



ALL INDIA ESIC SC/ST OFFICERS' & EMPLOYEES' FEDERATION

PANCHDEEP BHAWAN, WING NO. 4, SHIVPURI, PREM NAGAR, DEHRADUN, U.K. – 248007

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"Affiliated with All India Confederation of SC/ST Organisations"

(Regd.No. S/27858 of 1995)

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VICE-PRESIDENT (NORTH)
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HEERA SINGH
Mob. No. 09868241160

SECRETARY (PUB. RELATION)
ANIL KUMAR

SECRETARY (FOR NCR)
JAGDISH

F.No.AIESIC.SC/ST.FED. 2015-041.(R-II) Dated 24th December, 2018

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INTERNAL AUDITORS
KULDEEP KUMAR
KAILASH CHAND

To,

The Chairman,
National Commission for Scheduled Tribes,
5th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi - 110003.

Subject: **Discriminatory Amendments/framing of Recruitment Regulations for the post of Regional Director Grade 'B'/Joint Director in ESI Corporation for harming interest of 24 Reserve Category Officer our of which 14 officers belong to ST category.**

Sir,

With due regard, I would like to invite your kind attention on my letter No. AIESIC.SC/ST.Fed. 2015-040 dated 29th January, 2018 and reminder dated 16th August, 2018.

2. In this regard I would further like to invite your kind attention on your letter No. HS/1/2018/MLAB1/SEOTH/RU-III dated 28-11-2018, whereby you have sought rejoinder in the case if we are not satisfied with the action taken report/reply of the department.

3. In this regard, I would like to submit that we are not at all satisfied with the reply of our department as it is based on misreported facts, conjectures and surmises and designed to harm the interest of following officers of ST Category:

1. Shri Babu Lal (ST)
2. Shri Bhagirathi Nayak (ST)
3. Shri R. Ramesh (ST)
4. Shri Arjun Chatter (ST)
5. Shri T. R. Narshing Rao (ST)
6. Shri R. Raju (ST)
7. Shri Kikumba Longchar (ST)
8. Shri Harsharan Meena (ST)
9. Shri Ramesh M. Mugdur (ST)
10. Shri Heera Singh (ST)
11. Shri Laxmi Narayan Meena (ST)
12. Shri Sugan Lal Meena (ST)
13. Shri T.K. Chaudhari (ST)
14. Shri Sonam (ST)



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4. All above officers were promoted to the regular post of Assistant Director on 26-09-2003 (**Copy enclosed as Annexure - A**) and DPC conducted by UPSC considered them for regular promotion against the vacancy year 2003-04 by giving them following Serial number of Penal list (**Copy enclosed as Annexure - B**):

1.	Shri Babu Lal (ST)	170 of year 2003-04
2.	Shri Bhagirathi Nayak (ST)	192 of year 2003-04
3.	Shri R. Ramesh (ST)	193 of year 2003-04
4.	Shri Arjun Chatter (ST)	194 of year 2003-04
5.	Shri T. R. Narshing Rao (ST)	208 of year 2003-04
6.	Shri R. Raju (ST)	202 of year 2003-04
7.	Shri Kikumba Longchar (ST)	225 of year 2003-04
8.	Shri Harsharan Meena (ST)	226 of year 2003-04
9.	Shri Ramesh M. Mugdur (ST)	227 of year 2003-04
10.	Shri Heera Singh (ST)	228 of year 2003-04*
11.	Shri Laxmi Narayan Meena (ST)	229 of year 2003-04*
12.	Shri Sugan Lal Meena (ST)	230 of year 2003-04*
13.	Shri T.K. Chaudhari (ST)	231 of year 2003-04*
14.	Shri Sonam (ST)	232 of year 2003-04*

*Promoted on the basis of Review DPC

5. The Hon'ble Supreme Court in its judgment in **S. Sumnyan & Others V. Limi Niri & Others (2010, SC 292)** clearly reiterated the already existing law position that the ad hoc period of service ought to be treated as regular service in law as well as equity since the applicants were promoted from time to time on ad hoc basis due to failure of their administration in conducting DPC in advance as per guidelines issued by DOPT.

6. The benefit of this law as reiterated by Hon'ble Supreme Court of India was denied to these above officers and they were not considered for promotion for the post of Deputy Director in year 2007-08 (**Annexure - C**), 2008-09 (**Annexure - C**) and 2009-10 (**Annexure - D**) as following number of posts of Deputy Director was kept vacant in these years inspite of availability of eligible officers :

Year	ST posts kept vacant	ST posts kept vacant
2007-08	8	6
2008-09	13	10
2009-10	14	10

7. Subsequently these officers were considered for promotion in year 2010-11. Had these officers been promoted in due time they would have been senior to Directly Recruited Officers by two three years. This was intentional action on part of ESIC to deny benefit of seniority to promotee Officers which included these 14 officers.



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8. By following ratio decidendi of above case and various other similar cases the above officers had completed their regular service of 12 years as Assistant Director and Deputy Director on 25-09-2015. These officers had got NFG of Sr. Time Scale on 22-03-2015 and 24-07-2016 after completion of four years regular service as DD also.

9. The ESIC had continuously denied these Officers promotion since 01-01-2016 onwards.

10. Further to it the benefit of Senior Time Scale (Grade Pay of Rs.6600/-) was granted to one section of officers after regular service of 4 years as a proactive measure by ESIC and denial of due service benefits such as NFSG to above named 10 officers shown at SR.No. 5 to 14 and all other ST officers henceforth after completion of 4 years' service is unjust, unfair, ironical, antithetical and patently discriminatory and arbitrary in the face of availability of clear approvals of ESIC dated 8.9.2000 and pre-existing instructions vide Office Memorandum dated 6.6.2000, herein and duly backed up by Section-17 & 97 of the ESI Act, 1948, Articles 14 and 16 of the Constitution of India and judgments of Hon'ble Supreme Court of India, and Hon'ble High Court of Judicature at Delhi, as aforesaid.

11. In furtherance of above now the ESIC is altogether trying to change the rules for promotion to the Post of Regional Director Gr. 'B'/Joint Director for harming the interest of not only above 14 officers and similarly placed 200 other officers who are eligible on 01-01-2017, 01-01-2018 and 01-01-2019 and henceforth. The detail of manipulation with Recruitment Regulation for the post of Regional Director Gr. 'B'/Joint Director which is disputed by our Federation are explained as follows :

a) As per the Existing Recruitment Regulation (**Copy enclosed as Annexure – E**) :

Grades from which recruitment is done by promotion

A) Deputy Director with 10 years regular service in PB-3 with Grade Pay of Rs. 5400/- with regular service rendered as DD (STS) in PB-3 with Grade Pay of Rs. 6600/-.

Failing which

B) Combined Regular service of 12 years in the grade of

i) Deputy Director in PB-3 with Grade pay of Rs. 5400 with regular service rendered as DD (STS) in PB-3 with Grade Pay of Rs. 6600/- and

ii) Assistant Director/Section Officer/Manager Gr.I in PB-2 with grade pay of Rs. 4800/-

Out of which five years regular service as Deputy Director in PB-3 with Grade Pay of Rs. 5400/- with regular service rendered as DD (STS) in PB-3 with Grade Pay of Rs. 6600.

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- b) As per proposed Recruitment Regulation (**Copy enclosed as Annexure F**)

Grades from which recruitment is done by promotion

- A) Senior Deputy Director (**Non existant Post to be created in future**) with five years regular service in Level 11.

Note (1) Service rendered by Senior Deputy Directors (**Non-existent Post to be created in future**) in non-functional pay scale under the nomenclature of DD (STS) in level 11 shall also be counted as minimum qualifying service for promotion.

- c) As per para 3.1.3 of DoP&T Guidelines OM No. AB 14017/48/2010 Estt.(RR) dated 31-12-2010 it is prescribed that (**Copy enclosed as Annexure – G**) :

“Where the eligibility service for promotion prescribed in the existing rules is being enhanced (to be in conformity with the guidelines issues by this Department) and the change is likely to affect adversely some persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules.”

- d) As per Compendium of Frequently asked questions on Recruitment Rules issued by UPSC while UPSC issuing its stand had clearly endorsed the direction of DoP&T and prescribed that (**Copy enclosed as Annexure – H**):

“In case eligibility service for promotion prescribed in the existing rules is enhanced in accordance with a change in the Guidelines, which is likely to adversely affect certain members of the Service or incumbents holding a junior post on a regular basis, a note regarding retention of existing eligibility service in respect of such persons may be inserted in the Rules.”

- e) The proposed new amended RRs are enhancing qualifying service of promoted officer by 4 years in violation of DoP&T guidelines para 3.1.3 by not including protection clause in RR and hence they will become eligible for promotion to the post of Joint Director on 01-01-2023 in place of existing dated i.e. 01-01-2019 in violation of DoP&T guidelines, UPSC norms and various decisions of Hon'ble Supreme Court of India.
- f) The Administration of ESIC in furtherance of their unlawful intention of amending RRs while examining our contention had mislead the Hon'ble ESIC in its 173rd meeting by making following wrong observations :



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“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.”

A copy of Annexure XI of Supplementary II Item No. ESIC-1 is enclosed as **Annexure – I**.

- g) That, the Administration had misinformed Hon'ble ESIC with respect objections of all 94 promoted officers in clear terms at page No. 110, 112, 117, 119, 121, 122 and 134. **(Annexure - I can be referred. All misinformed facts are highlighted along with the name of officers in response of whom facts were misinformed to Hon'ble ESIC).**

12. Since, the reply of ESIC is not at all satisfactory and is based on misreported facts, conjectures and surmises and is designed to harm the interest of officers of SC & ST Category and my para wise comments to this reply is enclosed with this letter as **Appendix – I**.

13. In view of above facts, and my counter comments as provided in **Appendix – I**, you are requested to use your good office for sensitizing the officers of ESIC for following actions:-

- A) To send a proposal for filling up promotion post for the post of Regional Director Gr. 'B'/Joint Director for vacancy year 2016-17, 2017-18, 2018 and 2019 to UPSC in accordance with promotion order dated 26-09-2003 (**Annexure – A**), DPC minutes for the post of Assistant Director (**Annexure – B**) and law as laid down by Hon'ble Supreme Court in similar cases.
- B) To follow guidelines as contained in para 3.1.3 of DoP&T OM No. AB 14017/48/2010 Estt.(RR) dated 31-12-2010 and procedure prescribed in answer to question No. 18 of Compendium of Frequently asked questions on Recruitment Rules issued by UPSC should be followed in letter and spirit while amending the Recruitment Rules.
- C) To add a Note in column No. 11 of the Employees' State Insurance Corporation, Regional Director Gr. 'B'/Joint Director Recruitment Regulations, 2017 to the effect that **“the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules”** as per the guidelines given in para 3.1.3 of DOPT Guidelines issued on subject Framing/Amendment/ Relaxation of Recruitment Rules.



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D) To remove Note No. 1 from column No. 11 of the Employees' State Insurance Corporation, Regional Director Gr. 'B'/Joint Director Recruitment Regulations, 2017 as it is giving unlawful favour of squeezing of qualifying service to some officers who are not otherwise eligible as per para No. 3.12.2. of DOPT Guidelines issued on subject Framing/Amendment/Relaxation of Recruitment Rules as the post of Dy Director (STS) being non-functional have no constitutional sanctity for being treated as feeder cadre for primary as well as failing which clause.

Yours faithfully,

Enclosed : **Appendix – I along with Enclosures as above.**

(Heera Singh)
Secretary General