

Sr.No.	Action taken Report of ESIC	Our Grounds for expressing dis-satisfaction
A.	<p>I am directed to submit that this office had earlier received a letter from the Commission bearing No. H-11/Labour-7/2018/SSW-II dated 27.03.2019 addressed to Director General, ESIC wherein it was requested to take necessary action on proceedings (enclosed with the letter) and submit the Action Taken Report within 20 days. However, the proceeding was not found enclosed with above referred letter and the same was informed to the Commission with the request to furnish the proceedings/minutes at the earliest vide this office letter No. F-14/14/Fed/07-R. Cell dated 05.04.2019 (copy enclosed). However, the reply from the Commission is awaited.</p>	<p>Shri Manish Gupta, Joint Secretary, M/o L&E appeared in hearing on behalf of Secretary of Administrative Ministry and Shri R.S. Shrivastav, Director ESIC appeared in hearing on behalf of DG, ESIC. Both were present in the hearing and made certain commitments before the Hon'ble Member. Waiting for communication of minutes of hearing is just a lame excuse for delaying implementation of recommendations of the Commission. Shri R.S. Shrivastav, Director ESIC nominated to represent DG, ESIC in Commission was neither dealing the subject nor senior enough to fulfill the requirement of well-established protocol. It clearly reflects the unhealthy attitude of Administrative Ministry and ESIC towards not only SC Officers but also towards the Hon'ble Commission.</p>
B.	<p>Meanwhile, we have received a letter bearing No. AIESIC.SC/ST. FED. 2015-040.(R-III) dated 24.04.2019 from Sh. Heera Singh, Secretary General, All India ESIC SC/ST Officers' & Employees' Federation wherein he has enclosed a copy of the minutes of the hearing held on 07.02.2019 in connection with the Discriminatory amendments /framing of Recruitment Regulations for the post of Regional Director Grade-B/Joint Director in ESIC.</p>	<p>Yes, the contents are accepted. The ESIC had refused the receipt of minutes of hearing held on 07-02-2019. But the proceeding of hearing was open to the representatives of Administrative Ministry and ESIC and the assurances given by the Joint Secretary, M/o L&E before the Hon'ble Commission should have been penned down by respective officers before their competent authority. Waiting for communication of minutes clearly indicates the casual approach of Administrative Ministry as well as ESIC towards the cause of welfare of SC Officers and Staff.</p>

C.	<p>As per the minutes/proceedings received from Sh. Heera Singh along with above referred letter dated 24.04.2019, the Action Taken Report/Factual Position are submitted as under, as directed by the Commission:</p>	<p>The Administrative Ministry and ESIC had not acted on any of the paras of Minutes of the hearing on 07-02-2019 before the Hon'ble Commission. Further to above, they have not even considered it necessary to give their views on all paras of the proceeding of Minutes of Hon'ble Commission which reflects poorly on their casual approach towards the issues of welfare of SC Officers and Employees.</p> <p>All contents indicated in para C.1 to C.7 of Action taken Report are either irrelevant or slightly relevant and evasive in nature and written to express complete disregard to stature of Hon'ble Commission.</p>
C.1.	<p>It is submitted that Deputy Director is the 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 DoP&T OM dated 03.07.1986 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.</p>	<p>Para C.1 is grossly irrelevant hence, no comments.</p>

<p>C.2.</p>	<p>Recruitment Regulations for the post of Regional Director Grade-B/Joint Director was revised and notified on 02.11.2013 (Annexure-I), the qualifying service for promotion is as under:-</p> <p><i>“Deputy Director with ten years regular service in PB- 3 with Grade Pay Rs. 5400/- [including the regular service rendered as Deputy Director (Senior Time Scale) in Pay Band-3 in the scale of pay of Rs. 15,600-39,100 with Grade pay of Rs. 6600/-], failing which combined regular service of twelve years in the grade of Deputy Director in Pay band-3 in the scale of pay Rs. 15,600-39,100 with Grade pay Rs. 5400 [including the regular service render as Deputy Director (STS) in PB-3 in the scale of pay of Rs. 15,600-39,100 with Grade Pay of Rs. 6600/-] and Assistant Director or Section Officer or Manager Grade-I in Pay band-2 in the scale of pay of Rs. 9300-34800 with grade pay of Rs. 4800 out which five years regular service should be in the grade of deputy directors in PB-3 in the pay scale of Rs. 15600-39100 with grade pay of Rs. 5400 [including the regular service rendered in PB-3 in the scale of pay of Rs. 15,600-39100 with Grade pay of Rs. 6600/- as Deputy Director (STS)]” In other words:</i></p> <ul style="list-style-type: none"> • <i>Dy Director with 10 year service in PB- 3 with GP of Rs.5400, failing which –</i> 	<p>The statement of ESIC that <i>“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.”</i> is lopsided facts concealing following facts :</p> <ol style="list-style-type: none"> 1. The post of Assistant Director (Grade Pay Rs. 4800/-) and Deputy Director (Grade pay Rs. 5400/-) are functionally similar posts and have same delegation of powers. 2. The Assistant Directors are denied right of same pay for same work in spite of recommendation of merger of both cadres by Col. Nirmal Singh Committee which was established by ESIC to study the Cadre Structure of ESIC. The committee was chaired by Prof (Col.) Nirmal Singh, Professor of Administrative Staff College of Hyderabad. 3. The promotee Dy. Director would become eligible for promotion to the post carrying Rs. 7600 Grade Pay under failing clause if prescribed 12 years combined service of Assistant Director and Deputy Director with residency condition of being DD (STS) is fulfilled as per the DOPT Guidelines. 4. The pre-revised RR were notified after vetting by UPSC,
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	<ul style="list-style-type: none"> • <i>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.</i> <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.)</p>	<p>DOPT, M/o L&J and M/o L&E.</p> <p>5. The Legal opinion on relevant provisions of RR were sought by ESIC from Penal Advocate of ESIC for Supreme Court cases <u>Shri P.C. Hota who was former Chairman of UPSC and also former Secretary DoPT.</u> 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 alongwith the junior in service provided the senior fulfills the conditions stipulated in note two of Rule Eleven of the RR.”</i></p> <p>6. 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>
C.3.	<p>On operating the above RR in January, 2016 the above anomaly arose as 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.1 dated 29.11.2016 (Annexure-II) (date was inadvertently written as 29.11.2015) to remove the anomaly</p>	<p>The statement of ESIC is grossly incorrect for following reasons:</p> <ol style="list-style-type: none"> 1. Five Junior Promotee Cadre Officers were promoted to the post of Regional Director/Joint Director under failing clause with the kind approval of the then Hon’ble Minister of Labour and Employment, Government of India as there was no anomaly in RRs. 2. Subsequently the Ministry issued a <u>casual request</u> to

	<p>in the RRs notified on 02.11.2013. The junior Deputy Director becomes eligible for promotion under the failing which clause of combined service rendered as Assistant Director in Group "B".</p>	<p>ESIC to examine the RR with the approval of Joint Secretary.</p> <p>3. The matter came up for hearing in Hon'ble National Commission for ST where the representative of Administrative Ministry informed that the letter was not a direction under Section 92 of ESI Act, 1948 for declaring the RR as anomalous.</p>
C.4.	<p>Accordingly, 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-III) in compliance of DoP&T OM 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 were disposed off with detailed reasoning vide Appendix-XI of the agenda item placed before the ESI Corporation in its 173rd meeting held on 16.02.2018 (Annexure-IV). The revised RR, after vetting by UPSC and the Ministry of Law & Justice and with the approval of Ministry of Labour & Employment was notified on 15.12.2018 (Annexure -V)</p>	<ol style="list-style-type: none"> 1. The petitioner along with many other affected officers raised issue of inclusion of protection clause as per Paragraph 3.1.3 of the DoP&T OM No. AB.14017/48/2010-Estt(RR) dated 31-12-2010 as the change is likely to affect adversely some persons holding the feeder grade posts on regular basis. 2. The ESIC misreported the facts before the apex body of ESIC by 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. 3. The approval of apex body of ESIC was sought on the basis of reporting of wrong facts. 4. By this amendments in the RR, ESIC had increased date of completion of qualifying service of affected persons from 01-01-2019 to 01-01-2023. An increase of qualifying service by four years.

C.5.	<p>The note prescribed in paragraph 3.1.3 of the DoP&T OM dated 31.12.2010 was consciously excluded as inserting the said paragraph would defeat the very purpose of amendment of RR as the anomaly would continue to occur perpetually. It may also be kindly submitted that in a similar case of non inclusion of existing clause of RR in accordance with the ibid DOPT OM dated 31.12.2010 in WP(C) 2482/2016, UOI & Others Vs Shyam Sunder Sharma and others, the Hon'ble High Court held that "<u>any considered decision taken by the authority- whether or not to insert the, clause, ought to be respected and should not be lightly interfered with by the courts</u>".</p>	<p>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:</p> <ol style="list-style-type: none"> 1. 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. 2. 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>In view of above, the case was not appropriately considered and the decision as cited by ESIC is not applicable in our matter.</p>
C.6.	<p>The service rendered by Sh. Heera Singh as Assistant Director on adhoc basis may not 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</p>	<p>The view of ESIC is grossly incorrect for following reasons :</p> <ol style="list-style-type: none"> 1. The DPC conducted for the post of Assistant Director by UPSC had promoted first Officer against vacancy year 2002-03 and remaining 9 officers against vacancy year 2003-04.

<p>23.07.2001.(Annexure VI), which, inter alia, provides that <i>"an adhoc 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 grad"</i>. Sh. Heera Singh was promoted to the post of Assistant Director/Section Officer/Manager Grade-I on adhocbasis vide ESIC Office Order No. 614 of 2003 dated 26.09.2003 (Annexure-VII) wherein it was clearly mentioned that the service rendered by him 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>	<ol style="list-style-type: none"> 2. The delayed DPC was not fault of these 10 officers rather it was fault of ESIC to conduct DPC in time. 3. The contents of referred promotion Order are in violation of recommendation of Departmental Promotion Committee communicated by UPSC. 4. The rectification / remedial actions on referred promotion Order were actionable at the level of Competent Authority and non-taking of action of regularization of these services are fault of Competent Authority and affected persons cannot be made to suffer for fault of Department. 5. It is a routine feature in ESIC to delay DPC for corrupt motives. 6. At present also the meeting of DPC for the post of Assistant Director, Deputy Director and Joint Director are kept pending since last six years. 7. It is well established fact that : <ol style="list-style-type: none"> i) The Corporation felt the need for services of affected experienced personnel for the post of Assistant Director. ii) The affected persons fulfilled the description of Recruitment Regulations for the post of Assistant Director. iii) Due to unknown administrative reasons affected persons were promoted on Adhoc basis against
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		<p>regular vacancy.</p> <p>iv) Further, the UPSC also considered promotion of affected persons against year 2002-03 and 2003-04.</p> <p>In view of these circumstances, to deny affected persons benefit of Adhoc service and consequently, anterior dates of promotion is unjust.</p> <p>This decision has been 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.</p> <p>8. Hence, the ESIC must also give justice to affected persons on similar lines.</p>
C.7.(i)	<p>The allegation of discrimination against Scheduled Castes and Scheduled Tribes category is totally incorrect. A list of 120 Deputy Directors who were to be superseded by their junior deputy directors under impugned clause of old RR (Annexure-VIII), which includes 20 direct recruit officers of Scheduled Castes Category and 11 officers of Scheduled Tribes category as per details given in (Annexure-IX).</p>	<p>The statement is grossly incorrect for following reasons :</p> <ol style="list-style-type: none"> 1. The Seniority list upto vacancy year 2010-11 had been provisionally circulated for the post of Deputy Director but the same has not yet been finalized since last Ten years. 2. The logic of ESIC is grossly in violation of para 3.1.2 of DOPT Guideline OM No. AB-14017/48/2010-Estt.(RR) dated 31st December, 2010 which makes necessary guidelines for protection of senior officers who are superseded. The same was also incorporated as Note (2) to column 11 of Pre-Revised Recruitment Regulation. The extract is as follows : <p style="text-align: center;"><i>“Where juniors who have completed their</i></p>

		<p><i>qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying / eligibility service or two years, whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying /eligibility service.”</i></p> <p>3. Interfering with Recruitment Regulations for making provision for protecting seniority of some person beyond limits as prescribed by para 3.1.2. of DOPT guidelines and Note (2) to column 11 of Pre-Revised Recruitment Regulation by adopting unfair means to amend RR and by not considering the genuine demand of incorporation of protection clause in RR as demanded by some affected persons as per DOPT Guideline is grossly manipulative.</p>
C.7.(ii)	<p>No officer in the feeder cadre, including the 9 officers belonging to SC category, was eligible for promotion up to the date of notification of revised RR. Therefore, no DPC can be held for promotion to the post of Joint Director for any vacancy year up to and including 2018.</p>	<p>1. The observation made by ESIC is incorrect and biased with pre-conceived mind of favoring 11 officers of Finance Cadre and denying any kind of benefit to affected persons by unlawfully changing RR for the post of Regional Director Gr. B/Joint Director and subsequently not accepting legal position of considering the adhoc service rendered against regular vacancy as regular for promotion against the ratio</p>

		<p>decidendi of judgement of case S. Sumnyan & Others vs. Limi Niri & Others (2010, SC 292) given by Hon'ble Supreme Court.</p> <p>2. It is well established fact that :</p> <ul style="list-style-type: none"> i) The Corporation felt the need for services of affected experienced personnel for the post of Assistant Director. ii) The affected persons fulfilled the description of Recruitment Regulations for the post of Assistant Director. iii) Due to unknown administrative reasons affected persons were promoted on Adhoc basis against regular vacancy. iv) Further, the UPSC also considered promotion of affected persons against year 2002-03 and 2003-04. <p>In view of these circumstances, to deny affected persons benefit of Adhoc service and consequently, anterior dates of promotion is unjust.</p> <p>3. This position has very recently been 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.</p> <p>4. Hence, the ESIC must also give justice to affected persons on similar lines.</p>
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