

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE**

**ORIGINAL APPLICATION NO.170/00376/2020**

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.Shivakumar D  
S/o Danappa B  
Aged about 37 years, IMO Gr I  
ESIC Model Hospital, Rajajinagar  
Residing at No.304, 3<sup>rd</sup> Main  
14<sup>th</sup> Cross, Kirloskar Layout  
Hesaraghatta Main Road  
Bangalore – 560 073.

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

(By Advocate Shri N.Amaresh)

### **O R D E R**

#### **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 17 and the Relieving Order No.532/A/22/13/17/Ett dated 03.08.2020 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 4.7.2009 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. He 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 MS Ophthalmology in Bangalore Medical College and Research Institute (BMCRI) at Bengaluru 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 31.07.2017 to attend the classes. The applicant contended that he would have completed his PG degree course in July 2020 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 the applicant completing his 3 years course period, the college issued the relieving order dated 31.07.2020. The applicant went to report for duty on 03.08.2020, forenoon to the 3<sup>rd</sup> respondent

hospital as the 1<sup>st</sup> and 2<sup>nd</sup> August were general holidays owing to Bakr-Eid and Sunday respectively. Instead of giving order to report for duty, the applicant was issued an order on 03.08.2020 relieving him of his duties at the 3<sup>rd</sup> respondent hospital and directing him to report at Dispensary Cum Branch Office(DCBO) at Chamarajnagar. The respondent No.5 stated that the said relieving order is pursuant to the transfer orders dated 14.02.2020. Vide this relieving order, the applicant was transferred to the Dispensary Cum Branch Office (DCBO) at Chamarajnagar.

2. The applicant has assailed his transfer order dated 14.02.2020 and his subsequent relieving order dated 03.08.2020 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 pursuing 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 2<sup>nd</sup> 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.
- v. The applicant has further submitted that he would be facing many practical difficulties on account of impugned transfer order since his son is studying in 1<sup>st</sup> standard at Chikkabanavar and his daughter is one and a half year old. His mother had a Myocardial Infarction in 2008 and needs constant medical care and attention. She is also hypertensive and diabetic. Transfer at this stage would put the applicant and his family to hardship.

vi. 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.”*

vii. The applicant has pleaded that till date the DCBO in Chamrajnagar, where he has been transferred, is not established except taking a building on rent for the dispensary. 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.

viii. The applicant has also pleaded that the 2<sup>nd</sup> 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.

3. 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 Chamarajnagar 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.

4. 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 Ophthalmology, 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.

5. 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.*

6. 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 Bengaluru 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.17. The order mentions that the medical officers, who have been transferred in public interest, will stand relieved in the afternoon of 17<sup>th</sup> 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 un-implementable, so far as the applicant is concerned.

7. The applicant, in pursuance of the orders dated 14.02.2020, was relieved vide orders dated 03.08.2020, 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.

8. 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 4<sup>th</sup> 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.

9. The transfer orders dated 14.02.2020 (Annexure-A1), as well as the relieving orders dated 3.08.2020 (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.

10. Accordingly, the Original Application is allowed. The order dated 14.02.2020 (Annexure A1) issued by the Respondents qua the Applicant and the subsequent order dated 03.08.2020 (Annexure A2) issued by the Respondents are hereby quashed and set aside.

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

**(RAKESH KUMAR GUPTA)**  
**MEMBER (A)**

**(SURESH KUMAR MONGA)**  
**MEMBER (J)**

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**Annexures referred to by the applicant in OA No.170/376/2020:**

- Annexure-A1: Office order dtd.14.2.2020
- Annexure-A2: Relieving order dtd.3.8.2020
- Annexure-A3: Office order No.542/2017 dtd.31.7.2017
- Annexure-A4: Relieving order dtd.31.7.2020
- Annexure-A5: Memorandum dtd.4.6.2020 issued by R2
- Annexure-A6: Representation dtd.6.8.2020
- Annexure-A7: 1<sup>st</sup> respondent's Action Points w.r.t. setting up of DCBOs
- Annexure-A8: Information regarding IPs in Mysore Dvn., published in ESIC Annual Report 2017-18
- Annexure-A9: Number of IPs in Mysore published in Hindu news paper
- Annexure-A10: Annual report-2018 published by Govt. of Karnataka
- Annexure-A11: DCBO Operational Manual issued by R2
- Annexure-A12: Study certificate of the applicant's son
- Annexure-A13: OM dtd.25.10.2019 issued by R2
- Annexure-A14: Rationalisation order issued by R2
- Annexure-A15: Seniority list of R3 hospital

**Annexures with MA.No.262/2020 filed by the applicant:**

- Annexure-A16: Office order dtd.12.6.2009 passed by R1
- Annexure-A17: Leave application dtd.2.6.2017 of applicant
- Annexure-A18: Office letter dtd.5.6.2017
- Annexure-A19: Office order dtd.24.7.2017
- Annexure-A20: Reporting to duty letter dtd.3.8.2020
- Annexure-A21: OM dtd.2.7.2015 of DOPT
- Annexure-A22: OM dtd.10.8.2018 of R6
- Annexure-A23: OM dtd.16.7.2020 of Min. of Labour & Employment
- Annexure-A24: OM dtd.21.7.2020 of EPFO
- Annexure-A25: OM dtd.15.6.2020 of Min. of Housing & Urban Affairs
- Annexure-A26: Office order dtd.6.5.2020 of Dept. of Posts
- Annexure-A27: RTI reply dtd.1.9.2020
- Annexure-A28: RTI reply dtd.31.8.2020
- Annexure-A29: RTI application to R5
- Annexure-A30: RTI application to R6
- Annexure-A31: RTI application to R7

**Annexures with reply:**

- Annexure-R1: OM dtd.10.8.2018 of ESIC

**Annexures with reply to MA.262/2020 filed by the respondents:**

-NIL-

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