

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00872/2015

Friday, this the 10th day of January, 2020

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. Bindu K., D/o. Ponnayyan, aged 39 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574, Residing at Anizham, Pattathanam, Kollam.
2. T.R. Molly, D/o. J. Titus, aged 40 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574, Residing at Kavya, OPP to Vimala Central School, Karamcod PO, Chathanoor, Kollam.
3. Reni A., D/o. A.V. George, aged 43 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574, residing at Karunya, Erom North, Chathanoor.
4. Bindu S.S., D/o. Sadasivan, aged 42 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574, residing at Savithri Bhavan, Pulimath PO., Porunthamon.
5. Saraswathy P., D/o. P. Parameswara Panikker, aged 46 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574, residing at Souparnika, Koonayil, Paravur PO, Kollam.
6. Sudhamony S., D/o. P. Sankaran, aged 44 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574, residing at Plavilaveedu, Maidanam, Varkala PO, Varkala.
7. Laila C.L., D/o. P.K. Leshmanan, aged 40 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574., residing at Akshya, Kurumandal, Paravur.
8. Sunija C., D/o. Chandrasenan M., aged 40 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574, residing at Rajagiri, Valathungal, Kollam.
9. Girija Kumari G., D/o. Gopinathan Nair, aged 42 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574, residing at V.V. Nivas, Navaikulam PO, Thiruvananthapuram.

10. I. Moly, D/o. K.K. Mukundan, aged 39 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574, residing at Planthottam, Pozhikkara, S. Paravoor, Kollam.
11. Moni G., D/o. George, aged 52 years, Staff Nurse, ESIC Hospital, Parripally, Kollam – 691 574, residing at Annu Villa, Eramthikku, Karamcode. **Applicants**

(By Advocate - Shri V. Sajith Kumar)

Vs.

1. Union of India, rep. by the Secretary, Ministry of Labour and Employment, Shram Shakthi Bhavan, New Delhi – 110 002.
2. Employees State Insurance Corporation, Panchadweep Bhavan, CIG Road, New Delhi – 110 002, represented by its Director General.
3. The Regional Director, ESIC Corporation, Panchdeep Bhawan, NS Round, Thrissur.
4. The Medical Superintendent, ESIC Hospital, Parippally, Kollam District – 691 574.
5. The Medical Superintendent, ESIC Hospital, Asramam, Kollam District – 691 002.
6. State of Kerala, rep. By the Secretary to Government, Labour and Rehabilitation Department, Government Secretariat, Thiruvananthapuram – 695 001.
7. Binushma P.G. Aged 37 years, W/o. Sunilkumar, Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at TC 48/882(2), Gokulam, Konchiravila, Manakkadu PO, Thiruvananthapuram.
8. Priya P., aged 36 years, W/o. M. Thilakan, Staff Nurse, Paripally, ESI Hospital, Kollam, Kollam District, residing at Kollayil Charuvila Puthenveedu, Karimpaloor, Puthenkulam PO, Kollam – 691 302.
9. Sherin N.B., aged 36 years, W/o. Biju V., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Nehalayam, Alamukku, Poovachal PO, Thiruvananthapuram – 695 575.
10. Kunjumol P.N., aged 43 years, W/o. K.K. Raju, Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Sopanam, Samurthi Nagar, 8-A, Asramam PO, Kollam -691 302.

11. L. Padmakumari, aged 44 years, W/o. Praveen Kumar K.S., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Krishna, T.C. 21/1461, Nedumacadu, Karamana PO, Thiruvananthapuram – 695 002.
12. Bindu M. Thomas, aged 42 years, W/o. Sini George, Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Kollampallythara, Mera Nagar, 80-4, Mundakkal, Kollam District.
13. Indu S., aged 40 years, W/o. Padmakumar G., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Nivedhyam, H.No. 08/332, Mekhone, Chandana Thoppu PO, Kollam-691014.
14. Rose Charles, aged 42 years, W/o. Shaji K.V., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Kokkappallil House, Thonackadu PO, Cheriyannadu, Chengannur, Allapppy District.
15. Bindu S., aged 41 years, W/o. Jayaprakash K., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Puliyanmavil House, Kavumbhagam PO, Kizhakkumminri, Thiruvalla, Pathanamthitta – 689 102.
16. Sreelekha P.B., aged 43 years, W/o. P. Radhakrishnan, Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Anayadi, Padeetathil, Pallarvimangalam PO, Mavelikkara, Alleppey District.
17. Kavitha Aravind, aged 40 years, W/o. Binulal, Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Krishna Gadha, Kottikada PO, Kollam District.
18. Sunitha S., aged 37 years, W/o. Shaji T.J., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Shaji Nivas, Mithranikethan PO, Vellanadu, Thiruvananthapuram.
19. Susheela T., aged 48 years, W/o. Suresh Babu V., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Sabhalayam, Edavattom, Vellimon PO, Keralapuram, Kollam-691511.
20. Sijitha S., aged 40 years, W/o. Sunil P.S., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Souparnika, Kuzhiyam South Temple Nagar, House No. 5, Chandana Thoppu PO, Kollam – 691 014.
21. Seena M. Nair, aged 37 years, W/o. Anilkumar R., Staff Nurse, Parippally, ESI Hospital, Kollam, Kollam District, residing at Seena Sadan, Valanchery, Kilimanoor PO, Thiruvananthapuram – 695 601.

22. Annie Pius, aged 37 years, W/o. Gracious K.E., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Sharon Cottage, Maruthady PO, Kollam – 691 003.
23. Sheena H.M., aged 36 years, W/o. Santhosh R.P., Staff Nurse, Parippally, ESI Hospital, Kollam, Kollam District, residing at Sheena Mandiram, Edathara PO, Karyam, Kadakkal, Kollam-691536.
24. Soumya S., aged 32 years, W/o. Shaiju B., Staff Nurse, Parippally, ESI Hospital, Kollam, Kollam District, residing at Ozhukupara House, Vattappara House, Thiruvananthapuram – 695 028.
25. Diana Joseph, aged 35 years, W/o. Asok Eapen, Staff Nurse, Parippally, ESI Hospital, Kollam, Kollam District, residing at AN-125, Adarsh Nagar, Pattom PO, Thiruvananthapuram – 695 004.
26. Laisamma P.M., aged 41 years, W/o. Kurian T.C., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Thadimattathil House, Parampuzha PO, Kottayam – 686 004.
27. Preetha S.V., aged 34 years, W/o. Sajumon K., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Uthram, Kavottumukku, Kazhakkootam, Thiruvananthapuram-695 582.
28. Vineetha Kumary T.K., aged 33 years, W/o. G.K. Shanoj, Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Thraisham, Irikkunnam, Nettayam, Manicandeswaram PO, Thiruvananthapuram.
29. Surya K., aged 45 years, W/o. Madhu P.P., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Kareethara House, Chettimangalam, Thekkenada PO, Vaikom, Kottayam – 686 142.
30. Jeena Paul, aged 40 years, W/o. Jiju P.D., Staff Nurse, Udyogamandal, ESI Hospital, Ernakulam, Ernakulam District, residing at Pollayil House, Alangad PO, Near St. Mary's Church, Ernakulam.
31. Manju M.V., aged 39 years, W/o. G.D. Harikumar, Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Gokulam, House No. 20. V.S.P. Nagar, Keravdduray, Pattom PO, Thiruvananthapuram.
32. Prabhu Kumar R.A., aged 34 years, S/o. D. Raveendran, Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Pranavam, Mulammoodu, Mukkampalamoodu, Naruvamoodu PO., Thiruvananthapuram – 695 020.

33. Geethakumari N., aged 39 years, W/o. Suresh Kumar C., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Nermalayam, Perumpuzha PO, Kundara, Kollam – 691 504.
 34. Roopa P., aged 38 years, W/o. Gopakumar M.G., Staff Nurse, Udyogamandal, ESI Hospital, Ernakulam, Ernakulam District, residing at Anuroop, Panamanna PO, Ottappalam, Palakkadu – 679 501.
 35. Indu P.R., aged 41 years, W/o. Vijayan V., Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Nanda Krishna, Kannimel Cherry, Maruthady, Kollam – 03.
 36. Ambili R., aged 46 years, W/o. Cyril Chacko, Staff Nurse, Ashramam, ESI Hospital, Kollam, Kollam District, residing at Kalluvila veedu, Thannicodu, Kundara, Kollam – 691 501.
 37. Ambili P.A., aged 39 years, W/o. Biju P., Staff Nurse, Udyogamandal, ESI Hospital, Ernakulam, Ernakulam District, residing at Nadumuttam House, Neeleswaram PO, Kalady, Ernakulam.
- ... **Respondents**

**[By Advocates - Shri N. Anilkumar, SCGSC (R1),
Shri T.V. Ajayakumar (R2-5),
Shri M. Rajeev, GP and
Ms. Rekha Vasudevan, GP (R6) and
Shri Jackson Johny (R7-37)]**

This application having been heard on 06.01.2020, the Tribunal on 10.01.2020 delivered the following:

ORDER

Per Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicants are as under:

- “a) declare that the absorption of the applicants as Staff Nurse with Grade Pay of Rs. 4600/- is irregular even in the face of Annexure A3
- b) declare that applicants are entitled to be absorbed as Nursing Sister in the Hospitals managed by the respondent Corporation w.e.f. 4.3.2011.
- c) to direct the respondent to dispose of Annexure A6 and A7 representations.
- d) grant such other reliefs, as this Hon'ble Tribunal may deem just and proper and
- e) award costs.”

2. The brief facts of the case are that the applicants are Staff Nurse Grade-II in the State Government service. While they were holding the said post and by virtue of their length of service and seniority they secured promotion as Staff Nurse Grade-I and continued in the State run Hospital at Parippally. The 2nd respondent Corporation gradually began to take over hospitals in the larger interest of the society with a view to provide medical facilities and care to the needy, quickly and effectively. Accordingly, the hospital at Parippally was taken over by the Corporation on 16.4.2010 and thereafter ESIC is running the hospital under its direct control. The staff working in the hospital were deemed to be on deputation till they were absorbed in the 2nd respondent ESIC as its regular employees in different posts. However, the applicants were absorbed on the staff strength of the Corporation as their regular employees only w.e.f. 4.3.2011. The 2nd respondent Corporation issued orders absorbing the applicants as Staff Nurse in the Grade Pay of Rs. 4,600/-. All the applicants were thus absorbed in the regular service of the Corporation. At the time when the option was exercised the applicants wanted to be absorbed in the post of Nursing Sister and there were enough vacancies of Nursing Sister. The applicants have now rendered 14-17 years of service and had been making representations to the respondents for their absorption as Nursing Sister. The absorption of the applicants as Staff Nurse with lesser Grade Pay has not only reduced their salary and allowances but has put them far below others who have put in lesser number of years of service. Therefore, there is inherent anomaly in their absorption orders. Aggrieved the applicants have filed the present OA.

3. Notices were issued to the respondents. They entered appearance through Shri N. Anilkumar, SCGSC, appearing for respondent No. 1, Mr. T.V. Ajayakumar, Standing Counsel for respondents Nos. 2-5, Mr. M. Rajeev, GP and Ms. Rekha Vasudevan, GP for respondent No. 6 and Mr. Jackson Johny, appearing for respondents Nos. 7-37.

4. Respondents Nos. 2-5 filed a detailed reply statement contending that the applicants submitted willingness to be absorbed in the respondent Corporation. The posts of Staff Nurse Grade-I in the State service is not equivalent to the post of Nursing Sister in the ESIC. ESI Hospital, Parippally is coming under the administrative control of ESI Corporation which has been functioning under the Government of India. The Recruitment regulations for appointment/promotion in the various posts in ESIC is quite different from that of the State service. The method of recruitment to the Nursing cadre/posts is governed by the ESI Corporation (Recruitment) Regulations, 2010. The applicants were working in the State service as per the appointment/promotion rules prevailing in the State service prior to their absorption. The services of the applicant and all other relevant aspects were duly considered by the 2nd respondent Corporation while they were absorbed as Staff Nurse in the ESI Corporation. As per Annexure A1 option form it can be seen that the 2nd applicant submitted therein that “I opt for my absorption in ESI Corporation Service” only and the above option was not given to any specific post in the ESI Corporation. The absorption was done only in the equivalent post in the ESI Corporation. The higher post of Nursing Sister claimed by the applicants can be offered

to the applicants only on promotion after rendering the required service in ESI Corporation in the cadre of Staff Nurse and taking into consideration the seniority and other eligibility criteria as provided in the regulations. The respondents submitted that the applicants have got enhancement of more than Rs. 6,000/- on their absorption in the ESIC service and accordingly they were granted substantial amount towards the arrears of salary and allowances also. Respondents 2-5 pray for dismissing the OA.

5. Respondent No. 6 also filed a reply statement contending that the applicants have been relieved from State service on 4.3.2011 and their claim is for promotion in the ESI Corporation service. The representations stated to have been filed by the applicants are submitted before the ESI Corporation and the State Government is not aware of any such representations. The ESI Corporation has taken over the ESIC hospital, Parippally based on certain terms and conditions put forth by the ESIC in concurrence with the State Government. Now the State Government has no role in taking a decision in this regard. Respondent No. 6 also pray for dismissing the OA.

6. A reply statement was also filed by respondents 7-37 wherein it is contended that the applicants were absorbed on option. The applicants have never challenged their absorption as Staff Nurse in ESIC till this date. Respondents 7-37 pray for dismissing the OA.

7. Heard Shri V. Sajith Kumar, learned counsel appearing for the applicants, Shri N. Anilkumar, SCGSC, learned counsel appearing for respondent No. 1, Mr. T.V. Ajayakumar, learned Standing Counsel appearing for respondents Nos. 2-5, Mr. M. Rajeev, GP and Ms. Rekha Vasudevan, GP learned counsel appearing for respondent No. 6 and Mr. Jackson Johny, learned counsel appearing for respondents Nos. 7-37. Perused the record.

8. The applicants were absorbed in the staff strength of the Corporation as their regular employees only w.e.f. 4.3.2011. The 2nd respondent Corporation issued orders absorbing the applicants as Staff Nurse in the Grade Pay of Rs. 4,600/-. All the applicants were absorbed in the regular service of the Corporation. As contended by the applicants they exercised the option and wanted to be absorbed in the post of Nursing Sister as there were enough vacancies of Nursing Sister. They submit that having rendered 14-17 years of service they had been making representations to the respondents for their absorption as Nursing Sister and the absorption of the applicants as Staff Nurse with lesser Grade Pay had not only reduced their salary and allowances but has put them far below others who have put in lesser number of years of service. Therefore, there is inherent anomaly in their absorption orders. As submitted by the applicants all these factors were stated by the applicants in their representations at Annexures A4, A6 & A7. One of the relief claimed by the applicants is also to direct the respondents to dispose of their representations. However, we have gone through the reply statement filed by the ESI Corporation and we find that nothing has

been stated by them regarding the representations filed by the applicants. The respondents Nos. 2-5 have not taken any decision on the representation filed by the applicants. Therefore, we feel that ends of justice would be met if we direct respondents Nos. 2-5 to dispose of Annexures A4, A6 & A7 representations filed by the applicants and take a decision in the matter on merits within a period of three months from the date of receipt of a copy of this order without taking any ground of limitation. Ordered accordingly.

9. The Original Application is disposed of as above. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00872/2015

1. Annexure A1 - True copy of the willingness given by the 2nd applicant dated 20.6.2011.
2. Annexure A2 - True copy of the order dated 19.12.2011 absorbing the applicants as Staff Nurse.
3. Annexure A3 - True copy of the letter No. 544/A/11/11/EHP/10ADMN dated 20.12.2010 from the 4th respondent to the 2nd respondent.
4. Annexure A4 - True copy of the representation submitted collectively by the applicants dated 18.2.2013.
5. Annexure A5 - True copy of the representation submitted by the 4th applicant dated nil.
6. Annexure A6 - True copy of the representation dated 22.9.2015 sent by 1st applicant.
7. Annexure A7 - True copy of the representation dated 22.9.2015 sent by 4th applicant.
8. Annexure A8 - True copy of the final order dated 5.2.2015 in OA 157/13 of this Hon'ble Tribunal.
9. Annexure A8(a) - True copy of the relevant pages of the order No. E5-16637/2008/DIMS dated 17.9.2008 issued by the Director of Insurance Medical Services, Thiruvananthapuram.
10. Annexure A8(b)- True copy of the circular No. U-11/11/Rajajinagar/2005-Med.VI/Int.Cell dated 27.2.2012 issued by the Deputy Director, Employees State Insurance Corporation (Integ. Cell) to the 5th respondent.
11. Annexure A8(c)- True copy of the relevant pages of the office order No. 198 of 2015 dated 29.10.2015 issued by the Employees State Insurance Corporation.
12. Annexure A9 - True copy of the payment of absorption as par 2nd applicant.
13. Annexure A10 - True copy of the letter dated 4.6.2013.
14. Annexure A11 - True copy of the pay fixed in the office of ESIC Paripally.

15. Annexure A12 - True copy of the Government order No. 272/2015 dt. 1.12. 2015.
16. Annexure A13 - True copy of the letter No. F. No. 545/A/22/11/CHE/Admn/2013 dated 7.7.2016.
17. Annexure A14 - True copy of the office order No. 542/A/27/22/MHA/08 dt. 22.11.2016.
18. Annexure A15 - True copy of the office order No. EMHA-Mumbai/Recruit/DPC/1150/2013 dt. 30.12.2013.
19. Annexure A16 - True copy of the final seniority list of Staff Nurse in ESIC Model & Super Speciality Hospital, Asramam, Kollam dt. 31.12.2009.
20. Annexure A17 - True copy of the office order F. No. A/33/14/Pro/Absor/Kerala/Med-IV dt.16.3.2016.
21. Annexure A18 - True copy of the seniority list dt. 7.2.2017.
22. Annexure R7(a)- True copy of the order dated 26.10.2016 in MA Nos. 1210 of 2015 and 1102 of 2016 in OA No. 627 of 2016 of this Hon'ble Tribunal.
23. Annexure R7(b)- True copy of the order dated 5.4.2017 of this Hon'ble Tribunal.
24. Annexure R7(c)- The terms and conditions of permanent absorption of the applicants.

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