



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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KULDEEP KUMAR

KAILASH CHAND

F.No.AIESIC.SC/ST.FED.2015-049 Dated 16th October, 2018

To,

The Secretary,
Ministry of Labour and Employment,
Govt. of India,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi 110001.

Subject: **Bringing Wrong facts before ESIC Corporation in its 173rd Meeting in Appendix XI of Supplementary Agenda II Item No. ESIC – 1 proposed for Amending Recruitment Regulations for the post of Regional Director Grade 'B'/Joint Director in ESI Corporation for harming interest of 45 promoted officers.**

Sir,

1. With due regard, I would like to invite your kind attention on my letter No. AIESIC.SC/ST.Fed. 2015-037 dated 12th October, 2017 addressed to the Director General, ESIC against above subjected amendment in RRs (**Enclosed as Annexure – A**) wherein I have raised apprehension in clear terms that the ESIC is trying to enhance the qualifying service of 45 officers who as per existing Recruitment Regulations are going to be eligible on 01-01-2019. This is clear cut violation of DoP&T Guidelines which are clearly spelt out in Answer to Question No. 18 of Compendium of Frequently asked questions on Recruitment Rules issued by UPSC which is as follows :

"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."

(Enclosed as Annexure – B)

2. That, the ESIC, Ministry of Labour & Employment vide their Memorandum No. A-12(11)3/2017-E.I dated 29.12.2017 had proposed amendments in Recruitment Regulations for the post of Regional Director Grade 'B'/Joint Director and called for comments on proposed RRs. (**Annexure – C**)



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3. That, the proposed new amended RRs were enhancing qualifying service of these 45 officers by 4 years and 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. A comparative list of officers who are going to be eligible for promotion as per the existing RRs vis-à-vis proposed new RRs are enclosed as **Annexure H and I** respectively.
4. That, because of this consequentialeffect, I myself represented against the proposed amendments in my official capacity as Deputy Director, ESIC requested Administration vide my application dated 25-01-2018 for following the provision as contained in para 3.1.3 of DOPT O.M. No. AB 14017/48/2010 Estt.(RR) dated 31-12-2010. A copy of my representation is enclosed as **Annexure - D**. A copy of DoP&T OM dated 31-12-2010 is enclosed as **Annexure - E**.
5. That, the Administration while examining my contention in Appendix XI of Supplementary II Item No. ESIC 1 had mislead the Hon'ble ESIC by making following wrong observations :

"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 Appendix XI of Supplementary II Item No.ESIC-1 is enclosed as **Annexure - F**.
6. That, the Administration contrary to their observation against my objection not only is enhancing our qualifying service by introducing a nonexistent cadre of Sr. Deputy Directorbut also on the other hand is also trying to squeeze the qualifying service of promotion of 11 officers who as per the existing RR are going to be eligible on 01-01-2020 and with proposed amendment are being groomed to be promoted eligible on 01-01-2019. By not incorporating direction as contained in para 3.1.3 of DoP&T OM No. AB 14017/48/2010 Estt.(RR) dated 31-12-2010 the Administration is trying to keep room for manipulating the RR in the favour of 11 officers. By doing so the Hon'ble ESIC is also misinformed with respect to highlighted content in **Annexure - F**.
7. That, the Administration had not only misinformed Hon'ble ESIC with respect to my objection but has also misinformed Hon'ble ESIC regarding objections of all 94 promoted officers. **(Annexure F 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).**
8. That, the above misleading facts have not only been tabled before the 173rd Meeting of the ESI Corporation as Appendix XI of Supplementary II Item No. ESIC – 1, but the same has been forwarded to UPSC, Ministry of Labour and Employment and now it is being forwarded to Ministry of Law and Justice for their vetting.
9. That, while calling objections from all the stakeholders the lawful demands of promoted officers were misreported before the 173rd Meeting of the ESI Corporation and since, finding of examination of objections were misleading and incorrect the same were not communicated to all related stakeholders.

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10. That, further to above, it is also submitted that Hon'ble ESIC, UPSC, Ministry of Labour & Employment and Ministry of Law & Justice are also being misled by Administration of ESIC on following accounts also to influence their opinion :

10(a) That, the contention of ESIC that Hon'ble CAT has directed ESIC to approve the RR as per the petition of applicants in Hemant Kumar Pandey and others vs. UOI and other which is **grossly misplaced and factually incorrect.**

10(b) That the **Hon'ble CAT has directed ESIC to approve RR after receiving the objections of all the Stakeholders,** including seventeen respondents in **MA Case No. 4051/2017 and OA Case No. 732/2017 who in the instant case are Promoted Officers** within period of three months (**Enclosed as Annexure – G.**).

10(c) That, The ESIC in place of calling objections from all stakeholders just called comments only whereby they have shown their intention to treat serious objections as simple comments.

10(d) The ESIC in response to serious objections received from stakeholders regarding violation of DoP&T Guidelines had treated these as simple suggestions/comments and misled ESIC on factual positions to procure approval by deceiving ESIC which is explained in detail in above para No. 3 to 9.

10(e) The ESIC in violation of DoP&T Guideline ignored genuine representation and objections of respondents of **MA Case No. 4051/2017 and OA Case No. 732/2017 of Hon'ble CAT, Delhi** who are promoted officers of ESIC on flimsy and factually incorrect grounds. Thus, the ESIC has not only misled ESIC but also disobeyed direction of Hon'ble CAT and thus committed contempt of Hon'ble CAT, Delhi Bench.

10(f) The Management of ESIC had not communicated their decision/views to all stakeholders. By doing so the ESIC had not only violated the DoP&T Guidelines to harm stakeholders but they also misled Hon'ble ESIC with wrong facts and positions to favour 11 officers by wrong means. The Hon'ble court had issued direction to amend RR after giving due hearing to objections of all stakeholders. Since, the RR were violative of DOPT Guidelines and the action is being initiated on the direction of Hon'ble CAT, the decision of ESIC on objection should have been communicated to all aggrieved persons at least to those officer who were respondent in **MA Case No. 4051/2017 and OA Case No. 732/2017 of Hon'ble CAT, Delhi, so that all could have known approach of ESIC and raised their issued with Hon'ble CAT.**

10(g) As per the Note 1 of column. 11 of proposed RR for the post of Regional Director Gr. 'B' / Joint Director it is proposed that the service rendered by Senior Deputy Directors in non-functional pay scale under the nomenclature of Deputy Director (Senior Time Scale) in Level 11 shall also be counted as minimum qualifying service for promotion. Here it is pertinent to mention that favoured officers were given non-functional upgradation **purely on ad-hoc and temporary basis** in Level – 11 after completion of just four years without receiving any mandate from the then existing RRs, whereas the affected officers were given non-functional upgradation on regular basis after 5 years. **Annexure – J and K enclosed.**



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10(h) The detail of enhancement of qualifying service of 45 officers and squeezing of qualifying service of 11 officers can be gauged by making comparison of **Annexure – H and I** enclosed to this letter. **Annexure – H is list of officers who are going to be eligible on 01-01-2019 and 01-01-2020** as per existing Recruitment Regulations. **Annexure – I is comparative list of Officer who are going to be eligible on 01-01-2019 and 01-01-2023 as per proposed Recruitment Regulations.**

11. In view of above it is clear that the Recruitment Regulations are being framed/amended on the basis of misleading and fabricating facts with intention to favour some officers and cause harm to other officers without affording reasonable hearing to all the stakeholders thereby deceiving some affected stakeholders, Hon'ble CAT, Hon'ble ESIC Body and all other departments who have acted on the basis of such wrong facts.

Hence, it is my humble submission before your good office to kindly direct the Director General, ESIC for following actions:

1. To follow guideline as contained in para 3.1.3 of DoP&T OM No. AB 14017/48/2010 Estt.(RR) dated 31-12-2010 in letter and spirit by inserting a note as per para 3.1.3 in column No. 11 of proposed RR which is as follows :

"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"

2. To pass a speaking order and circulate it among all stakeholder who have represented the matter, so that the aggrieved stakeholders could approach the Hon'ble court as the approval of Hon'ble ESIC in its 173rd meeting of ESI Corporation is procured on the basis of false facts and fabricated reasoning.

Yours faithfully,

(Heera Singh)
Secretary General

Enclosed : as above.