

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/234/2018
M.A./100/1741/2019

New Delhi, this the 27th day of May, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Anil Kumar Sahu,
S/o Shri Kewal Sahu
R/o E-14, Second floor,
Sector-12, Noida – 201301
G.B. Nagar (UP)
Posted as Joint Director
ESIC-HQ, New Delhi-110002

....Applicant

(Appeared in person)

Versus

1. Union of India
Through the Secretary
Ministry of Labour & Employment
Government of India, Rafi Marg,
New Delhi-110019
2. The Director General
Employees State Insurance Corporation (ESIC)
Headquarters, CIG Marg,
New Delhi-110002
3. The Chairman
Union Public Service Commission
Dholpur House, Shahjahan Road,
New Delhi-110069

... Respondents

(Through Shri L.C. Singhvi, for respondents 1 and 2 and
Shri Ravinder Agarwal, for respondent 3)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

The applicant joined the service of Employees State Insurance Corporation (ESIC) on 6.03.2003 as Deputy Director, on being selected through the process of direct recruitment. He was promoted to the post of Joint Director on 15.07.2013.

2. Promotion from the post of Joint Director is to the post of Director. The qualification stipulated for promotion, under the Recruitment Rules (RRs), is that one should have five years of standing in the post of Joint Director or sixteen years of total service, of which, at least three years shall be in the post of Joint Director/Regional Director.

3. It is stated that in the year 2017, as many as 34 vacancies of Director existed and as against that, only seven Joint Directors/Regional Directors were promoted. It is also stated that the Joint Directors who did not possess the requisite qualifications, were also promoted on the ground that their juniors in the seniority list were promoted to the post of Director. The applicant approached this Tribunal by filing OA 3666/2017, complaining about his non-selection for promotion. The OA was dismissed through order dated 24.10.2017. The applicant filed W.P. (C) No.10653/2017 in

the Delhi High Court. In view of the liberty granted therein, this OA is filed with a prayer to direct the respondents, to grant relaxation to the applicant under clause 5 of the RRs, by removing the restrictions contained in Note 2, as solicited by respondent no.2. Another limb of the relief is to direct the respondents to remove the infirmity in the office order No.104/2017 dated 1.06.2017 and to promote the applicant with effect from 1.06.2017 by holding review DPC. Ancillary and consequential reliefs are also prayed for.

4. The applicant contends that the RRs, and in particular the Note 2 thereof, brings about discrimination among the persons, who are similarly situated. He states that the provision is violative of Articles 14 and 16 of the Constitution, apart from being unreasonable. Reliance is also placed on the judgment of the Supreme Court in **R. Prabha Devi & ors. Vs. Government of India, through Secretary, Ministry of Personnel**, 1988 AIR 902.

5. The respondents filed counter affidavit opposing the OA. It is stated that the applicant did not fulfill the requisite qualification stipulated in the RRs in the context of experience. According to them, Note 2 was included in the RRs to avoid anomalous situation of the juniors in the cadre being promoted even while seniors are left out and that such a situation does not obtain in the case of the applicant.

6. We heard the applicant in person, Shri L.C. Singhvi, for respondents 1 and 2 and Shri Ravinder Agarwal, for respondent 3.

7. The service particulars of the applicant are that he joined the respondent organization on 6.03.2003 as Deputy Director and was promoted to the post of Joint Director on 15.07.2013. The promotions to the post of Director were effected through order dated 1.06.2017. The grievance of the applicant is that those who were eligible as on that date, were not promoted. It is essential to extract rules in this behalf, which read as under:

“Promotion:

Regional Director Grade `B` or Joint Director in Pay Band-3 in the scale of Rs.15600-39100/- with Grade Pay of Rs.7600/- with five years of regular service in the grade failing which Regional Director Grade `B` or Joint Director with combined regular service of sixteen years in the grade of Regional Director Grade `B` or Joint Director and Deputy Director out of which three years regular service should be in the grade of Regional Director Grade `B` or Joint Director.”

8. From this, it becomes clear that to be eligible for promotion to the post of Director, a Joint Director must have (a) five years of regular service in the post of Joint Director; or (b) Sixteen years of combined regular service in the grade of Regional Director or Joint Director and Deputy Director, out of which three years regular service shall be in the grade of Regional Director or Joint Director. The applicant did not fulfill any of these conditions, as on 1.06.2017.

9. It is not uncommon in the various departments that juniors in a particular cadre fulfill the conditions of promotion even while their seniors do not fulfill. This happens mostly when the appointment to the feeder categories, at one stage or the other, is through direct recruitment as well as promotion. To meet such anomalous situations, provisions are made for granting relaxation to a certain extent, so that the senior who is overtaken by a junior, is also promoted. In the RRs, Note 2 is added to meet such a situation. It reads as under:

“Note (2) Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors shall also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.”

10. Except that it provides a window for those who are facing hardship, the rule by itself, does not confer any right or privilege to a particular category of officers. It is only when a junior in a cadre is promoted even while his senior is left out, that the rule gets attracted and subject to the stipulation therein, depending upon his eligibility, the senior is also promoted, in such cases.

11. The applicant furnished the particulars of the Joint Directors in the organization who were promoted, as Directors though they did not fulfill the conditions stipulated under the

rules namely (a) five years of regular service in the cadre; or (b) sixteen years of combined regular service in the grade of Regional Director or Joint Director and Deputy Director out of which three years regular service in the grade of Regional Director or Joint Director. Three officers viz. R.K. Gautam, Nar singh and Pranay Sinha, occurred at serial number 6, 7 and 12 in the seniority list. The applicant's name occurs at serial number 15. The reason for promoting officers at serial number 6, 7 and 12 was that their juniors at serial number 9 and 14 were promoted. Obviously, the benefit of Note-2 was extended. The applicant did make grievance regarding the promotions and OA 3666/2017 filed by him, was dismissed with the following observations:

“4. We have carefully examined the above Note (2). In terms of the aforesaid Note, the right of consideration becomes available to the seniors where the juniors who have completed qualifying or eligibility service are being considered for promotion and seniors are not considered due to short of requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less and have successfully completed their probation period. It is admitted case of the applicant that no person, junior to him has been considered and thus he cannot claim any right of consideration. For invoking the aforesaid Note, no such ground has been urged before us. The interpretation sought to be placed by the applicant of Note (2) is totally misplaced and misconstrued. The rejection order clearly indicate the grounds for non consideration of the applicant for promotion to the post of Director. We do not find any infirmity in the impugned order. For the above reasons, this OA is dismissed.”

12. The manner in which the applicant pursued the Writ Petition, is reflected in the order dated 7.12.2017 passed by

the High Court. It reads as under:

“After some arguments, Mr. Anil Kumar Sahu, the petitioner who appears in person, seeks leave to withdraw this petition, with liberty to institute an appropriate proceeding, at an appropriate stage, in accordance with law.

Leave and liberty granted.

The petition is dismissed as withdrawn and disposed of accordingly. Pending application also stands disposed of.”

13. Being a responsible officer, the applicant was supposed to rest at that or to pursue remedy in Supreme Court. However, he has opened second front of litigation just by challenging the Note and making prayers which are totally impermissible. Even his challenge to these does not disclose as to which provision of law is unsustainable. It hardly needs any mention that many a time exceptions sustain the rules that are otherwise stringent. If the exception is taken away, rules itself faces threat. Same situation obtains in the context of promotions. It is axiomatic that a senior cannot be overtaken by a junior. Just to avoid such an anomalous situation, Note 2 is added.

14. The judgment of the Supreme Court in R. Prabha Devi (supra), relied upon by the applicant, is on a totally different issue altogether. It was mostly about the process of selection where a junior can also be promoted, if he is otherwise eligible.

15. We do not find any ground to grant reliefs prayed for. The OA is, therefore, dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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