

**APPENDIX - I**

Sr. No.	Facts presented by ESIC	Counter Comments
1.	ESI Corporation is a statutory Corporation created under an Act of Parliament namely "The Employees' State Insurance Act, 1948. ESIC is functioning under the Ministry of Labour and Employment, Government of India. Section 17 of the Act, provides provisions for employment of officers and staff for the efficient transaction of its business. Section 17(2)(a) of the Act provides that 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.	<p>The ESI Corporation has quoted every related provisions of ESI Act, 1948 and its subordinate laws except 1<sup>st</sup> proviso of Sub-section 2 of Section 17 which has been blatantly flouted by ESIC to favour 11 Direct Recruittee officers. The main clause of Sub-section 3 of Section 17 and 1<sup>st</sup> proviso is as follows :</p> <p>"every appointment to posts (other than medical posts) corresponding to Group 'A' and Group 'B' posts under the Central Government shall be made in consultation with the Union Public Service Commission :</p> <p>Proviso :</p> <p><u>Provided that this sub-section shall not apply to an officiating or temporary appointment for a period not exceeding one years"</u></p>
2.	Further proviso clause below section 17(2)(a) of the Act provides that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.	<p><b><u>Violations :</u></b></p> <p>i) ESIC vide their Office Order No. 222 of 2016 (<b><u>enclosed as Annexure - J</u></b>) appointed 14 Deputy Director as Incharge of various Sub Regional Offices against the vacancy of Joint Director I/c in violation of proviso of Sub-section 3 of Section 17 and RRs for the post of Regional Director Gr. 'B'/Joint Director as <b><u>ESIC had not sought consultation of UPSC and as per laid down procdeures all SRO are to be headed by JD I/cs (Annexure - K).</u></b> Hence, <b><u>the appointment of these officers as Deputy Director I/c is void to law.</u></b></p>
3.	Section 17(3) of the ESI Act provides that every appointment to posts (other than medical posts) corresponding to Group 'A' and Group 'B' posts under the Central Government shall be made in consultation with the Union Public Service Commission ( <b><u>APPENDIX - I</u></b> )	
4.	Powers to make recruitment regulations in respect of officers and staff of the ESIC has been conferred on the ESI Corporation as per sub-section (1) of Section 97 read with clause (xxi) of sub section (2) and sub section (2A) of that section. ( <b><u>APPENDIX - II</u></b> )	<p>ii) While giving officiating charge against the post of Regional Director Gr. 'B'/Joint Director the concerned officers, they were provided relaxation of four years without approval of apex body of ESIC, Ministry of Labour and Employment and UPSC in spite of the fact that eligible promotee officers were available for</p>

5.	<p>Further, Section 92 (2) of the ESI Act provides that the Central Government may, from time to time give such directions to the Corporation as it may think fit for the efficient administration of the Act, and if any such direction is given, the Corporation shall comply with such directions (<b>APPENDIX-III</b>).</p>	<p>promotion for the post of Regional Director Gr. 'B'/Joint Director.</p> <p>iii) If adhoc service against regular vacancies in the post of AD and DD were counted then Promotee officers were available with full desired experiences on 01-01-2016 without need of any kind of relaxation. The concerned officers should have been promoted with consultation of UPSC to the post of Regional Director Gr. 'B'/Joint Director.</p> <p>iv) The list of affected SC Officers are as follows :</p> <ol style="list-style-type: none"> <li>(1) Shri R.N. Bahera (SC)</li> <li>(2) Shri yashwant Rai (SC)</li> <li>(3) Shri Ravinder Singh (SC)</li> <li>(4) Shri Ram Sudhar Ram (SC)</li> <li>(5) Shri G. Selvakumar (SC)</li> <li>(6) Shri P. Sutradhar (SC)</li> <li>(7) Shri E.D. Ravindran, (SC)</li> <li>(8) Shri Sindo Ram (SC)</li> <li>(9) Anal Kumar Pal (SC)</li> <li>(10) Mohinder Singh (SC)</li> </ol>
6.	<p>Deputy Director is an entry grade Group 'A' posts in ESIC. Method of recruitment to the post is 50 % by promotion from Assistant Director / Section Officer / Manager Grade I and 50 % by direct recruitment. Existing RRs for the post of Deputy Director and Hierarchy chart of posts from Deputy Director to Regional Director Grade 'B'/Joint Director during various period are given in <b>APPENDIX - IV &amp; V</b> respectively.</p>	<p>Hierarchy chart is misleading</p> <p>Wrong and misleading Facts were provided on following Points :</p> <ol style="list-style-type: none"> <li>1. <b>Before 02-11-2013</b> the functional hierarchy chart as per DOP was as follows : <ol style="list-style-type: none"> <li><b>Level - 3</b> of decision making (HODs) <ul style="list-style-type: none"> <li>- 1) Additional Commissioner &amp; RD I/c</li> <li>2) Director &amp; RD I/c</li> <li>3) Joint Director I/c</li> </ul> </li> </ol> </li> </ol>

**Level - 2** of subordinate officers recommending the case

- 1) Deputy Director (Admn./Training/Insurance)\*
- 2) Deputy Director (Finance)\*
- 3) Assistant Director\*

Note \*These officers are replacement to each other and are frequently swapped among various Level 2 roles

**Level - 1** of processing the case

- 1) Social Security Officer/Office Superintendent

2. **After 02-11-2013** the functional hierarchy chart:

**Level - 3** of decision making (HOD)

- 1) Additional Commissioner & RD I/c
- 2) Director & RD I/c
- 3) Joint Director I/c
- 4) Deputy Director I/c (**This cadre was included in decisionmaking role without any DOP and this officiating charge as HOD of some Sub-Regional Office was given to some officers without consultation of UPSC in violation of proviso of Section 17(3) of the ESI Act, 1948 after ignoring due full right of promotee officers including above named 10 officers of SC category.**)

**Level - 2** of subordinate officers recommending the case

- 1) Deputy Director (Admn./Training/Insurance)\*
- 2) Deputy Director (Finance)\*
- 3) Assistant Director\*

Note \*These officers are replacement to each other and are frequently swapped among various Level 2 roles

**Level - 1** of processing the case

- 1) Social Security Officer/Office Superintendent.

3. **Proposed functional** hierarchy chart is as follows :

**Level - 3** of decision making (HOD)

- 1) Additional Commission & RD I/c
- 2) Director & RD I/c
- 3) Joint Director I/c
- 4)\* Sr. Deputy Director I/c
- 5)\* Deputy Director I/c

\* **(This cadre was included in decisionmaking role without any DOP and this officiating charge as HOD of some Sub-Regional Office was givento some officers without consultation of UPSC inviolation of proviso of Section 17(3) of the ESI Act,1948 after ignoring due full right of promotee officers including above named 10 officers of SC category.)**

**Level - 2** of subordinate officers recommending the case

- 1) Deputy Director (Admn./Training/Insurance)\*
- 2) Deputy Director (Finance) (Separate Cadre is proposed)\*
- 3) Assistant Director\*

Note \*These officers are replacement to each other and are frequently swapped among various Level 2 roles

**Level - 1** of processing the case

- 1) Social Security Officer/Office Superintendent

4. While introducing role of Deputy Director I/c in the level of decision making in year 2016 the ESIC has failed to protect lawful right of following officers who were eligible as per existing RRs on crucial date of 01-01-2016 :

- (1) Shri R.N. Bahera (SC)
- (2) Shri yashwant Rai (SC)

		<p>(3) Shri Ravinder Singh (SC)  (4) Shri Ram Sudhar Ram (SC)  (5) Shri G. Selvakumar (SC)  (6) Shri P. Sutradhar (SC)  (7) Shri E.D. Ravindran, (SC)  (8) Shri Sindo Ram (SC)  (9) Anal Kumar Pal (SC)  (10) Mohinder Singh (SC)</p> <p>5. If the UPSC had been consulted while making officiating arrangement as per the requirement of proviso of Section 17(3) of the ESI Act, 1948 the right of above officers could have been protected. ESIC preferred to violate this proviso to harm interest of above officers and to bypass the authority of apex Corporate Body of ESIC, UPSC and MoL&amp;E.</p>
7.	Existing RRs for the post of Regional Director Grade 'B'/Joint Director (Rs. 15600-39100, Grade Pay Rs. 7600) were notified on 2.11.2013 in the Gazette of India in supersession of the earlier RRs for the post notified on 22-07-1995 with the approval of the UPSC & MoL&E ( <b>APPENDIX - VI</b> )	Accepted as a matter of fact.
8.	In earlier RRs for the post of Regional Director Grade 'B'/Joint Director notified on 22-07-1995, for promotion to the post five years regular service in the grade of Deputy Director (Insurance/Administration/Finance/Training) was required ( <b>APPENDIX - VII</b> )	Accepted as a matter of fact. But this fact has no relevance after upgradation of post on 2.11.2013 as the post was upgraded with change in Scale of Pay (Grade) and related eligibility criteria.

9.	<p>MoL&amp;E vide their letter No. S-38012/02/2008-S.I dated 3.2.2009, inter alia, approved a non-functional pay scale under the nomenclature of Deputy Director (Senior Time Scale) in PB-3 Grade Pay Rs. 6600/with minimum regular service of 4 years as Deputy Director in Grade Pay Rs. 5400/- in PB-3. Due to this change grade pay of Deputy Director (STS) and next higher post i.e. Regional Director Gr. 'B'/Joint Director were same i.e. in PB-3 with grade pay of Rs. 6600/- (<b>APPENDIX - VIII</b>)</p>	<p>Accepted as a matter of fact. But when Senior Time Scale (Grade Pay of Rs.6600/-) could be granted to one section of officers after regular service of 4 years as a proactive measure by ESIC, denial of due service benefits such as NFSG to above named 2 officers named at Sr. No. 9 and 10 and to 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 &amp; 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.</p> <p>Further to it the Grade pay for the post of Regional Director Gr. 'B'/Joint Director was subsequently upgraded while adopting new Recruitment Regulation on 2.11.2013.</p>
10.	<p>In order to remove the aforesaid anomaly MoL&amp;E vide their letter No. S-38012/2/2008-SS.I(Vol.II) dated 1.6.2011, inter alia, enhanced the grade pay of Joint Director from Rs. 6600/- to Rs. 7600/- MoL&amp;E in the said letter dated 1.6.2011 also directed the ESIC to amend all the relevant recruitment rules in accordance with these changes. (<b>APPENDIX -IX</b>). Accordingly, RRs for various Group 'A' posts on administrative side including the post of Regional Director Grade 'B'/Joint Director were notified on 2.11.2013.</p>	<p>The Recruitment Regulations for post of Deputy Director was notified on 12-12-2014 and prior to this period Non-Functional Selection Grade was allowed to many Deputy Directors on completion of four years regular service as Deputy Director.</p> <p>Many of the officers from 2009 to 2014 were allowed benefit under this provision but the above indicated 2 officers shown at Sr. No. 9 and 10 were not provided Non-Functional Selection Grade on 24-07-2016.</p> <p>The benefit of this amendments in Staff and Conditions of Service Regulations was also provided to Shri K.G. Suresh, Joint Director (E-I) on the basis of 4 years regular service.</p>

11.	<p>In the existing RRs for the post of Regional Director Grade 'B'/Joint Director, notified on 2.11.2013, for promotion to the post ten years regular service as Deputy Director (Rs. 15600-39100, Grade Pay Rs. 5400) &amp; Deputy Director (STS) (Rs. 15600-39100, Grade Pay Rs. 6600) under primary clause <b>or</b> twelve years combined regular service as Assistant Director (Rs. 9300-34,800, Grade Pay Rs. 4800) and Deputy Director &amp; Deputy Director (STS) out of which five years regular service as Deputy Director under failing which clause is required.</p>	<ol style="list-style-type: none"> <li>1. "Or" as cited is wrong whereas the word used in RR is "failing which".</li> <li>2. "Regular Service rendered" is not written with name of the post of Assistant Director whereas as the same is invariably written with all narration of post of Deputy Director and Deputy Director (STS) exclusively.</li> </ol>
12.	<p>As per ESIC Office Order No. 23 of 2016 dated 29.1.2016 (<b>APPENDIX - X</b>) five Deputy Director (all recruited to the post by promotion) were promoted to the post of Regional Director Grade 'B'/Joint Director under failing which clause of RRs for the post though they were junior to many Deputy Director recruited to the post by direct Recruitment. Copy of provisional seniority list of Deputy Director issued vide ESIC Memorandum No. A-24/15/1/2016-E.I dated 28.6.2016 (yet to be finalized) is enclosed as <b>APPENDIX - XI</b>. As per the seniority list, officers, figured at Sl. No. 57, 59, 63, 65 and 77 were promoted to the post of Regional Director Grade 'B'/Joint Director by the aforesaid Office Order dated 29.01.2016 whereas senior Deputy Directors recruited to the post by direct recruitment and figured from Sl. No. 2 to 56, 58, 60, 62, 64 and 66 to 76 were left out.</p>	<p>Whenever RRs are implemented completing of qualifying service is material and if juniors are eligible for promotion there is provision of relaxation of qualifying service of seniors by two years. Hence, supersession of Junior is a common feature and it is nowhere treated as anomaly. The provision of "failing which" clause is being followed in ESIC in not only the post of Regional Director Grade 'B'/Joint Director rather it is followed in many cadres in ESIC Some examples are as follows :</p> <ol style="list-style-type: none"> <li>1. Regional Director Grade 'A'/Director (<b>Annexure - L</b>)</li> <li>2. Chief Engineer (<b>Annexure - M</b>)</li> <li>3. Executive Engineer (<b>Annexure - N</b>)</li> <li>4. Director (Official Language) (<b>Annexure - O</b>)</li> <li>5. Joint Director (Official Language) (<b>Annexure - P</b>)</li> </ol> <p>One such live example is case of Mr. K.G. Suresh, JD (E-1) who has been superseded by nearly 5 officers junior to him.</p> <p>The officers who were promoted vide <b>Appendix - X</b> if would have been promoted as Assistant Director in time they would have definitely got promoted to the post of Deputy Director much before the year 2010-11. The same can be gauged from the facts as indicated at Sr. No. 57, 59, 63, 65 and 77. Even if they were promoted off late their date of joining is 02-06-2009 whereas all those officers who are shown as senior to these officers were appointed too late after 02-06-2009.</p>

		<p>If the ratio decidendi of judgment of Hon'ble Supreme Court in case of <b>S. Sumnyan &amp; Others V. Liminiri &amp; Others (2010, SC 292)</b> would have been applied they would also have been promoted in previous years.</p> <p>In order to manipulate with facts the ESIC has not finalized the seniority list of Deputy Directors after year 2009-10 so that except of persons who figure in provisional seniority list of 2010-11 others could not dispute the list.</p>
13.	<p>MoL&amp;E vide their letter No. S-38016/21/2013-SS.I dated 29.11.2016 (date was inadvertently written as 29-11-2015) (<b>APPENDIX - XII</b>), pointed out the aforesaid anomaly in the existing RRs for the post of Regional Director Grade 'B'/Joint Director wherein qualifying service for promotion is to be counted not only in immediate lower grade but in posts even two level below which has created situation in which some promotee Junior Deputy Director have been promoted having completed the requisite qualifying service in lower grade whereas DR officers have been left out. In the said letter dated 29.11.2016 the MoL&amp;E directed the ESIC to examine the issue and send the proposal to Ministry for amendments to RRs in consultation with UPSC.</p>	<p>The letter was infected from following shortcomings :</p> <ol style="list-style-type: none"> <li>1. Date of letter is wrongly written as 29-11-2015</li> <li>2. The letter seems to be issued without approval of competent authority.</li> <li>3. Letter is full of factual errors giving impression that SSO (Grade Pay 4600) are being directly promoted to the post of Joint Director (Grade Pay 7600). Whereas as the fact is that officers having Grade pay of Rs. 6600 are being promoted to the Grade Pay of Rs. 7600/- by considering combined service of AD &amp; DD posts as they are having similar duties and responsibilities.</li> </ol> <p>The existing RR was examined and approved by UPSC and DOPT followed by approval of Government is conveyed for amendment vide letter dated 7<sup>th</sup> March, 2013. Writing letter dated 29-11-2015 by Ministry had prompted ESIC to enhance qualifying service of promoted eligible officers and squeeze qualifying service of other 11 officers in violation of DOPT Guidelines making it highly inappropriate and manipulative. With this action ESIC is not only violating DOPT Guidelines but it is also violating law established by various decisions of Hon'ble Supreme Court of India and for this unworthy and unlawful cause the reason being cited is Ministry's unconstitutional letter dated 29-11-2015.</p>
14.	<p>As per direction of the Ministry of Labour and Employment the matter was examined and it was decided that the present anomaly can be removed by changing the hierarchal structure from Deputy Director to Regional Director Grade 'B'/Joint Director with provision of specified number of posts in Level 11 (Rs. 67,700-2,08,700) of the Pay Matrix with new nomenclature of the post of Senior Deputy Director with specified number of sanctioned post in place of the existing nomenclature i.e. Deputy Director (STS). Accordingly draft RRs for the aforesaid three posts were prepared and in compliance of the DoP&amp;T OM No. AB-14017/61/2008-Estt. (RR) dated</p>	



	<p>13-10-2015 (<b>APPENDIX - XIII</b>) a copy of each of the proposed RRs for the aforesaid posts were put up on the official website of the ESIC for seeking comments of the stakeholders within 30 days of the issue of the Memorandum (<b>APPENDIX - XIV</b>).</p>	
15.	<p>In the meantime in O.A. No. 732/2017 filed by Hemant Kumar Pandey &amp; Other vs UOI and others before the Principal Bench of Central Administrative Tribunal, Delhi the Hon'ble CAT vide its Order dated 11.1.2018 ordered for completion of the process of the notifying the recruitment regulations, namely, the Employees' State Insurance Corporation, Regional Director Grade 'B'/Joint Director Recruitment Regulations, 2017 after receiving the objections from all the stakeholders including the applicants to M.A. No. 4051/2017 within a period of 3 months from the date of receipt of a Certified copy of this order. Copy of Order dated 11.1.2018 enclosed as <b>APPENDIX - XV</b>.</p>	<p>The Hon'ble court has not authorized and directed ESIC to violate DOPT guidelines and law decided by Hon'ble Supreme Court of India. Whereas the ESIC has not only violated DOPT guidelines but also law decided by Hon'ble Supreme Court of India.</p> <p>The ESIC with malafide intention of favoring 11 officers has extended qualifying service of promoteeofficers of existing feeder cadre from existing combined service of 12 years to 16 years and squeezed qualifying service of 11 officers from existing 10 to 9 years. This squeezing of qualifying service is also in violation of residency period prescribed by DoP&amp;T.</p> <p>The letter dated 29-11-2015 issued by MoL&amp;E and Contempt Petition filed before Hon'ble CAT is being used to bring pressure on all for violating DOPT Guidelines and laws established by court of law.</p>
16.	<p>ESI Corporation in its 173rd meeting held on 16-02-2018 approved the draft RRs for the posts of Deputy Director, Senior Deputy Director and Regional Director Gr. 'B'/Joint Director after examination of 183 representations received from the various stakeholders and also approved creations of 180 posts of Senior Deputy Director in Level 11 of the Pay Matrix. As per rule 20 of the Employees' State Insurance (Central) Rules, 1950, powers for creation of posts vested in Corporation under sub-section (1) of Section 17 of the Act shall be exercised by the Corporation in relation to posts carrying maximum scale of pay of Rs. 37,400-67000 with grade pay of Rs. 8900/- (Nov Level 13 A of the pay matrix after implementation of seventh CPC recommendations in ESIC)(<b>APPENDIX - XVI</b>). Minutes of the said meeting were issued on 5.3.2018. Copy of the</p>	<p>The Administration of ESIC in furtherance of their intention to amend RRs while examining our contention had mislead the Hon'ble ESIC in its 173rd meeting by making following wrong observations :</p> <p>"Paragraph 3.1.3 of the DoP&amp;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>A copy of <b>Annendix XI</b> of Supplementary II Item No. ESIC-1 is enclosed as <b>Annexure - I</b>.</p> <p>That, the Administration contrary to their observation against my objection not only is enhancing qualifying services of above 10 aggrieved persons but on the other hand is also trying to squeeze the qualifying service of promotion of 11 officers who as per the existing RR</p>

	<p>Agenda Item and minutes of the meeting of the ESIC are enclosed as <b>APPENDIX – XVII &amp; XVIII</b> respectively. Thereafter approval/sanction regarding creation of posts of Senior Deputy Director and the revised sanctioned strength of the post of Deputy Director and Regional Director Grade 'B'/Joint Director in ESIC were issued vide ESIC Memorandum No. B-11/14/1/2018-E.III dated 22.3.2018 (<b>APPENDIX – XIX</b>).</p>	<p>are going to be eligible on 01-01-2020 and with proposed amendment are being groomed to be promoted on 01-01-2019. By not incorporating direction as contained in para 3.1.3 of DoP&amp;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 the apex body of ESIC is also misinformed with respect to highlighted content in <b>Annexure – I</b>.</p> <p>That, the Administration had misinformed apex Corporate Body of ESIC with respect to objections of all 94 promoted officers in clear terms at page No. 110, 112, 117, 119, 121, 122 and 134 by stating that their qualifying service is not going to be enhanced. (<b>Annexure - I</b> can be referred. The name of all officers in response of whom facts were misinformed to Hon'ble ESIC along with misinformed facts are prominently highlighted.</p> <p>The approval of ESIC here is procured on the basis of wrong facts and misleading information.</p>
17.	<p>Draft RRs for the aforesaid posts, as approved by the ESI Corporation, were submitted to the Union Public Service Commission for approval under Section 17(3) of the ESI Act, 1948 vide ESIC letter No. A-12(11)3/2017-E.I dated 24.5.2018 (APPENDIX – XX). The UPSC vide their letter No. 3/12(7)/2018-RR dated 6.8.2018 (APPENDIX – XXI) has approved the draft RRs for the posts of Deputy Director, Senior Deputy Director and Regional Director Grade 'B'/Joint Director. The USPC in the approved draft RRs for the post of Regional Director Grade 'B'/Joint Director has removed the failing which clause for promotion to the post in addition to some other modification in the RRs approved by the ESIC in its 173rd meeting after due deliberation with ESIC.</p>	<p>The UPSC has relied on false and misrepresented facts as explained above against para No. 16 provided by ESIC to its apex corporate body.</p> <p>Hence, the approval of UPSC here is procured on the basis of wrong facts and misleading information in violation of DOPT Guidelines.</p>

18.	Draft RRs for the aforesaid three posts, as approved by the Commission, has been sent to the MoL&E for approval of the Government and also legal vetting from the Ministry of Law and Justice vide ESIC letter No. A-12(11)3/2017-E.I dated 14.8.2018 (APPENDIX – XXII).	<p>The MoL&amp;E and Ministry of Law and Justice has also relied on false and misrepresented facts as explained above against para No. 16 provided by ESIC to its apex Corporate Body.</p> <p>The approval of MoL&amp;E and vetting of Ministry of Law and Justice is also procured on the basis of wrong facts and misleading information in violation of DOPT Guidelines.</p>
19.	The present amendments in recruitment regulations for the posts of Regional Director Grade 'B'/Joint Director has been initiated as per direction of the MoL&E in order to remove the anomaly in the present RRs whereby junior officers becomes eligible for promotion under failing which clause by superseding their senior officers. A list of Deputy Director (recruited by direct recruitment who will be superseded by their junior Deputy Directors (recruited to the post by promotion) under failing which clause of existing RRs w.e.f. 1.1.2019 is enclosed is enclosed as (APPENDIX – XXIII). Among these direct recruited officers 20 officers belong to Scheduled Castes Category and 11 officers belong to Scheduled Tribe category as per details given in APPENDIX – XXIV. Therefore allegation of discrimination against the Scheduled Castes category is totally incorrect.	<p>The direction of MoL&amp;E was infected from following shortcomings :</p> <ol style="list-style-type: none"> <li>1. Date of letter is wrongly written as 29-11-2015</li> <li>2. The letter seems to be issued without approval of competent authority.</li> <li>3. Letter is full of factual errors giving impression that SSO (Grade Pay 4600) are being directly promoted to the post of Joint Director (Grade Pay 7600). Whereas as the fact is that officers having Grade pay of Rs. 6600 are being promoted to the Grade Pay of Rs. 7600/- by considering combined service of AD and DD.</li> <li>4. The existing RR was examined and approved by UPSC and DOPT followed by approval of Government is conveyed for amendment vide letter dated 7th March, 2013. Writing letter dated 29-11-2015 by Ministry had prompted ESIC to Enhance qualifying service of 45 eligible officers and squeeze qualifying service of other 11 officers in violation of DOPT Guidelines making it highly inappropriate and manipulative. With this action ESIC is not only violating DOPT Guidelines but it is also violating law established by various decisions of Hon'ble Supreme Court of India.</li> </ol> <p>The affected promotee officers were given promotion to the post of Assistant Director on adhoc basis against regular vacancy of year 2003-04 and the regular promotion was delayed till year 2006. The regular service of Assistant Director should have been counted from 26-09-2003. Had the promotion of Assistant Director been done in time, the officers would have been eligible for promotion to the post of Regional Director Gr. 'B'/Joint Director on 01-01-2016. The applicants</p>

were provided adhoc promotion to the post of DD. The applicants were regularised on the post of DD off late on 22-03-2011. From these facts it is clear that the promoted officers have lost precious 4-5 years by not allowing promotion in time. Had they been promoted in time they would have been senior to all directly recruited officers.

The Management has not found any anomaly in following facts for favouring DR officers:

1. AD and DD have got same work, duties and responsibilities but are paid different scale of pay in violation of legal principle "equal work equal pay".
2. The Promotee Officers were not considered for promotion to the post of Joint Director by counting their adhoc services against regular vacancy of AD from 26-09-2003 as the DPC conducted by UPSC also promoted them against vacancy for year 2003-04 which was also violation of decision of Hon'ble Supreme Court decisions in case of **S. Sumnyan & Others V. Lini Niri & Others (2010, SC 292)**.
3. By counting adhoc service against regular vacancy of AD of these officers from 26-09-2003 these officers are completing required combined qualifying service of 12 years on 25-09-2005.
4. Many of the SC/ST Promotee Officers were not considered for giving NFSG Sr. Time Scale by counting their ad hoc services against regular vacancy of DD from 03-08-2012 as the DPC conducted by UPSC also promoted them against vacancy for year 2011-12 in violation of various Supreme Court decisions.
5. The DR Officers were provided NFSG Sr. Time Scale after completion of just four years regular service without any mandate from RR for the post of Deputy Director.
6. Here it is clear that, had the ESIC followed all norms laid down by DOPT these officers would have been eligible for promotion on 01-01-2016.

7. Hence, these officers are eligible for promotion on crucial date i.e. 1.1.2016 and the ESIC has already delayed their promotion by two years.
8. In order to further favour DR Officers the Management is amending the rules just by bypassing DoP&T Guidelines.
9. Management has misled the apex body of ESIC by misreporting facts that qualifying service of promotee officers is not going to be enhanced rather they have also not only enhanced the qualifying service of promotee officers but simultaneously they are squeezing qualifying service of 11 officers also in violation of DOPT guidelines.

The Management has brought the lopsided view by bringing list of 31 officers who will be superseded. If eligible officers are not available in feeder cadre and there is a provision of failing clause in RR then it is bound to make some junior officers qualified for promotion by superseding senior officers. This is a common feature and law also recognize it. The post of Joint Director is not an isolated example. Following are some more known examples of such cadres where failing clause is prevailing :

1. Regional Director Grade 'A'/Director(**Annexure - L**)
2. Chief Engineer(**Annexure - M**)
3. Executive Engineer(**Annexure - N**)
4. Director (Official Language)(**Annexure - O**)
5. Joint Director (Official Language) (**Annexure -P**)

If the ESIC is allowed to use this logic then it will harm the interest of nearly 200 promoted SC/ST officers who by virtue of this amendment are going to be adversely affected.

If management feels that supersession is not beneficial for department it should amend RRs by fair means and by following DOPT guidelines and various decisions of Hon'ble Supreme Court of India.

		<p>The officers who were promoted vide <b>Appendix - X</b> if would have been promoted as Assistant Director in time they would have definitely got promoted to the post of Deputy Director much before the year 2010-11. The same can be gauged from the facts as indicated at Sr. No. 57, 59, 63, 65 and 77. Even if they were promoted off late their date of joining is 02-06-2009 whereas all those officers who are shown as senior to these officers were appointed after this date. If notional seniority of past service without actual service can be given to DR Officers, then recognising adhoc service rendered against regular vacancy by promote officer must also be considered as regular service as the same is recognized by court of law.</p>
20.	<p>Shri Heera Singh, Secretary is presently holding the post of Deputy Director (STS). He was recruited to the post of Deputy Director by promotion from Assistant Director. He is also one of the beneficiaries of existing RRs for the post of Regional Director Grade 'B'/Joint Director as he will be eligible to be considered for promotion to the post w.e.f. 1.1.2019 by superseding many directly recruited Deputy Directors senior to him. He is a representative of all Officers and Employees belonging to Scheduled Castes and Scheduled Tribes category in ESIC. By making this representation, he is looking after only his own interest and ignoring the genuine interest of directly recruited deputy directors, which include 31 officers belongs to SC/ST category as given in above para.</p>	<p>Here ESIC is concealing the fact that following 10 officers of SC category are eligible to be considered for promotion to the post of Joint Director w.e.f. 1.1.2019 and ESIC is trying to enhance qualifying service of officers working in feeder cadre from existing 12 years to 16 years without following DOPT Guidelines and prevailing law position.</p> <p>Here it is pertinent to mention that the provision of failing clause has also been included in Recruitment Regulations of following cadres :</p> <ol style="list-style-type: none"> <li>1. Regional Director Grade 'A'/Director(<b>Annexure - L</b>)</li> <li>2. Chief Engineer(<b>Annexure - M</b>)</li> <li>3. Executive Engineer(<b>Annexure - N</b>)</li> <li>4. Director (Official Language)(<b>Annexure - O</b>)</li> <li>5. Joint Director (Official Language) (<b>Annexure - P</b>)</li> </ol> <p>In the RRs of Executive Engineer there is provision for promotion of Assistant Engineer in the Grade Pay Rs. 4600/- to the post of Executive Engineer Grade pay Rs. 6600/- directly without any need of getting promotion of Assistant Executive Engineer in the Grade Pay of Rs. 5400/-. Copy of RRs of Executive Engineer is enclosed as <b>(Annexure - N)</b></p>

21.	It is also informed that ESIC has received a Notice dated 7.8.2018 from the Hon'ble CAT Principal Bench, New Delhi in C.P. No: 455/2018 of the Hon'ble CAT in OA No. 732/2017 ( <b>APPENDIX - XXV</b> ).	Sir, ESIC is violating DoPT guidelines and the ESIC is self-incriminating the case in CAT in order to harm the interest of these 10 officers and favouring petitioners for unlawful considerations.
22.	In view of the above, it is submitted that RRs for the posts of Deputy Director, Senior Deputy Director and Regional Director Grade 'B'/Joint Director are being amended/framed as per statutory provision and as per extant DoPT instructions. Further draft RRs as approved by the EISC in its 173rd meeting has been approved by the UPSC with some modifications and draft RRs as approved by the UPSC will further be scrutinized by the MoL&E and the Ministry of Law and Justice before notification in the Gazette of India. Hence, there is no discrimination against Scheduled Castes Community and the matter may kindly be closed.	<p>The Administration of ESIC in furtherance of their intention to amend RRs while examining our contention had mislead the Hon'ble ESIC in its 173rd meeting by making following wrong observations :</p> <p>“Paragraph 3.1.3 of the DoP&amp;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>A copy of Appendix XI of Supplementary II Item No. ESIC-1 is enclosed as <b>(Annexure - I)</b>.</p> <p>That, the Administration contrary to their observation against my objection not only is enhancing qualifying services of above aggrieved persons but 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 on 01-01-2019. By not incorporating direction as contained in para 3.1.3 of DoP&amp;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 favor of 11 officers. By doing so the apex Corporate Body of ESIC is also misinformed with respect to highlighted content in <b>(Annexure - I)</b>.</p> <p>That, the Administration had misinformed apex Corporate Body of ESIC with respect to objections of all 94 promoted officers in clear terms at page No. 110, 112, 117, 119, 121, 122 and 134 by stating that their qualifying service is not going to be enhanced<b>(Annexure -I</b> can be referred.The name of all officers in response of whom facts were misinformed before the apex Corporate Body of ESICalong with all misinformed facts are prominentlyhighlighted).</p> <p>The approval of ESIC here is procured on the basis of wrong facts and misleading information.</p>

