

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 1974/92

.. Date of decision:

16.7.93

E.S.C.I.C. Medical Officers`

Association

.. Applicant

Versus

E.S.I.C.

.. Respondents

CORAM

Hon`ble Sh. J.P.Sharma, Member (J)

For the applicant

.. Sh. N. Safaya, Counsel

For the respondents

.. None

JUDGEMENT

(Delivered by Hon`ble Sh. J.P.Sharma, Member (J))

The applicant No.1 is an Association of Doctors (GDMO) working in E.S.I.C. and its various hospitals dispensaries. The respondents have a good number of quarters constructed in the hospital/dispensary complex primarily meant for allotment to doctors and essential staffs whose stay within the institutional campus is essential. These hospitals/dispensaries are at Basaidara Pur, Jhilmil, Noida and other residential quarters are also available at the dispensaries at Motinagar, Sarojininagar, Reghubir Nagar, Subzi Mandi and other residential quarters in Noida Sector 24 and 56 and in Nand Nagari at Delhi. The grievance of the association is that the respaondents issued order dated 1.5.92 (Annexure A) on the subject of allotment of vacant Type IV quarters in ESI Hospital, Noida and Jhilmil. The said letter is reproduced below :

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"It has been decided to allot Type IV quarters lying vacant in ESI Hospital, Jhilmil and Noida in the following order of priority (department-wise) for the smooth functioning of the speciality services of these hospitals:-

Order of priority:

- i) Specialists.
- ii) GDMOs with Post-graduate Degree in the Speciality.
- iii) GDMOs with Post-Graduate Diploma in the speciality.
- iv) Senior most GDMOs posted in the department.

For this purpose the specialities have been identified as under:

- 1) Gynae & Obstetrics
- 2) Anaesthesia
- 3) Medicine
- 4) Orthopaedics
- 5) Paediatrics
- 6) Surgery.

2. Accordingly options may be called for from all the Specialists/GDMOs in Delhi/Noida Scheme irrespective of their place of posting with the advice to submit the options latest by 20th May 1992. On receipt of the options priority list for allotment according to the criteria mentioned above should be prepared and get approved from the Head quarters office for specific allotment of quarter(s). Those who are allotted

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quarters on the above basis are required to perform the call duty/emergency duty without any claim for leave/monetary considerations. "

The Association vide their letter dated 25.6.92 represented against the above letter of 01.05.92. The respondents issued another letter dated 7.7.92 regarding allotment of residential quarters under hospital pool to the eligible employees working in the ESI Hospitals. So far as, the allotment of Type IV quarters is concerned, the said letter states as follows :

"As regards allotment of Type IV quarters lying vacant at ESI Hospital, Jhilmil and Noida, the policy adopted and conveyed by DM Cell vide their letter No. D-11/21/N-91 DM(HQ) dated 1.5.92 may be followed and treated as a one time measure. For future allotment the normal procedure as laid down in the "Maulana Azad Medical College Allotment Rules" adopted by the Corporation may be followed. "

Aggrieved by this order, the applicant has prayed for the following grant of relief:

- (a) to quash the impugned order dated 1.5.92 and 7.7.92 (Annexure A & B) respectively.
- (b) Direct the respondents to adopt a uniform allotment procedure/rules.
- (c) Allot the quarters of medical pool to doctors only.
- (d) to prepare and circulate an eligibility list before making actual allotment.

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The averments in the application is that the respondents are going to allot the quarter lying vacant illegally and arbitrarily depriving the senior most doctors from getting the residential quarters. Further the respondents have dereserved its quarters meant for specialists in Jhilmil hospitals and add those hospitals to common pool for allotment to administrative staff instead of allotting the same to senior most G.D.M.Os. Thus, it also accommodate ministerial staff at the cost of the doctors.

The respondents filed a reply denying the various averments and stated that the Maulana Azad Medical College (Allotment of Residence) Rules, 1977 have been adopted since 11.10.89 for allotment of accommodation in these hospitals (R.I). The Government of India, Directorate of Estate, Allotment of Government residences (General Pool in Delhi) Rules, 1963 have been adopted for allotment of quarters constructed in the dispensary premises and ESIC colony at Noida. The policy of allotment of quarter in different pools is appropriate and justified keeping in view the need to run the hospitals efficiently and at the same time provide residential quarters to various categories of staff on rational and just basis applicable to similar staff in the Govt. of India. It is further stated that the pay scales of the specialised doctors were enhanced and accordingly, they became entitled for Type V (A), V(B) and Type VI quarters. These doctors preferred not to apply for Type IV quarters. Thus, the Type IV quarters were lying vacant an administrative decision on the lines of Maulana Azad Medical College Rules was taken for implementation as a one time measure. The order of May 1992 was issued after identifying the disciplines

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which are essential for efficient and smooth functioning of the hospitals, by a high powered committee under the Chairmanship of the Director, Medical E.S.I. Scheme Delhi alongwith the Medical Superintendent of all the three ESI Hospitals in Delhi and Noida. The Committee did not consider it essential to include the doctors of Eye and ENT because the doctors are not required normally for emergency calls vis-a-vis other disciplines included in the order of 1.5.92. The GDMOs with PG Degree or Diploma possess post graduate qualifications like specialists and hence their services are more useful for patients in hospitals. That being so, they have been given the priority over other GDMOs in the matter of allotment of quarters in the hospital complexes only. It is according to the respondent Corporation have no intention to allot flats vacated by doctors to ministerial staff as averred in the application.

I heard the learned counsel for the appallicant and none appeared on behalf of the respondents. I have also gone through the rejoinder alongwith the annexures filed by the applicant. In the matter of allotment of quarters, ESIC has been following the definite procedure since 1985 on the patron of Maulana Azad Medical College (Allotment & Residence) Rules 1977. These rules have been annexed with the counter. It defines essential staff means such staff whose stay within the institutional campus is essential for efficient management of the hospitals/patient's care, security and who is required to perform call duties and includes wardens of the hospital and a list of such persons is annexed from Sl. No. 1 to 14 under this clause. There is an exception to this clause that the

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allotment committee reserves the right to add/delete any category from the above list in public interest. However, it a one time exception of Type IV quarters, the aforesaid statement was taken as given in the order dated 7.7.92 quoted upon. In the order dated 1.5.92, the order of priority has been given and this is in consonance with the utility of the staff at the odd hours for the benefit of the patients and public at large. The contention of the learned counsel for the applicant that exclusion of Eye and ENT from the above category of staff is arbitrary. It is for the administration to find out whether a particular discipline of the medicare is most required in a particular locality of odd hours duty or not and once a decision is taken by a high powered committee as stated by the respondents then another order to find fault with the findings of the committee, a heavy burden lies to show the same is malafide or arbitrary. It is not the case of the applicant that preferential treatment has been given to certain ministerial staff or para medical staff. What has been argued by the learned counsel for the applicant is that arbitrary distinction has been made in the order of 1.5.92 between the DGMOs with PG degree and Diploma holders. Now this order of prioty has been arrived at on the basis of utility of the particular discipline on the basis of their higher qualifications to make some attraction for efficient doctors to join ESIC. When provision is made providing accommodation on priority basis then the post become attractive to the incumbent hoping immediately or in a near future on the basis of priority, he will be provided with residential accommodation. Thus, the distinction of the qualification cannot said to be arbitrary. In order to

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attract better qualified persons to come for best and efficient care to the patients then the condition cannot said to be inequitable or discriminatory. As regards the one time exception in the order dated 7.7.92, the respondents have clearly stated in the rule that certain Type IV quarters were not required for specialists on the ^{claim}~~virtue~~ of their ^{entitlement}~~involvement~~ of higher type of quarters and reluctant to occupy Type IV quarters which is earmarked for specialists have been dereserved as one time measure. It is also observed that in view of the normal procedure as laid down in Maulana Azad Medical College Rules shall be followed.

In view of the above facts and circumstances of the case, the present application is totally devoid of merit and it is, therefore, dismissed.

There will be no order as costs.

J. P. Sharma
(J.P. Sharma) 16.7.93
Member (J)