

To,

The Regional Director,  
Regional Office,  
ESI Corporation,  
Dehradun, UK.

Subject : **Request for forwarding my application for conducting DPC for DPC year 2017-18 and 2018 to the Chairman, The Litigation Committee constituted under National Litigation Policy, Employees' State Insurance Corporation, Hqrs. Office for considering the undersigned for promotion.**

Sir,

Please find enclosed is my application on above subject for forwarding the same to the Chairman, The Litigation Committee constituted under National Litigation Policy, Employees' State Insurance Corporation, Hqrs. Office.

An early action in the matter will be highly appreciated.

Yours faithfully,

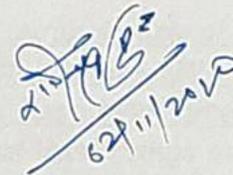


( Heera Singh )  
Deputy Director (STS)  
ESIC RO Dehradun.

**Enclosed : as above.**

Dated : 2<sup>nd</sup> November, 2020.

o/c



21/11/20  
62/11/2020

To,

The Chairman,  
The Litigation Committee constituted under  
National Litigation Policy,  
Employees' State Insurance Corporation,  
CIG Road,  
New Delhi 110002.

Subject: **Request of conducting DPC for DPC year 2017-18 and 2018 for considering the undersigned for promotion.**

Sir,

With due regard, I would like to invite your kind attention on following facts which are affecting my rights:

1. Since long back the post of Deputy Director and Assistant Director in ESIC have been assigned different pay scales for **same job responsibilities having same delegations of powers**, hence leading to gross violation of Principle of "Same Work Same Pay". (**Annexure - I**).
2. The matter was raised and examined on many occasions but the disparity was never removed.
3. A "Col. Nirmal Singh Committee" was constituted by ESIC for conducting study of Cadre Structure of ESIC. The committee was chaired by Prof (Col.) Nirmal Singh, Professor of Administrative Staff College of Hyderabad. The recommendations of Committee with respect to post of Assistant Director/SO/Deputy Accounts Officer etc. was prescribed in para 15.2.1 of Chapter 15, which were as follows (**Annexure - II**):

*"On the basis of the analysis presented in various parts of the report, certain appointments in the scale of Rs. 650-1200 such as ARD, SO, Dy. Accounts Officer etc. in Regions and Headquarters have been recommended for up-gradation to DRD level. It is proposed that this change over should be in a phased manner. The existing incumbents who fulfil the eligibility criteria and are duly approved by selection as subsequently proposed may be promoted to the grade of Rs. 700-1300 to the extent of 50% of additional upgraded posts. The remaining 50% upgraded posts may be held by officers in the grade of Rs. 650-1200 as an interim measure and as and when posts become available through separation etc., these be filled through direct recruitment only till the 50 % parity is reached; after which 50:50 formula can operate normally."*

4. The recommendations were ignored and the principle of "Same work same pay" was continued to be violated in spite of several efforts to remove the disparity in both the cadres.
5. Later on in order to bring some parity between post of Assistant Director and Deputy Director and refraining from keeping posts vacant for long time, it was consciously decided to bring failing clause in RR for the post of Joint Director for considering promotee cadre officers for promotion by counting their additional service of two years as Assistant Director (**Annexure - III**).
6. Five Officers were promoted on the basis of this pre-revised Recruitment Regulations with the approval of Hon'ble Minister for Labour and Employment (**Annexure - IV**).
7. The ESIC violated DoP&D Guidelines No. 35014/2/80-Estt.D Dated 7 February, 1986 (**Annexure - V**) by keeping vacant slots in seniority list. The O.M. No. 20011/1/2012-Estt. (D) dated 04.03.2014 (**Annexure -VI**) was also rashly and wrongly applied to our case in violation of para 5(h) of the said OM as the principles for determination of inter-se-seniority of direct recruits and promotees was effective from 27-11-2012, the date of Hon'ble Supreme Court Judgment in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Others, whereas we were off late appointed on 24-07-2012 but prior to date of judgment (**Annexure -VII**). The decision in the case of N.R. Parmar Vs. UOI & Others has been disapproved by Hon'ble Supreme Court and hence overruled in K. Meghachandra Singh & Ors. Vs. Ningam Siro & Ors. (**Annexure -VIII**). For similar reasons the Hon'ble CAT of Jaipur Bench vide their judgment dated 23-06-2020 had also quashed the seniority of UDC of Rajasthan Region (**Annexure -IX**) which was issued applying the DoP&TO.M. No. 20011/1/2012-Estt. (D) dated 04.03.2014.
8. In order to favour some Directly Recruitment Officer and to harm the interest of Promotee cadre officers the department had initiated following actions violating DoP&T Guidelines :
  1. The DoP&D Guidelines No. 35014/2/80-Estt.D Dated 7 February, 1986 clearly prescribes that (**Annexure - V**) :

"It has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct

recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them un-intended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be benched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available."

This guideline has been grossly violated as explained in following paras.

- a) While finalizing Seniority list for the post of Deputy Director, ESIC vide Memorandum No. A-25/15/01/2016-E.I dated 30-07-2019 **Annexure - X**, the DoP&D Guidelines No. 35014/2/80-Estt.D Dated 7 February, 1986 was violated in toto and had kept notional vacant slots by delaying DPC and the seniority list finalization. The DR Officers of year 2009-10 were given seniority in rota quota against the available officers of year 2005-06 (Copy of noting of File No. A-24/15/1/2016-E-I is enclosed as **Annexure - XI**) in spite of the fact that promoted officers were available in relevant year against regular vacancy and could not get promotion to post of Joint Director due to non-finalization of seniority, which was intentionally finalised after 13 years and by that time most of the promotee officers got retired.
- b) While finalizing further Seniority list for the post of Deputy Director, ESIC vide Memorandum No. A-24/15/01/2016-E.I dated 14-08-2020(**Annexure -XII**), the DoP&D Guidelines No. 35014/2/80-Estt.D Dated 7 February, 1986 was again violated in toto and ESIC had kept vacant slots for Officer who are not in existence in cadre and expected to be recruited in future.
- ii. The ESIC Refrained from submitting DPC proposal for the post of Joint Director to UPSC for year 2017-18, 2018 and 2019, in spite of the fact that the undersigned was eligible for promotion.
- iii. On the contrary the process of filling the post of Joint Director I/c by making officiating appointment of Deputy Director I/c for period exceeding one year without consultation of UPSC was started vide Order No. 222 of 2016 dated 21-10-2016 (**Annexure -XIII**) in violation of first proviso of Sub-section 3 of Section 17 (**Annexure -XIV**) which states as under:

*“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: Proviso: Provided that this sub-section shall not apply to an officiating or temporary appointment for a period not exceeding one years”*

- iv. In order to favour some Directly Recruited Officer the Recruitment Regulations for the post of Joint Director was amended by introducing a fresh cadre of Sr. Deputy Director in addition to already existing cadre of Assistant Director and Deputy Director with same job responsibilities having **same delegations of powers.**
- v. The DoP&T had vide Paragraph 3.1.3 of the DoP&T OM No. AB.14017/48/2010-Estt. (RR) dated 31.12.2010 (**Annexure - XV**) provided for retention of Existing Eligibility Service if the change is likely to affect adversely some persons holding the feeder grade posts on regular basis. The process of amendment of RR for the post of Joint Director was initiated on the basis of Ministry’s letter No. S-38016/21/2013-SS-1 dated 29<sup>th</sup> November, 2016 (**Annexure -XVI**) on the direction of Joint Secretary without approval of Central Government/Hon’ble Labour Minister. Copy of noting file attached as **Annexure -XVII**. Hence, it was not a direction of Central Government. While amending the RR for the post of JD the approval of apex body of ESIC was also received on misrepresented facts (**Annexure -XVIII**) wherein ESIC had submitted wrong fact that “Paragraph 3.1.3 of the DoP&T OM No. AB.14017/48/2010-Estt. (RR) dated 31.12.2020, does not apply in the instant case as here qualifying service for promotion has not been enhanced”, whereas in reality qualifying service of similarly placed officers has been enhanced. Even if my adhoc service against regular vacancy would have not been counted, I would have become eligible for promotion to the post of JD on 01-01-2019 whereas with the new RRs my qualifying service for promotion has been enhanced till 01-01-2023.
9. The Hon’ble High Court of Delhi in ESIC & Others vs. Awadesh Prasad Tripathi & Others in case No. W.P.(C) 2723/2014 (**Annexure - XIX**) had clearly decided that the adhoc services against regular vacancy is countable as regular service for purpose of promotion which is in consonance with ratio decidendi of judgment of case S. Sumnyan & Others vs. Limi Niri & Others (2010, SC 292) given by Hon’ble Supreme Court.

It was clearly pronounced by Hon’ble High Court of Delhi in ESIC & Others vs. Awadesh Prasad Tripathi & Others in case that the denying of benefit of

ad hoc service and consequently, anterior dates of promotion is unjust as it is well established fact that :

- i) The Corporation felt the need for services of affected experienced personnel from the feeder cadre.
- ii) The affected persons fulfilled the description of Recruitment Regulations for the post of feeder cadre.
- iii) Due to unknown administrative reasons affected persons were promoted on Ad hoc basis against regular vacancy.
- iv) Further, the UPSC also considered promotion of affected persons against relevant year.

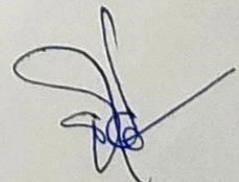
10. The applicant had served ESIC as ad hoc Assistant Director from 18 December, 2003 (**Annexure - XX**) against regular vacancy. The UPSC had also recommended my promotion against vacancy year 2003-04 (**Annexure - XXI**). In same way the applicant had served as ad-hoc Deputy Director from 03, November, 2010 (**Annexure - XXII**). The UPSC had also recommended my promotion against vacancy year 2011-12 (**Annexure - XXIII**). Hence, I have completed my AD/DD service of twelve years in 17<sup>th</sup> December, 2015 and I am eligible for promotion for the post of Joint Director on 01-01-2017.

#### **PRAYER**

Since, my grievance has not yet been resolved, I am submitting my following requests for your sympathetic and kind consideration please.

A. The applicant had served ESIC as ad hoc Assistant Director from 18<sup>th</sup> December, 2003 (**Annexure - XX**) against regular vacancy. The UPSC had also recommended my promotion against vacancy year 2003-04 (**Annexure - XXI**). In same way the applicant had served as ad hoc Deputy Director from November, 2010 (**Annexure - XXII**). The UPSC had also recommended my promotion against vacancy year 2011-12 (**Annexure - XXIII**). I have completed my AD/DD combined service of twelve years in 17<sup>th</sup> December, 2015 and should have got DD STS in 2016. Hence, I am eligible for promotion for the post of Joint Director on 01-01-2017 as per law position explained in para 9 above.

Hence, you are requested to kindly convene DPC for the post of Joint Director for year 2017-18 and 2018 and my ad hoc service against regular vacancy of Assistant Director and Deputy Director may kindly be considered for my promotion to the post of Joint Director.



- B. Sir, ESIC as well as Administrative Ministry had not considered our view point and deliberately favoured Direct Recruit officials DDs violating the para No. 3.1.3. of DoP&T OM No. AB14017/48/2020 Estt. (RR) dated 31.12.2010 (**Annexure - XV**) by misleading the apex body of ESIC. Hence, you are requested to add the protection clause as per para 3.1.3. of DoP&T OM No. AB14017/48/2020 Estt. (RR) dated 31.12.2010 in RR of Joint Director with retrospective effect to protect the interest of those officers whose qualifying service for promotion is enhanced by new RR as is also followed in the case of new proposed RR for the post of Assistant, UDC and Personal Assistant (**Annexure - XXIV to XXV**).
- C. Sir, All DDs were provided DD (STS) NFSG after completion of service of four years vide office order dated 27-02-2009, 22-09-2011, 11-11-2014 and 22-09-2015 (**Annexure - XXVI to XXIX**) but the applicant was provided DD (STS) NFSG after completion of service of five years vide order dated 29-11-2017 (**Annexure - XXX**) which is a disparity among equals and hence, discriminatory. Hence, I may also be provided Sr. Time Scale after completion of four years service.
- D. Notional Vacant slots in seniority list for the post of Deputy Director, ESIC vide Memorandum No. A-25/15/01/2016-E.I dated 30-07-2019 and clear vacant slots in seniority list for the post of Deputy Director, ESIC vide Memorandum No. A-24/15/01/2016-E.I dated 14-08-2020 may be removed and both seniority lists may be recast by applying principle of Rota Quota as per DoP&T OM No. 35014/2/80-Estt.D Dated 7 February, 1986 (**Annexure - V**) as per position explained in para 7 and 8.

Sir, I beg to you to kindly consider my submissions so that I have not to seek legal aid for restoring my right.

Yours faithfully,



( Heera Singh )

Deputy Director (STS)  
ESIC, Regional Office,  
Dehradun, Uttarakhand.

**Enclosed : Annexure I to XXX.**

Dated : 2<sup>nd</sup> November, 2020.