

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH**

**OA/021/00215/2019 with MA No. 312/2020**

HYDERABAD, this the 19<sup>th</sup> day of October, 2020

**Hon'ble Mr. Ashish Kalia, Judl. Member**

**Hon'ble Mr. B.V. Sudhakar, Admn. Member**



1. Dr. Leena Kanungo D/o S.B. Kanungo, Gr. 'A'  
Aged about 49 years, Senior Specialist Grade-I,  
E.S.I.C. Medical College & Hospital,  
Sanathnagar, Hyderabad.
2. Dr. Ch. Sheethal D/o Ch. Bhaskar Rao,  
Aged about 43 years, Senior Specialist Grade-I,  
E.S.I.C. Medical College & Hospital,  
Sanathnagar, Hyderabad.
3. Dr. G. Laxmi Prasad S/o G. Rajaram,  
Aged about 46 years, Senior Specialist Grade-I,  
E.S.I.C. Medical College & Hospital,  
Sanathnagar, Hyderabad.
4. Dr. C. Pavan Kumar S/o C. Malleshham,  
Aged about 42 years, Senior Specialist Grade-I,  
E.S.I.C. Medical College & Hospital,  
Sanathnagar, Hyderabad.
5. Dr. K. Sreenivasa Rao S/o K. Jaganmohan Rao,  
Aged about 47 years, Senior Specialist Grade-I,  
E.S.I.C. Medical College & Hospital,  
Sanathnagar, Hyderabad.
6. Dr. G. Thirupathi S/o G. Chinnaiah,  
Aged about 43 years, Senior Specialist Grade-I,  
E.S.I.C. Medical College & Hospital,  
Sanathnagar, Hyderabad.
7. Dr. A. Aruna D/o A. Rajareddy,  
Aged about 45 years, Senior Specialist Grade-II,  
E.S.I.C. Medical College & Hospital,  
Sanathnagar, Hyderabad.
8. Dr. A. Dhanalakshmi D/o A. Nageswara Rao,  
Aged about 42 years, Senior Specialist Grade-II,  
E.S.I.C. Medical College & Hospital,  
Sanathnagar, Hyderabad.

9.Dr.Rupali Akude D/o Ashok Akude,  
Aged about 40 years, Senior Specialist Grade-II,  
E.S.I.C.Medical College & Hospital,  
Sanathnagar, Hyderabad.

10.Dr.Sneha Pamar D/o R.Dharm Singh,  
Aged about 41 years, Senior Specialist Grade-I,  
E.S.I.C.Medical College & Hospital,  
Sanathnagar, Hyderabad.



11.Dr.Akshata Powar D/o Prakash Powar,  
Aged about 37 years, Senior Specialist Grade-II,  
E.S.I.C.Medical College & Hospital,  
Sanathnagar, Hyderabad.

12.Dr.Ram Manohar Lohia.T.D.  
S/o T.V.Narayana Reddy,  
Aged about 42 years, Senior Specialist Grade-II,  
E.S.I.C.Medical College & Hospital,  
Sanathnagar, Hyderabad.

13.Dr.S.Santhosh Kumar S/o Subhash Rao,  
Aged about 42 years, Senior Specialist Grade-II,  
E.S.I.C.Medical College & Hospital,  
Sanathnagar, Hyderabad.

14.Dr. P. Venu S/o P. Mallaiah,  
Aged about 42 years, Senior Specialist Grade-II,  
E.S.I.C.Medical College & Hospital,  
Sanathnagar, Hyderabad.

15.Dr. K. Ram Babu S/o K. Veeresham,  
Aged about 52 years, Senior Specialist Grade-II,  
E.S.I.C.Medical College & Hospital,  
Sanathnagar, Hyderabad.

...Applicants

(By Advocate : Mr. M.Ramgopal Rao)

Vs.

1. Union of India, Ministry of Labour and Employment,  
Shram Shakthi Bhavan, Rafi Marg, New Delhi-110 001.  
Represented by its Principal Secretary.
2. The Employees' State Insurance Corporation,  
Panchdeep Bhavan, CIG Road, New Delhi-110 002.  
Represented by its Director General.

3. The Employees' State Insurance Corporation,  
Panchdeep Bhavan, CIG Road, New Delhi-110 002.  
Represented by its Dy. Director (Medical Admn.) .
4. The Employees' State Insurance Corporation,  
Panchdeep Bhavan, CIG Road, New Delhi-110 002.  
Represented by its Assistant Director (Medical Admn.)
5. E.S.I.C.Medical College & Hospital,  
Sanathnagar, Hyderabad, State of Telangana,  
Represented by its Dean.
6. Medical Council of India, Pocket No.14,  
Sector 8, Dwaraka Phase-I, New Delhi.



....Respondents

(By Advocate : Mr. N. Srinivasa Rao, SC for ESIC)

---

**ORAL ORDER**  
**(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)**

**Through Video Conferencing:**



2. The OA is filed aggrieved over the orders of respondents of treating applicants as surplus and consequently seeking options to transfer them vide letters dated 24.1.2019 and 22.2.2019 respectively.

3. Brief facts of the case are that the applicants are Doctors with Post Graduation degree in specialized areas, who were appointed in the respondents' organization as Specialist Grade-II (Junior Scale) from 2008 to 2013 to attend to patient care. Their services were regularized and posted thereafter at ESIC Model Hospital, Nacharam, Hyderabad. Applicant's claim that they are borne in the A.P. cadre of specialist (Non Teaching) till their tenure is completed in Specialist Grade-II (Senior Scale) with State Seniority. Some applicants are in Specialist Grade-I and some others in Specialist Grade-II. While the situation prevailed as described, respondents organization entered into an agreement with the State Govt. for exchange of ESIC Nacharam Hospital with ESIC Sanathnagar Hospital with 'as is where is clause.' Condition. Further, G.O.I permitted the respondents to set up a medical College with intake of 100 MBBS students from 2016-17 onwards. Applicants volunteered for teaching, since they possess P.G. qualification, from the inception of the said college as an additional responsibility with no extra remuneration. In the process applicants claim that they have effected savings to the public exchequer. Despite such efforts of the applicants, respondents have released the sanctioned strength on 24.1.2019 in respect of teaching staff and residents for the Medical College,



Sanathnagar excluding the applicants. Applicants claim that they are on par with the non-teaching staff of Insurance Medical Officers (IMO) with P.G. degree working in broad specialties like the applicants and hence, they should also have been included in the sanctioned list, because they can attend to patient care in the hospital attached to the college. Instead of doing so, respondents have issued Impugned proceedings dated 22.2.2019 declaring the applicants as surplus and sought options to post them elsewhere, even when there was work load to attend to. Respondents' decision to rationalize staff strength of IMOs and specialists on 24.1.2019 is irrational. Aggrieved, OA has been filed.

3. The contentions of the applicants are that they have been appointed as non teaching specialists during the period 2008 to 2013, in accordance with the respondents' organization rules prevailing at that instant of time. Impugned order is based on Medical Council of India (MCI) guidelines for sanctioning a medical college and that too, by taking student strength and not bed strength. Decision of the respondents has to adhere to the ESI Act and the policies framed thereon. Continuing the non specialist IMOs who discharge similar functions and ignoring the applicants is hostile discrimination. If promotion is accorded as Specialist Grade-I, then only they would come under All India Cadre and thereupon their seniority would be ranked on All India basis. Respondents, without working out the cadre strength or considering their representations to work as Teaching Staff and without notice, forced applicants to indicate options for likely transfer. Respondents' decision taken on 24.1.2019 is irrational. The services of the applicants from Nos.1 to 4 have been used to obtain recognition from MCI

to start Post Graduation courses and Medical College and further, they were shown as staff strength of the proposed Medical College. Applicants with one to two decades of service are being replaced by junior/ senior residents and post graduate students. By transferring applicants from Sanathnagar Hospital, there would be none to attend to the clinical side defeating the objective of the Act. There are lakhs of card holders and to take care of their health, a 1000 bed hospital is required for which additional staff is required and not reduction of staff, as ordered by the respondents. The reports of committees formed by respondents organization (ESIC) have recommended closure of colleges and increase clinical strength and therefore, in this context rationalization is incorrect. Neither G.O.I. nor Chairman of ESIC Committee has approved the rationalization. Most of the applicants are female employees. Applicants can be accommodated against regular vacancies instead of engaging outsiders on contract and outsourcing basis. Model code of conduct in regard to Elections is in vogue and hence, applicants should not be shifted at the present juncture of time.



5. Respondents, *per contra*, state that the vacancies of Doctors, be they General Duty Medical Officers or Specialists, have to be calculated on the basis of the sanctioned strength of the different units. Applicants are Group-A cadre employees and hence, they are in the All India Cadre and not regional cadre, as has been brought out in the appointment order of the 1<sup>st</sup> Applicant (Annexure R-1). The 1<sup>st</sup> applicant is liable to be posted anywhere in the country. Respondents have cited the judgments of the Hon'ble Supreme Court in support of their contentions of the limited scope of the Tribunal in matters relating to transfer. The claim of the respondents

is that they are empowered to decided unilaterally in public interest, under sub section (1) of Section 97 of ESIC Act 1948 (Annexure R-4) read with clause (xxi) of sub section (2) and (2-A) to prescribe the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of officers excepting the DG and Financial Commissioner.



Applicants have completed the normal tenure of posting as per transfer policy circulated on 10.08.2018 (Annexure R-5). They can join new stations and represent for posting at Hyderabad. Applicants No.1 to 6 are in Specialist Grade-I and the rest are on the verge of promotion to the said grade. Clause 3 (iv) of the offer of appointment does indicate that applicants are borne on A.P. cadre as long as they are in Specialist Grade-II and when they get promoted as Specialist Grade-I doctors, they would belong to all India cadre as stated in the very same clause. Agreement between the State Govt. of Telangana and the respondents as well as setting up of the Medical College has been done lawfully. MCI has laid norms for Specialist (Teaching) and that the applicants were used as a stop gap arrangement in setting up the Medical College and Hospital at Sanathnagar, Hyderabad. Staff strength and posts of Professors, Asst. Professors etc. were sanctioned as per MCI norms. Members appointed against these posts are to be posted as Specialist (Teaching) in place of Specialist (Non teaching). Medical Officers like Dr.Sanjay Raina, Dr. Kamlesh Harish etc. (Annexure R-6) of the respondents organization, who had the requisite qualification in accordance with MCI norms, have been designated as teaching staff as per administrative requirements. Applicants, as per available records, are neither eligible nor did they make any efforts to get confirmation from MCI. If they do and MCI gives the confirmation, their





requests could be considered as teaching faculty based on availability of Specialist (Teaching) vacancies. Simple willingness will not do unless they get confirmation from MCI. As per MCI norms for recognition of a Medical College, respondents have to appoint teaching staff and hence, Specialist (Non-teaching) have been excluded from the revised sanctioned strength orders issued on 24.1.2019. Rationalization of the staff strength is the decision of the Governing Body of the respondents organization in its 175<sup>th</sup> meeting (Annexure R-8) and complying with the same, reorganization orders were submitted to the Body in its 177<sup>th</sup> meeting on 19.2.2019. The Governing Body is the competent authority to take decisions of the type in question. In the 215<sup>th</sup> meeting of the standing committee which administers the directions given by the Governing body, has taken note of the same. As a part of the rationalization process, Nacharam Hospital was merged with Sanathnagar Hospital. Subsequently, respondents organisation entered into medical education requiring posting of teaching staff as per MCI norms. As a result, overlapping occurred with respect of Post Graduate specialists treating patients ,figuring in the teaching faculty, since it is a part of their job. Respondents claim is that they have chosen the higher staff strength worked out by using ESIC norms and MCI staff norms, in order to fulfill functional requirements (Annexure R-9). Applicants cannot be considered against posts of General Duty Medical Officers, which is a distinct cadre. Respondents' advertisement indicates the intention of the respondents to provide quality medical care by recruiting doctors and to overcome their short supply. 41 to 42 doctors are enough to attend to 2500 OPD patients a day. Respondents have planned 248 doctors in Sanathnagar Hospital for handling 500 beds



which is reasonable as per any norm. As per clause 6 (2) of ESIC (Staff and Conditions of Service) Regulations, 1959, on abolition of permanent posts, services of holders of such posts can be terminated by giving 3 months notice or pay them proportionately in lieu thereof. Instead of invoking the clause cited, respondents are trying to accommodate the applicants who were found surplus in other posts. Respondents' organization is trying to establish a dispensary in each district in order to have All India presence.



Units having deficit of doctors should not suffer. Teaching cadre is a separate cadre and even then, those eligible from the non-teaching side have been considered subject to availability of vacancies. Rationalization has not been done to harm any doctor personally. Respondents have only issued a notice and no further action was taken. Respondents are still in the process of working out the work load. In case applicants fulfill the eligibility criteria, they can be considered for posting at Sanathnagar Hospital/Medical college, depending on administrative requirements. Teaching faculty also provide medical service as a part of their job profile. At present, 500 bed strength is enough and increasing it depends on future needs. Decision of rationalization was in public interest. As per para 19.2.3 of the Manual on Model Code of Conduct, transfer of doctors can be effected. Contract employees are engaged on a temporary basis till the posts are filled up on a regular basis. Applicants cannot compare with the senior residents whose tenure is fixed for a period of 3 years and they are engaged to enable them to gain experience to be eligible to apply for the posts of Specialists. Applicants are misleading the Tribunal by making irrelevant submissions and hence, the OA deserves to be dismissed.

At the time of the admission of the OA, considering the facts and submission of counsels, Tribunal passed an interim order staying the operation of the impugned order on 04.03.2019 till the reply is filed.



Respondents have filed MA 312/2020 for vacation of stay stating that a similar plea of similarly placed employees namely Dr. Sandhya R and Dr. Mridula A.M. were dismissed by the Hon'ble Bengaluru Bench of this Tribunal in OA 196/2019 & 238/2019 respectively on 24.01.2020. Further, in policy matters the Tribunal should not interfere as per law. ESI hospitals are facing shortage of doctors and therefore, pleaded for vacation of the stay.

6. Heard Mr. M. Surender Rao, learned Senior Counsel representing Mr. M. Ramgopal Rao, learned counsel for the applicants and Mr. N. Srinivasa Rao, learned Standing Counsel for the respondents and perused the pleadings on record.

7. I. The dispute arose consequent to the issue of the impugned order dated 22.2.2019 seeking options from the applicants to be posted elsewhere in the country. Applicants' case is that they were appointed in the years 2008 to 2013 in the respondents organization at ESI Nacharam Hospital, Hyderabad, as per the rules prevailing at that juncture of time. They belong to the A.P. Cadre and hence should not be posted beyond the state of A.P. Rebutting the contentions made by the applicants, respondents state that applicant Nos. 1 to 6 are Specialist Grade I and the rest are on the verge of promotion as Specialist Grade-I. Citing clause 3 (iv) of the offer of appointment by the applicants stating that they are borne on A.P. cadre is applicable only when they are in Specialist Grade-II. When they are

promoted to Specialist Grade-I, they belong to all India cadre as stated in the very same clause. Hence, applicants who are in Specialist Grade-I cannot avoid transfer on all India basis. When questioned on this aspect, the Ld. Senior counsel for the applicants maintaining that applicants belonged to A.P. Cadre by referring to one case, is a little surprising.



Nevertheless, as admitted by the respondents, applicants Nos.7 to 15 are still in the A.P. Cadre and are therefore, liable for transfer within the then combined State of A.P. In respect of transfers, Tribunal can interfere only when they are issued against Transfer policy or on grounds of being malafide. Respondents have cited judgments of Hon'ble Apex Court which require strict adherence. Undoubtedly, transfer of the applicants has to be as per transfer policy after completing the normal tenure. Applicants did not contend about any transgression of the transfer policy. In the instant case, the aspect of transfer arose, with the respondents undertaking restructuring. To implement the proposed restructuring, notices were issued to indicate options. It is pertinent to note that no transfer orders have been issued. Respondents have just commenced the preliminary exercise which has agitated the applicants to knock the doors of the Tribunal.

II. Respondents did enclose the decision of the Governing body of the respondents' corporation in its 175<sup>th</sup> meeting (Annexure R-8), to undertake rationalization which we have gone through. As a result of such a decision, respondents have resorted to restructuring by merging Nacharam Hospital and Sanathnagar Hospital located in Hyderabad resulting in applicants' becoming surplus. The Governing Body is the competent authority to rationalize cadres as per bye laws of the respondents

Corporation and therefore, the contention of the applicants that an incompetent authority has taken the decision is incorrect. Moreover, restructuring is a policy matter wherein the Tribunal has a narrow band width to interfere. The Standing Committee which implements policy decisions has also taken note for necessary action.



III. Applicants contend that the respondents have applied MCI norms of student strength in order to obtain permission to start a Medical College with attached hospital instead of bed strength and respondents Corporation norms. In response, respondents have explained in detail that they have taken the MCI norms as well as the respondents' norms (ESIC) and chosen the one which specified higher staff strengths. They gave specific instances in the annexure to the reply statement (Annexure R-9). Hence to claim that the lower norms were applied in implementing restructuring is unfounded. Respondents did use the services of the applicants to obtain permission from MCI to start a Medical College. Applicants being on the role of the respondents for more than a decade and using their services for obtaining permission from MCI is not something inappropriate to be found fault with. Applicants should have felt proud in doing so rather than complaining in doing a good deed. Their services were used as a stop gap arrangement and the regular posting of staff in the medical college has to be necessarily based on MCI norms. Expectation of the applicants to be posted in teaching posts though they belong to the non-teaching side is not a reasonable expectation. Agreed, applicants volunteered to work as specialist in the teaching cadre, as teaching is a part of their job profile and that too, without any extra numeration, which is a

saving to the public exchequer, yet Cadres cannot be equated unless certain norms are followed. MCI has to allow the applicants who are specialists in the non teaching side to take up teaching assignments as was done in case of Medical Officers like Dr. Sanjay Raina, Dr. Kamlesh Harish etc.



(Annexure R-6) of the respondents organization, who had the requisite qualification in prescribed by MCI. Consequently the said doctors have been designated as teaching staff as per administrative requirements. It is not explained by the applicants as to why they did not make similar efforts to seek permission from MCI to take on teaching assignments. Respondents claim that applicants are not eligible but that is for the MCI to decide and not for the respondents to assert so.

Applicants claim that they have experience of more than a decade and instead of using their services, using services of residents is not a good practice. Moreover, if the applicants are transferred there would be none to look after the clinical side at Sanathnagar Hospital. Decrying services of others like Jr. Residents/Residents/ Post Graduate students, whose services are being used by the respondents, to further applicants' interest is distasteful to comment upon. Each has a role to play and none is indispensable. Even engaging contract employees by the respondents is a temporary arrangements till regular employees are posted and respondents can adjust applicants in posts for which they are eligible and not in any posts, just for the sake of retaining them at Hyderabad. Respondents have an equal responsibility as much as the applicants to run the hospital/ Medical College and therefore, it would be sweeping to state that if applicants are transferred they would be none to take care of the clinical

side. Respondents have excluded applicants while sanctioning posts to run the medical college in question for the simple reason that respondents cannot engage non teaching staff in teaching side unless applicants secure permission from MCI, on the strength of qualifications they possess.

Besides, the rider of vacancies being available.



IV. One another contention of the applicants is that that there are lakhs of card holders resulting in dealing with nearly 2500 OPD patients per day, for which more staff is required. A 1000 bed hospital is the need of the hour which warrants more staff and in the said circumstances they can be easily accommodated. Respondents have explained that 500 beds are adequate at present giving the details as to the number of OPD patients handled per day by a doctor. Increasing bed strength is a prerogative of the respondents and it is a decision to be taken in the future. To accommodate applicants interest expanding the bed strength appears not to be a rational proposition.

V. Applicants further contended that without giving adequate notice and without revealing details as to how they have become surplus, respondents are attempting to shift them. In this regard, respondents have admitted that they are working out the work load and that shortly they would be made available. In the meanwhile, notices have been issued to obtain options from the applicants which they state is their right. True, but it is like placing the cart before the horse. The respondents need to actually work out the work load on merger and then decide the surplus. The respondents have been hasty in calling for options by issuing the impugned notice dated 22.2.2019 from the applicants to transfer them thereafter



depending on the response. In addition, respondents claiming that as per Clause 6 (2) of ESIC (Staff and Conditions of Service) Regulations, 1959 they have the power to dispense staff who are found to be surplus, smacks of high handedness in dealing with a sensitive issue of the nature in question, when respondents have not even completed the exercise of deciding the surplus. We make it clear that the law expects the surplus staff should be adjusted against available vacancies and when all avenues are over, then as a last resort, dispensing their services would arise and that too in accordance with law. Paradoxically, on one hand, respondents have submitted that there is a shortage of doctors and on the other hand, they are claiming that they have power to disengage surplus staff. While filing affidavits before the Tribunal, respondents are expected to exercise caution in making their submissions by avoiding contradictory stands. We expect the respondents to don the role of model employer, which is expected of them being an organ of the State, and be fair in responding to applicants genuine grievances. Particularly, when some of the applicants are not even in the Specialist Grade-I at the time of filing the OA to be considered as belonging to the All India Cadre for mooted the transfers proposed.

VI. Lastly, respondents submitted that the Hon'ble Bengaluru Bench of this Tribunal in OAs 196/2019 & 238/2019 dismissed a similar plea made by similarly placed employees. In the instant case, respondents have admitted that they are still at the stage of assessing the work load on restructuring and without completing it assuming that the applicants are surplus staff is premature, to say the least. Hence, applying the Bangalore Bench verdict straightaway to the cases of the applicants is not fair. The



question of transfer arises when the applicants are declared surplus as per rules. That stage has not yet arrived.

VII. Therefore, in view of the above, we direct the respondents to complete the exercise of assessing the work load on the merger of Nacharam Hospital with Sanathnagar Hospital and thereafter, declare the staff, if any, who are to be declared as surplus. Details be made available to the staff, on a need to know basis, of the respondents organization through standard internal communication channels. Thereafter, notices be issued to those who are to be moved out as per rules and law keeping in view observations made as at above. Haste propels unnecessary hassles and attendant hiccups. Therefore, let the respondents complete the exercise as directed with great care and caution in 3 months time. Till the respondents complete the exercise as stated above, interim orders issued on 4.3.2019 will hold good.

With the above directions the OA and the MA stand disposed, with no order as to costs.

**(B.V.SUDHAKAR)**  
**ADMINISTRATIVE MEMBER**

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

*evr*