

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.1154 of 2012**

**Date of CAV: 10.09.2018**

**Date of Pronouncement:11.09.2018**

Between:

S. Noor Ahmed, S/o. S.A. Sattar,  
Joint Director, Regional Office,  
ESI Corporation, Hyderabad, AP.

... Applicant

And

1. UOI, Rep. by  
The Commissioner (P&A),  
Headquarters, Employees State Insurance Corporation,  
Panchdeep Bhawan, CIG Marg,  
New Delhi – 110 002.

2. The Director General (Estt Branch),  
Headquarters, Employees State Insurance Corporation,  
Panchdeep Bhawan, CIG Marg,  
New Delhi – 110 002.

... Respondents

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|-----------------------------|-----|--|
| Counsel for the Applicant   | ... | Mr. K. Sudhakar Reddy  |
| Counsel for the Respondents | ... | Mr. M.C. Jacob, Advocate for<br>Mr. B.N. Sharma, SC for ESIC |

***CORAM:***

***Hon'ble Mr. B.V. Sudhakar, Administrative Member***

***Hon'ble Mr. Swarup Kumar Mishra, Judicial Member***

***ORDER***

***{As per Hon'ble Mr. B.V. Sudhakar, Administrative Member }***

The OA is filed against the impugned order No.A-19/12/38/86 EJ (A) dated 23.05.2012 in not considering the candidature of the applicant to be promoted as Joint Director for the vacancy year 2008-09 and 2009-10.

2. Brief facts of the case are that the applicant was promoted as Dy. Director w.e.f. 06.10.1997 and in the seniority list of Dy. Directors, the applicant figures at Sl. No. 75. The applicant on being proceeded on disciplinary grounds was

imposed with the penalty of reduction to a lower time scale/ post of Assistant Director for a period of 2 years vide order dated 22.05.2007. DPC met twice on 25/26.02.2009 and 24.09.2010 to consider promotion of officers to the post of Joint Director. However, as the applicant was not considered for promotion to the post of Joint Director for the said years, as per the Rules of DPC, the applicant is aggrieved and therefore, the present OA.

3. The contention of the applicant is that his seniority in the Dy. Director cadre has been protected despite the penalty of reversion as Assistant Director. The respondent organization has also forwarded the applicant's name to UPSC along with vigilance clearance and integrity certificate for the vacancy year 2008-09, but his candidature was not assessed. Reasons for the same were not adduced by the DPC. Three juniors of the applicant figuring at Sl. Nos. 78, 80 & 81 of the seniority list of Dy. Director were promoted ignoring the applicant. On being enquired by the UPSC, the respondent organization vide letter No. A/32/13/3/2000/E.I/Vol.II, dated 12.07.2010, informed the UPSC that the applicant was not in the feeder cadre and therefore, his candidature need not be considered even for the year 2009-10. The applicant contends that the clarification given by the respondent organization is incorrect as the applicant's name continues to be listed at Sl. No. 75 in the seniority list, thereby confirming that the applicant is very much in the feeder cadre. Besides, the applicant contends that the punishment is no bar for assessing the suitability for promotion by the DPC as per the rules on the subject. The applicant sought a review DPC to consider his promotion on the date of expiry of the punishment on 22.05.2009, but it was rejected vide impugned order dated 23.05.2012.

4. The respondents contend that as per recruitment rules, for the post of Joint Director, the eligibility condition is 5 years of regular service in the grade of Deputy Director. The DPC held on 25/26.02.2009 did not consider the name of the applicant for the year 2008-09 as he was not in the feeder cadre as on 01.01.2008. Again when the DPC met on 24.09.2010 to consider promotion to the post of Joint Director for the year 2009-10, reckoning the cut off date as 01.01.2009, since the applicant was undergoing punishment, his case could not be considered. After completion of the punishment, the respondent organization based on the recommendation of screening committee promoted the applicant as Joint Director on adhoc basis on 03.07.2009. The main contention of the respondents is that on the crucial date for considering the applicant for promotion, he was not in the feeder cadre.

5. Heard learned counsel representing both the parties.

6. The applicant was working as Dy. Director in the respondent organization and he was placed in the Dy. Directors seniority list. Due to disciplinary action, he was reverted as Assistant Director for a period of two years. During the currency of punishment imposed on the applicant, UPSC conducted DPC on 25/26.02.2009 and 24.09.2010 and considered officers for promotion to the post of Joint Director, but, the applicant was not considered. In regard to promotion of an employee who is undergoing punishment, para 7(g) of the DOPT vide OM No. 22011/4/2007-Estt.(D) dated 21.11.2016 reads as under:

*“In assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as 'unfit' for promotion. However, where the DPC considers that despite the penalty the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over [paragraph 13 of DoPT OM dated 10.4.1989].*

As per this ruling, the applicant was expected to be considered by DPC and record its findings. In the present case, the candidature of the applicant was not even considered. This is against the DPC norms stated. Further, clause 7(i) of the DOPT OM No. 22011/4/2007-Estt.(D) dated 28.04.2014, states as under:

*“While there is no illegality in denying promotion during the currency of the penalty, denying promotion in such cases after the period of penalty is over would be in violation of the provisions of Article 20 of the Constitution.”*

As per the said clause, officer should have been considered for promotion after the currency of the punishment was over on 22.05.2009. Not doing so is thus violative of Article 20 of the Constitution of India. Even para 2 of the same OM also provides for considering the case of the applicant for promotion.

7. Besides, the punishment imposed on the applicant vide respondents order No. C-14/11/40/97-Vigilance dated 22.05.2007 only states that penalty of reduction to a lower time scale/ post of Assistant Director is imposed for a period of two years. It does not specify as to restoration of seniority after the currency of the punishment as is required under CCS (CCA) Rules vide Ministry of Home Affairs OM No.9/13/62-Estt. (D), dated 10.10.1962 and No. 9/30/63-Estt.(D), dated 7.02.1964. Besides, there is no corrigendum issued to the said punishment order as is seen from the records placed before the Tribunal. Hence, the applicant is deemed to have been restored to his original seniority in the cadre of Dy. Director. It is seen that the respondents have promoted the applicant as Joint Director on adhoc basis on 03.07.2009 presumably on this basis. The punishment is over by 21.05.2009 and the applicant has not been considered for regular promotion. Thus, as seen from the above, the action of the respondents

in not considering the applicant for promotion during 2008-09, 2009-10 and thereafter, against the stated rulings pertaining to DPC is arbitrary and violative of the rules. Hence, the impugned order dated 23.05.2012 is quashed.

8. The respondents are directed to take up with UPSC for holding a review DPC as per clause 7(g) of DOPT vide OM No. 22011/4/2007-Estt.(D) dated 21.11.2016 and 7(i) of DOPT OM No. 22011/4/2007-Estt(D), dt.28.04.2014 in the context of his juniors being promoted and decide accordingly as per his eligibility and relevant rules on the subject. The time frame calendared for the said action is 5 months from the date of receipt of this order.

9. OA is accordingly allowed. No order as to costs.

**(SWARUP KUMAR MISHRA)**  
**JUDICIAL MEMBER**

**(B.V. SUDHAKAR)**  
**ADMINISTRATIVE MEMBER**

Dated, the 11<sup>th</sup> day of September, 2018

*evr*