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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

**Original Application No.180/01079/2014
& Original Application No.180/00290/2015**

Tuesday, this the 24th day of July, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Original Application No.180/1079/2014

Salil T.,
Assistant Director,
Employees State Insurance Corporation,
Regional Office, Thrissur.
Residing at Madathil House,
Sankarapuram Road,
Mulakkunathukavu P.O.,
Thrissur – 680 581.

...Applicant

(By Advocate – Mr.P.Chandrasekhar)

V e r s u s

1. The Union of India,
represented by Secretary to Government of India,
Department of Personal & Training,
Ministry of Personnel, North Block,
New Delhi – 110 001.
2. Employees State Insurance Corporation,
Head Quarters Office, Panchdeep Bhavan,
C.I.G Marg, New Delhi – 110 002,
represented by its Director General.
3. The Director General (Estt.1A),
Head Quarters Office,
Employees State Insurance Corporation,
Panchdeep Bhavan, C.I.G. Marg,
New Delhi – 110 002.
4. Union Public Service Commission,
represented by its Chairman, Dholpur House,
New Delhi – 110 001.

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5. Kumar P.K.,
Assistant Director (Finance),
Employees State Insurance Corporation,
Medical College Hospital, Paripally,
Kollam District – 691 574. ...Respondents

**(By Advocates – Mr.K.Kesavankutty,ACGSC [R1],
Mr.T.V.Ajayakumar [R2-3] & Mr.Thomas Mathew Nellimoottil [R4])**

Original Application No.180/290/2015

Jelson.V.A.,
Assistant Director,
Employees State Insurance Corporation,
Sub Regional Office, Ernakulam.
Residing at Vadacherry, Schoolmuttam East,
Ochamthuruthu P.O., Kochi – 682 508. ...Applicant

(By Advocate – Mr.P.Chandrasekhar)

V e r s u s

1. The Union of India,
represented by Secretary to Government of India,
Department of Personal & Training,
Ministry of Personnel, North Block,
New Delhi – 110 001.
2. Employees State Insurance Corporation,
Head Quarters Office, Panchdeep Bhavan,
C.I.G Marg, New Delhi – 110 002,
represented by its Director General.
3. The Director General (E.1 Branch),
Head Quarters Office,
Employees State Insurance Corporation,
Panchdeep Bhavan, C.I.G. Marg,
New Delhi – 110 002.
4. Union Public Service Commission,
Dholpur House, New Delhi – 110 001,
represented by its Secretary. ...Respondents

**(By Advocates – Mr.P.R.Sreejith,ACGSC [R1],
Mr.T.V.Ajayakumar [R2-3] & Mr.Thomas Mathew Nellimoottil [R4])**

These Original Applications having been heard on 18th July 2018, the
Tribunal on 24th July 2018 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/1079/2014 is filed by Shri.Salil.T, Assistant Director, Employees' State Insurance Corporation, Thrissur and O.A.No.180/290/2015 is filed by Shri.Jelson.V.A., Assistant Director, Employees' State Insurance Corporation, Ernakulam seeking pre-dating of their promotion as Assistant Director effected in 2011 to 2009 on the ground that the vacancies were available during the year 2009-2010 and there had been delay in conducting the DPC during the relevant year. As the subject at hand is one and the same, both with reference to point of law as well as facts, the O.As are disposed of by a common order.

2. In O.A.No.180/1079/2014 the applicant is shown as working as Assistant Director/Manager Grade-I in Employees' State Insurance Corporation (ESIC for short), being given the benefit of regular promotion to the post with effect from 18.11.2011. Admittedly, the respondents had imposed a penalty on the applicant of reduction of pay by one stage from Rs.6900/- to Rs.6725/- for one year with cumulative effect as per their order No.C-14/15/564/04-vig. dated 16.7.2007 (Annexure A-1). The currency of the punishment got over on 16.7.2008 and he would have been eligible to be considered for promotion to the vacancy available in 2009-2010. Yet he has been informed by communication of the respondents dated 18.11.2011 (Annexure A-6) that he was given promotion against the vacancy of 2010-2011 having been deemed 'unfit' against vacancy year 2009-2010.

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3. The applicant contends in the O.A that the respondents were duty bound to conduct annual DPC. This dictum had been violated in not convening the DPC during 2010. Various Benches of this Tribunal had decreed that the interest of an employee should not be prejudiced by the non convening of DPC in time. The applicant claims to have made representations at various points in time seeking pre-dating of his promotion but it has had little effect.

4. In O.A.No.180/290/2015 the applicant is also an incumbent in the post of Assistant Director in the respondents' organization. He was granted regular promotion as Assistant Director only with effect from 21.10.2011 whereas he was eligible to be accommodated against the same post during 2009-2010. The reason why he lost out was because the DPC scheduled for that year was not held. Now the date of regular promotion of the applicant to the grade of Assistant Director/Manager Grade-I has become crucial and relevant for his future promotion to the grade of Deputy Director and possibly thereafter to the grade of Joint Director. As per Annexure A-4 he had represented his case and the same had been forwarded to the 3rd respondent by the Sub Regional Office, Ernakulam of the Corporation. It is maintained that as per extant Government orders a Model Calender for DPC is to be drawn up and strictly adhered to for the purpose of filling up promotional vacancies in time. As vacancies are known well ahead of their occurrence, there ought to have been no difficulties in making arrangements for convening the DPC in time. In the light of these circumstances, the applicant had approached this Tribunal in O.A.No.180/1078/2014 and

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obtained an order dated 17.4.2014 directing 3rd respondent to consider Annexure A-4 representation. Pursuant to this order which is at Annexure A-8, the 3rd respondent had passed order dated 3.2.2015 (Annexure A-9) rejecting the claim of the applicant. It is maintained by the applicant that the refusal of the respondents to concede to the demand of the applicant is arbitrary and violative of the principles of natural justice.

5. The respondents have filed reply statement in both the cases rebutting the contentions of the applicants for being granted promotion with retrospective effect. The respondents have taken shelter under the provision of DoP&T O.M.No.22011/5/86-Estt.(D) dated 10.4.1989 which reads as under :

Para 6.4.1 – When for the reasons beyond control, DPC could not be held in an year, even though vacancies arose during that year (or years), the first DPC that means thereafter should prepare the select list by placing the select list of the earlier year above the one for the next year and so on.

Para 6.4.4 – While promotions will be made in the order of the consolidated select list, such promotions **will have only prospective effect even in cases where the vacancies relate to earlier years.**

Para 17.11 – The date of Commission's letter forwarding fair copies of the minutes duly signed by the Chairman of the DPC or the date of the actual promotion of the officers, whichever is later, should be reckoned as the date of regular promotion of the officer.

(emphasis supplied)

6. The delay in convening the DPC had occurred due to valid administrative reasons and this cannot be taken as a ground for claiming retrospective effect to promotion approved by the DPC when they were made on a subsequent date.

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7. Heard Shri.P.Chandrasekhar learned counsel appearing on behalf of the applicants, Shri.K.Kesavankutty,ACGSC learned counsel appearing for Respondent No.1 in O.A.No.180/1079/2014, Shri.P.R.Sreejith,ACGSC learned counsel appearing for Respondent No.1 in O.A.No.180/290/2015, Shri.T.V.Ajayakumar learned counsel appearing for ESIC and Shri.Thomas Mathew Nellimoottil, learned counsel appearing for U.P.S.C. It was maintained by the learned counsel for the respondents in both the cases that the O.As are liable to be dismissed on the ground of non-joining of affected parties as if the seniority list is to be recast it would adversely affect several others. The representations filed by both the applicants have been considered and disposed of in line with the consistent policy adopted by the respondent organization. There is no provision under law to pre-date promotions and the date of final approval of DPC proceedings is the relevant date for the purpose.

8. We have considered the pleadings both oral and documentary and examined all factors in detail. The sole issue to be considered here is whether failure to hold the DPC in a relevant year in time would vest any right on the applicant for promotion on the ground that there were vacancies available. The Hon'ble Apex Court in **Nirmal Chandra Sinha v. Union of India & Ors.** reported in **Civil Appeal No.8058/2001** ruled in its order dated 31.3.2008 as follows :

7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide [Union of India and others vs. K.K. Vadera and others](#) 1989 Supp (2) SCC 625,

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State of Uttaranchal and another vs. Dinesh Kumar Sharma 2007 (1) SCC 683, K. V. Subba Rao vs. Government of Andhra Pradesh 1988(2) SCC 201, Sanjay K. Sinha & others vs. State of Bihar and others 2004 (10) SCC 734 etc.

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10. In the present case, appellant Nirmal Chandra Sinha was promoted as General Manager on 29.11.1996, but he claims that he should be deemed to have been promoted w.e.f. 13.3.1996 with consequential benefits. We are afraid this relief cannot be granted to him. It is settled law that the date of occurrence of vacancy is not relevant for this purpose.

9. Further in **Union of India & Ors. v. N.C.Murali & Ors. reported in AIR 2017 SC 1496** it has been ordered as follows :

“13. In view of the law laid down in the above mentioned cases, it is clear that unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallize on the date of occurrence of vacancy and the promotion is to extended on the date when it is actually effected.”

10. In view of specific law being set out as above on the subject, we see no merit in the case of both the applicants. Accordingly O.A.No.180/1079/2014 and O.A.No.180/290/2015 are dismissed. No costs.

(Dated this the 24th day of July 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/01079/2014

1. **Annexure A-1** – A true copy of the order No.C-14/15/564/04-vig dated 16.7.2007 of the Insurance Commissioner of the 2nd respondent.
2. **Annexure A-2** – A true copy of the order No.A-33/13/1/2008(Adhoc)/E.I dated 7.10.2008 of the 2nd respondent.
3. **Annexure A-3** – A true copy of the representation dated 16.12.2011 of the applicant to the 3rd respondent.
4. **Annexure A-4** – A true copy of A-20/11/20/98-E1 dated 13.2.2012 of the Deputy Director DPC Cell of the 2nd respondent.
5. **Annexure A-5** – A true copy of the representation dated 9.7.2012 of the application to the 3rd respondent.
6. **Annexure A-6** – A true copy of the order of the 2nd respondent No.A-33(13)1/2010-E1 dated 9.12.2013.
7. **Annexure A-7** – A true copy of the order No.A-33(13)1/2008-E1 dated 18.11.2011 of the 2nd respondent.
8. **Annexure A-8** – A true extract of the representation dated 7.11.2014 of the applicant to the Director General (Grievances) of the 2nd respondent.
9. **Annexure A-9** – A true copy of the covering letter No.54-C.11/15/2013 Admn. Dated 11.11.2014 of the Deputy Director (Admn.), Trichur.
10. **Annexure A-10** – A true copy of the Office Memorandum No.A-24/14/1/AD 2010-E1 dated 27.12.2013 and the Final Gradation List/Seniority List in the grade of Assistant Director/Manager Grade I.
11. **Annexure R-4(a)** – True copy of the internal guidelines issued by Commission for treatment of penalties uniformly in all DPC.
12. **Annexure R-4(b)** – True copy of the order dated 8.5.2012 of High Court of Delhi in W.P.(C) No.2715/2012.

List of Annexures in O.A.No.180/00290/2015

1. **Annexure A-1** – A true copy of the order No.A-33/12/1/97-E1 Col.III dated 9.2.2007 of the 2nd respondent.
2. **Annexure A-2** – A true copy of the order No.A-33/(13)1/2008-E1 dated 18.11.2011.
3. **Annexure A-3** – A true copy of the Employees' State Insurance

Corporation (Insurance Commissioner) Recruitment Regulations, 2013.

4. Annexure A-4 – A true copy of the representation dated 6.11.2014 of the applicant to the 3rd respondent.

5. Annexure A-5 – A true copy of the letter dated 6.11.2014 of the Deputy Director (Admn.) of the Sub Regional Office, Ernakulam of the 2nd respondent to the 3rd respondent.

6. Annexure A-6 – A true copy of the O.M.No.22011/9/98-Estt (D) Pl. dated 21.9.2006.

7. Annexure A-7 – A true copy of the Office Memorandum 22011/9/98-Estt.(D) dated 8.9.1988.

8. Annexure A-8 – A true copy of the order dated 17.12.2014 in O.A.No.180/01078/14 of this Hon'ble Tribunal.

9. Annexure A-9 – A true copy of the order No.A-20/11/18/98-E1 of the 3rd respondent dated 3.2.2015.
