

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/00375/2020

ORDER RESERVED ON 20.10.2020

DATE OF ORDER: 04.11.2020

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

Dr.Chetan B L

S/o Lakshmikantha B.C

Aged about 40 years, IMO Gr I

ESIC Model Hospital, Rajajinagar

Residing at "MadhuChaitrashreeNilaya"

3rd Cross, 7th Main, Vidyanagar

Tumkur-572103.

....Applicant

(By Advocate Shri N.Khetty)

Vs.

1. Union of India

Ministry of Labour & Employment

Government of India, Nirman Bhavan

New Delhi - 110 011

Represented by its Secretary.

2. Employees State Insurance Corporation

Hqrs. Office, Panchadeep Bhavan

C.I.G Marg, New Delhi : 110002

Represented by its Director General.

3. The Employees State Insurance

Corporation Model Hospital

& PGIMSR, Rajajinagar

Rajajinagar

Bangalore-560 010.

Represented by its Dean

4. The Employees State Insurance Corporation Model Hospital & PGIMSR, Rajajinagar
Rajajinagar
Bangalore-560 010
Represented by its Medical Superintendent.

5. The Employees State Insurance Corporation Model Hospital & PGIMSR, Rajajinagar
Rajajinagar
Bangalore-560 010
Represented by its Deputy Director (Admn)

6. Employees State Insurance Corporation
Hqrs. Office, Panchadeep Bhavan
C.I.G Marg, New Delhi-110002
Represented by its Deputy Director.

7. Regional Director
Employees State Insurance Corporation
No.10, Binny fields, Binny pet
Tank Bund Road
Bangalore-560023.Respondents

(By Advocate Shri N.Amaresh)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunal's Act 1985 seeking the following relief:

a. Quash the transfer order bearing Office Order No.20 of 2020 in No.A-11/11/14/2017-Med.IV dtd.14-2-2020 passed by the Respondent No.6 in so far it pertains to the Applicant at Sl.No 19 and the Relieving Order No.532/A/22/13/17/Estt dated 31.07.2020 passed by the Respondent No.5 which are produced herewith as Annexure-A1 and A2 respectively.

b. Grant any such relief, as deemed fit in the facts and circumstances of the case, and in the interest of justice.

2. The facts of the case, as pleaded by the learned Counsel for the applicant, Shri N.Khetty, are as follows:

The Applicant joined the Employees State Insurance Corporation (ESIC), Model Hospital & PGIMSR, Rajajinagar, Bangalore on 8.7.2009 as Insurance Medical Officer (IMO) - Grade II after completion of his MBBS. After completion of four years of service, he was promoted as IMO-Grade I and took up the entrance examination for Post Graduate course through Post Graduate Entrance Test in 2016. He was successful and was allotted a PG seat in MD Skin & VD in Jaya Jagadguru Murugharajendra Medical College at Davanagere, Karnataka, for the academic year 2016-17. This PG seat was allotted by the State Government of Karnataka, under In-service quota. The applicant requested for study leave for joining the said course, which was initially denied to him by his employer. He filed a Writ Petition in the Hon'ble High Court seeking directions to relieve him to pursue the higher studies under study leave. During the pendency of the aforesaid Writ Petition, the Employees State Insurance Corporation finally relieved the applicant and granted him study leave to pursue the higher studies. He was relieved on 29.07.2017 to attend the classes. The applicant contended that he would have completed his PG degree course in July 2019 had he been relieved by ESIC before the start of the course in time. However, on account of the fact that there was a delay in his joining the course of about 15 months, he was able to complete the 3 years course period on 30.7.2020 only. He still has to appear in the final examinations of the course. Subsequent to his completing 3 years course period on

30.07.2020, he reported to ESIC Hospital, Rajajinagar to report for duty. He reportedly developed backache, which aggravated on 02.08.2020. He, therefore, applied for leave on medical grounds on 03.08.2020. However, he was informed through a WhatsApp SMS and Email that the 5th respondent had issued a relieving order dated 31.07.2020 which was emailed to him on 3.8.2020 whereby he was directed to report at the ordered place of posting in pursuant to the Office Order No.20 of 2020 dated 14.02.2020 under which he had been transferred. Vide this order, the applicant was transferred to the Dispensary Cum Branch Office (DCBO) at Madikeri.

3. The applicant has assailed his transfer order dated 14.02.2020 and his subsequent relieving order dated 31.07.2020 on the following grounds:

- i. The order No. 20 of 2020 dated 14.02.2020 was passed by respondent No.6 at a time when the applicant was prosecuting his higher studies and was on study leave. This indicates that the transferring authority had no knowledge about the whereabouts of the applicant and his present role. The order also stated that the medical officers will stand relieved in the afternoon of 17.02.2020, if not relieved earlier, and join at new place of posting without availing joining time even if admissible. This was not possible since he was on study leave at that moment.
- ii. The order dated 14.02.2020 transferring and purportedly relieving the applicant ceases to have effect since it has not been implemented for 5 months. It has therefore been become redundant and infructuous as it has not been acted upon by the respondents.

- iii. The transfer and relieving order dated 14.02.2020 has never been communicated or served upon the applicant, despite the fact that the said order stated that a copy of the same is marked to the applicant.
- iv. A Memorandum dated 4.6.2020 was issued by the 2nd respondent to all its hospitals in the country, imposing moratorium on rotational transfers of officers/staff in view of Covid-19 pandemic. It categorically stated that no rotational transfers for officers/officials in different grades (Group 'A', 'B' and 'C') be carried till 30.04.2021. The exception to the said moratorium on rotational transfers, would, however, be administrative reasons to fill up any vacancy due to promotion/retirement and consideration of requests by officers/staff on compassionate grounds i.e. medical emergency with self or family members etc., with general principles that minimum dislocation is caused to the officers. The memorandum also stated that the transfers to the aforesaid categories should be recommended by the Transfer Committee. The impugned transfer order is in clear violation of this Memorandum.

The applicant has further submitted that he would be facing many practical difficulties on account of impugned transfer order since his daughter is studying in 2nd standard at Tumkur, and his son is 2 years' old. His father is suffering Chronic Obstructive Pulmonary Disease with pulmonary hypertension and needs intermittent home oxygen therapy and medicine. Transfer at this stage would put the applicant and his family to hardship.

v. The applicant has also questioned the need for establishing DCBOs at various far off locations. He has quoted from a note circulated by the Secretary, Ministry of Labour and Employment relating to the action points which emerged after meeting with Cabinet Secretary on IT initiatives for improving efficiency on 27.12.2019 in which inter-alia the following actions were decided:

“The Ministry should re-examine the setting up of DCBOs, keeping in view the requirement of investment in infrastructure, recruitment of doctors, para-medics and other support staff. The Cabinet Secretary suggested that an alternative/better approach would be that the existing government infrastructure (both of Central and State Government) should be utilized for providing medical services. In case, the government infrastructure is inadequate, private medical facilities could be made available to the IPs.”

vi. The applicant has pleaded that till date the DCBO in Madikeri, where he has been transferred, is not established except taking a house on rent for the dispensary that too in late 2019. He has further pleaded that the DCBOs are referral hospitals and do not need specialists since the DCBO is a primary care service dispensary for which an MBBS graduate is sufficient. The applicant has completed his PG course study period and if he works in the DCBO, his skill as a specialist will be wasted.

vii. The applicant has also pleaded that the 2nd respondent had issued a policy vide OM dated 25.10.2019 for optimum utilization of GDMOs with Post Graduate qualifications. Under this policy, the controlling authorities have been directed to ensure that services of beneficiary General Duty

Medical Officers who have availed the study leave are utilized in respective specialities/departments only. And in case no regular specialist is available in a particular department of a hospital, PG qualified GDMOs of that speciality, from the same unit or elsewhere, may be posted as in-charge of that speciality department.

4. The respondents have filed a detailed reply in this Court. The learned counsel for the respondents Shri N.Amaresh in his reply statement has averred the following:

- i. The OA has no merit and is liable to be dismissed. The applicant, despite knowing fully well that he is appointed as GDMO in the organisation has no authority to claim himself as a specialist. His cadre has not been changed after completion of PG course. He is primarily required to attend to duties as a GDMO and he is required to provide services wherever required.
- ii. The transfer order dated 14.02.2020 was issued in public interest under administrative exigencies in the course of opening up of DCBOs all over India. The aim of setting up DCBO is to provide centralized service of medical care and financial compensation and other services as per provisions of the act under the same roof. The ESIC, as per the provisions of the ESIC Act recently merged into the Code on Social Security 2020, is duty bound to set up medical facilities in all districts of the country. Opening of DCBO in a phased manner is an action in this direction.

- iii. The claim of the applicant relating to non-operationalization of DCBO at Madikeri can only be one sided as the applicant, being a doctor, is the most key person in the said DCBO and the act of the applicant in not joining his duties as ordered vide order dated 14.02.2020 is in a way responsible for the delay in operationalization of such units.
- iv. The applicant was fully aware of the fact of his transfer to DCBO as the said transfer order was duly circulated in public domain (respondent Corporation website) that could be accessed by anyone concerned. It is understood that the ‘stand relieving’ instructions could not be applicable to his case for being engaged in completion of course. The spirit of the order is absolutely clear that he is immediately to be relieved from duties as and when he is available. He has not been asked to terminate his higher studies in between. The transfer order in this case was not a rotational one but was issued in public interest under the administrative exigencies in the course of opening of DCBOs in all over India.
- v. The applicant has been posted in respondent Corporation Hospital, Rajajinagar for over 10 years. As per the policy for transfer and posting of General Duty Medical Officers, Specialists, Teaching Faculty, Dental Surgeon and AYUSH in ESIC (Annexure-R1), under Clause No.3, it is clearly mentioned, that the normal tenure of a medical officer at any place of posting, shall be a maximum of 5 years. ESIC constantly tries to utilize its human resources in the best way possible and as and when there will be an opportunity to utilize the applicant’s skill in the

organisation, his re-posting could be considered as per administrative feasibility in the coming future.

5. At the very outset, it is clear from the pleadings that the applicant is employed in ESIC as Insurance Medical Officer Grade-I and functions as a General Duty Medical Officer. He does not belong to any “specialist” cadre of ESIC. He had chosen to undergo the Post Graduate degree course in Dermatology, on his own volition, and had got the seat under the State in-service quota for doctors. He was also granted study leave by ESIC for attending the course, though with some delay of around 15 months. However, as a Group-A Medical Officer, he has an all India transfer liability and he is expected to work wherever his employer chooses to suitably post him to avail of his services. It is not within his right to question his posting except on grounds of malafide, or on grounds of any violation of any statutory provisions relating to his posting. He had already served at ESIC Hospital in Rajajinagar as a medical officer for a period of 10 years, although the normal tenure of a medical officer under the general transfer policy of ESIC is supposed to be a maximum of 5 years. His pleas, relating to re-examination of the policy of setting up of DCBOs by ESIC, as well as regarding optimum utilisation of human resources within ESIC, are for consideration of ESIC as an institution, and such pleas cannot form the basis of challenging his transfer order purportedly issued in public interest by ESIC.

6. There are a plethora of judgements in Supreme Court on the issue of Judicial intervention in the matter of postings and transfer of employees.

In Mrs. Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532, the Honorable Supreme Court has observed as follows:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department....."

In Union of India and others vs. S.L. Abbas AIR 1993 SC 2444, the Honorable Supreme Court has observed as follows:

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration"

A similar view has been taken in National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and another (2001) 8 SCC 574, wherein it has been held that

no Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the appellate authorities substituting their own decision for that of the management.

7. However, a closer examination of the impugned order indicates that it was issued by ESIC on 14.02.2020 while the applicant was still undergoing his PG degree course at Davanagere and was on study leave for that purpose. The

impugned transfer order contained a list of 31 medical officers who were transferred to various DCBOs including the applicant at Sl.No.19. The order mentions that the medical officers, who have been transferred in public interest, will stand relieved in the afternoon of 17th February 2020, if not relieved earlier, and join at new place of posting, without availing joining time even if admissible. This clearly indicates that, the fact that the applicant was on study leave at that point of time, has not been taken into account at all while issuing this order. The order also does not indicate that any of the medical officers, who may be on study leave at that point of time, should join at their new place of posting only after they report for duties subsequent to the expiry of their study leave. The order, therefore, suffers from the vice of non application of mind, which makes it unimplementable, so far as the applicant is concerned.

8. The applicant, in pursuance of the orders dated 14.02.2020, was relieved vide orders dated 31.07.2020, after he reported back for duties subsequent to expiry of study leave. Since the transfer order dated 14.02.2020 itself suffered from lapses, it was inappropriate on the part of respondents to issue relieving orders on the basis of this defective order.

9. It would have been more appropriate if a suitable posting/transfer order had been issued by the ESIC subsequent to the applicant reporting for duties after completion of his study leave. Subsequent to passing of the original transfer orders dated 14.02.2020, there were significant changes in the working environment on account of the spread of Covid-19 pandemic. The memorandum dated 4th of June 2020 issued by the second respondent ESIC, took this changed environment into account. In addition to this, the policy guidelines issued vide OM dated 25.10.2019

directing the authorities of ESIC for optimum, effective and efficient utilisation of GDMOs with PG qualifications, could also have been taken into account, since the applicant was reporting back for duties after completing his three year coursework towards PG degree.

10. The transfer orders dated 14.02.2020 (Annexure-A1), as well as the relieving orders dated 31.07.2020 (Annexure-A2) while not taking into account any of the above factors, suffer from the vice of non application of mind, and being therefore, arbitrary, are liable to be quashed.

11. Accordingly, the Original Application is allowed. The order dated 14.02.2020 (Annexure A1) issued by Respondent No.6 qua the Applicant and the subsequent order dated 31.07.2020 (Annexure A2) issued by Respondent No.5 are hereby quashed and set aside.

12. There shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA No.170/375/2020:

Annexure-A1: Office order dtd.14.2.2020
 Annexure-A2: Relieving order dtd.31.7.2020
 Annexure-A3: Office order No.542/2017
 Annexure-A4: Relieving order dtd.30.7.2020
 Annexure-A5: Certificate of the applicant for having completed PG course
 Annexure-A6: Memorandum dtd.4.6.2020 issued by R2
 Annexure-A7: Representation dtd.5.8.2020
 Annexure-A8: 1st respondent's Action Points w.r.t. setting up of DCBOs
 Annexure-A9: Information regarding IPs in Mysore Dvn., published in ESIC
 Annual Report 2017-18
 Annexure-A10: Number of IPs in Mysore published in Hindu news paper
 Annexure-A11: Annual report-2018 published by Govt. of Karnataka
 Annexure-A12: DCBO Operational Manual issued by R2
 Annexure-A13: Study certificate of the applicant's daughter
 Annexure-A14: Order providing Oxygen Concentrator to the applicant's father
 Annexure-A15: OM dtd.25.10.2019 issued by R2
 Annexure-A16: Rationalisation order issued by R2
 Annexure-A17: Seniority list of IMOs in R3 hospital

Annexures with MA.No.261/2020 filed by the applicant:

Annexure-A18: Office order dtd.12.6.2009 passed by R1
 Annexure-A19: Leave application dtd.2.6.2017 of applicant
 Annexure-A20: Office letter dtd.5.6.2017
 Annexure-A21: Office order dtd.24.7.2017
 Annexure-A22: Application dtd.29.7.2017 for change the study leave of applicant
 Annexure-A23: Reporting to duty letter dtd.31.7.2020
 Annexure-A24: OM dtd.2.7.2015 of DOPT
 Annexure-A25: OM dtd.10.8.2018 of R6
 Annexure-A26: OM dtd.16.7.2020 of Min. of Labour & Employment
 Annexure-A27: OM dtd.21.7.2020 of EPFO
 Annexure-A28: OM dtd.15.6.2020 of Min. of Housing & Urban Affairs
 Annexure-A29: Office order dtd.6.5.2020 of Dept. of Posts
 Annexure-A30: RTI reply dtd.1.9.2020
 Annexure-A31: RTI reply dtd.31.8.2020
 Annexure-A32: RTI application to R5
 Annexure-A33: RTI application to R6
 Annexure-A34: RTI application to R7

Annexures with reply:

Annexure-R1: OM dtd.10.8.2018 of ESIC

Annexures with reply to MA.261/2020 filed by the respondents:

-NIL-