle of academic session. In such compelling circumstances applicant has decided to forgo his adhoc promotion that too in a specific term, therefore under the circumstances stated above the impugned order dated 19.10.2005, as well as impugned orders rejecting representation of the applicant dated 30.12.05 and consequential order dated 03.01.06 are liable to be set aside so far applicant is concerned by passing an appropriate order/interim order or direction upon the respondents to allow the applicant to continue in the present place of posting and not to insist the applicant to join in the adhoc promotional post in the state of West Bengal for the reasons indicated above.

Copy of the impugned order dated 30.12.05 and 03.01.06 are enclosed herewith for perusal of Hon'ble Court as Annexure- 4 and 5 respectively.

- 4.7 That it is stated that as per the Govt. instruction a Government employee is entitled to refuse his regular/adhoc promotion and in such event his case is not liable to be considered for further promotion at least for a period of 1 year. It would be evident from the instruction containing for refusal of promotion from Swamy's Complete Manual on Establishment and Administration for Central Government Offices, wherein it is clearly laid down that a Govt. employee if refuses his promotion after the same is offered to him in that event his juniors may be considered for such promotion and no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of such promotion or till a vacancy arises. However, the above-mentioned policy shall not apply where adhoc promotion against short-term vacancies are refused, therefore the applicant is entitled to refuse the conditional adhoc promotion on valid ground indicated above.

Jagat Barnah

4.8 That it is stated that the applicant after receipt of the impugned order dated 03.01.2006 submitted a fresh representation addressed to the Director General, ESIC, New Delhi. In the said representation applicant inter alia stated that he is willing to accept the promotion to the post Asstt. Director if the same is made on regular basis, however, even if the regular promotion is offered to the applicant then also the same will be availed by him after the academic session is over. Applicant further pointed out that one post of Asstt. Director is still lying vacant in the N.E. Region at Guwahati for which he is eligible, more so when post is available in N.E. Region as such his posting on adhoc basis in the state of West Bengal is highly discriminatory. Applicant further stated that he has not been considered for DPC for regular promotion for the reasons best known to the authority, however, the said representation dated 03.01.2006 is still pending before the authority. It is relevant to mention here that the applicant in his first representation specifically stated that he is not willing to accept the adhoc promotion and in his subsequent representation the applicant also stated that he is willing to accept the promotion if the same is made on regular basis, therefore, the impugned order dated 19.10.2005 as well as order dated 30.12.05 and 03.01.2006 are liable to be set aside and quashed so far the applicant is concerned.

Copy of the representation dated 03.01.06 is enclosed herewith for perusal of Hon'ble Court as Annexure- 6.

4.9 That your applicant begs to say that large numbers of junior employees are available in the Corporation may be interested for availing adhoc promotions in the short term vacancies and the department very well could offer such adhoc promotion to the junior employees available and serving in the cadre of the applicant in ESIC.

4.10 That your applicant further begs to say that when large-scale vacancies are available in the grade of Manager Gr. I/Section Officer/Asstt. Director,

Jagat Baruah

there is no justification for considering the promotion of the applicant on adhoc basis without holding DPC and imposing arbitrary conditions not to confer benefit of seniority in the event of availing adhoc promotion. In one hand the respondents Corporation trying to utilize the services of the applicant on adhoc basis and on the other hand respondents are denying seniority in the grade that too when large scale regular posts are available in the department, therefore there is no justification on the part of the respondent Corporation to resort to adhoc promotion to deny the legitimate benefit of promotion to the applicant and other similarly situated employees and on that score alone the Hon'ble Court be pleased to direct the respondents to consider his representation and allow him to continue in the present place of posting in the same capacity. It is relevant to mention here that in terms of the impugned order dated 30.12.2005 the applicant is going to be released with effect from 06.01.2006 (A/N), therefore the applicant has no other alternative but to approach this Hon'ble Tribunal for stay of the impugned order dated 19.10.2005, 30.12.2005 as well as order dated 03.01.2006 so far the applicant is concerned.

- 4.11 That your applicant beg to say that the impugned order has been issued during the middle of academic session and the impugned order is of routine nature and there is no urgency and as such there is enough scope on the part of respondent Corporation to offer such adhoc promotion to the junior employees of the Corporation and allow the applicant to continue in the present place of posting. In this connection the applicant begs to rely on the judgment and order of the Hon'ble Supreme Court in the case of Director of School Education -Vs- O. Karuppa Thevan and another, reported in 1994 Supp (2) SCC 666.

In the circumstances stated above the impugned order dated 19.10.2005 is liable to be set aside and quashed so far the applicant is concerned.

Jugal Barnab

A copy of the judgment and order dated 31.01.1994 passed by the Hon'ble Supreme Court is enclosed herewith for perusal of the Hon'ble Court as Annexure- 7.

4.12 That it is stated that Shri R. Natarajan, Joint Director-I has issued the impugned order of rejection dated 30.12.2005 at his own level in a very whimsical and casual manner, without application of mind in order to enforce the arbitrary order of adhoc promotion as such his action smacks malafide and Shri R. Natarajan has been impleaded in his personal capacity as party respondent No. 5 since his action is contrary to the law.

4.13 That this application is made bonafide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

- 5.1 For that, the applicant has a legal right to refuse a conditional adhoc promotion order on his personal ground or domestic ground, where in the adhoc promotion a specific condition has been imposed not to confer seniority benefit in the promotional grade.
- 5.2 For that, there is no justification on the part of the respondent Corporation to resort to large scale adhoc promotion when vacancies are very much available in the Corporation.
- 5.3 For that, denial of seniority benefit in the event of availing adhoc promotion is an arbitrary condition imposed unilaterally by the Corporation which is contrary to the instructions issued by the Govt. of India from time to time discouraging the Govt. department not to adopt adhoc promotion policy.
- 5.4 For that, no ground has been assigned for not holding regular DPC and also no ground is assigned for not issuing promotion order on regular basis inspite of existence of regular vacancies.

Jugal Bernal

- 5.5 For that, large numbers of juniors are available in the department of ESIC who may be interested to avail the adhoc promotion without benefit of seniority.
- 5.6 For that, the son the applicant is prosecuting his study in the School and his final examinations are scheduled to be held in the month of March 2006, therefore transfer on adhoc promotion during the middle of academic session shall cause irreparable loss and injury to the education of the children which is not sustainable.
- 5.7 For that, applicant has submitted representation to forgo his adhoc promotion due to educational problem of his son who is studying under the State Board of Assam but the same has not been considered by the authority in the manner it is required to be considered rather representation has been rejected mechanically without application of mind and also in a very casual manner, moreover the rejection order is very cryptic and non-speaking and as such on that ground itself the impugned order dated 19.10.05, 30.12.05 as well as the consequential order dated 03.01.06 are liable to be set aside and quashed so far the applicant is concerned.
- 5.8 For that there is no urgency of affecting the impugned adhoc promotion order.
- 5.9 For that applicant is going to be released on 06.01.06 (A/N) without proper consideration of his representation.
- 5.10 For that the impugned order of posting on adhoc promotion dated 19.10.05 as well as rejection order dated 30.12.05 and 03.01.06 have been issued during the middle of academic session without any urgency which will cause irreparable loss and injury to the applicant and his dependent family members including his son who is going to appear final

Jugal Barnah

examination scheduled to be held in the month of February/March 2006 under the State Board.

- 5.11 For that respondents are not entitled to impose arbitrary conditions while issuing the adhoc promotion order and on that score alone the impugned order dated 19.10.2005 is liable to be set aside and quashed so far applicant is concerned.

6. Details of remedies exhausted.

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order No. 500 of 2005, bearing letter No. A33/12/1/97-E. I Col. II dated 19.10.2005 (Annexure-1) as well as the rejection order dated 30.12.2005 and the consequential order dated 03.01.2006 so far the applicant is concerned.

Jugal B. Bhatnagar

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in the present post of posting in the same capacity.

8.3 Costs of the application.

8.4 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

9.1 That the Hon'ble Tribunal be pleased to stay operation of the impugned order No. 500 of 2005, bearing letter No. A33/12/1/97-E.I Col. II dated 19.10.2005 (Annexure- 1) as well as the rejection order dated 30.12.2005 and the consequential order dated 03.01.2006 so far the applicant is concerned till disposal of this application.

10.

11. Particulars of the L.P.O

i)	L.P.O No.	: 264317795
ii)	Date of issue	: 23.12.05
iii)	Issued from	: G. P. O. Guwahati
iv)	Payable at	: G. P. O. Guwahati

12. List of enclosures:
As given in the index.

Jugal Baruah

VERIFICATION

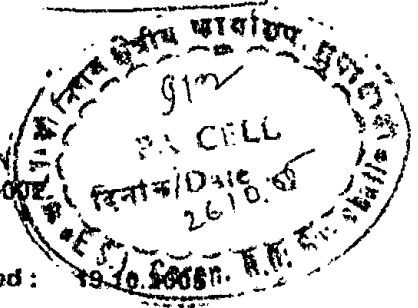
I, Shri Jugal Baruah, S/o- Late Kula Chandra Baruah, aged about 50 years, working as Superintendent, in the Regional office, Employees State Insurance Corporation, Bamunimaidan, Guwahati- 21, Assam, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 6th day of January 2006.

Jugal Baruah



HEADQUARTERS
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAVAN: C.I.G. ROAD: NEW DELHI-110002
http://esic.nic.in



No. A33/12/1/97-E.I Col. II

Dated : 19.10.2005

OFFICE ORDER No. 500 OF 2005

The Director, General is pleased to order the promotion of the following officers in the grade of Insurance Inspector (in the pay scale of Rs.5500 - 9000/-) to the grade of Assistant Director / Manager Gr. I / Section Officer (in the pay scale of Rs.6500 - 10500) on adhoc basis and post them as follows:-

Sl. No.	Name of the Officer S/Shri/Smt.	Present place of posting as I.I / Mgr.Gr.II/ Supdt.	Region/Sub-Region/Office in which posting is now ordered as Asst. Director/ Section Officer/ Manager Gr.I on adhoc basis
1.	Ashok Kumar Parida	Karnataka	Karnataka
2.	W. Suresh Manuel	Coimbatore	Coimbatore
3.	Nizamuddin	Karnataka	Andhra Pradesh
4.	Bhagwan Singh	Jharkhand	West Bengal
5.	B.K. Sinha	Bihar	Bihar
6.	Jugal Barua	Assam	West Bengal
7.	DK Sarkar	West Bengal	West Bengal
8.	RN Mohrana	Orissa	West Bengal
9.	KK Kureal	Uttar Pradesh	Noida
10.	VK Roda	Delhi	Hqrs.
11.	VK Taneja	D(M)D	D(M)D
12.	M Kalaivanan	Tamil Nadu	Karnataka
13.	S Jayaraj	Tamil Nadu	Tamil Nadu
14.	Pankaj Kumar	Delhi	Hqrs.
15.	J.Shiva Shankar	Andhra Pradesh	Andhra Pradesh
16.	Baldev Raj	Uttar Pradesh	Uttar Pradesh
17.	A.K.Nim	Delhi	Hqrs.
18.	M.Koodalingam	Coimbatore	Kerala
19.	M.Durai	Karnataka	Goa
20.	Jaglal Chaudhary	Jharkhand	Jharkhand
21.	Ramulu	Andhra Pradesh	Andhra Pradesh
22.	D.Sugumaran	Karnataka	Karnataka
23.	S.K.Chaturvedi	Hqrs.	Hqrs.
24.	P.N.Bhasin	Delhi	Delhi
25.	Ram Swaroop Kunharia	Rajasthan	Madhya Pradesh
26.	Ramesh Chander -II	Delhi	Hqrs.
27.	Mrs. Saroja Ashokan	Pune	Pune
28.	Amarjeet Kumar	Punjab	Punjab
29.	D.N. Dhalgera	Gujarat	Gujarat
30.	S.S.Hirani	Gujarat	Gujarat
31.	Chander Sen	D(M)D	D(M)D
32.	Saheb Ram Singh	Delhi	Hqrs.
33.	Anil Kr. Rastogi	Delhi	Hqrs.
34.	M.A.Hafees	Andhra Pradesh	Andhra Pradesh
35.	G.Panda	Orissa	West Bengal
36.	Har Sahai	Uttar Pradesh	Uttar Pradesh
37.	S.K.Srivastava	Madhya Pradesh	Chattisgarh
38.	C.B.Gandhi	Gujarat	Gujarat
39.	N.C.Purani	Gujarat	ESICM Hospital, Ahmedabad
40.	Kusum Vohra	Hqrs.	Hqrs.
41.	Kanwaljit Singh	Delhi	Delhi
42.	V.L.Joshi	Madhya Pradesh	Madhya Pradesh
43.	Daljit Kaur Mavi	Punjab	Punjab
44.	D.K.Sharma	Rajasthan	Madhya Pradesh

Attended
Advocate
6.11.05

45.	Narain Dass.	Rajasthan	Rajasthan
46.	Abdul Quodeos	Delhi	Hqrs.
47.	Vilayati Lal	Delhi	Hqrs.
48.	Anil Kumar Khanna	Hqrs.	Mumbai
49.	N.K.Basari	Gujarat	Gujarat
50.	J.K.Parmar	Gujarat	Gujarat
51.	R.K.Sharma	Delhi	Hqrs.
52.	R.S.Rohilla	Haryana	Hqrs.
53.	Mrs. V.K.Pathak	Hqrs.	D(M)O
54.	S.C.Kulshrestha	Uttar Pradesh	Uttar Pradesh
55.	Salpal	Hqrs.	Hqrs.
56.	Harish Chander	Haryana	Haryana
57.	Sunil Kumar	Haryana	Hqrs.
58.	Hoshiar Singh	Haryana	Hqrs.
59.	Kiran Kohli	Delhi	Delhi
60.	Shubhakaran	Punjab	Himachal Pradesh
61.	Tarsem Pal	Haryana	Haryana
62.	K.S.Minhas	Haryana	Pune
63.	Sat Pal Bansal	Haryana	Pune
64.	Neelam Puri	Haryana	Mumbai
65.	S.G.Tehr	Andhra Pradesh	Andhra Pradesh
66.	Suresh Pal Singh	Rajasthan	West Bengal
67.	P.N.Sahoo	Orissa	Orissa
68.	G.C.Rout	Orissa	West Bengal
69.	Shiv Shankar Lal Srivastava	Uttar Pradesh	Uttar Pradesh
70.	Upendra Bajaj	Madhya Pradesh	Madhya Pradesh
71.	Baldev Singh	Punjab	ESICM Hospital, Bari Brahma (Jammu)
72.	Smt.L.B.Shah	Gujarat	Gujarat
73.	Smt.A.S.Chaurasia	Gujarat	Gujarat
74.	Ladu Ram Rana	Rajasthan	Rajasthan
75.	P.R. Kudal	Rajasthan	Rajasthan
76.	B.C.Godika	Rajasthan	West Bengal
77.	Mrs. B. Nag	Assam	West Bengal
78.	A.Shyama Prasad	Karnataka	Karnataka
79.	U.Vasantha Kr. Shenoy	Karnataka	Karnataka
80.	Ram Kr. Dwivedi	Uttar Pradesh	Uttar Pradesh
81.	K.Sreenivasan	Kerala	Kerala
82.	M.V.Krishnan	Kerala	Kerala
83.	P.Balakrishnan Nair	Kerala	Kerala
84.	J.P.S.Malik	Haryana	West Bengal
85.	V. Srinivasa	Karnataka	Karnataka
86.	D.B.Bhende	Mumbai	Mumbai
87.	R.A.Pillai	Pune	Pune
88.	A.B.Manivatkar	Nagpur	SRO, Aurangabad
89.	M.P.Gangurde	Mumbai	Mumbai
90.	M.S.Dhaware	Pune	Pune
91.	V.D.Pinjarkar	Nagpur	Mumbai
92.	R.G.Waghmare	Mumbai	Mumbai
93.	N.S.Bodhere	Mumbai	Mumbai
94.	V.P.Nalavede	Pune	Pune
95.	M.P.Chankapure	Nagpur	Mumbai
96.	B.P.Gaigwal	Pune	Pune
97.	Shankar Lal Anjana	Madhya Pradesh	Madhya Pradesh
98.	A.Pondyrajani	Madurai	Trunelveli
99.	C.N.Chauhan	Gujarat	Gujarat
100.	J.Boro	Assam	West Bengal
101.	S.Venkatarathnam	Andhra Pradesh	Andhra Pradesh
102.	P.S.Verma	Haryana	West Bengal
103.	Rameshwar Das	Punjab	ESICM Hospital, Ludhiana
104.	S.R.Mago	Delhi	Delhi
105.	N.K. Sahu	DMD	DMD
106.	Santosh Malhotra	DMD	Mumbai
107.	Prem Lata	Hqrs.	Mumbai

108.	Rama Dhamija		Hqrs.	Mumbai
109.	M.C.Nag		Assam	West Bengal
110.	Raj Kumari Sabharwal		Delhi	Hqrs.
111.	Praveen Sehgal		Gujarat	Gujarat
112.	A.K. Sagi		Delhi	Pune
113.	Alluri Venu Gopal		Andhra Pradesh	Andhra Pradesh
114.	C.P. Wadhwa		Hqrs.	West Bengal
115.	N.K. Luthra		Hqrs.	West Bengal
116.	Rajiv Kumar Choudhary		Mumbai	Mumbai
117.	Jyoti Prasad		Bihar	Bihar
118.	Meenakshi Nanda		Delhi	Pune
119.	P.M. Khale		Madhya Pradesh	Madhya Pradesh
120.	Vinay Kumar Sharma		Delhi	West Bengal
121.	K.Padmavathy		Tamil Nadu	Salem
122.	Sushil Sachdeva		Delhi	West Bengal
123.	S.S.Dalai		Haryana	Tamil Nadu
124.	P.K. Bhatnagar		Delhi	Delhi
125.	Manish Gupta		D(M)D	West Bengal
126.	K.K. Malhotra		Hqrs.	Hqrs.
127.	P.M. Narayandas		Karnataka	Karnataka
128.	M.G. Panhar		Gujarat	Gujarat
129.	K.N. Jotwani		Gujarat	Gujarat
130.	Kakali Das		Andhra Pradesh	Andhra Pradesh
131.	I.G. Pillai		Gujarat	ESICM Hospital, Ahmedabad
132.	B.C. Mehta		Gujarat	Mumbai
133.	Om Prakash Dhingra		Delhi	West Bengal
134.	Vijay Kumar		Delhi	West Bengal
135.	Pankaj Kumar		Bihar	West Bengal
136.	Savita R. Suresh		Delhi	West Bengal
137.	Rajendra R. Pillai		Nagpur	SRO Aurangabad
138.	Prasun Kumar Sinha		Mumbai	Mumbai
139.	Rohtas Singh	SC	Delhi	West Bengal
140.	Majmudar P. Keshav Lal	SC	Gujarat	Mumbai
141.	Kalidas Sajjan	SC	West Bengal	West Bengal
142.	Girish Kumar Kain	SC	Delhi	West Bengal
143.	Vijay Bokalia	SC	D(M)D	Hqrs.
144.	Champak Biswas	SC	West Bengal	West Bengal
145.	Azad Singh	SC	Delhi	West Bengal
146.	Jyoti Parkash	SC	Karnataka	Goa
147.	Ajay Kumar Mahan	SC	Delhi	Tamil Nadu
148.	Premdas Jaiswara	SC	Uttar Pradesh	Uttar Pradesh
149.	P.K. Krishnan Kutty	SC	Kerala	Kerala
150.	V. N. Sarojini	SC	Kerala	Kerala
151.	C. Gopinathan	SC	Kerala	Kerala
152.	Krishna Das	SC	Jharkhand	West Bengal
153.	S. Palaninathan	SC	Tamil Nadu	Tamil Nadu
154.	Amarjeet Singh	SC	Punjab	Punjab
155.	S. Dhandapani	SC	Coimbatore	Coimbatore
156.	Ram Prasad	SC	Delhi	West Bengal
157.	Mool Chand	SC	Delhi	West Bengal
158.	Jai Prakash	SC	Delhi	West Bengal
159.	Phool Singh Giroh	SC	Delhi	West Bengal
160.	Vikramjit Singh	SC	Delhi	West Bengal
161.	Ran Singh	SC	Delhi	West Bengal
162.	Baldev Singh	SC	Punjab	Andhra Pradesh
163.	B. Gnana Kumar	SC	Andhra Pradesh	ESICM Hospital, Bari
164.	Hari Krishan	SC	Haryana	Brahma, Jammu
165.	J. B. Ram	SC	Jharkhand	Andhra Pradesh
166.	Bhola Ram	SC	Haryana	Haryana
167.	Balvant Ram	SC	Haryana	Jharkhand
168.	Ram Swaroop Jarwal	SC	Rajasthan	West Bengal
169.	S.C. Deka	SC	Assam	Tamil Nadu
170.	B.C. Rahi	SC	Rajasthan	Mumbai
				West Bengal
				West Bengal

The promotion of the officers will take effect from the date of their assumption of charge.

The promotion of all the above mentioned officers is ordered purely on temporary and adhoc basis. They may be reverted to their lower post without any notice or assigning any reason therefor. The adhoc promotion shall not confer on them any right to continue in the post or for regular promotion in future. The period of service rendered by them on adhoc basis in the grade/cadre will count neither for seniority in the grade/cadre nor for eligibility for promotion to the next higher grade/cadre. The pay of all these officers on promotion will be fixed in the pay scale of Rs.6,500 - 10,500/- under the normal rules.

The transfers/postings of all these officers have been ordered in public interest and they are entitled to TATTA/DA/Joining Time as admissible under the rules, wherever applicable.

The officers posted to regions which are different from their present ones will be relieved from their present posts by their present controlling officers concerned only after they receive communications regarding their places of postings from the Regional Directors/ Directors/ Joint Directors i/c of the Regions/Sub-Regions to which they are posted. The orders indicating the placement of officers who are posted in other Regions/ Sub-Regions shall be issued by the respective Regional Directors/ Directors/ Joint Director i/c within a week from the date of issue of this order.

The Regional Directors may utilize the services of the senior-most officers available in their regions in the cadre of Asst. Directors/ Managers Gr.I as Asst. Directors in the Regional Office as per this Office Order No. 316 of 2005 dated 30.6.2005 in file No. A -22 (13) 1/2004-E I.

The charge reports may be sent to all concerned in due course.

(Hindi version follows)

[Signature]
13/10/05
(R. NATARAJAN)
JOINT DIRECTOR E. I

To,

1. The officers concerned,
2. All officers of the Headquarters.
3. All the Regional Directors.
4. All the Directors / Joint Directors i/c of the Sub-Regional Offices.
5. All the Medical Superintendents of ESIC Hospitals and ESIC Model Hospitals.
6. D(M)Delhi/D(M) Noida/Director, ESI Hospital, KK Nagar/Director (FWP), New Delhi
7. The concerned Joint Directors (Fin.) and Dy. Directors (Fin)
8. The Librarian, Hqrs. Office
9. Official Language Branch, Headquarters for Hindi version.
10. Copy to personal files/ Guard file/ Spare copy.

-19-
EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE NORTH EASTERN REGION
GUWAHATI 21


Annexure-2

39

No. 43-A22/15/2004-Btt.

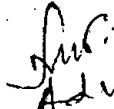
Dated 26-10-2005

A copy of the Hrs. Office Order No. 500 of 2005 issued under No. A.33/12/1/97-EI Col. II dated 19-10-2005 regarding promotion/posting/Transfer is sent herewith for information and necessary action.


(A.C. CHOUHURY)
DEPUTY DIRECTOR
FOR REGIONAL DIRECTOR

- To
- ✓ 1. Sri J Baruah, Suptt., R.O. ESIC, Guwahati.
 2. Mrs B. Nag, Suptt., R.O., ESIC, Guwahati.
 3. Sri J Baro, B M, B O, ESIC, Jorhat.
 4. Sri S C Deka, B M, B O, ESIC, Nagam.

Attested


Advocate
6.1.06

To
The Director General
E.S.I. Corporation,
C.I.G Marg,
New Delhi-110002

Through:- The Regional Director, E.S.I. Corporation, Guwahati, Assam.

Subject:- Prayer for granting exemption from the operation of Hqrs. Promotion order No.500 of 2005 under serial No.6.

Sir

Kindly refer to Hqrs. Office order No. 500 of 2005 issued vide No.A/33/12/97-E.I.Col.II, dated 19.10.05 regarding promotion of Insurance Inspector to the grade of Assistant Director/Manager Gr.II/Section Officer.

In this connection, I have the honour to state that Sir,

1. My son Sri Banjeet Baruah is a final year candidate of Class XII standard and currently studying in a local educational institution affiliated to State Higher Secondary Council. Therefore, it will be bolt from the blue for my son if I depart the station at this critical study period of time.
2. That sir, my mother is 86 years old and none of the male family member are available except me to look after at her last part of life. My two elder brothers have already died of deadly disease like Cancer.
3. That Sir, my wife has been physically unsound with multiple diseases who needs constant care and nursing for maintaining her health.

Under the above circumstances, I would like to state that I shall not be able to proceed outside the state of Assam and therefore, kindly allow me to forgo the promotion at present on the ground cited above.

Yours faithfully,

Jugal Baruah
(JUGAL BARUAH) 26/10/2005
SUPERINTENDENT.
E.S.I. Corporation
Guwahati, Assam

Attested
Advocate
6.1.06



HEADQUARTERS
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAVAN: C.I.G. ROAD: NEW DELHI-110002.
<http://esic.nic.in>

No. A-32/12/1/97-E.I
To,

Dated : 30.12.2005

1. The All Regional Directors
2. Directors/Joint Directors, i/c of Sub Regions
3. D(M)D/M.S., ESIC Hospitals/ESIC Model Hospitals,
4. Joint Director (E-V), Hqrs. Office.

Sub : Promotion to the cadre of Assistant Director/Section Officer/Mgr. Gr. I on adhoc basis - Representations - considered - Decision - communicated.

Ref : This office order No. 500 of 2005 dated 19.10.2005.

Sir/Madam,

I have to state that the representations received from the officials of your office requesting for cancellation/modification of the order issued in the reference cited promoting them on adhoc basis to the cadre of Assistant Director/Section Officer/Mgr. Gr. I has been considered but could not be accepted due to administrative exigencies. I, therefore, request you to inform the officials concerned that their representations have been rejected.

They may also be relieved on 06.01.2006 (AN) of their present charge with direction to report for duty at the new place of posting as ordered in this office order No. 500 of 2005 dated 19.10.2005.

The compliance report, thereon, may be sent to this office immediately.

Yours faithfully,

[Signature]
(R. NATARAJAN)
JOINT DIRECTOR-I
FOR DIRECTOR GENERAL

Attested
[Signature]
Advocate
6.1.06

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE NORTH EASTERN REGION
DUMULIMALDAI : GUWAHATI-21

No: 13-422/15/2004-Btt.

Date: 03-01-2006

MEMORANDUM

Subject: Promotion to the cadre of Assistant Director/Section officer/Egr. Gr I on adhoc basis- representations considered - decision communicated.

.....

As per Hqs. Office letter No; A32/12/1/97 - B-I dated 30-12-2005 on the above cited subject, I am directed to inform that the representation furnished by the officials on 25-10-2005, 26-10-2005 and 27-10-2005 forwarded to Hqs. Office vide R.O. Letter No; 13-422/15/2004-Btt. dated 01-11-2005 has been considered but could not be accepted due to administrative exigencies.

(P. SUBRAMANIAM)
ASST. DIRECTOR

For, REGIONAL DIRECTOR

- To:
1. Sri Jugal Baruah, Supt. R.O. Guwahati
 2. Sri. Bala Hagg, Supt. R.O. Guwahati.
 3. Sri J. Boro, B.M. Jorhat.
 4. Sri S.C. Deka, B.M. Nagaon.

Attested
Advocate
6.1.06

To
The Director General
E.S.I. Corporation
Panchdeep Bhawan
New Delhi-110002

Through Regional Director, ESIC, Guwahati

Sub:- Promotion to the post of Assistant Director/Manager Gr.I/Section Officer
In the pay scale of RS.6,500/- 10,500 on ad hoc basis.

Sir,

With reference to Hqrs. Office, ESI Corporation, New Delhi office order no. 508 of 2005 vide no A.33/12/1/97-Estt. Vol. II dated 19.10.05 on the above subject. I have to submit my representation as under for your kind reconsideration.

- 1) That Sir, I am willing to accept the promotion to the post of Assistant Director/ Mgr. Gr.I/Section Officer provided it is offered to me on regular basis.
- 2) That Sir, a regular post of Assistant Director is still lying vacant in the N.E. Region, Guwahati for which I am eligible to be accommodated. But unfortunately being a senior I.I. I have not been considered for that place of posting for the reasons best known to the authority.
- 3) That Sir, my junior has been accommodated as ad hoc Assistant Director in N.E. Region, Guwahati depriving me for regular promotion which is not only violation of principle of natural justice but also a clear discrimination in selecting the place of posting.
- 4) That Sir, my present pay structure is RS.6,500 - 10,500/- obtained by virtue of ACP and your above noted promotion does not confer on me any right to continue in the post or for regular promotion in future. Further, the period of service, rendered by me on ad hoc basis in the grade will neither count for seniority nor for eligibility for promotion to the next higher cadre.

It indicates that my service is sought to be utilized in other region with higher responsibility without conferring any right and benefits which is not tenable in law. Thus, the term ad hoc promotion without any benefit has no meaning in my case.

5. That Sir, I have not been considered for DPC for regular promotion due to the reason best known to the Authority.

Under the above circumstances I would like to request you kindly to look into my case and accommodate me as Assistant Director, N.E. Region Guwahati.

Yours faithfully,

Attested
Advocate
6.1.06

Jugal Baruah
(JUGAL BARUAH) 3/01/2006
SUPERINTENDENT
R.O., E.S.I.C., GHY.-21

transfer were being paid special pay in addition to their pay but the direct recruits were denied this privilege. This Court held that the denial of special pay to Class I direct recruits amounted to violation of Articles 14 and 16 of the Constitution and that they were entitled to special pay at the same rates at which it is paid to the transferred officers working in the Centre.

4. The learned counsel for the appellants has sought to distinguish this case on the ground that in that case this Court found that the special pay was not being paid to the transferred officials for compensating their displacements or for their qualifications but was being paid for the arduous and special nature of the functions to be discharged in the Telecommunication Research Centre. It has been urged that in the present case special pay was being paid to the officials appointed by way of transfer to enable them to encounter the problems due to the disturbance involved. The said explanation that has been put forward for grant of special pay to transferee officers cannot, however, be accepted. In Rule 1307 [FR 9 (25)] of the Indian Railway Establishment Code, Volume II, the expression "special pay" has been defined as under:

"Special pay.— Means an addition, of the nature of pay, to the emoluments of a post or of a railway servant, granted in consideration of—

- (a) the specially arduous nature of duties; or
- (b) a specific addition to the work or responsibility and includes non-practising allowance granted to doctors in lieu of private practice."

Moreover, the High Court has found that the averment in the writ petition with regard to the posts having arduous nature of duties was not controverted in the affidavit that was filed on behalf of the appellants in the writ petition in the High Court. In these circumstances, we find no basis for distinguishing the instant case from the case of *Telecommunication Research Centre Scientific Officers' (Class I) Assn.*¹

5. We, therefore, find no merit in this appeal and it is accordingly dismissed. No order as to costs.

1994 Supp (2) Supreme Court Cases 666

IN THE SUPREME COURT OF INDIA

DIRECTOR OF SCHOOL EDUCATION,
MADRAS AND OTHERS

Appellants;

Versus

KARUPPA THEVAN AND ANOTHER

Respondents

Civil Appeal No. 546 of 1994, decided on January 3, 1994

1. Service Law — Transfer of employee — Transfer for exigencies of administration — Affording prior hearing in case of — Held, not necessary — Administrative Law — Natural justice — Hearing — Inapplicability of the principle of

(Para 2)

2. Service Law — Transfer of employee — Employee's children studying in school — Transfer of such employee during mid-academic term — Propriety — In

Attended
Advocate
6.1.88

absence of urgency such transfer restrained from being effected till the end of that academic year. (Para 2)

Appeal allowed. H-R/13371/SLA

ORDER

1. Leave granted. Heard both counsel.

2. The Tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs.

1994 Supp (2) Supreme Court Cases 667

(BEFORE S.C. AGRAWAL AND M.K. MUKHERJEE, JJ.)

A.M. VADI

Appellant;

Versus

INDIA TRADE PROMOTION ORGANISATION
AND ANOTHER

Respondents.

Civil Appeal No. 713 of 1994 in SLP (Civil) No. 20507

(1993, decided on February 4, 1994)

1. Service Law — Appointment — Selection — Non-selection to a post — Lack of adequate balance service to fulfil the condition to serve the employer for the requisite minimum period (two years in this case) after completing the normal tenure of such posting (three years in this case) abroad — High Court's interference in exercise of its writ jurisdiction, with such a decision of the Selection Committee — Held, the High Court could not find fault with the Selection Committee's decision for not curtailing the period of foreign service for a few months to accommodate the writ petitioner (therein Respondent 2) — Further, in a writ petition against non-selection on the said ground, the High Court could not examine the eligibility of the selected candidate — Constitution of India, Art. 226

2. Service Law — Appointment — Selection — Non-selection — Selection Committee's decision regarding — Scope of judicial review — Constitution of India, Art. 226

Held:

The High Court in exercise of its jurisdiction under Article 226 of the Constitution was not justified in finding fault with the decision of the Selection Committee regarding the non-selection of Respondent 2 the SLP.

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NOTICE

From:-

Shri J. Nalwa
Advocate

To: Shri G. Baishya
Sr. C.G.S.C.

Sub: O.A. No. — /06 (Shri J. Nalwa - vs - U.O. & others.)

Sir, find please enclosed herewith a copy of the
abovementioned O.A. This is for your information
and necessary action.

Please acknowledge receipt.

Received

(G. Baishya)
Sr. C.G.S.C.

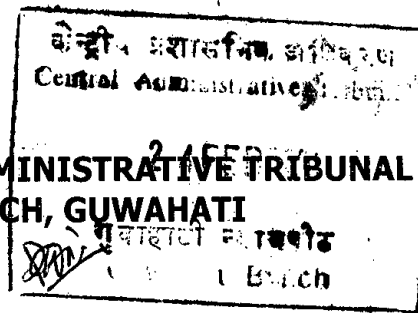
Yours Sincerely

J. Nalwa
Advocate
06/10/06.

- 25 -

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. NO. 5/2006



Filed by 42
The Respondents through
Alsha Das.
Addl Cnsc
24/02/06

Shri Jugal Baruah

----- Applicant

Vs.

Union of India & Others

----- Respondents

**COUNTER AFFIDAVIT SUBMITTED BY THE RESPONDENTS AS PER
THE DIRECTIONS OF THE HON'BLE TRIBUNAL**

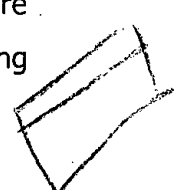
I, R. Natarajan, aged about 53, working at present as the Joint Director as Joint Director, ESI Corporation, Headquarters, New Delhi do hereby solemnly affirm and state that I have read and understood the contents of the Application. I am authorised to file the present affidavit and submit as under:

That the deponent begs to give Preliminary submissions before giving parawise reply.

Preliminary submissions:

The Employees' State Insurance Corporation is a statutory body constituted under the provisions of the Employees' State Insurance Act, 1948 (Central Act 34 of 1948) to provide social security to the insured persons who are employed in the factories and establishments covered by the Act and are drawing wages of Rs. 7500/- p.m and less.

The Corporation has its offices spread throughout the length and breadth of the nation and the Corporation runs more than 22 hospitals in various states. In order to administer the scheme, the Corporation requires officers who can be transferred all over the nation. It, therefore, appoints all the officers only with all-India transfer liability. The transfer liability is a pre-condition for appointment and it is made clear to all of them even at the time of inviting applications for those posts. All the posts in the ESI Corporation from the cadre of Insurance Inspectors (Pay scale of Rs. 5500-9000) and above carry all-India transfer liability.



Adhoc promotion became an administrative necessity:

There were large number of vacancies in the cadre of Assistant Directors and almost all the Regional Directors had been complaining of pendency in Revenue and Recovery work for want of adequate number of officers. Complaints of similar nature emanated from the Medical Superintendents of various ESIC Hospitals and ESIC Model Hospitals too. A proposal for promoting 261 officers to the cadre of Assistant Directors has already been sent to the Union Public Service Commission on 29.1.2005. The UPSC is in the process of holding the meeting of the Departmental Promotion Committee for this purpose. But, the time taken in the process being a long one and considering the administrative exigencies as explained above, it was decided to promote the seniormost persons on adhoc basis to man the 170 positions immediately. It was in these circumstances, the orders were issued on 19.10.2005 promoting Shri Jugal Baruah also as one among the 170 officers.

But, out of 170 persons promoted thus, 54 persons had given representations permitting them to decline the promotion ordered or requesting for change in the place of postings. But, such a change in the place of posting could be considered only in respect of a few cases where vacancies existed.

It was, therefore, decided to enforce the promotion and no promotee was allowed to decline promotion. It would pose more problems and create more dislocations in the administration of the cash and medical benefits to the insurance population for whom the ESI Scheme was brought into existence, if the Appointing Authority had decided to accept the plea of all these persons and cancelled their promotions. In the hypothetical situation of promoting the juniors in the place of the 54 persons who had represented against the postings, there will have to be large number of reversions of those juniors later when the regular promotion is ordered on receipt of the Select Panel from the UPSC which is expected to be received within a month or two. The adhoc promotion of junior would have to be ordered by the Administration knowing full well that the juniors who are promoted and posted to various outstations throughout the nation, would have to be paid Transfer Travelling Allowance, Travelling Allowance, Dearness Allowance, Lumpsum Grant, etc., in addition to Joining Time to serve in those places only for a shorter duration of a few months. Again, they would have to be brought back to their original stations (at public expense) or transferred to some other stations in the lower cadre (at public expense) soon when their seniors accept regular promotion. This, only to suit the convenience, likes and dislikes of the subordinate officers who are seniors and who have actually pledged, at the time of joining the service of the Respondent Organisation, to accept the all-India transfer liability. Such a course of action is not in public interest.

Moreover, those juniors who are given adhoc promotions and posted to outstations in various other Regions may also, in all probability, decline such promotions if the places of posting were not to their liking.

The promotees simply lose sight of the fact that this office order dated 19.10.2005 promoting them to the cadre of Assistant Director was **an order and not an offer**. It was an order requiring compliance and not an offer necessitating acceptance.

In A.C. Roy & Others Vs. Union of India and others, (O.A. No. 555 of 1986, Date of Judgment 26.7.1988) the CAT, Calcutta has observed that "***the applicants have no right to refuse promotion. Promotion is not given merely for the benefit of the employees concerned: it is also in the interest of the administration . On account of experience and proficiency of and employee, he is judged suitable for promotion and posted at a higher post. This posting is in the interest of the administration and no government employee can refuse to carry out this order***". The Tribunal has also observed that there is no personal liberty for an employee "***to refuse promotion when a government employee is promoted and transferred in the public interest***".

In this case "***a transfer order has been passed involving hundreds of employees all over India and if in a large number of them in one particular station refuse promotion and if in such circumstances the authorities are of the opinion that the refusal will be against public interest because it will defeat the very purpose for which the transfer order has been issued; then, their decision (not to allow the employees to refuse promotion) cannot be termed arbitrary or unreasonable***". The Tribunal said that such a decision of the authorities "***is fair and maintainable***".

The Government of India, DP&AR, O.M. No. 22034/3/81 – Estt. (D) dated 1.10.1981, specifies that "where the reasons adduced by the officer for his refusal of promotion are not acceptable to the appointing authority, then he should enforce the promotion on the officer and in case the officer still refuses to be promoted, disciplinary action can be taken against him for refusing to obey his orders" . **The Administration has to fill up the large number of vacancies existing in West Bengal, Mumbai and other regions in the cadre of officers Group 'B'.**

Where the appointing authority is of the opinion that public interest would suffer by refusal of promotion involving transfer or otherwise, there would be no question of accepting the reasons for refusal of promotion.

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It is not obligatory on the part of the Appointing Authority to permit the subordinates to decline the promotion ordered in public interest.

In this case the transfer has been ordered at the time of promotion. It is not a general transfer in the same cadre. We are in need of officers to fill up large number of vacancies in West Bengal and we have posted officers from various far away regions to West Bengal. But, the Applicant Shri. Jugal Baruah is not willing to move out from the neighbouring region Assam. ***"There is no rule which confers any right on a government servant to stay in a particular place for a particular period."*** (Jenamane Prafulla Kumar Vs State of Orissa – 1981(1) SLJ –546- Orissa. – AIR 1965 SC 1196 – AIR 1972 SC 1004)

But, even in the case of transfers in the same cadre the Hon'ble Supreme Court has observed (in the case of In Union of India & Ors. Vs. S.L. Abbas reported in AIR 1993 SC 2444) that:

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration.... The said guidelines however does not confer upon the Government employee a legally enforceable right."

In Mrs. Shilpi Bose & Ors. Vs. State of Bihar & Ors. reported in AIR 1991 SC 532 the Hon'ble Supreme Court has held that:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be

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conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

The promotion and transfer of the Applicant has been ordered in public interest and the Appointing Authority had taken into account various factors including the interest of the officers. The Applicant has been promoted and posted only in the neighbouring region whereas many officers have been posted to far off places. **The official has no inherent right to decline the order promotion.** As the Select Panel from the UPSC is expected shortly for promoting persons on regular basis, permitting the Applicant and 53 others who sought permission to decline promotion and promoting their juniors would result in short term displacement of many juniors who may not get regular promotion in the current recruitment process for which proposal has already been sent to the UPSC. **As a result, if they are promoted now, they would have to be reverted and brought back to original stations (at public expense) or transferred in the lower cadre to some other stations (at public expense) soon when their seniors accept regular promotion.** This will also result in more dislocation again and again in the administration of the cash and medical benefits to the insurance population for whom the ESI Scheme was brought into existence.

3. That with regard to the statement of the Applicant in paragraph 4.2 of the O.A, the deponent begs to state that The Applicant is suppressing the fact that he joined the ESI Corporation as LDC on 1.2.1979 and was working in Assam all through his career spanning into 27 years except for a period of three years from 15.5.1990 to 16.8.1993 when he was working in West Bengal in the cadre of Insurance Inspector.

The Applicant joined duty in the cadre of Insurance Inspector being aware of the all-India transfer liability. The averments in this para are not relevant to his prayer for declining the promotion ordered.

4. That with regard to the statement of the Applicant in paragraph 4.3 the deponent does not admit anything contrary to the records of the case.

5. That with regard to the statement of the Applicant in paragraph 4.4 of the O.A, the deponent begs to state that the condition has been incorporated as per the Government of India, DOPT, O.M, No.31/6/90-EO (MM) dated 25.1.1990. The arguments of the Applicant against adhoc promotion are not correct. Adhoc promotions are ordered only when there is administrative exigency. The Applicant himself had, on earlier occasions, been complying with the order of his adhoc promotion to the cadre of U.D.C and had worked on adhoc basis in that promoted cadre for more than three years. He had again been promoted on adhoc basis to

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the cadre of Assistant and had worked on adhoc basis in that cadre for about six months.

The details in this regard are given below:

Sl. No.	Cadre	Period of service on adhoc capacity
1	UDC	From 17.3.1981 to 16.8.1983
2	Assistant	From 7.11.1989 to 1990

6. That with regard to the statement of the Applicant in paragraph 4.5 of the O.A, the deponent begs to state that the order dated 19.10.2005 was not an order of transfer of the Applicant in lateral capacity. It was an order of promotion. The Respondent No. 2 had to fill up vacancies in the cadre of Assistant Directors because of the vacancies created by the promotion of officers to various higher cadres like that of Additional Commissioners, Regional Directors Grade 'A'/Directors, Regional Directors Grade 'B'/Joint Directors and Deputy Directors. Promotions to these higher cadres had cascading effect and large number of vacancies had arisen in the cadre of Assistant Directors, especially in West Bengal, Mumbai and other Regions.

The personal reasons of the official cannot be the deciding factor when the Administration has to run large number of hospitals, Regional Offices and Branch Offices throughout the nation. It is reiterated that the impugned order dated 19.10.2005 is not a transfer order in a lateral cadre but an order of promotion in public interest.

7. That with regard to the statement of the Applicant in paragraph 4.6 of the O.A, the deponent begs to state that The Applicant has no right to refuse promotion. His request is to be considered by the Appointing Authority which may accept or reject his request subject to administrative exigencies. The Government of India, DP&AR, O.M. No. 22034/3/81 – Estt. (D) dated 1.10.1981, specifies that where the reason produced by the officer for his refusal of promotion are not acceptable to the appointing authority, then he should enforce the promotion on the officer and in case the officer still refused to be promoted, disciplinary action would be taken against him for refusal to obey his orders.

Where the appointing authority is of the opinion that public interest would suffer by refusal of promotion involving transfer or otherwise, there would be no question of accepting the reasons for refusal of promotion.

It is not obligatory on the part of the Appointing Authority to permit the subordinates to decline the promotion ordered in public interest.

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Because of the compelling reasons to fill up the vacancies in the cadre of Assistant Directors in West Bengal and other regions, the request of the Applicant and many other promotees to permit them to decline promotion was not accepted.

8. That with regard to the statement of the Applicant in paragraph 4.7 of the O.A, the deponent begs to state that The averments are denied. No government servant is entitled to decline promotion. Acceptance of his plea to that effect depends upon the decision of the Appointing Authority due to administrative exigencies.

In A.C. Roy & Others Vs. Union of India and others, (O.A. No. 555 of 1986, Date of Judgment 26.7.1988) the CAT, Calcutta has observed that "**the applicants have no right to refuse promotion. Promotion is not given merely for the benefit of the employees concerned: it is also in the interest of the administration . On account of experience and proficiency of and employee, he is judged suitable for promotion and posted at a higher post. This posting is in the interest of the administration and no government employee can refuse to carry out this order**". The Hon'ble Tribunal has also observed that there is no personal liberty for an employee "**to refuse promotion when a government employee is promoted and transferred in the public interest**".

In this case "a transfer order has been passed involving hundreds of employees all over India and if in a large number of them in one particular station refuse promotion and if **in such circumstances** the authorities are of the opinion that the refusal will be against public interest because it will defeat the very purpose for which the transfer order has been issued, then, **their decision (not to allow the employees to refuse promotion) cannot be termed arbitrary or unreasonable**". The Tribunal said that such a decision of the authorities "**is fair and maintainable**".

9. That with regard to the statement of the Applicant in paragraph 4.8 of the O.A, the deponent begs to state that the Applicant has said that 'he has not been considered for DPC for regular promotion for the reasons best known to the authority". He is not aware that the Respondent No. 2 has already sent proposal to the UPSC for convening DPC for regular promotion and the adhoc promotion ordered on 19.10.2005 was a consequential action due to many vacancies having arisen due to large scale promotion to the higher cadres in the months of July, August and September 2005. The Applicants representation dated 26.10.2005 had been considered by the Appointing Authority along with the representations of 53 other promotees.

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10. That with regard to the statement of the Applicant in paragraph 4.9 of the O.A, the deponent begs to state that As the Select Panel from the UPSC is expected shortly for promoting persons on regular basis, permitting the Applicant and 53 others who sought permission to decline promotion and promoting their juniors would result in short term displacement of many juniors who may not get regular promotion in the current recruitment process for which proposal has already been sent to the UPSC. **As a result, if they are promoted now, they would have to be reverted and brought back to original stations (at public expense) or transferred in the lower cadre to some other stations (at public expense) soon when their seniors accept regular promotion.** This will also result in more dislocation in the administration of the cash and medical benefits to the insurance population for whom the ESI Scheme was brought into existence.

11. That with regard to the statement of the Applicant in paragraph 4.10 of the O.A, the deponent, instead of repeating the contentions, begs to rely and refer upon the statement in paragraph 9 of this affidavit.

12: That with regard to the statement of the Applicant in paragraph 4. 11 of the O.A, the deponent, while denying the averments made therein, begs to state that there was urgency to fill up the vacancies. There had even been a Parliamentary Question / Call Attention Motion in the month of October 2005 (No. 6) regarding large number of vacancies remaining unfilled. The citation of the judgment in the case of Director of School Education Vs. O. Karuppa Thevan is not relevant in the context. This is not an order of transfer in the lateral capacity but an order of promotion. Transfers are governed by separate Transfer Policy whereby general transfers are ordered at the close of the academic year. But, promotions cannot be postponed till then, as the vacancies are required to be filled.

The Administration had to fill up large number of vacancies which became even larger with the promotion of many officers in the senior levels due to cadre restructuring. The vacancies were more in West Bengal, Mumbai, Gujarat and other regions and the Administration had to take care of its needs to man the hospitals, Regional Offices and Branch Offices.

13. That with regard to the statement of the Applicant in paragraph 4.12 of the O.A, the deponent begs to deny the averments made therein. This office letter dated 30.12.2005 had been issued as approved by the Respondent No. 2 and it has clearly been mentioned in the said letter.

14: That with regard to the statement of the Applicant in paragraph 4.13 of the O.A, the deponent begs to state that the Application has been made by the Applicant through ignorance and belief that he is entitled to remain in the same

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station forever. "***There is no rule which confers any right on a government servant to stay in a particular place for a particular period.***" (Jenamane Prafulla Kumar Vs State of Orissa –1981(1) SLJ –546- Orissa. – AIR 1965 SC 1196 – AIR 1972 SC 1004). His application deserves to be rejected.

15: That with regard to the statement of the Applicant in paragraph 5.1 of the O.A, the deponent begs to state that the Applicant has no right to decline promotion. His request to that effect is subject to the acceptance of the Appointing Authority depending upon administrative exigencies.

16: That with regard to the statement of the Applicant in paragraph 5.2 of the O.A, the deponent begs to state that the averments do not make sense. The adhoc promotions were made due to urgency to fill up the vacancies as explained against Para 6, 9 and 12 supra.

17: That with regard to the statement of the Applicant in paragraph 5.3 of the O.A, the deponent begs to state that The Applicant has already availed himself of the benefit of adhoc promotion earlier as explained against Para 5. The conditions pertaining to adhoc promotions are as per the Government of India, DOPT, OM No. 31/6/90-EO (MM) dated 25.1.1990.

18: That with regard to the statement of the Applicant in paragraph 5.4 of the O.A, the deponent begs to state that the proposal for regular promotion of officials against 261 vacancies is pending with the UPSC.

19: That with regard to the statement of the Applicant in paragraph 5.5 of the O.A, the deponent begs to state that the Administration has taken decision in public interest not to accept the request of the Applicant and 53 others to permit them to decline promotion or change in the places of posting with due consideration to the representation and interests of the individuals and the prevalent situation in the organisation. Their juniors cannot be promoted now and posted to outstations as, in all likelihood, they may have to be reverted and brought back again at public expense when the seniors who decline the adhoc promotion accept the regular promotion.

20: That with regard to the statement of the Applicant in paragraph 5.6 of the O.A, the deponent begs to state that this is not an order of transfer in the lateral capacity but an order of promotion. Transfers are governed by separate Transfer Policy whereby general transfers are ordered at the close of the academic year. But, promotions cannot be postponed till then as the vacancies are required to be filled.

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21: That with regard to the statement of the Applicant in paragraph 5.7 of the O.A, the deponent begs to state that There were 54 representations requesting for change of place of posting or seeking permission to decline promotion. These are administrative issues. Administrative orders are not required to be speaking orders. Every order of the authority to his subordinate need not be followed by the issue of speaking order when the subordinate concerned refuses to comply with the order.

22: That with regard to the statement of the Applicant in paragraph 5.8 of the O.A, the deponent begs to state that there was and is urgency in filling up the vacancies. The reasons have been explained in Para 6, 9 and 12 supra.

23: That with regard to the statement of the Applicant in paragraph 5.9 of the O.A, the deponent begs to state that it is in public interest that the Applicant is relieved at once.

24: That with regard to the statement of the Applicant in paragraph 5.10 of the O.A, the deponent begs to state that this is not an order of transfer in the lateral capacity but an order of promotion. Transfers are governed by separate Transfer Policy whereby general transfers are ordered at the close of the academic year. But, promotions cannot be postponed till then as the vacancies are required to be filled.

25: That with regard to the statement of the Applicant in paragraph 5.11 of the O.A, the deponent begs to state that the conditions imposed were as per the instructions pertaining to adhoc promotion. The order dated 19.10.2005 was in public interest.

26: That in view of the facts and circumstances stated above and considering the public interest involved in the present case, the Hon'ble Tribunal may not be pleased to interfere with the orders which has been passed in public interest and may be pleased to dismiss the Application directing the Applicant to join in the promoted post in West Bengal immediately.

AFFIDAVIT

I do hereby declare that the contents of the above statement are believed by me to be true on the records of the case. No part of it is false and nothing has been concealed therefrom.

I sign this affidavit on the 18th day of February, 2006.


DEPONENT

Notice

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Date - 24/2/06

From, Usha Das.
Addl C HSC

To, Mr. M. Chanda
Mr. G. N. Chakraborty
Mr. S. Nath

Advocates

Sub: OA NO. 5/06 filed by
Shri Jugal Banmah

Sir, Please find herewith a copy
of WS being filed today. Kindly
acknowledge the receipt thereof
Thanking You.

Received copy

Sincerely Yours
Usha Das.

Addl CHSC

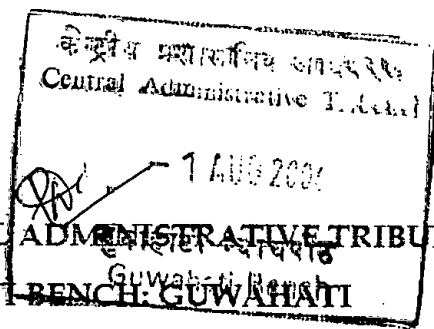
J. Chakraborty
24/2/06
Advocate

Adv

32/06

68/06

35-
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI



Filed by me applicant-
through: S. N. Nath, Jg
Attorney
01.08.2006

In the matter of: -

O.A. No. 5 of 2006

Shri Jugal Baruah

-Vs-

Union of India and Others.

-And-

In the matter of: -

Rejoinder submitted by the
applicant in reply to the written
statements submitted by the
respondents.

The applicant above named most humbly and respectfully begs to state as
under; -

1. That with regard to the statement made in the paragraph "Preliminary submissions", the applicant while denying the contentions of the respondents begs to state that vide impugned order dated 19.10.2005, whereby as many as 170 officers including the applicant have been promoted to the cadre of Manager Gr. I/Section Officer/Asstt. Director on ad-hoc basis with arbitrary terms and conditions such as there will be no seniority benefit in the event of availing ad-hoc promotion and the ad-hoc service shall not be counted towards future promotion and also with the condition that the ad-hoc promotion may be terminated at any point of time without assigning any reason or show cause and the said ad-hoc promotion

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also involves transfer and posting from one State to another State with the aforesaid arbitrary condition. The applicant refused to accept the conditional adhoc promotion order on his personal ground or domestic ground.

In this connection it is relevant to mention here that the respondents also issued one similar order vide order No. 614 of 2003 issued under letter No. A-222/13/1/2003-E.1 (A) dated 26.09.2003, whereby in as much as 220 posts in the cadre of Assistant Director/Section officer/Manager Grade-I has been filled up on ad- hoc basis in the scale of Rs. 6,500-10,500/- imposing an arbitrary condition that the ad-hoc promotion shall not confer any right on the employees either to continue in the post or for regular promotion in future. It is also made clear in the said promotion order that the period of ad hoc service likely to be rendered by the employees on ad hoc basis in the grade/cadre will not count for seniority in the grade/cadre or for eligibility for promotion to the next higher grade/cadre and ad hoc promotees may be reverted to their lower post without any notice or assigning any reason thereof, and as a result of such ad hoc promotion firstly the possibility of holding DPC for regular promotion is blocked. On the other hand for implementation of the order of ad-hoc promotion a large scale transfer and posting has been ordered by the competent authority through out the country, which cost huge Govt. expenditure from the Government exchequer, on the other hand, the arbitrary conditions has been imposed in the order of ad-hoc promotion such as threat of reversion to the lower post without any notice, and also arbitrary denial of seniority benefit for the period of ad-hoc service likely to be rendered by the ad-hoc appointee/promotee. When ad-hoc promotions are effected against the substantive vacancies the order of large-scale ad-hoc promotion is oppose to public policy/Govt. policy. By the order dated 26/09/2003, 220 posts of Assistant Director/Section Officer/manager Grade-I has been promoted in the month of September' 2003 and those offices who have availed such ad-hoc promotion are still continuing on ad-

hoc basis without any break. Therefore it appears that the respondents Corporation are interested to utilize the services of their employees by way of granting ad-hoc promotion for years together in a most arbitrary manner without conferring the benefit of seniority as well as without holding DPC for effecting regular promotion.

It is relevant to mention here that in the promotion order dated 26.09.2003 the name of the present applicant is also figured at Sl. No. 28, but the applicant did not avail of ad-hoc promotion firstly on the ground that the said benefit of ad-hoc promotion may be terminated at any time without issuing any notice, secondly there is a specific condition that seniority benefit shall not be conferred in the event of availing ad-hoc promotion, thirdly, on the ground that service likely to be rendered on ad-hoc period shall not be counted towards regular promotion or for eligibility for future promotion. Moreover such ad-hoc promotion involves transfer and posting from one State to another State during the middle of the academic session since my son was reading at Class X during the month of September' 2003 and that was a mid academic session, moreover, the order of ad-hoc promotion dated 26.09.2003 has been issued imposing arbitrary conditions denying benefit of seniority as well as the same is issued with the threat of termination of ad hoc promotion at any time without assigning any reason and also issued in violation of local arrangement policy which is normally made in the event of effecting ad hoc promotion for a temporary period. It appears from the arbitrary action of the respondents that they have resorted to ad hoc promotion policy with the sole intention to spoil the service prospect of the employees including the applicant serving in the corporation. There is no initiation on the part of the respondent to hold the regular DPC for filling up of large scale vacancies on regular basis and pursuant to the impugned promotion order dated 26.09.2003, those ad-hoc appointees/promotes are still continuing in the promotional post even after a lapse of more than 2 (two) years. In violation of sub-section 3 of Section 17 of the Employees State Insurance Act, 1948, wherein it has been stated that

any officiating or temporary appointment shall not exceed 1 year, the relevant portion of section 17 of the E.S.I.C Act, 1948 is quoted below for perusal of the Hon'ble Court.

"17. Staff.- (1) The Corporation may employ such other staff of officers and servants as may be necessary for the efficient transaction of its business provided that the sanction of the Central Government shall be obtained for the creation of any post [the maximum monthly salary of which [exceeds such salary as may be prescribed by the Central Government].

(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 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.

(b) In determining the corresponding scales of pay of the members of the staff under clause (a). The Corporation shall have regard to the education qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the corporation shall refer the matter to the Central Government whose decision thereon shall be final.]

(3) Every appointment to [posts [(other than medical posts)] corresponding to [group A and Group B] posts under the Central Government]. Shall be made in consultation with the [Union] Public Service Commission:

Provided that this sub-section shall not apply to an officiating or temporary appointment for [a period] not exceeding one year.

[Provided further that any such officiating or temporary appointment shall not confer any claim for regular appointment and the services rendered in that capacity shall not count towards seniority or minimum qualifying service specified in the regulations for promotion to next higher grade].

- (4) If any question arises whether a post corresponds to a [Group A and Group B] post under the Central Government, the question shall be referred to that Government whose decision thereon shall be final.]”

Be it stated that the posts of Assistant Director/Section Officer/Manager Grade-I fall within Group 'B' category. It is also relevant to mention here that the post of Assistant Regional Director subsequently re-designated as assistant Director. It is ought to be mention here that the post of Insurance Inspector/Manager Grade-II/ Superintendent having equivalent rank and status with same scale of pay and the promotional avenue from the aforesaid post are same and interchangeable i.e. in the cadre of Assistant Director/Manager Grade-I/Section Officer/Deputy Accounts officer. The promotion of the applicant in the next higher grade is governed by the Employees State Insurance Corporation (Assistant Regional Director/Manager Grade-I/Section Officer/Deputy accounts officer recruitment regulation 1996), wherein 3 years regular service has been prescribed for promotion from the cadre of Insurance Inspector/Manager Grade-II/Superintendent to the cadre of Assistant Regional Director/Manager Grade-I/Section officer/Deputy Accounts Officer. But the respondents in spite of having large scale of vacancies in the promotional cadre of Astd. Director/Manager Grade- I/Section

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Officer/ Deputy Accounts Officer have not convened regular DPC for providing regular promotions to the applicant and similarly situated employees for the reasons best known to the authority.

Be it stated that the judgment of the various Court's have been quoted in the paragraph Preliminary Submissions of the written statement, the applicant begs to state that those judgments are not relevant in the facts situation of the case as because those judgments are related to the denial of regular promotion, but the respondents in the instant case issued the impugned order dated 19.10.2005 for adhoc promotion with arbitrary conditions denying benefit of seniority as well as the same is issued with the threat of termination of ad hoc promotion at any time without assigning any reason and also issued in violation of local arrangement policy which is normally made in the event of effecting ad hoc promotion for a temporary period.

Copy of the extract of section 17 of the E.S.I.C Act 1948 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- A.

2. That with regard to the statements made in paragraph 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 the written statement the applicant deny the correctness of the same saves and accept which are borne out of records and further begs to state that after his appointment to the cadre of Inspector/Superintendent, he was never considered for promotion on regular basis in the next higher post of Assistant Director/Section Officer/Manager Grade-I in spite of having large numbers of regular vacancies since 2000-2001 in the promotional cadre as such the applicant is stagnating in the same post of Inspector/Superintendent. However, in terms of the Govt. of India's O.M dated 09.08.1999, the applicant was granted 1st financial upgradation in the year 2002 on completion of 12 years of regular service in the cadre of Inspector/Superintendent. Be it stated that as per Govt. of India's

instruction the DPC should be conveyed at regular intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. A vacancy shall be filled in accordance with recruitment rule in force on the date of vacancy. The requirement of convening annual meeting of DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled up by promotion or no officers are due for confirmation during the year in question. But surprisingly none of the instructions has been followed in the instant case of the applicant by the respondent Corporation and there is a deliberate and willful violation of the Govt. Rules or instructions by a Corporation like ESIC and on that ground alone the order of ad hoc promotions issued under the impugned order dated 19.10.2005 are liable to be set aside and quashed so far the applicant is concerned.

3. That with regard to the statements made in paragraph 26 of the written statement the applicant deny the contention of the respondents and begs to state that he has a legal right to refuse a conditional adhoc promotion on personal ground or domestic ground wherein a specific condition has been imposed not to confer seniority benefit in the promotional grade. The applicant also respectfully begs to state that all the grounds averred to in the original application are valid and legally tenable and the application is full of merits for being allowed.

In the facts and circumstanced stated above the applicant humbly submits that he is entitled to the reliefs prayed for and the O.A deserves to be allowed with cost.

VERIFICATION

I, Shri Jugal Baruah, S/o- Late Kula Chandra Baruah, aged about 50 years, working as Superintendent, in the Regional office, Employees State Insurance Corporation, Bamunimaidan, Guwahati- 21, Assam, applicant in the instant Original Application duly authorized to verify the statements made in the rejoinder, do hereby verify that the statements made in paragraph 1 to 3 are true to my knowledge and I have not suppressed any material facts.

And I sign this verification on the 31st day of July' 2006.

Jugal Baruah

16. **Principal Officers.**—[(1) The Central Government may, in consultation with the Corporation, appoint a Director General and a Financial Commissioner.]

(2) The Director General shall be the Chief Executive Officer of the Corporation.

(3) [The Director General and The Financial Commissioner] shall be whole-time officers of the Corporation and shall not undertake any work unconnected with their office without the sanction of the Central Government [and of the Corporation].

(4) [The Director General or the Financial Commissioner] shall hold office for such period, not exceeding five years as may be specified in the order appointing him. An outgoing [Director General or Financial Commissioner] shall be eligible for reappointment if he is otherwise qualified.

(5) [The Director General or the Financial Commissioner] shall receive such salary and allowances as may be prescribed by the Central Government.

(6) A person shall be disqualified from being appointed as or for being [the Director General or the Financial Commissioner] if he is subject to any of the disqualifications specified in section 13.

(7) The Central Government may at any time remove [the Director General or the Financial Commissioner] from office and shall do so if such removal is recommended by a resolution of the Corporation passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the total strength of the Corporation.

17. **Staff.**—(1) The Corporation may employ such other staff of officers and servants as may be necessary for the efficient transaction of its business provided that the sanction of the Central Government shall be obtained for the creation of any post [the maximum monthly salary of which exceeds such salary as may be prescribed by the Central Government].

[(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 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.

1. Subs. by Act 29 of 1989, sec. 6, for the section (1) (w.e.f. 20-10-1989).

2. Subs. by Act 29 of 1989, sec. 6, for "The Principal Officers" (w.e.f. 20-10-1989).

3. Ins. by Act 44 of 1966, sec. 10 (w.e.f. 17-6-1967).

4. Subs. by Act 29 of 1989, sec. 6, for "A Principal Officer" (w.e.f. 20-10-1989).

5. Subs. by Act 29 of 1989, sec. 6, for "Principal Officer" (w.e.f. 20-10-1989).

6. Subs. by Act 38 of 1975, sec. 3, for "with a maximum monthly salary of five hundred rupees and above" (w.e.f. 1-1-1975).

7. Subs. by Act 29 of 1989, sec. 7, for "exceeds two thousand and two hundred fifty rupees" (w.e.f. 20-10-1989).

8. Subs. by Act 29 of 1989, sec. 7(ii), for "and section (2)" (w.e.f. 20-10-1989).

*Alfred
Jain
Abhinav*

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Approved by UPSC for this purpose
Annexure - A

(b) In determining the corresponding scales of pay of the members of the staff under clause (a), the Corporation shall have regard to the education, qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Corporation shall refer the matter to the Central Government whose decision thereon shall be final.]

✓ (3) Every appointment to [posts (other than medical posts)] corresponding to [Group A and Group B] posts under the Central Government, shall be made in consultation with the [Union] Public Service Commission.

Provided that this sub-section shall not apply to an officiating or temporary appointment for [a period] not exceeding one year.

Provided further that any such officiating or temporary appointment shall not confer any claim for regular appointment and the services rendered in that capacity shall not count towards seniority or minimum qualifying service specified in the regulations for promotion to next higher grade.]

(4) If any question arises whether a post corresponds to a [Group A and Group B] post under the Central Government, the question shall be referred to that Government whose decision thereon shall be final.]

18. **Powers of the Standing Committee.**—(1) Subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.

(2) The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf.

(3) The Standing Committee may, in its discretion, submit any other case or matter for the decision of the Corporation.

19. **Corporation's power to promote measures for health, etc., of insured persons.**—The Corporation may, in addition to the scheme of benefits specified in this Act, promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and may incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

20. **Meetings of Corporation, Standing Committee and Medical Benefit Council.**—Subject to any rules made under this Act, the Corporation, the Standing Committee and the Medical Benefit Council shall meet at such times and places and shall observe such rules or procedure in regard to transaction of business at their meetings as may be specified in the regulations made in this behalf.

1. Subs. by Act 44 of 1966, sec. 11, for "post carrying a maximum monthly pay, to five hundred rupees and above" (w.e.f. 17-6-1967).

2. Ins. by Act 29 of 1989, sec. 7(iii)(a) (w.e.f. 16-5-1990).

3. Subs. by Act 45 of 1984, sec. 3, for "Class I or Class II" (w.e.f. 27-1-1985).

4. Subs. by the A.O. 1950, for "Federal".

5. Subs. by Act 29 of 1989, sec. 7(iii)(b), for "and aggregate period" (w.e.f. 20-10-1989).

6. Ins. by Act 29 of 1989, sec. 7(iii)(c) (w.e.f. 20-10-1989).

7. Ins. by Act 44 of 1966, sec. 11 (w.e.f. 17-6-1967).

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NOTICE

From:- S. Nabh.
Advocate

To: Mr. U. Das.
Adl. C.G.S.C

Sub:- Rejoinder in O.A. No. 5/2006

Sir/Madam,

I find please enclosed herewith a copy of the rejoinder, which is being filed on today. This is for your necessary action.

~~Find~~ please acknowledge receipt.

Received
Usha Das.
(U. Das) Addl. C.S.C
01/05/06.

Yours Sincerely

S. Nabh.
Advocate
01/05