

OA No. 291/763/2019, OA No. 291/764/2019, OA No. 291/765/2019,
OA No. 291/766/2019, OA No. 291/767/2019, OA No. 291/768/2019
OA No. 291/769/2019, OA No. 291/782/2019, OA No. 291/66/2020,
OA No. 291/67/2020 and OA No. 291/68/2020

CENTRAL ADMINISTRATIVE TRIBUNAL
 JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/763/2019
ORIGINAL APPLICATION NO. 291/764/2019
ORIGINAL APPLICATION NO. 291/765/2019
ORIGINAL APPLICATION NO. 291/766/2019
ORIGINAL APPLICATION NO. 291/767/2019
ORIGINAL APPLICATION NO. 291/768/2019
ORIGINAL APPLICATION NO. 291/769/2019
ORIGINAL APPLICATION NO. 291/782/2019
ORIGINAL APPLICATION NO. 291/66/2020
ORIGINAL APPLICATION NO. 291/67/2020
&
ORIGINAL APPLICATION NO. 291/68/2020

Order reserved on 25.02.2021

DATE OF ORDER: 04.03.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

OA No. 291/763/2019

Smt. Sylvia Saroj wife of Shri Ronald Francis, aged about 57 years, resident of 10/583, Kaveri Path, Mansorowar, Jaipur at present working as A.N.S. in ESIC Hospital Alwar. 9829422228 Group-C.

....Applicant

Shri Banwari Sharma, counsel for applicant (through Video Conferencing).

VERSUS

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OA No. 291/67/2020 and OA No. 291/68/2020

1. The Union of India through the Secretary, Ministry of Department of Labour & Employment, Government of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. The Director General, Department of Employees State Insurance Corporation (E.S.I.C.), Panchdeep Bhawan CIG Marg, New Delhi – 110002.
3. The Regional Director, E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.
4. The Dy. Director (Administration), E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.

....Respondents

Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

OA No. 291/764/2019

Gopal Sharma son of late Shri Brijmohan Sharma, aged about 51 years, resident of E-26, Green Park, Agra Road, Jaipur at present working as A.N.S. in ESIC Model Hospital, Jaipur – 9414600160, Group-C.

....Applicant

Shri Banwari Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. The Union of India through the Secretary, Ministry of Department of Labour & Employment, Government of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. The Director General, Department of Employees State Insurance Corporation (E.S.I.C.), Panchdeep Bhawan CIG Marg, New Delhi – 110002.

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3. The Regional Director, E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.
4. The Dy. Director (Administration), E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.

....Respondents

Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

OA No. 291/765/2019

Ballaram Meena son of late Shri Badri Prasad, aged about 55 years, R/o 2-D, Navya Apartment, Ganesh Nagar, Heerapura, Jaipur at present working as A.N.S. in ESIC Model Hospital, Jaipur, 8094400700, Group-C

....Applicant

Shri Banwari Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. The Union of India through the Secretary, Ministry of Department of Labour & Employment, Government of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. The Director General, Department of Employees State Insurance Corporation (E.S.I.C.), Panchdeep Bhawan CIG Marg, New Delhi – 110002.
3. The Regional Director, E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.
4. The Dy. Director (Administration), E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.

....Respondents

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Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

OA No. 291/766/2019

Smt. Anamma P A wife of Shri Babu K.S., aged about 56 years, resident of Plot No. 6, Salasar Vatika-V, Niwaru Road, Jaipur at present working as A.N.S. in ESIC Model Hospital, Jaipur. 9413335049 Group-C.

....Applicant

Shri Banwari Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. The Union of India through the Secretary, Ministry of Department of Labour & Employment, Government of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. The Director General, Department of Employees State Insurance Corporation (E.S.I.C.), Panchdeep Bhawan CIG Marg, New Delhi – 110002.
3. The Regional Director, E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.
4. The Dy. Director (Administration), E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.

....Respondents

Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

OA No. 291/767/2019

Smt. Shaila Kumari M.P. Wife of Shri Rajappan T.K., aged about 57 years, resident of Plot No. 131, Road

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No. 9, Moti Nagar, Queens Road, Jaipur at present working as A.N.S. in ESIC Model Hospital, Jaipur. 9828091288, Group (C).

....Applicant

Shri Banwari Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. The Union of India through the Secretary, Ministry of Department of Labour & Employment, Government of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. The Director General, Department of Employees State Insurance Corporation (E.S.I.C.), Panchdeep Bhawan CIG Marg, New Delhi – 110002.
3. The Regional Director, E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.
4. The Dy. Director (Administration), E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.

....Respondents

Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

OA No. 291/768/2019

Shri Panchu Ram Jatav son of Shri Prabhati Lal Jatav, aged about 54 years, resident of Plot No. A-1, Janakpuri, Dhabas, Ajmer Road, Jaipur at present working as A.N.S. in ESIC Model Hospital, Jaipur. 9460188389 Group-C.

....Applicant

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Shri Banwari Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. The Union of India through the Secretary, Ministry of Department of Labour & Employment, Government of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. The Director General, Department of Employees State Insurance Corporation (E.S.I.C.), Panchdeep Bhawan CIG Marg, New Delhi – 110002.
3. The Regional Director, E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.
4. The Dy. Director (Administration), E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.

....Respondents

Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

OA No. 291/769/2019

Ram Kishan Laxkar son of late Shri Kanhaiya Lal Laxkar, aged about 52 years, resident of Plot No. 2, Vishwakarma Nagar-II, Maharani Farm, Durgapura, Jaipur presently posted as Assistant Nursing Superintendent ESIC Model Hospital, Jaipur. 9784386818 Group-C.

....Applicant

Shri Banwari Sharma, counsel for applicant (through Video Conferencing).

VERSUS

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1. The Union of India through the Secretary, Ministry of Department of Labour & Employment, Government of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. The Director General, Department of Employees State Insurance Corporation (E.S.I.C.), Panchdeep Bhawan CIG Marg, New Delhi – 110002.
3. The Regional Director, E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.
4. The Dy. Director (Administration), E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh, Marg, Jaipur.

....Respondents

Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

OA No. 291/782/2019

Badri Narayan Verma S/o Shri Maliram, Aged about 56 years, R/o Plot No. 1036-4C, Lodha Mandi Road, Shankar Colony, Macheda, Jaipur at present working on the post of Assistant Nursing Superintendent, ESIC, Model Hospital, Jaipur-302006. M-8696666856.

....Applicant

Shri K.N. Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through Secretary to the Govt. of India, Ministry of Labour & Employment, Govt. of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.

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2. Employees State Insurance Corporation through its Director General, Medical Division-IV, H.Q. Office Panchdeep Bhawan, C.I.G. Marg, New Delhi – 110002.
3. The Medical Commissioner, Employees State Insurance Corporation, Medical, H.Q. Office Panchdeep Bhawan, CIG Marg, New Delhi – 110002.
4. Dy. Director, HQ., Employees State Insurance Corporation, Medical, H.Q. Office Panchdeep Bhawan, CIG Marg, New Delhi – 110002.
5. Dy. Director (Administration), Employees State Insurance Corporation, Medical, H.Q. Office Panchdeep Bhawan, CIG Marg, New Delhi – 110002.
6. Medical Superintendent, ESIC Model Hospital, Laxmi Nagar, Ajmer Road, Jaipur (Raj.) – 302006.

....Respondents

Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

OA No. 291/66/2020

1. Mahesh Chand Sharma son of Shri Chiman Lal Sharma, aged about 55 years, resident of 38, Santosh Nagar, Ajmer Road, Jaipur at present working as Plaster Assistant in ESIC Model Hospital, Jaipur – 302019. Mobile No. 9252606561. Group-(C).
2. Puran Mal son of Shri Ghisa Ram, aged about 57 years, resident of Maliyon Ka Mohalla, Khatiyo Ki Mandi, Chardarwaja at present working as Lab Assistant in ESIC Model Hospital, Jaipur – 302019.
3. Sushma wife of Roop Narayan Jediya, aged about 52 years, resident of 101/133, Meera Marg, Mansarowar, Jaipur at present working as Lab Assistant in ESIC Model Hospital Jaipur. 302019.
4. Prakash Chand son of Shri Ladu Ram, aged about 48 years, resident of Sarangpura,

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Bad Ke Balaji, Ajmer Road, Jaipur at present working as Lab Assistant in ESIC Model Hospital, Jaipur-302019.

5. Kailash Chand son of Shri Birdhi Chand, aged about 53 years resident of A-4, Ground Floor, ESIC Campus, Ajmer Road, Jaipur at present working as CSSD in ESIC Model Hospital, Jaipur-302019.
6. Smt. Sheela Devi wife of Ramesh Chand, aged about 52 years, Resident of ESIC Campus, Ajmer Road, Jaipur at present working as Operation Theater Assistant in ESIC Model Hospital, Jaipur-302019.
7. Madan Lal son of Shri Mohan Lal, aged about 57 years, resident of House No. 44/64, Ram Nagar, Harijan Basti, Shastri Nagar, Jaipur at present working as CSSD in ESIC Model Hospital, Jaipur-302019.
8. Mohini Devi wife of Nathu Lal, aged about 58 years, resident of House No. 69, Govardhan Colony, Jaipur at present working as CRT Assistant in ESIC Model Hospital, Jaipur-302019.
9. Smt. Shimla Devi wife of Shri Ramu, aged about 57 years, resident of ESIC Campus, Ajmer Road, Jaipur at present working as CRT Assistant in ESIC Model Hospital, Jaipur. 302019.
10. Gopal Parewa son of Shri Suwa Lal, aged about 58 years, resident of 131, Ekta Nagar, Dhabas, Jaipur at present working as Plaster Assistant in ESIC Model Hospital, Jaipur. 302019.
11. Megha Devi wife of late Shri Bhagwan Sahai, aged about 54 years, resident of Plot No. 13, Panchyawala, Sirsi Road, Jaipur at present working as O.T. Assistant in ESIC Model Hospital, Jaipur. 302019.
12. Vinod son of Shri Ramu, aged about 48 years, resident of 91/99, Brijlalpura Sanganer Road, Jaipur at present working as Lab. Assistant in ESIC Model Hospital, Jaipur. 302019.
13. Ashok Kumar S/o Shri Girdhari Lal, aged about 56 years, resident of Plot No. 34, Janakpuri-I, Imaliwala Phatak, Jyoti Nagar,

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Jaipur at present working as Plastr Assistant in ESIC Model Hospital, Jaipur.302019.

14. Smt. Kamla Devi S/o Mukesh, aged about 53 years resident of Plot No. 26, Tata Nagar, Shastri Nagar, Jaipur at present working as CSSD in ESIC Model Hospital, Jaipur. 302019.
15. Sunil Kumar Morya son of Shri Bhagwan Shaya, aged about 43 years, resident of B-C-46, Ashok Nagar Purani Chungi, Ajmer Road, Jaipur at present working as Head Cook in ESIC Model Hospital, Jaipur. 302019.
16. Mahadeva Prasad son of Shri Cheeranjeev Lal, aged about 57 years, resident of A-12, Jhalana Dungari, Indra Nagar, Jaipur at present working as CSSD in ESIC Model Hospital, Jaipur. 302019.

....Applicants

Shri K.N. Sharma, counsel for applicants (through Video Conferencing).

VERSUS

1. Union of India through Secretary to the Govt. of India, Ministry of Labour & Employment, Govt. of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. Employees State Insurance Corporation through its Director General, Medical Division-IV, H.Q. Office Panchdeep Bhawan, C.I.G. Marg, New Delhi – 110002.
3. The Medical Commissioner, Employees State Insurance Corporation, Medical, H.Q. Office Panchdeep Bhawan, CIG Marg, New Delhi – 110002.
4. Dy. Director, HQ., Employees State Insurance Corporation, Medical, H.Q. Office Panchdeep Bhawan, CIG Marg, New Delhi – 110002.
5. Medical Superintendent, ESIC Model Hospital, Laxmi Nagar, Ajmer Road, Jaipur (Raj.) – 302006.

....Respondents

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Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

OA No. 291/67/2020

1. Mrs. Kavita Sharma Daughter of Shri G.N. Sharma, aged about 42 years, resident of Plot No. 213, Narayan Vihar, Gopalpura, Jaipur at present working as Nursing Sister in ESIC Model Hospital, Jaipur-302006. M-9461559123. Group-(C).
2. Mrs. Susan Chacko daughter of late Shri P.T. Chacko, aged about 50 years, resident of 58-A, Shanti Nagar-B, Gujar Ki Thadi, New Sanganer Road, Jaipur at present working as Nursing Sister in ESIC Model Hospital, Jaipur. 302006.
3. Mrs. Mini Varghese daughter of Mr. E.C. Varghese, aged about 42 years, resident of Plot No. 3, Govindpuri, Sodala, Jaipur at present working as Nursing Sister in ESIC Model Hospital, Jaipur. 302006.
4. Nanak Ram Bairwa son of Shri Ramdhan Bairwa, aged about 52 years, resident of 52A/C, Vikas Nagar-B, Heerapura, Jaipur at present working as Nursing Sister in ESIC Model Hospital, Jaipur. 302006.
5. Smt. Susamma P.M. D/o K.C. Mathai aged about 53 years, resident of 61-G, Tagore, Nagar, Ajmer Road, Jaipur at present working as A.N.M. in ESIC Model Hospital, Jaipur.302006.
6. Smt. Elsamma Thomas wife of Shri K.G. Varghese, aged about 56 years, resident of 79, Shyam Enclave Road, No. 78, Panchyawala, Sirsi Road, Jaipur at present working as A.N.M. in ESIC Model Hospital, Jaipur. 302006.
7. Smt. Anitha M.J. wife of Shri Mahaveer Singh, aged about 56 years, resident of House No. 43, Roshan Nagar-B, Kanakpura, Sirsi Road, Jaipur at present working as A.N.M. in ESIC Model Hospital, Jaipur. 302006.

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8. Smt. Mayapuri wife of Nirbhay Giri Goswami, aged about 54 years, resident of Plot No. A-86, Khadi Colony, Sodala Jaipur at present working as A.N.M. in ESIC Model Hospital, Jaipur. 302006.
9. Smt. Vimla Sharma wife of Shri Omprakash Sharma, aged about 53 years, resident of plot No. 7, Shashi Vihar, Sector 71, Pratap Nagar, Buddhsinghpura, Sanganer, Jaipur at present working as A.N.M. in ESIC Model Hospital, Jaipur. 302006.
10. Smt. Shivani Naha wife of Shri Uttam Majumdar, aged about 58 years resident of 79/111-A, Shipra Path Mansarowar, Jaipur at present working as A.N.M. in ESIC Model Hospital, Jaipur. 302006.
11. Smt. Prabha Dcruz wife of Shri George Methew, aged about 53 years, resident of C-483, Jagdamba Vihar, Behind Heerapura Power House, Jaipur at present working as A.N.M. in ESIC Model Hospital, Jaipur. 302006.
12. Lizy T W/o Rajan O, aged about 56 years, resident of B-207, Jagdamba Nagar, Heerapura, Jaipur at present working as Lab Technician in ESIC Medical Hospital, Jaipur. 302006.

....Applicants

Shri K.N. Sharma, counsel for applicants (through Video Conferencing).

VERSUS

1. Union of India through Secretary to the Govt. of India, Ministry of Labour & Employment, Govt. of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. Employees State Insurance Corporation through its Director General, Medical Division-IV, H.Q. Office

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Panchdeep Bhawan, C.I.G. Marg, New Delhi – 110002.

3. The Medical Commissioner, Employees State Insurance Corporation, Medical, H.Q. Office Panchdeep Bhawan, CIG Marg, New Delhi – 110002.
4. Dy. Director, HQ., Employees State Insurance Corporation, Medical, H.Q. Office Panchdeep Bhawan, CIG Marg, New Delhi – 110002.
5. Medical Superintendent, ESIC Model Hospital, Laxmi Nagar, Ajmer Road, Jaipur (Raj.) – 302006.

....Respondents

Shri T.P. Sharma, counsel for respondents (through Video Conferencing).

OA No. 291/68/2020

1. Dr. Rekha Sharma (C.M.O.) D/o Sh. D.C. Gaur, aged about 51 years, resident of H. No. 1, Mansinghpura, Tonk Road, Jaipur. 302006. Mobile No. 9929241759, Group 'A'.
2. Dr. Pradeep Kumar Mangal (CMO) S/o Shri H.L. Mangal, aged about 45 years, resident of 70/33-A, Patel Marg, Mansarowar, Jaipur. 302006.
3. Dr. Lalit Ku. Punjabi (Specialist Orthopedics) son of late Shri Chela Ram Punjabi, aged about 60 years, resident of 116, Vashishtha Marg, Pratap Nagar, Khatipura, Jaipur. 302006.
4. Dr. Sunita Hingorani CMO D/o late Shri Prahlad Hingorani, aged about 56 years, Resident of 116, Vashishtha Marg, Pratap Nagar, Khatipura, Jaipur. 302006.
5. Dr. Pratibha Shekhawat, CMO D/o Dr. V.N.S. Tomar, aged about 51 years, resident of 68, Marudhar Vihar Colony, Khatipura Mod, Jaipur – 302012.
6. Dr. Sadhana Sharma (CMO, MS. Obstetrics in Gynecology), D/o Dr. B.K. Joshi, aged about 56 years, Resident of B-118,

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Parshwanath Colony, Nirman Nagar, Jaipur.
302006.

All applicants working on the post of CMO in ESIC
Medical Hospital, Ajmer Road, Jaipur.

....Applicants

Shri K.N. Sharma, counsel for applicants (through
Video Conferencing).

VERSUS

1. Union of India through Secretary to the Govt. of India, Ministry of Labour & Employment, Govt. of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. Employees State Insurance Corporation through its Director General, Medical Division-IV, H.Q. Office Panchdeep Bhawan, C.I.G. Marg, New Delhi – 110002.
3. The Medical Commissioner, Employees State Insurance Corporation, Medical, H.Q. Office Panchdeep Bhawan, CIG Marg, New Delhi – 110002.
4. Medical Superintendent, ESIC Model Hospital, Laxmi Nagar, Ajmer Road, Jaipur (Raj.) – 302006.

....Respondents

Shri T.P. Sharma, counsel for respondents (through
Video Conferencing).

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ORDER

Per: Hina P. Shah, Judicial Member

With the consent of learned counsels for the parties OA No. 291/763/2019, OA No. 291/764/2019, OA No. 291/765/2019, OA No. 291/766/2019, OA No. 291/767/2019, OA No. 291/768/2019 OA No. 291/769/2019, OA No. 291/782/2019, OA No. 291/66/2020, OA No. 291/67/2020 and OA No. 291/68/2020 are taken up together for disposal as common question of law and facts is involved in all these cases.

2. For the sake of convenience, the brief facts of OA No. 291/763/2019 (Smt. Sylvia Saroj vs. Union of India & Ors.) are taken up. The OA No. 291/763/2019 has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "i) by an appropriate order or direction, the impugned order dated 6.8.2018 (Annex. A/1) may kindly be quashed and set aside.
- ii) by further appropriate order or direction, the impugned order dated 17.8.2018

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(Annexure-A/2) may kindly be quashed and set aside qua the applicant with further directions to allow the applicant to continue at the place where he was working prior to passing this order.

- ii) award costs of this Original application; and
- iii) grant such other and further relief/s, as may be deemed just and expedient in the facts and circumstances of the case so as to give full relief to the Applicants.”

3. The brief facts of the case, as stated by the applicant, are that she is presently posted as A.N.S. in ESIC Model Hospital, Jaipur and initially she was appointed on the post of Nurse Grade II for a period of six months in the office of Director Employees State Insurance, Jaipur with department of Medical and Health Services, Government of Rajasthan, Jaipur vide order dated 08.12.1981 and, thereafter, she was confirmed in service. As per letter dated 30.05.2002, all the employees were agreed to draw their salary and other service benefits according to the Central Govt./ESIC Rules during their period of deputation. In the meeting of the Screening Committee constituted by the Director General of ESIC in connection with taking over of the ESI Hospital, Jaipur, it has been

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interalia decided that all the staff posted at ESI Hospital, Jaipur (except one dietician) may be taken on deputation for one year and the performance will be reviewed regularly. The Hospital of the State Government along with staff was taken over by ESIC on 01.09.2002 (Annexure A/7). While the applicant was serving on deputation, ESIC decided to absorb the staff serving on deputation in the Hospital and in this regard, ESIC sent a draft of terms and conditions of absorption to the Secretary, Government of Rajasthan vide its letter dated June 03, 2005. As per condition No. 3, an employee opting absorption has to resign from the State Govt. service and as per condition No.4, an option to opt separate institutional seniority only for the particular hospital was given to the employees, in which case they will not be transferred outside the Hospital even after absorption, however, their promotion will be based on institutional seniority only subject to vacancy in the Hospital. Accordingly, State of Rajasthan, vide its letter dated 16.10.2006, (Annexure A/9), accepted the terms and conditions of absorption as set out by the ESIC and consent for

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same was given by the employees including the applicant. As per the tripartite agreement entered between State of Rajasthan, ESIC and employees, the applicant along with others were absorbed in Corporation service as per letter dated 16.01.2007 (Annexure A/10). It is further stated that since the entry of the applicant in service was by way of either opting for institutional seniority or All India Seniority and since applicant opted for institutional seniority, thereby reducing her promotional chances at All India Level. As per institutional seniority opted by the applicant, her juniors who had opted for All India Seniority were considered for promotion and became senior to the applicant for which applicant never raised any complaint. As per decision taken unilaterally by the Corporation without intimation to the applicant or bringing to her knowledge, in its 174th meeting, a decision was taken to place all the absorbed staff in State Seniority of respective States, who were previously placed in institutional seniority in different units. A decision was taken under misbelieve that the applicant can be repatriated to the State

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Govt. as per last para of letter dated 06.08.2018, (Annexure A/1), as the Corporation has approved a decision to place all the absorbed staff in State seniority of respective State. But the Corporation has failed to consider that the applicant was absorbed only after tendering resignation from service of State Govt. and in fact no lien of the applicant lies with the State Govt. presently. The applicant along with others had previously filed O.A. No. 404/2018 challenging the order dated 06.08.2018, which was subsequently withdrawn qua her with liberty to file fresh one challenging the impugned order dated 06.08.2018 and consequent order of transfer dated 17.08.2018. Applicant further states that as there was no question of rotational transfer and without identifying sensitive posts, the respondents have acted in violation to the terms and conditions of absorption and have transferred the applicant. Accordingly, respondents issued an order of transfer dated 17.08.2018 (Annexure A/2) for which the applicant had filed a separate OA No. 437/2018 whereby the applicant was transferred from ESIC Model Hospital Jaipur to ESIC

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Hospital, Alwar, wherein interim order staying the operation of impugned orders was passed and the same was operating, however, the said OA was withdrawn with liberty to file the fresh one challenging the order dated 06.08.2018 and 17.08.2018. Thus, as both the orders dated 06.08.2018 and 17.08.2018 have been issued in clear violation of terms and conditions of absorption and conditions of service and without proper application of mind, the applicant has preferred the present Original Application for quashing and setting aside the said orders.

4. This Tribunal vide order dated 18.12.2019 granted status quo order with regard to the posting of the applicant and the said interim relief is continued till date.

5. After issue of notices, the respondents filed their reply raising preliminary objection that the applicant has not exhausted legal remedy as per Section 20 of the Administrative Tribunals Act, 1985 as she has directly approached the Tribunal for redressal of her

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grievances and on the said ground, O.A. deserves to be rejected. The respondents state that earlier there was only one Hospital established in each State and they had an option to choose either Institutional seniority or All India seniority. But due to establishment of multiple hospitals across the State, institutional seniority lost its sanctity as ESIC maintains state-wise regional cadre for paramedical and nursing staff. Therefore, Institutional Seniority was replaced with State Seniority in 'terms of absorption' of hospitals taken over after 2006. Moreover, even in State Govt. service, the absorbed employees were liable to be posted in any medical institution within the State, therefore, the competent authority in public interest in its 174th meeting held on 29.05.2018, it was decided to post employees within the State and, accordingly, letter dated 12.09.2018, (Annexure R/3), was issued. It was further clarified that on account of further posting or transfer within the State, the employees would neither be deprived of their salary nor would lose their seniority and their status would remain unchanged. Therefore, no

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interference is called for as no prejudice would be caused to the employees on account of replacement within the State in terms of absorption or maintaining State seniority in place of institutional seniority. As the decision has been taken in wide interest of the employees as well as in public interest and, therefore, to provide ESIC facilities at more than one Centre, it is essential for the administration to transfer the staff from one hospital to another in the State. The ESIC has also introduced the routine and rotational transfer policy of the paramedical and nursing personnel from one hospital to another hospital/dispensary within a region for ensuring smooth functioning/running of ESIC hospitals and dispensaries as per letter dated 05.06.2018 (Annexure R/1). Therefore, all the nursing and paramedical staff are liable to be transferred at any ESIC hospital/ dispensary/ any upcoming institution in Rajasthan region as per administrative exigency. Therefore, a decision has been taken by the competent authority by introducing a new transfer policy of nursing and paramedical employees for Rajasthan Region through Transfer Policy dated

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10.08.2018 (Annexure R/2). Hence, the present Original Application is liable to be rejected as there is no substantial force in the submissions of the applicant in the eyes of law. Therefore, respondents are justified in their action.

6. We have heard learned counsels for the parties at length through Video Conferencing and examined the pleadings minutely as well as the judgments cited by the parties.

7. The applicant besides reiterating his submissions further added that the orders dated 06.08.2018 as well as 17.08.2018 have been passed in violation of the “**terms and conditions of absorption**” wherein it was clearly mentioned that in case of institutional seniority being opted by the employee, he would not be transferred outside hospital/institution but his promotional avenue would be restricted and due to this her juniors have got promotion much prior. But applicant stated that she did not raise any complaint towards promotion as she herself has accepted

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Institutional Seniority. On the other hand, when some of the absorbed employees requested to switch over to All India Seniority, the Corporation had not permitted the same citing terms and conditions of absorption. Therefore, the Corporation cannot be allowed to approbate and reprobate at the same time. If the rule is applicable to employees then even the Corporation is bound by the same rules as it is the same Corporation which has agreed and promised at the time of absorption. Thus, the Corporation is estopped in law and cannot turn around as the same is in violation of principles of promissory estoppel. In similar facts and circumstances, the Ahmedabad Bench of this Tribunal stayed the operation of consequent transfer orders and the case of applicant is exactly identical to the said case. As the impugned orders are illegal, arbitrary, irrational and in violation of guidelines and instructions issued by DOPT & Ministry of Labour from time to time, which clearly requires rotational transfer of employees holding sensitive posts and as the applicant is not holding any sensitive post, her transfer to a distant place in

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absence of policy is illegal, therefore, the impugned orders deserve to be quashed and set aside.

8. The respondents reiterated their stand and stated that as the applicants were allowed and absorbed in ESIC Hospital in terms of absorption which was finalized by the State Government as per letter dated 16.10.2006 and, accordingly, option were invited from interested employees. Since at that stage there was only one hospital, therefore, employees had no option except to opt and were allowed institutional seniority. But subsequently due to change of service conditions and expansion of Hospitals and Dispensaries, the position of seniority is required to be changed. Therefore, employees are required to be transferred from one Institution to another Institution within the region on account of transfer and posting. The respondents further clarified that the applicants would not be deprived from their right of upgradation of pay, revision of pay nor they would lose seniority as the service conditions would have a retrospective effect i.e. from the date of their absorption in ESIC. The

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respondents relied on the judgment of the Hon'ble Apex Court in the case of Union Public Service Commission vs. Girish Jayanti Lal Vaghela & Others, decided on 02nd February 2006, reported in (2006) 2 SCC 482, wherein at para 16 to 19, has held as under:-

"16. The nature of right possessed by a Government servant and also his status after his appointment to a post under the Government was considered by a Constitution Bench in [Roshan Lal Tandon v. Union of India](#) (1968) 1 SCR 185 : AIR 1967 SC 1889 and it was held as under in AIR para 6 of the reports : (SCR p. 195 A-H)

"[6] ... It is true that the origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that [Article 311](#) imposes constitutional restrictions upon the power of removal granted to the President and the Governor under [Article 310](#). But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the

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enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

'So we may find both contractual and status obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.'

(Salmond and Williams on Contracts, 2nd Edn., p.12.)"

17. In [Dinesh Chandra Sangma v. State of Assam](#) (1977) 4 SCC 441 : 1978 SCC (L&S) 7 : AIR 1978 SC 17 the contention that the relationship between the government servant and the Government is contractual in nature was not accepted and was specifically repelled. It will be useful to reproduce para 11 of the reports where the conclusions were recorded: (SSC p. 446)

"11. Mr. Niren De submits that [Article 310\(2\)](#) supports his submission that the relationship between the government servant and

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the Government is contractual. Sub-article (2) of Article 310 provides that

'notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post'.

The above is a special provision which deals with a special situation where a contract is entered into between the Government and a person appointed under the Constitution to hold a civil post. But simply because there may be, in a given case, a contractual employment, as envisaged under Article 310(2) of the Constitution, the relationship of all other government servants, as a class, and the Government, cannot be said to be contractual. It is well-settled that except in the case of a person who has been appointed under a written contract, employment under the Government is a matter of status and not of contract even though it may be said to have started, initially, by a contract in the sense that the offer of appointment is accepted by the employee."

18. Again in para 12 the Court said as under: (SSC p. 446)

"12. It goes without saying that in many employments, whether of private limited companies or public companies, contracts of employment are executed containing a term for termination of employment by notice. Such cases of contractual employment are different from those of government employees whose employment is a matter of status and not of ordinary contract. The conditions of service of a government servant are regulated by statute or statutory rules made under Article 309 of the Constitution."

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19. It, therefore, follows that employment under the Government is a matter of status and not a contract even though the acquisition of such a status may be preceded by a contract, namely, an offer of appointment is accepted by the employee. The rights and obligations are not determined by the contract of the two parties but by statutory rules which are framed by the Government in exercise of power conferred by [Article 309](#) of the Constitution and the service rules can be unilaterally altered by the rule-making authority, namely, the Government."

Therefore, the employment under the Government is a matter of status and not a contract, namely an offer of appointment accepted by the employee. The rights and obligations are not determined by the contract of the two parties by statutory rules which are framed by the Government in exercise of power conferred by Article 309 of the Constitution of India and that the service rules can be unilaterally altered by the rule making authority, namely the Government. As it is mandatory to maintain State seniority to provide equal promotional avenues on the basis of seniority to the staff and to provide better services to the society, rotational transfer at any ESIC Hospital/ dispensary/ any upcoming institution in Rajasthan region as per administrative exigency is necessary. So they have decided to do away with the Institutional seniority and

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absorbed medical employees are to be replaced under State/ All India Seniority. Therefore, transferring absorbed medical employees to other hospitals/dispensary within the State in public interest cannot be said to be unreasonable and arbitrary as the terms and conditions agreed upon between the employer and employee would be the same. Recently the absorbed nursing sisters were promoted to the post of Asstt. Nursing Superintendent (A.N.S) vide order No. 19(E) of 2018 dated 28.08.2018, as per existing policy as on 06.08.2018 in view of the larger benefit of the absorbed employees considering them against the vacancy of the ESIC Hospital, Bhiwadi and ESIC Hospital Alwar and they have joined the promotional post. It has also been pointed out that most of the absorbed officials with institutional seniority want them to be considered against the vacancies of hospitals other than ESIC Model Hospital, Jaipur. As such, there is no illegality in the orders of the respondents and, therefore, the applicant does not deserve any relief and the present Original Application deserves to be rejected.

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9. The question which requires our consideration is whether the principle of estoppels applies as well as whether law permits a person to both approbate and reprobate.

10. After hearing the parties and perusing the pleadings, the factual matrix of the case is that the applicant was initially appointed as Nurse Gr.-II with the Department of Medical and Health Services, Government of Rajasthan, Jaipur, first for six months and later on her services were confirmed. In the meeting of the Screening Committee held on 30.05.2002, constituted by the Director General of ESIC, it was interalia decided that all the staff from State Government will be posted at ESI Hospital, Jaipur and taken on deputation for one year and later their performance would be reviewed regularly and all employees were agreed to draw their salary and other service benefits according to the Central Govt./ ESI Corporation Rules. Accordingly, the hospital of State Government along with staff in terms of the minutes

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of the agreement was taken over by ESIC on 01.09.2002 (Annexure A/7). The ESIC has decided to absorb the staff serving in Hospital **“as per the terms and conditions of absorption of the State Govt. employees working on deputation in the ESIC Model Hospital”** and the same were sent to the Secretary, Government of Rajasthan vide its letter dated 03rd June 2005 (Annexure A/8). There were several conditions laid down and out of the same, Condition Nos. 3 & 4 are relevant, which are as follows:

“3) An employee opting for absorption has to resign from State Govt. service and his absorption in Corporation service will take effect from the date of deputation in ESI Corporation or from the date he joins the duty in the ESI Corporation whichever is earlier.

4) Seniority of an employee absorbed in the Corporation will be determined either from the date from which one holds the post on deputation or from the date one holds the post of equivalent grade on regular basis in the State Govt. Service whichever is earlier. Seniority of two or more State Govt. employee absorbed in the Corporation service would however, be fixed as per the seniority existing in the State Govt. prior to their absorption. Before absorption an employee will be free to opt for separate institutional seniority only for the particular hospital. In this case they will not be transferred outside the hospital even after absorption and the promotions will be based on the institutional seniority only subject to the vacancy in the hospital OR the individuals can also opt to be part of all India seniority, in which case they will be liable for all India transfer and all India promotional avenues. If opting for institutional seniority, the all India posts and cadres to which they will not be eligible for promotion will be the Medical Superintendent of Hospital

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and all officers in the pay scale of Rs. 14300-18300 (current NFSG scale)."

Thereafter, in terms of the tripartite agreement entered between State of Rajasthan, ESIC and employees, the applicant along with others were absorbed in Corporation as per letter dated 16.01.2007 (Annexure A/10). It is relevant to highlight the fact that as the applicant has exercised her option and has accepted Institutional Seniority and in lieu of the same, she has given up her chances of promotion at All India Level and the juniors to the applicant who have opted for All India Seniority were considered for promotion and they became senior as a result of exercise of the option by the applicant. The applicant has no grudge to the same and never raised any complaint as she has herself exercised the option. One more fact which is relevant is that in view of the terms and conditions accepted by the applicant, it was clear that she will not be transferred to any other Hospital/ Dispensary as she herself has chosen to be at ESIC Model Hospital, Jaipur. But the Corporation in its 174th meeting held on 29.05.2018 has approved a

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decision to place all the absorbed staff in State Seniority of respective States, who were previously placed in Institutional Seniority in different units. The said decision was taken unilaterally without any intimation to the applicant nor to the State Government, which has given consent for absorption subject to the option of institutional seniority on a non-transferable post. The Corporation has failed to also take into consideration that the applicant was absorbed in the Corporation only after tendering resignation from service of the State Government and now they cannot also be repatriated to the State Government. It is clear that Corporation is in a patent error to transfer the applicant to another Hospital or Dispensary in lieu of the Institutional Seniority on a non-transferable post opted by the applicant. The Corporation as per letter dated 05.06.2018 in the guise of public interest or for smooth functioning of hospitals have mentioned that the mandatory rotational transfer should be undertaken for all categories of staff in sensitive posts after three years, however, rest of the staffs' transfer should be

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undertaken as per need / requirement. Though applicant is not working on a sensitive post, yet by impugned order dated 17.08.2018 has been transferred from ESIC Model Hospital, Jaipur to ESIC Hospital, Alwar.

11. The case law referred by the respondents in the case of [Roshan Lal Tandon v. Union of India](#), AIR 1967 SC 1889 cannot be applied to the present case as in the said case there was no tripartite agreement entered between the parties whereas in the present case there was an agreement entered between the parties wherein it was agreed that on absorption to Corporation the applicant's lien will be forfeited and that they will be able to opt for Institutional seniority or All India Seniority. Once the said terms and conditions of absorption are agreed between the parties, the Corporation cannot unilaterally transfer the employees stating that they have a right to alter the rules unilaterally without the consent of the parties. On the other hand, as held by the three Judges Bench of the Hon'ble Apex Court in Appeal

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(Civil) No. 608/2001 decided on 21.01.2002 in the case of **Anil Bajaj (Dr.) vs. Post Graduate Institute of Medical Education and Research & Anr.** that the principle of estoppel arises only when a lawful promise was made and acted upon his detriment, the party making the promise is stopped in law to resile from the promise. Similar view was taken by the Hon'ble Apex Court in the case of the **State of Jharkhand & Ors. vs. Brahmaputra Metalics Ltd., Ranchi & Anr.** (Civil Appeal Nos. 3860-3862 of 2020) decided on 01.12.2020. This Court has given an expansive interpretation to the doctrine of promissory estoppels in order to remedy the injustice being done to a party who has relied on a promise.

12. As we have observed that the applicant has opted for Institutional seniority with a definite purpose of even foregoing seniority as it was made very clear that she would remain in ESIC Model Hospital, Jaipur. The Corporation on its own cannot change conditions which were not brought to their knowledge though tripartite agreement was entered between State

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Government, ESIC and employees and the terms and conditions of absorption were clearly spelt out. Therefore, the Corporation cannot be allowed to approbate and reprobate at the same time as some of the absorbed employees had also earlier requested to switch over to All India Seniority which the Corporation had blatantly refused citing terms and conditions of absorption. Thus, we are of the opinion that as Corporation is also bound by the terms and conditions of absorption being a party to the agreement and it has promised so at the time of absorption of the employees and, therefore, cannot be allowed to take a 'U' turn as it is stopped in law to do the same and, accordingly, has no right to transfer the applicant to any other Hospital / dispensary for whatsoever reasons it feels best. We find that the impugned orders are in blatant violation of principle of promissory estoppels and require to be quashed and set aside.

13. In the light of the discussions made herein above, we, therefore, have no hesitation to quash and set

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aside the impugned order dated 06.08.2018 (Annexure A/1) as well as impugned order dated 17.08.2018 (Annexure A/2) qua the applicant as the same are illegal, arbitrary and bad in law. Accordingly, the present Original Application is allowed. No order as to costs. The status quo order granted to the applicant with regard to posting of the applicant by this Tribunal vide order dated 18.12.2019 stands confirmed.

14. With these observations and directions, all the aforesaid similar Original Applications are also allowed accordingly. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat