

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/00212/2017

Date of order: 22/1/2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

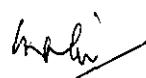
1. Sri Soumitra Ghosh,
S/O Late Santi Kr. Ghosh,
25/1, Keyatala Lane,
Kolkata – 700 029.
Aged about 58 years.
2. Debasis Datta,
S/O Late Girindra Ch. Dutta,
2/3 Poddar Nagar, 2nd Floor, Flat No. B-1,
P.O : Jodhpur Park,
Kolkata – 700 068.
Aged about 53 years.
3. Mridul Chakraborty,
S/O Sh. Amal Kr. Chakraborty,
ESIC Staff Qtrs., Qtr. No C-22 'AF' Block,
Sector-I, Salt Lake City,
Kolkata – 700 064.
Aged about 50 years.
4. Gobinda Lal Mondal,
S/O Late Netai Kr. Mondal,
Vill & P.O Beonta,
P.S. – K.L.C. 24 Pgs. (S)
Aged about 58 years
5. Dilip Kr. Naskar,
(since promoted as Asst. Director),
S/O Late Bijoy Kr. Naskar,
Balia Nafar Ch. Naskar Road,
Near Nafar Ch. Balika Vidyalaya,
Kolkata – 700 084.
Aged about 59 years.
6. Tarun Kanti Naskar,
S/O Late Amulya Charan Naskar Brickfield Road,
Subuddhipara Road,
P.O : Baruipur, 24 Pgs. (S),
Pin – 700 144.
Aged about 58 years
7. Pradyut Kr. Dey,
S/O Late Gopal Ch. Dey,
ESIC Staff Qtrs., Qtr. No. C-22, 'AF' Block,
Sector-I, Salt Lake City,
Kolkata – 700 064.
Aged about 58 years

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8. Ashis Guha Thakurta,
S/O Late Ramendra Nath Guhathakuta,
7/23 Bijoygarh,
Kolkata – 700 032.
Aged about 53 years.
9. Bidyut Ganguly,
(since promoted as Asst. Director)
S/O Late Nirode Baran Ganguly,
1/3 Azadgarh,
P.O : Regent Park,
Kolkata – 700 040.
Aged about 57 years.
10. Narayan Ch. Ghosh,
S/O Shri Biswanath Ghosh,
782/F, R.M. Sarani
Nivedita Pally, Baidyabati,
Hooghly – 712 222.
Aged about 55 years.
11. Ratan Kr. Sarkar,
S/O Late Binode Behari Sarkar,
ESIC Staff Qtrs. Qtr. No. Q-13, 'AF' Block,
Sector-I, Salt Lake City,
Kolkata – 700 064.
Aged about 58 years.
12. Dipa Roy,
S/O Late Ajit Prasad Roy,
580/1, Bidhan Pally,
P.O : Garia
Kolkata – 700 084.
Aged about 52 years.
13. Gautam Das,
S/O Late Krishna Ch. Das,
Sitalatala Road,
Dakshin Para,
P.O : Barasat,
Kolkata – 700 124
Aged about 56 years.
14. Nabarun Kiran Das,
S/O Late Aghore Ch. Das,
14/c/14 Anupama Housing Complex,
VIP Road,
Kolkata – 700 052.
Aged about 58 years.

All are working as SSO in different branches/Branch Offices of Employees State Insurance Corporation under the Regional Head Office in West Bengal having its office at Panchdeep Bhawan 5/1 Grant Lane, Kolkata – 700 012.

..... Applicants.



-Versus-

1. Union of India
Service through the Secretary
To the Ministry of Labour & Employment,
New Delhi – 110 001.
2. The Secretary to the Ministry of Personnel,
PG and Pension,
Department of Personnel & Training
Govt. of India, North Block,
New Delhi – 110 001.
3. The Director General,
ESI Corporation HQ Office Pachdeep Bhawan,
C.I.G. Marg,
New Delhi – 110 002.
4. Regional Director ESI Corporation,
Pachdeep Bhawan,
5/1, Grant Lane,
Kolkata – 700 012.
5. The Deputy Director (Fin) Regional Office
Pachdeep Bhawan, 5/1 Grant Lane,
Kolkata – 700 012.
6. Pinaki Chakraborty,
S/o Late P. C. Chakraborty
(Working as SSO in the Office of the ESI
Corporation, 5/1 Grant Lane, Kolkata – 12.)

..... Respondents.

..... 6 is a pro forma Respondent

For the Applicants

Mr. L.K. Chatterjee, Counsel
Mr. N. Roy, Counsel

For the Respondents

Mr. S. Banerjee, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants have come up in third stage litigation and, in particular, in
sequel to O.A. No. 350/00303/2015, which was disposed of on 26.3.2015 with
the following orders:

"5. Since it will be of no use keeping this matter pending before this Tribunal, the
respondents are directed to take a conclusive view, as stated in the speaking order, as
expeditiously as possible. The decision to recover excess payment shall be kept in
abeyance till the conclusive view on the decision is taken with regard to all the persons,

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who are likely to be affected. As such pay of the applicants shall not be affected till the said decision is arrived at."

2. Heard both the Counsel, examined pleadings and documents on record.
3. Ld. Counsel for the applicant would strongly urge that, in terms of DOPT O.M. dated 22nd December, 2010 (Annexure A-2 to the O.A.) read with the speaking order of the Respondent Authorities dated 2.5.2016 (Annexure A-7) in O.A. No. 350/00429/2015, with special reference to fixation/stepping up of pay of SSOs on 16.3.2012, the claim of the applicants stand established.
4. Per contra, Ld. Counsel for respondents contends that the respondent authorities had issued a conclusive order on 21.3.2018 which has not been challenged in the instant Original Application even through an amended application. The instant Original Application seeks the same relief as sought for in O.A. No. 303 of 2015 namely, in quashing/setting aside the respondents' letter dated 28.4.2014, grant of GP @ Rs. 4600/- w.e.f. 1.1.2006 and payment of arrears and interest thereon. It is further submitted that in pursuance of the directions of the Tribunal, the Director General, ESIC has submitted a status report on affidavit in which the following has been stated:-

"Fixation of pay in the pre-revised scale of Rs. 7450-11500/- in respect of SSOs promoted between 01.01.2006 and 31.8.2008, is devoid of prerequisite approvals as the ESI Corporation in its 140th meeting held on 11.10.2007 had upgraded pay scale of SSO from Rs. 5500-9000 only and not to the pay scale of Rs. 7450-11500. Therefore fixation of pay, if any, in the pre-revised scale of Rs. 7450-11500 is incorrect and the same is invalid."

Accordingly, the following actions ordered immediately vide ESIC memorandum dated 21.3.2018:-

- a) Re-fix the pay band in accordance with Clause (A)(i) and (ii) of Rule 7 of CCS (RP) rules, 2008 and as clarified in OM F. No.-1/2008-IC dated 30.08.2008, wherever applicable. The Grade pay of Rs. 4600 shall be payable in addition.
- b) Necessary action may be taken for recovery of excess amount drawn wherever the pay has been fixed in the re-revised scale of Rs. 7400/11500 in respect of SSOs promoted between 01.01.2006 and 31.08.2008 and in subsequent cases of stepping up of pay, if any.

Subsequently, the memorandum dated-21.03.2018 has been stayed in various court case filed before the CAT Principle Bench New Delhi, CAT Hyderabad Bench, CAT Ernakulam Bench.

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A process have already been initiated for moving a petition before the Honourable Principal Bench New Delhi for clubbing of petition filed in various Tribunals across the country and also for vacation of stay granted by Honourable CAT Principal Bench New Delhi in the O.A. No. 2126/2018 filed by all India ESIC officers federation and anrs' vs. Union of India and others directing ESIC "not to give any effect to order dated 21.3.2018 until further orders."

A memorandum dated 1.6.2018 has also been issued by ESIC in compliance of Hon'ble CAT, Principal Bench, New Delhi interim order dated 25.5.2018 in the O.A. No. 2126/2018 directing the field offices to not to give any effect to order dated 21.3.2018 until further orders."

5. From the said status report, it is inferred that, although, the conclusive order dated 21.3.2018, being stayed by various Benches of the Tribunal, have not been given effect to, the said order dated 21.3.2018, primarily lays down the manner of fixation of pay with respect to SSOs promoted between 1.1.2006 and 31.8.2008.

6. Although not averred upfront in the pleadings, during hearing it transpired that the applicant SSOs were initially engaged as SSOs on adhoc basis prior to 1.1.2006 but were promoted on regular basis in 2013. This being the admitted position, the order dated 21.3.2018 does not address the case of the applicants as they were not promoted between 1.1.2006 and 31.8.2008.

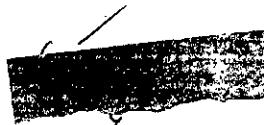
7. Accordingly, with the consent of the parties, we hereby accord liberty to the applicants to prefer representations to respondent No. 3, who is the Director General, ESI Corporation, clearly mentioning their specific dates of their individual regular promotions and to ventilate their grievances through a comprehensive representation within a period of three weeks from the date of receipt of a copy of this order.

Once so received, the respondent No. 3, will, thereafter examine the said representations in accordance with law, as prevailing during the material point of time when the applicants had been promoted as regular SSOs and thereafter pass an order regarding the fixation of their pay within a further period of six weeks of the same. Decision arrived at should be communicated forthwith to the

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applicants. Recovery, if any, shall remain in abeyance pending decision on the representations of the applicants.

8. With these directions, the O.A. is disposed of. No costs.



(Dr. Nandita Chatterjee)
Administrative Member



(Bidisha Baherjee)
Judicial Member

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