

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**LIBRARY!**

No. O.A. 350/00569/2020

Date of order: 14.8.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
 Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. Leena Mistry,
 wife of Dr. Kaushik Das,
 Presently residing at Greenfiled Oasis,
 Block- Mandakini, Flat No. 1C,
 P.O Rasapunja, P.S Bishnupur,
 District - south 24 Parganas,
 Pin 700104

--Applicant.

versus

1. Union of India, service through the Secretary, Department of Personnel & Training, Government of India, North Block, New Delhi-110001.

2. The Joint Secretary, Govt. of India, Ministry of Personnel, Public Grievances & Pensions, (Department of Personnel and Training, North Block New Delhi - 110001.

3. The Director, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, North Block, New Delhi-110001.

4. Employees' State Insurance Corporation, (Ministry of Labour and Employment, Govt. of India) Panchdeep Bhawan, CIG Road, New Delhi – 110002.

5. The Additional Commissioner for Director General, Employees' State Insurance Corporation, Panchdeep Bhawan, CIG Road, New Delhi – 110002.

6. The Deputy Director (MA), Employees' State Insurance Corporation, Panchdeep Bhawan, CIG Road, New Delhi – 110002.

7. ESI-PGIMSR & ESIC Medical College & ESIC Hospital & ODC (EZ), Joka, Diamond Harbour Road, P.O- Joka, Kolkata – 700104.

8. The Asst. Director (Administration), ESI-PGIMSR & ESIC Medical College & ESIC Hospital & ODC (EZ) Joka, Diamond Harbour Road, P.O- Joka, Kolkata – 700104.

9. The Dean, ESIC Hospital & ODC (EZ),
 Joka Diamond Harbour Road,
 P.O- Joka,
 Kolkata – 700104.

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10. The Deputy Medical Superintendent,
ESIC Hospital & ODC (EZ),
Joka Diamond Harbour Road,
P.O- Joka,
Kolkata - 700104.

11. The Deputy Director (Finance),
ESIC Hospital & ODC (EZ),
Joka Diamond Harbour Road,
P.O- Joka,
Kolkata - 700104.

12. The Deputy Director (Dean Office),
ESIC Hospital & ODC (EZ),
Joka Diamond Harbour Road,
P.O- Joka,
Kolkata - 700104.

13. The I/C, MDDC Haldia,
Basudevpur, Haldia,
Purba Medinipur,
Pin 721604.

--Respondents.

For the Applicant : Mr. B. Chatterjee, Counsel
Mr. R.N. Barik, Counsel

For the Respondents : Mr. S. Chowdhury, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at the transfer order dated 4.8.2020, whereby the applicant was transferred from ESIC Hospital & ODC (EZ), Joka to ESIC, MDDC Haldia and also the corresponding release order dated 6.8.2020, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

"(a) To cancel, rescind, revoke and/or withdrawn Office Order No. 79 of 2020 vide No. 412.U.22/14/MDDC Haldia/2015 Vol-III dated 04.08.2020 for transfer of the applicant from ESIC Hospital & ODC (EZ), Joka to MDDC Haldia as also the corresponding release order dated 06.08.2020, and permit the applicant to

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continue working in her present place of posting ESI Hospital, Joka in the Department of Pulmonary and Chest Diseases.

- (b) Cost of an incidental to this application.
- (c) Pass such other or further order or orders."

2. Heard both Ld. Counsel, examined documents on record. This matter is taken up for disposal at the admission stage.

3. Ld. Counsel for the applicant would submit that she and her spouse had been serving in the office of respondent No. 7 since 28.7.2015 and 1.9.2012 respectively.

That on 4.8.2020, a rotational transfer order was issued vide which the applicant was transferred from ESIC-PGIMSR, ESIC Medical College and ESIC Hospital & ODC (EZ), Joka, Diamond Harbour Road, Kolkata to ESIC, MDDC, Haldia in public interest with instructions to be released on 6.8.2020.

Ld. Counsel would aver that (i) Such transfer order was in violation to the moratorium on rotational transfer issued on 4.6.2020 by the ESIC Headquarters. (ii) Ld. Counsel would also allege that the applicant's transfer order is contrary to the policy for optimum utilization of GDMO with PG qualification which would be further borne out by the respondents' memorandum dated 13.5.2020 annexed at Annexure A-5 to the O.A. (iii) The applicant would also argue that DOPT's O.M. dated 30.9.2009 reiterated by office memorandum dated 2.7.2015, prescribes a policy for posting of husband and wife at the same station which was violated in the case of the applicant while transferring her to Haldia.

Ld. Counsel would agitate that the applicant had preferred a representation on 5.8.2020 to the respondent authorities asking for reconsideration of her transfer orders, the same was not considered and the applicant stood released as on 6.8.2020, and, accordingly, being



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aggrieved, the applicant has approached this Tribunal praying for the above mentioned relief.

4. Lt. Counsel for the respondents, on the other hand, would counter all the averments of the applicant on the following grounds:-

- (i) That, as the husband of the applicant is on study leave at Medical College, Kolkata, the applicability of DOPT O.M. dated 30.9.2009 does not hold good.
- (ii) That, her transfer from Joka to Haldia is not a transfer *per se* as the Unit at MDCC, Haldia is nothing but an extension of ESIC Hospital & ODC (EZ), Joka.
- (iii) Although the applicant is claiming her indispensability in the ESIC Hospital & ODC (EZ), Joka, her attendance records reveal that she had attended the Joka Unit only for one day in the previous three months, which belies her claim to her ubiquitous presence in the Joka Hospital.
- (iv) That, ^{as} there is only one sanctioned post in the Joka Unit and a substitute doctor has already joined the same, the scope of accommodating the applicant therein does not arise.
- (v) That, an order was issued last year in which the applicant had been transferred out of Joka, but she was retained on grounds of her infant child. To facilitate her retention, and, in partial relaxation of the transfer policy, her senior was transferred, while the applicant, being the junior-most, was actually liable to be so transferred.

Lt. Counsel for the respondents would also argue that, in case the prayer of the applicant is allowed, most medical officers would cite personal grounds to avoid transfers and rendering it difficult to operate the medical units, particularly, such as the one in Haldia where there is a dire need of medical officers with requisite specializations.

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5. We find on perusal of records, however, that, although a representation dated 5.8.2020 Annexure A-7 to the O.A. was pending at the level of the respondent authorities, the respondent authorities had released her on 6.8.2020 without issuing any speaking order on the same.

Accordingly, as consented to by both parties, and, without entering into the merits of the matter, we would direct concerned respondent authority or any other competent authority to consider the representation of the applicant at Annexure A-7 to the O.A., if received at his end, within a period of two weeks from the date of receipt of a copy of this order.

Till such time that the representation is disposed of, as the applicant has already been relieved as per Annexure A-8 to the O.A., the respondents may not take any coercive measure to compel her to join her transferred place of posting.

6. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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