

**Central Administrative Tribunal  
Principal Bench**

OA No. 1102/2013

This the 23<sup>rd</sup> day of August, 2018

***Hon'ble Mr. Justice L. Narasimha Reddy, Chairman***  
***Hon'ble Mr. Pradeep Kumar, Member (A)***

Dr. P.K.Jain,  
S/o Late Gopi Ram Jain,  
Aged 55 years,  
r/o C-7, 1<sup>st</sup> floor, Arya Samaj Road,  
Adarsh Nagar,  
Delhi-33.

... Applicant

(By Advocate: Sh. Abhimanyu Sharma proxy for Sh. Atul Kumar)

Versus

1. ESIC through Director General,  
Panchdeep Bhawan, CIG Road,  
New Delhi.
2. Union of India  
Through Labour Secretary,  
Department of Labour,  
Shram Shakti Bhawan,  
Rafi Marg, New Delhi.

... Respondents

(Present: None)

**ORDER (ORAL)**

**By Justice L.Narasimha Reddy, Chairman**

The applicant joined the ESIC as Insurance Medical Officer (IMO) Grade-II on 08.04.1986, on ad hoc basis. His services were regularised in the post w.e.f 19.05.1992. He was promoted to the

post of IMO Grade-I w.e.f. 15.06.1996. The next promotion from IMO is to the post of CMO. According to the Recruitment Rules, there are two modes of promotion:

- (i) On completion of six years of regular service in IMO Grade-I; and
- (ii) On completion of ten years as IMO Grade II and IMO Grade I, of which two years shall be as IMO Grade I.

2. The applicant was promoted as CMO in June 2002. He made a representation on 27.09.2010 to the respondents with a request to treat his promotion from 15.06.1998, on which date he completed 10 years of service as IMO Grade-II with two years as IMO Grade-I. His representation was rejected through order dated 25.05.2012 on the ground that only regular service in the post of IMO Grade-II can be counted, and since the service of the applicant in the post of IMO Grade-II was regularised w.e.f. 19.05.1992, his request cannot be accepted. The applicant contends that rule does not refer to 'regular service' of 10 years, and there is absolutely no basis for the respondents to insist on that and in denying the benefit of promotion w.e.f. 15.06.1998.

3. Respondents filed the counter affidavit. They contend that the applicant completed ten years of service as IMO Grade-II and two years as Grade-I and was promoted to the post of CMO in the year

2002. It is stated that the applicant accepted the same and did not challenge it, at that point of time.

4. There is no dispute that the applicant was initially appointed as IMO Grade-II on 08.04.1986 and his services in that post were regularised w.e.f. 19.05.1992, or that he was promoted to the post of IMO Grade-I w.e.f. 15.06.1996. On finding that applicant became eligible for promotion to the post of CMO, respondents passed orders in June 2002 in that behalf. Applicant contends that he is entitled to be promoted as CMO w.e.f. 15.06.1998. For this purpose it becomes necessary to refer to the relevant rules of promotion. Column 12 of the table appended to the rules, in so far as the applicant is concerned, is as under:

“PROMOTION:

Medical Referee/Administrative Medical Officer/Insurance Medical Officer Grade I with six years regular service in the Grade.

OR on completion of ten years as IMO Grade II and IMO Grade I of which two years shall be as Insurance Medical Officer, Grade I.”

(emphasis supplied)

5. The entire controversy turns around the date, with effect from which, the service of the applicant is to be counted.

6. Admittedly, the applicant is not claiming the benefit on the first portion of the above mentioned rule, which is applicable to IMO Grade-I with six years of regular service. It is with reference to the second part of the provision, that the benefit is being claimed by the applicant. The respondents insist that service of ten years must be reckoned from 19.05.1992, on which date, the service of the

applicant is regularised. The record discloses that the applicant is appointed on ad hoc basis, on 08.04.1986. The respondents themselves issued office order dated 15.06.1995 wherein it was mentioned that ad hoc service rendered in Group-B can be treated as continuous one, from the date of joining on ad hoc basis. The name of the applicant figured in the annexure appended thereto. If the service is counted from 08.04.1986, the applicant would be completing ten years of service in 1996. However, since the rule insists that the period of ten years must include two years of service in IMO Grade-I also, his date of eligibility happens to be 15.06.1998 since the applicant was promoted to the post of IMO Grade-I on 15.06.1996.

7. The view taken by the respondents is that service of the applicant in the post of IMO Grade-II may be reckoned only from 19.05.1992, i.e. date of regularisation. In this regard, a clear distinction needs to be maintained between the alternative avenues, provided for under the rules referred to above. The rule making authority was very clear in its mind in deciding whether or not to insist on the 'regular service' as distinguished from 'service' simplicitor. In the first category the expression "regular" was explicitly used in respect of service in the post of IMO Grade-I; to become eligible for promotion as CMO. Such an expression, i.e., "regular" was not used in the next provision. It refers only to "completion of ten years".

8. It is a settled principle of law, that if the rule making authority employed a particular expression in a particular situation but omitted to use it in a similar situation, the omission is deemed to be deliberate and with a definite purpose.

9. The applicant is entitled to count his service from 08.04.1986 and thereby is entitled to be promoted to the post of CMO w.e.f. 15.06.1998 by which time he completed not only 10 years of total service as IMO Grade-II, but also two years of service IMO Grade-I.

10. The OA is accordingly allowed directing the respondents to treat the promotion of the applicant to the post of CMO w.e.f. 15.06.1998. Applicant shall be entitled to count the service with effect from the date for the purpose of increments, pension and promotion but he shall not be entitled to any backwages up to the date of this order.

(Pradeep Kumar)  
Member (A)

(Justice L.Narasimha Reddy)  
Chairman

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