

Sr.No.	Action taken Report of ESIC	Our Grounds for expressing dis-satisfaction
1	<p>I am directed to refer to the National Commission for Scheduled Tribes letter bearing No. HS/1/2018/MLABI/SEOTH/RU-III dated 7.6.2019 (received on 12.6.2019) addressed to the Director General, ESIC forwarding therewith a copy of Minutes of the meeting taken by the commission on 9.5.2019 in the aforesaid matter. In the Commission's letter it has been directed to submit the action taken report to the Commission within a month's time. As per para 9 of the said minutes, the commission has recommended certain actionable points mentioned in brief as under: -</p> <p>(i) Amendment in RRs for the post of JD by inclusion of protection clause to protect the interest of incumbents placed similar to complainant.</p> <p>(ii) Immediate holding of DPC for the post of JD for the years 2016-17, 2017-18, 2018 & 2019 and grant of promotion to 14 ST officers and others.</p> <p>(iii) Grant of DD (STS) scale to 10 officers (including complainant) on completion of four years of regular service.</p> <p>(iv) Posting of Shri Heera Singh, Dy. Director at New Delhi being Secretary General of the stated Federation.</p>	<p>1. ESIC had not disputed the contents as recorded in para 1 to 8 of minutes of meeting held on 09-05-2019.</p>
2	<p>It is submitted that this office made genuine attempt to implement the directions / recommendations of Hon'ble NCST but there are some statutory constraints. De-novo examination of record related to this case reveals that compliance of all related <u>statutory provisions</u> has been ensured by ESIC on the matters under complaint. The major portion of contents of the Minutes under reference speaks of points raised by the complainant. In absence of explanatory details in the minutes of the meeting, this office is unable to identify the points where ESIC failed/erred in implementing relevant <u>constitutional /statutory provisions</u>. Since the submissions/explanations of this office could not find place in the minutes, it is considered necessary to submit point-wise explanation for kind consideration of</p>	<p>2.1. ESIC had not made any attempt to implement the directions / recommendations of Hon'ble NCST.</p> <p>2.2. ESIC had failed to explain the terms used "statutory constraints" and "constitutional / statutory provisions".</p> <p>2.3 Rather all "constitutional / statutory provisions were blatantly violated for favouring some persons :</p> <p>a) The RR were communicated to be defective without approval of Hon'ble</p>

	<p>Hon'ble Commission.</p>	<p>Minister for Labour and Employment by Administrative Ministry, whereas previously the Hon'ble Minister approved promotion of five persons on the basis of same RRs. Copy of noting of relevant files already provided to Hon'ble Chairman during the Meeting.</p> <p>b) The approval of Apex Body ESIC was sought on wrong facts stating that paragraph 3.1.3 of the DoP&T OM No. AB.14017/48/2010-Estt.(RR) dated 31-12-2010 does not apply in the instant case as here qualifying service for promotion has not been enhanced.</p> <p>c) The suggestions of UPSC, Min of Law and Justice were bypassed.</p> <p>d) Approval of Hon'ble Minister was sought on misreported/concealed facts.</p> <p>e) The para 3.1.3 of DOPT Guidelines was not followed.</p> <p>f) The DG, ESIC appeared before the Hon'ble Chairman with JD (E-I) and DD (DPC), he along with his administrative officers failed to justify their actions and accepted to seek opinion of DOPT on the matters of RR and Legal judgements of Hon'ble Supreme Court and Hon'ble High Courts.</p> <p>2.4. This reply suggest that ESIC has no regard for recommendations of Hon'ble National Commission for Scheduled Tribes and they are bent upon to commit atrocity against SC and ST Officers.</p>
3	<p>ESIC, being a statutory organization financed by public money, has scrupulously observed all the statutory provisions related to reservation policy of the Govt. of India in the matter. It is earnestly requested to kindly consider the point-wise submissions as mentioned against each in the text below and guide us on specific deviations, if any, from the statutory provisions.</p>	<p>3. This statement of ESIC is grossly incorrect in light of facts given against para 2 above.</p>

4	<p>Recommendations No.1:- The DG, ESIC and Administrative Ministry are expected to amend the RRs and make provision for adding protection clause to protect the interest of those persons whose qualifying service for promotion is enhanced by new RR and make it effective retrospectively as no one should get harmed.</p>	4. Compliance not made by ESIC.
4.1	Action Taken/Factual position:-	
4.1.1.	<p>As gist of the matter it is submitted that the RRs under which aggrieved officers seek protection was notified on 02.11.2013, in which a "failing which clause", (taking account of combined service rendered, as per current pay, in Pay level 11 & 10 in Group "A" and pay level 8 in Group "B" service), was included which did not exist in the RR in vogue for the post of Joint Director notified on 22.7.1995. On its very first implementation, it was found violative of natural justice and service norms. While drafting and getting the approval for impugned- RR, ESIC-probably did not anticipate the anomaly that would arise on implementing the RR.</p> <p>It is submitted that Deputy Director is a Group 'A' entry level post in ESIC. As per the RR, the recruitment is 50% through promotion from the cadre of Assistant Directors (Group "B") and 50% by Direct Recruitment. The seniority of Dy. Directors is fixed as per extant DoP&T instructions on Rota Quota basis (DR: 50% and DPC: 50%). The Dy. Director is the feeder cadre for promotion to the post of Regional Director Grade-B/Joint Director. Counting the service rendered as Assistant Director in Group "B" cadre gives promotee officers undue benefit under "failing which clause" in the impugned RR under which their service rendered in two scales below (i.e. combined service in level 8, 10 & 11) was being counted for promotion to level 12.</p>	<p>4.1.1.A ESIC has failed to explain the term "violative of natural justice and service norms".</p> <p>4.1.1.B Rather ESIC had violated para 3.1.3 of DoP&T Guidelines OM No. AB.14017/48/2010-Estt.(RR) dated 31-12-2010 for favouring some officers and causing harm to interest of some of the officers.</p> <p>4.1.1.C It is wrong to say that While drafting and getting the approval for impugned – RR, ESIC-probably did not anticipate the anomaly that would arise on implementing the RR.</p> <p>4.1.1.D It is a admitted fact that by including failing clause in RRs the ESIC had included provision for allowing lower cadre officers to supersede for the welfare of the organisation.</p> <p>4.1.1.E Here it is pertinent to mention that the post of Assistant Director and Deputy Director are functionally similar and function under same delegation of power.</p> <p>4.1.1.F It is also pertinent to mention here that ESIC had got "Job Evaluation and Manpower Structure" study done from a Committee lead by Colonel Nirmal Singh of Administrative Staff College of India, Bellavista, Hyderabad and it also recommended for upgradation of the post of Assistant Director to Deputy Director level.</p> <p>4.1.1.G ESIC is biased while using term "undue benefit under failing which clause" only to favour finance cadre officers for promoting corruption in ESIC.</p>

<p>4.1.2.</p>	<p>As basic principle of service conditions, combined regular service of Group "A" and "B" post is not taken into account for promotion to any post/grade. As an exception the stated failing which clause considering service rendered in Group "A" and Group "B" was included for first time in the RRs of Jt. Directors notified in November 2013. These RRs were actually operated in the year 2016 wherein five promotee Dy. Directors were promoted to the grade of Jt. Director on ad hoc basis under HQRS ESIC office order No. 23/2016. The order revealed the anomaly in the impugned RR where superseding 50-70 directly recruited seniors in the seniority list, against the general norms, promoted 5 junior officers.</p>	<p>4.1.2.A ESIC is biased and connoting its own "basic principle of service conditions".</p> <p>4.1.2.B It was never an anomaly. The RR were made consciously and were so formulated to give some equality to functionally similar post of Assistant Director and Deputy Director as the same was violative of legal principle of "same pay for same work".</p> <p>4.1.2.C The pre-revised RR were notified after vetting by UPSC, DOPT, M/o L&J and M/o L&E.</p> <p>4.1.2.D The Legal opinion on relevant provisions of RR were sought by ESIC from Penal Advocate of ESIC for Supreme Court cases Shri P.C. Hota who was former Chairman of UPSC and also former Secretary DoPT. He opined that <i>"All RRs of ESIC like any other statutory RR are mandatory in character and therefore, the ESIC which is a statutory body under the Government of India has to be careful that the senior in service can only be considered for promotion along with the junior in service provided the senior fulfills the conditions stipulated in note two of Rule Eleven of the RR."</i></p> <p>4.1.2.E On the basis of above opinion the case was examined in ESIC as well as in Administrative Ministry and five promotee Officers were bestowed promotion to the post of Regional Director Grade 'B'/Joint Director with the kind approval of Hon'ble Minister for Labour and Employment.</p> <p>4.1.2.F Calling a promotion bestowed with the approval of Hon'ble Minister for Labour and Employment as anomalous and that also when it is vetted by a Senior Bureaucrat turned Supreme Court Advocate is grossly misplaced.</p>
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<p>4.1.3.</p>	<p>Immediately on operationalization of the said RRs for the first time in the year 2016, a large number of representations were received against the anomalous clause and legality of these RR was challenged before Honble CAT, Principal Bench vide OA 732/2017. Shri Heera Singh, the Complainant Officer, was also expected to be benefited in future on the basis of this anomalous "failing which clause" being a promoted officer. He as petitioner along with 16 other similarly placed promotee officers (both general category officers and SC/ST Officers), approached the Honb'e CAT for impleading in the above mentioned OA by filing MA (MA 4051/2017 refers) to avoid anticipated struck down of the anomalous "failing which clause" (Para 5 of MA refers). Honble Tribunal disagreed to their request and dismissed the above-mentioned MA. <u>This was not brought to the notice of the Hon'ble Commission by the complainant officer.</u></p>	<p>4.1.3.A Calling "failing which clause" as anomalous is grossly incorrect and arbitrary as the same "failing which clause" is successfully being operated in RR for the following cadres :</p> <ul style="list-style-type: none"> a. Regional Director Gr.A/Director. b. Chief Engineer. c. Executive Engineer d. Director (Official Languages) e. Joint Director (Official Language) <p>4.1.3.B Here it is pertinent to mention that Shri K.G. Suresh, Joint Director (E-I) is also anticipated beneficiary of this so called anomalous "failing which clause" incorporated in the RR for the post of Regional Director Gr. A/Director.</p> <p>4.1.3.C When it is asked as to why the already approved proposed RR of Regional Director Gr. A/Director not being notified the DG, ESIC takes a plea that since Finance Cadre is being separated the RR are not notified whereas when the issue of filling up the Administrative post of Joint Director comes the DG, ESIC works for filling these posts from DD (Finance) cadre officers.</p> <p>4.1.3.D Here it is clearly evident that two similar herds of officers are being dealt differently only because the group which is being made to suffer harassment is by majority being represented by SC/ST officer (14 ST Officer & 10 SC Officers) out of total of 43 eligible officers.</p>
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4.1.4	<p>The recommendation of Hon'ble Commission to provide protection to the complainant by again including the "failing which clause" would straight restoration of anomaly which has been struck down by the judiciary constructively by dismissing the MA as mentioned above.</p>	<p>4.1.4.A The statement is grossly incorrect and tantamount to breach of privilege bestowed to Hon’ble National Commission for Scheduled Tribes by the Constitution of India.</p> <p>4.1.4.B The Hon’ble Commission is constituted under Article 338A of the Constitution of India. A per clause 8 of Article 338 A the Hon’ble Commission have all the powers of a civil court trying a suit and in particular in respect of the matter of summoning and enforcing the attendance of any person from any part of India and examining him on oath.</p> <p>4.1.4.C Hence, it is our request that the DG, ESIC may be directed to submit their this reply on oath and may be held accountable for giving false and misleading information to Hon’ble Commission.</p>

<p>4.2</p>	<p>As detailed explanation, it is submitted that Deputy Director is a Group 'A' entry level post in ESIC and as per the RR, the recruitment is 50% through promotion from the cadre of Assistant Directors (Group "B") and 50% by Direct Recruitment:. The seniority of Dy. Directors is fixed as per extant DoP&T instructions on Rota Quota basis (DR: 50% and DPC: 50%). The Dy. Director was the feeder cadre for promotion to the post of Regional Director Grade-B/Joint Director up to 14.12.2018. At the time of regular promotion of 45 officers including 14 ST Officers to the post of Deputy Director during the year 2011 and 2012 (Annexure I), the RR for the post of Regional Director Grade B/Joint Director notified in the Gazette of India on 22.7.1995 were in vogue (Annexure-II). As per these RRs, the eligibility conditions for promotion to the post of Regional Director. Grade 'A'/Joint Director was 100% by promotion from feeder cadre of Deputy Director with prescribed residency service in the feeder cadre. There was no 'failing which clause' in the said RRs allowing counting of service in the cadres lower than feeder cadre. Hence at the time of appointment of Deputy Directors from the year 2009 to 1.11.2013 (Annexure I), their eligibility conditions for promotion was to be ascertained as per then existing RRs of Regional Director Grade 'B'/Joint Director notified on 22.7.1995. All 120 Deputy Directors recruited to the posts by direct recruitment including 31 reserved category officers (SC-20, ST-11) during the aforesaid period were senior to 45 officers recruited to the post by promotion as per details given in Annexure I & III. The post of Regional Director Grade B/Joint Director was in PB-3 with Grade Pay Rs. 6600 up to 31.5.2011 and thereafter Rs. 7600/- w.e.f. 1.6.2011 on upgradation of the post. Joint Director being a group 'A' promotional post, no reservation for promotion is to be applied as per the Govt. of India/DoP&T norms, as reservation is to be applied only when there is element of direct recruitment up to 75%. Therefore, all direct recruit senior Deputy Director would have been considered for promotion before the 45 promotee officers (including 14 ST officers) as per the then existing RRs.</p>	<p>4.2.A The statement of ESIC that “Hence at the time of appointment of Deputy Directors from the year 2009 to 1.11.2013, their eligibility conditions for promotion was to be ascertained as per then existing RRs of Regional Director Grade B/Joint Director notified on 22-07-1995”is grossly misleading and incorrect for following reasons :</p> <ol style="list-style-type: none"> a. The post of Regional Director Grade B/Joint Director was upgraded on 2-11-2013 with change in scale of pay and qualifying conditions. b. Hence, from 02-11-2013 onward old scale of pay and qualifying conditions will not apply on the promotee cadre officers as well as directly recruited officers. <p>4.2.B The statement of ESIC that “All 120 Deputy Directors recruited to the posts by Direct Recruitment including 31 reserved category officers (SC-20, ST-11) during the aforesaid period were senior to 45 officers recruited to the post by promotion as per details given in Annexure I & III)” is also grossly misleading and incorrect for following reasons :</p> <ol style="list-style-type: none"> a. The promotee cadre officers are working in similar functional cadre from year 2002-03. b. The work which Directly Recruited Officers have started doing in year 2009 onwards was being done by similarly placed Assistant Directors since year 2002-03 and 2003-04. Hence, denying them recognition of similar experience and work is violative of legal principle of “same work for same pay”.
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4.3	<p>Recruitment Regulations for the post of Regional Director Grade-B/Joint Director notified in 1995 was revised and notified on 02.11.2013 (Annexure-IV), with the qualifying service for promotion as under:-</p> <ul style="list-style-type: none"> • Dy Director with 10 year service in PB-3 with GP of Rs.5400, failing which - • Combined service of 12 years including the service rendered as Assistant Director out of which 5 years' service as Dy. Director in PB-3 with GP of Rs.5400. <p>(Effectively, a promotee Dy. Director would become eligible for promotion to a post carrying Rs. 7600 Grade pay with 5 years' service in Group A post (Grade pay of Rs.5400) whereas a direct recruit Dy. Director would become eligible only after 10 years in Group A, creating discrimination among Group A officers in a common seniority list.). Further, if failing which clause in the revised RRs notified on 2.11.2013 was not incorporated, all 120 Deputy Directors recruited to the post by direct recruitment would have promoted before 45 officers. Hence insertion of 'failing which clause' in the RRs notified on 2.11.2013 adversely affected/ harmed the direct recruitee senior Deputy Director (including 31 reserved category Deputy Directors) and provided an unfair advantage to the junior Deputy Director recruited to the post by promotion.</p>	<p>4.3.A The argument of ESIC is misleading for following reasons :</p> <ol style="list-style-type: none"> a. There is a provision in RR for protecting the interest of such senior officers as they are considered for relaxation of maximum of two years. b. Since, Directly Recruited officers were not qualifying for promotion even after relaxation of two years the unhealthy method of tempering the Recruitment Regulations was resorted to deny promotion to those who otherwise were eligible for promotion on 01-01-2016, 01-01-2017, 01-01-2018 and 01-01-2019.
4.4	<p>On operating the above RRs in January, 2016, junior officers became eligible for promotion under failing which clause by superseding their seniors in the seniority list. The anomaly, as mentioned above, in the RR was referred to MoLE, which directed ESIC vide their letter No. S-38016/21/2013-SS.I dated 29.11.2016 (Annexure-V) (date was inadvertently written as 29.11.2015) to remove the anomaly in the RRs notified on 02.11.2013.</p>	<p>4.4 The argument of ESIC is misleading for following reasons :</p> <ol style="list-style-type: none"> a. There is a provision in RR for protecting the interest of such senior officers as they are considered for relaxation of maximum of two years hence junior getting promotion is not an anomaly. b. Since, Directly Recruited officers were not qualifying for promotion even after relaxation of two years the unhealthy method of tempering the Recruitment Regulations was resorted to deny promotion to those who otherwise were eligible for promotion on 01-01-2016, 01-01-2017, 01-01-2018 and 01-01-2019.

<p>4.5</p>	<p>Accordingly, in order to remove the anomaly, the proposed amendments in the Recruitment Regulations for the post of Regional Director Grade B/Joint Director were put up on official website of ESIC vide Memorandum No. A-12(11)3/2017-E.I dated 29.12.2017 (Annexure-VI) in compliance of DoP&T O.M. No. AB-14017/61/2008-Estt. (RR) dated 13.10.2015 for seeking comments of the stakeholders. In this context, 183 representations were received including the representation of Sh. Heera Singh and the same <u>were disposed off with detailed reasoning vide Appendix-XI</u> of the agenda item placed before the ESI Corporation in its 173rd meeting held on 16.02.2018 (Annexure-VIII). The revised RR, after approval by UPSC, MoL&E and vetting by the Ministry of Law & Justice was notified on 15.12.2018(Annexure -VIII). It is important to mention that notification of revised RRs was being monitored by Hon'ble CAT, Principal bench while adjudicating contempt Petition 455/2018 against orders in OA 732/2018.</p>	<p>4.5.A Calling “failing which clause” as anomalous is grossly incorrect and arbitrary as the same “failing which clause” is successfully being operated in RR for the following cadres :</p> <ul style="list-style-type: none"> a. Regional Director Gr.A/Director. b. Chief Engineer. c. Executive Engineer d. Director (Official Languages) e. Joint Director (Official Language) <p>4.5.B Here it is pertinent to mention that Shri K.G. Suresh, Joint Director (E-I) is also anticipated beneficiary of this so called anomalous “failing which clause” incorporated in the RR for the post of Regional Director Gr. A/Director.</p> <p>4.5.C When it is asked as to why the already approved proposed RR of Regional Director Gr. A/Director for removing “failing which clause” not being notified the DG, ESIC takes a plea that since Finance Cadre is being separated the RR are not notified. Whereas, when the issue of filling up the Administrative post of Joint Director comes, the DG, ESIC works for filling these posts from DD (Finance) cadre officers.</p> <p>4.5.D Here it is clearly evident that two similar herds of officers are being dealt differently only because the group which is being made to suffer harassment is by majority being represented by SC/ST officer (14 ST Officer & 10 SC Officers) out of total of 43 eligible officers.</p> <p>4.5.E The statement of ESIC that “It is important to mention that notification of revised RRs was being monitored by Hon'ble CAT, Principal bench while adjudicating contempt Petition 455/2018 against orders in OA 732/2018” grossly misleading. The Tribunal was monitoring the compliance of its order that “The respondents will complete the process of notifying the Recruitment Regulations namely, the Employees’ State Insurance Corporation, Regional Director Grade B/Joint Director Recruitment Regulations, 2017 after receiving</p>
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		<p>the objections from all the stakeholders, including the applicants in MA No. 4051/2017, within a period of three months from the date of receipt of a certified copy of this order.” Here, the Hon’ble Tribunal had not given respondents any permission to violate legal provisions.</p> <p>4.5.F Here, it is pertinent to mention that the Hon’ble Tribunal’s Orders were violated by ESIC by not dealing our objections in free and fair manner. On the contrary the RR were got approved by our Apex Body i.e. ESIC by deceiving it in a unconstitutional and criminal way by misusing the pressure of contempt Petition 455/2018 against orders in OA 732/2018.</p>
4.6	<p>The note prescribed in paragraph 3.1.3 of the DoP86T OM dated 31.12.2010 was consciously excluded in the RRs for the post of Regional Director Grade 'B'/Joint Director notified on 15.12.2018 as inserting the said 'Note' would have defeated the very purpose of amendment of RR as the anomaly would continue to occur perpetually. Here, it is kindly submitted that in a similar case of non-inclusion of the note prescribed in the aforesaid paragraph 3.1.3, in WP (C) 2482/2016, UOI & others vs Shyam Sunder Sharma and others, the Hon'ble High Court, Delhi (Annexure IX) held that the words 'could be included in the revised rules' in the 'Note' gives a discretion to the Cadre Controlling Authority to consider-whether, or not, there is any necessity of incorporating the note.</p> <p>The Hon'ble High Court further held that once a discretion was vested in the Cadre Controlling Authority to decide whether there was any requirement of inserting such a clause in the revised RRs, any considered decision taken by the authority-whether to insert, or not to insert the clause, ought to be respected and should not be lightly interfered with by the courts.</p>	<p>4.6.A. The legal position as accepted by the ESIC is applicable on considered decisions only, whereas, in instant case the decision was based on following biased actions of DG, ESIC and JS, Ministry of Labour & Employment by not considering genuine objections :</p> <p>4.6.B The apex body of ESIC was not informed about the fact that the reason of introducing three new RRs for the post of Regional Director Gr. B/Joint Director, Sr. Deputy Director and Deputy Director was to deny promotion to 44 promotee Officers out of which 10 officers belonged to SC Category and 14 Officers belonged to ST Category who were going to be eligible on 01-01-2019.</p> <p>4.6.C The approval of Hon’ble Minister for Labour and Employment for new recruitment Regulations for the post of Regional Director Gr. B/Joint Director and Sr. Deputy Director was sought in violation of suggestions given by Ministry of Law and Justice by concealing the material facts.</p> <p>4.6.D. In view of above, the case was not appropriately considered and the decision as cited by ESIC is not applicable in our matter.</p>

4.7	The impugned paragraph 3.1.3 does not provide a common level playing field among the Group "A" Dy. Directors (50% Direct recruits and 50% promotes) but defeats the basic norms by counting service rendered in Group "B" post in favour of promotee officers.	4.7. In view of above the arguments does not hold lawful grounds.
5	Recommendations No. 2:- The DPC for the promotion of DD to JD for the years 2016-17, 2017-18, 2018 and 2019 may be held immediately and the 14 eligible ST Officers and others if available should be promoted as per their eligibility conditions.	5. No action is taken by ESIC on the matter
5.1	Action Taken/Factual position:-	5.1. No action is taken by ESIC on the matter
5.2	While recording the above recommendation, Hon'ble Commission has asked this office to promote the complainants as per their eligibility condition. The Hon'ble Commission is kindly aware of the provisions that any promotion to be granted in Government functioning is subject to availability of the vacancy and fulfillment of eligibility criteria by the concerned. The complainant is also aware of fact that the rule position in this regard does not support his claim for demanded promotion with retrospective effect on the basis of eligibility by counting ad hoc service.	<p>5.2. The observation given by ESIC are violative of following Judgements of Hon'ble Supreme Court of India :</p> <p>5.2.A Shri L. Chandrakishore Singh vs State of Manipur & Others reported in (1999) 8 SCC 287 at para 15:</p> <p>“It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation”.</p> <p>5.2.B This legal position of considering the adhoc service rendered against regular vacancy as regular for promotion was reaffirmed in judgement of case S. Sumnyan & Others vs. Limi Niri & Others (2010, SC 292) given by Hon'ble Supreme Court.</p>

		<p>5.2.C This decision was of again upheld by Hon'ble High Court of Delhi in case of ESIC & Others vs. Awadesh Prasad Tripathi & Others in case No. W.P.(C) 2723/2014 where it was clearly held that :</p> <p>“The ESIC was to blame itself for not holding the DPC at the relevant time. On the other hand, the corporation felt the need for services of the experienced personnel – the description that the respondents/applicants fulfilled, which resulted in their ad-hoc promotion. In these circumstances, to deny them the benefit of ad-hoc services and consequently, anterior dates of promotion was unjust.”</p> <p>5.2.D Hence, the ESIC must also give justice to affected persons on similar lines.</p>
5.3	<p>As detailed explanation on the point it is submitted that as per RRs for the post of Regional Director Grade 'B'/Joint Director notified on 2.11.2013, no officer (including the complainant) was eligible to be considered for promotion during the year 2016-17, 2017-18 and during the year 2018 up to 14.12.2018. The service rendered by Sh. Heera Singh as Assistant Director and other similarly placed promotee officers on adhoc basis cannot be counted for promotion to the higher cadre in terms of DOPT OM NO. 22011/3/75-Estt(D) dated 29.10.1975, reiterated in OM No.28036/8/87-Estt. (D) dated 30.03.1988 and OM No. 28036/1/2001-Estt. (D) dated 23.07.2001.(Annexure -X), which, inter alia, provides that "an ad hoc appointment does not bestow on the person a claim for regular appointment and the service rendered on ad-hoc basis in the grade concerned also does not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade". Sh. Heera Singh and other officers were promoted to the post of Assistant Director/Section Officer/Manager Grade-I on adhoc basis vide ESIC Office Order No. 614 of 2003 dated 26.09.2003 (Annexure-XI) wherein it was clearly mentioned that the service rendered by them on ad-hoc basis in the grade/cadre will count neither for seniority in the grade/cadre nor for eligibility for promotion to the next higher grade/cadre.</p>	5.3. In view of counter comments given against para 5.2 the submissions of ESIC are not sustainable

5.4	Further, these RRs for the post have been superseded by notification of new RRs w.e.f. 15.12.2018 (Annexure VIII) with new feeder grade for promotion to the post i.e. Senior Deputy Director. As per RRs applicable on the crucial date, only Senior Deputy Directors with specified qualifying residency service of 5 years would be eligible to be considered for promotion to the grade of Jt. Director.	5.4. In view of counter comments given against para 5.2 the submissions of ESIC are not sustainable
6	Recommendations No. 3: The affected 10 persons should be provided DD (STS) NFSG after completion of regular service of four years as per condition prescribed in Regulations 7(1) of Employees' State Insurance Corporation Regulations, 1959 read with Amendment of 2011 to the "Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959".	6. No action is taken by ESIC on the matter
6.1	Action Taken/Factual position:	6.1. No action is taken by ESIC on the matter
6.2	<p><u>Senior Time Scale to Deputy Director was initially granted to the Deputy Director on completion of four years of regular service by an administrative order vide Mol86E letter No. S-38012/02/2008-SS.I dated 3.2.2009(Annexure XII).</u> Later this provision was inserted by amendments in the "First Schedule" of the ESIC (Staff and Conditions of Service) Regulations, 1959 vide Gazette Notification dated 17.12.2011. (Annexure XIII). <u>Later in exercise of the power conferred to the ESIC by sub-section (1) of section 97 read with clause (xxi) of sub-section (2) and sub-section (2A) of that section Recruitment Regulations for the post of Deputy Director were notified in the Gazette of India on 6.6.2015(Annexure XIV).</u> In the revised RRs a Note under column (4) was provided as under:-</p> <p style="text-align: center;">Note: Non-functional pay scale under the nomenclature of Deputy Director.</p> <p>(Senior Time Scale) in Pay Band-3 of Rs. 15,600-39,100 with Grade Pay of Rs. 6600/- shall be admissible to the Deputy Directors on completion of five years' of regular service as Deputy Director in Pay Band-3 in the pay scale of Rs. 15,600- 39,100 with grade pay of Rs. 5400/-.</p>	<p>6.2.A. Shri K.G. Suresh, Joint Director (E-1) was provided the same benefit of STS scale even before completing his 5 service as Deputy Director in following circumstances :</p> <p>a) There was no such provision for giving STS non-functional scale in RR of DD on 27-02-2009.</p> <p>b) There was no such provision for giving STS non-functional scale in ESIC (Staff and Conditions of Service) Regulations, 1959 on 27-02-2009.</p> <p>c) The beneficiaries were provided this benefit by virtue of administrative order dated 03-02-2009 as referred as Annexure XII.</p> <p>6.2.B. Whereas, the aggrieved persons were denied this benefit even though they were in better circumstances as detailed bellow :</p> <p>a) There was provision for giving STS non-functional scale in RR of DD.</p> <p>b) There was provision for giving STS non-functional scale in ESIC (Staff and</p>

		<p>Conditions of Service) Regulations, 1959.</p> <p>c) The aggrieved persons were denied this benefit in spite of approval of the Government vide letter No. A-12018/04/2011-SS.I (Pt.I) dated 30-05-2016 issued "for amendment in RRs for the post of Deputy Director in ESIC to the extent that Senior Time Scale (STS) to Deputy Directors in ESIC to be granted on completion of 4 (four) year of service instead of 5(five) years as exists in the RRs in vogue."</p> <p>6.2.C. Discrimination being committed by key persons of Establishment can be gauged from above facts.</p>
6.3	In this context, it is stated that as per section 17(2)(a) of the ESI Act, 1948, the method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and order applicable to the officers and employees of the Central Government drawing corresponding scales of pay (Annexure - XV).	6.3. Matter of fact, hence admitted.
6.4	Therefore, RRs for the post of Deputy Director notified on 6.6.2015, has superseded the provision of grant of STS provided in the "First Schedule" of the Employees; State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959. Besides, the entire "First Schedule" of the aforesaid regulation of 1959 notified on 17.12.2011 has been substituted with the revised Schedule based on the seventh CPC recommendations w.e.f. 1.1.2016 vide Gazette Notification dated 6.5.2017(Annexure XVI). Hence the petitioner cannot rely on the First Schedule notified on 17.12.2011 which has later been superseded by the aforesaid statutory regulations notified on 6.6.2015 and 6.5.2017.	<p>6.4. As clarified in counter comments against para 6.2 following facts are clear :</p> <p>6.4.A When it comes to providing benefit to Shri K.G. Suresh, JD (E-I) there is no requirement of Recruitment Regulations, there is also no need for ESIC (Staff and Conditions of Service) Regulations, 1959 everything can be violated.</p> <p>6.4.B. When it comes to rectifying the wrongs committed for providing benefit to Shri K.G. Suresh, JD (E-I) the ESIC (Staff and Conditions of Service) Regulations, 1959 can be manipulated and amended retrospectively in violation of all legal principles.</p> <p>6.4.C. When it comes for giving same benefit to others majority of whom are SC/ST Officers, the Rules and Regulation come in picture for harming their interest.</p> <p>6.4.D. Hence, it is clear that the aggrieved persons are better placed for getting this</p>

		benefit and are still being denied this benefit.
6.5	Due to the aforesaid reasons affected 10 persons cannot be provided benefit of Deputy Director (STS) after completion of regular service of four years as they have completed regular service of four years as Deputy Director after the notification of revised RRs for the post of Deputy Director notified on 6.6.2015.	6.5 In view of counter comments given against para 6.2 and 6.4 above, denying this benefit to aggrieved person is grossly discriminatory and tantamount as social deprivation.
7	Recommendations No. 4:- The petitioner also raised the issue that the Secretary General of their Federation had been unwillingly transferred out of Delhi to cause harm to functioning of their Federation and demanded for his posting in ESIC Headquarters Office which is necessary for betterment of members of Association of their All India Federation.	7. No action is taken by ESIC on the matter
7.1	Action Taken/Factual position:	7.1. No action is taken by ESIC on the matter
7.2	The petitioner was transferred to his present place of posting as per extant transfer policy of ESIC. The ESIC SC/ST Officers & Employees' Federation has not been recognized by the ESI Corporation. As per clarification given regarding Central Civil Services (Recognition of Service Associations) Rules, 1993 an Association whose membership is restricted to a particular caste, tribe or religious denomination cannot be recognized under the Rules vide OM No. 2/2/94-JCA dated 22.4.1994(Annexure XVII).	<p>7.2.A. The ESIC has concealed the fact that the petitioner is a single parent solely looking after his two little kids. ESIC Neither shown compassion to his family problem nor to issues of SC/ST Officers and Employees of ESIC which are pursued and represented by the petitioner.</p> <p>7.2.B. The action of ESIC is discrimination toward members of SC / ST Communities.</p> <p>7.2.C. The ESIC has refused to recognize our Associations and Federation on false grounds. It is right to say that "An Association whose membership is restricted to a particular caste, tribe or religious denomination cannot be recognized. Here the ESIC has given wrong facts that our Association has restricted membership to a particular caste, particular tribe or particular religious denomination without naming that particular caste, tribe or religious denomination.</p> <p>7.2.D. Here I would like to submit that our Associations do not have restricted its membership to any particular caste, any particular tribe or any particular denomination.</p>

		<p>7.2.E . Our membership is open to all castes enlisted as Scheduled Castes of all our states and union territories.</p> <p>7.2.F. Our membership is also open to all tribes enlisted as Scheduled Tribes of all our states and union territories.</p> <p>7.2.G. The way union is restricted to workmen and Officers Association is restricted to Officers of ESIC, similarly, our membership is restricted to members of Scheduled Castes / Scheduled Tribes only.</p> <p>7.2.E. Refusing recognition is nothing but discrimination and an act of atrocity against SC/ST members.</p>
7.3	<p>It is pertinent to mention here that Shri Heera Singh, was also one of the future beneficiaries of RRs for the posts of Regional Director Grade 'B'/Joint Director notified on 2.11.2013 as he was eligible, under the impugned anomalous clause, to be considered for promotion to the post w.e.f. 1.1.2019 <u>by superseding many directly recruited Deputy Directors senior to him including 31 reserved category officers.</u> Though he claims to be representative of all Officers and Employees' belonging to Scheduled Castes and Scheduled Tribes categories in ESIC, he has represented for protecting only his own interest (and promotee officers) and ignored the <u>genuine interest of 31 directly recruited Scheduled Castes /Scheduled Tribes Deputy Directors in ESIC.</u></p>	<p>7.3.A. There was no anomaly in RR as it was confirmed by Penal Advocate of ESIC for Hon'ble Supreme Court.</p> <p>7.3.B. The impugned clause was accepted by the then Hon'ble Minister for L&E for giving promotion to five officers and the amendment to RR was also accepted by current Hon'ble Minister for L&E only because wrong facts were submitted before him.</p> <p>7.3.C. Denying promotion to any one by amending RRs by way of deceiving APEX body of ESIC and Hon'ble Minister for L & E in itself is a criminal offence and protecting seniority of some persons by unreasonable means is also violative of law.</p>
7.4	<p>However, his request for transfer to Delhi will be considered in due course as per extant transfer policy.</p>	<p>7.4.A Dislocating Officers of SC and ST community is a regular feature in ESIC and petitioner was also transferred out of Delhi only because the Management could involve in committing discrimination against SC / ST Officers and Employees and in this process indulge in gross irregularities and corruption.</p>