CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 15 of 2011
w i t h
Original Application No. 30 of 2011

Thursday, this the 12th day of April, 2012

CORAM:
Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. **Original Application No. 15 of 2011** -

Dr. Reshmi Asok, Aged 50 years, W/o. Dr. V.S. Joy,
Chief Medical Officer, Employees State Insurance
Corporation Hospital, Kollam. ..... **Applicant**

(By Advocate – Mr. K.P. Sathessan)

V e r s u s

1. Union of India represented by the Director (Establishment),
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training, New Delhi-110 001.

2. The Joint Director of Medical, Head Quarters Office,
Employees State Insurance Corporation, Panchdeep Bhawan,
CIG Road, New Delhi – 110 002.

3. Dr. S.J. Rajan, Chief Medical Officer,
Employees State Insurance Corporation Hospital, Kollam.

4. Dr. Preeyalal Bhaskaran, Chief Medical Officer,
Employees State Insurance Corporation Hospital, Kollam.

5. Dr. K. Meeral Bai, Chief Medical Officer,
Employees State Insurance Corporation Hospital, Kollam.

6. Dr. S. Sreedevi, Chief Medical Officer,
Employees State Insurance Corporation Hospital, Kollam.

7. Dr. P. Thanuja, Chief Medical Officer,
Employees State Insurance Corporation Hospital,
Kollam. ..... **Respondents**

**[By Advocates – Mr. M.K. Aboobacker, ACGSC (R1),
Mr. T.V. Ajayakumar (R2),
Mr. N. Raghuraj (R4&6) &
Mr. Prasun S (R7)]**

2. **Original Application No. 30 of 2011** -

Dr. Tanuja P., D/o. Paramoo,
IMO, Grade I, ESI Model and Super Speciality
Hospital, Asramam, Kollam-691 002, residing at
Udayagiri, Madan Nada, Thekkevila PO,
Kollam-16. ..... **Applicant**

(By Advocate – Mr. Prasun S.)

Versus

1. The Director General Employees' State Insurance Corporation, Head Quarters Office, Panchdeep Bhawan, CIG Road, New Delhi-02.

2. The Joint Director (Medical), Employees' State Insurance Corporation (Medical), Head Quarters Office, Panchdeep Bhawan, CIG Road, New Delhi-02.

3. Medical Commissioner, Employees' State Insurance Corporation (Medical), Head Quarters Office, Panchdeep Bhawan, CIG Road, New Delhi-02.

4. The Medical Superintendent, ESIC Model and Specialty Hospital, Employment State Insurance Corporation, Asramam, Kollam, Pin 691 002.

5. The Union of India represented by its Secretary, Ministry of Labour and Establishment (Government of India), Shram Shakti Bhawan, Rafi Marg, New Delhi-110 001.

6. Employees State Insurance Corporation, Head Quarters Office, Panchdeep Bhawan, CIG Road, New Delhi-02, represented by its Director.

7. B. Preeya Lal, IMO, Grade I, ESIC Model and Super Speciality Hospital, Asramam, Kollam, Pin 691 002.

8. Dr. K. Meera Bai, IMO, Grade I, ESIC Model and Super Specialty Hospital, Asramam, Kollam, Pin 691 002.

9. Dr. S. Sreedevi, IMO, Grade I, ESIC Model and Super Specialty Hospital, Asramam, Kollam, Pin 691 002. ..... **Respondents**

[By Advocates – Mr. T.V. Ajayakumar (R1-4 & 6), Mr. George Joseph, ACGSC (R5) & Mr. N. Raghuraj (R7&9)]

These applications having been heard on 27.03.2012, the Tribunal on 12-04-12 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member-

Being identical, these O.As were heard together and are disposed of by this common order.

2. The applicants are Chief Medical Officer /Insurance Medical Officer Grade-I presently working in the Employees State Insurance Corporation (ESIC) Hospital, Kollam. They had joined service as Medical Officers in the Kerala State Insurance Medical Service in the year 1987. Subsequently, they were absorbed into the ESIC, Kollam on the terms and conditions as per Annexure A-2 dated 30.12.2005 (in OA No. 15/11). The order of absorption dated 19.02.2008 was made effective from 01.01.2003. The applicant in O.A. No. 15/2011 had joined the ESIC, Kollam on **24.07.2003**. The applicant in O.A. No. 30/2011 had joined on 10.04.2003. The seniority of the applicants were maintained in the provisional gradation seniority list dated 17.07.2008 as per Annexure A-2 circular. But they are placed below their juniors in the final seniority

list dated 23.09.2010 at Annexure A-8 (in OA No. 15/11). Aggrieved, the applicants have filed these O.As for quashing the seniority list dated 23.09.2010 and restoring their seniority list as per the gradation seniority list dated 17.07.2008.

3. The applicants submitted that the terms of absorption provided that the seniority of two or more State Government employees absorbed in the ESIC service would be fixed as per the seniority existing in the State Government prior to their absorption. Annexure A-2 contained the same terms and conditions as incorporated in O.M. dated 27.03.2001 at Annexure A-9. The applicants who entered into the service much earlier than the party respondents are made juniors to them as per the final seniority list. This is an unmerited punishment inflicted on them for no fault of theirs without giving an opportunity for personal hearing. When the retrospective absorption was ordered, the applicant in O.A. No. 15/2011 was on study leave. The absorption of an employee cannot wipe out the length of service rendered in the post from which he has been absorbed.

4. The respondents in their reply statement submitted that the cut off date stipulated for reckoning seniority of the employees including doctors was the date of taking over of the above hospital from the State Government by the ESIC, i.e. 01.01.2003. The party respondents have joined the above ESI hospital on 01.01.2003, much earlier than the applicants in these O.As. Therefore, they cannot claim seniority over and above those party respondents who joined the ESIC prior to their joining.

The terms of absorption as per Annexure A-2 are applicable only to the employees who have joined the ESIC with effect from 01.01.2003 after getting relieved from the parent department with effect from 31.12.2002, for inter se seniority. A person who was not on deputation on 01.01.2003 cannot claim seniority over a person who was already in service on 01.01.2003. Annexure A-6(3) letter dated 02.03.2009 from the Section Officer of the ESIC, New Delhi, had clarified that the seniority of all the four Medical Officers including the applicants who joined the hospital after 01.01.2003 will be in accordance with their date of joining on deputation. The applicant in OA No. 15/2011 was granted study leave by the State Government and not by the ESIC.

5. We have heard learned counsel for the parties and perused the records.

6. The method of determining the seniority of persons absorbed after being on deputation as per O.M. dated 25.09.1986 was that the seniority of the person absorbed would normally be counted from the date of absorption but if he had been holding already the same or equivalent grade on regular basis in his parent department, such a regular service would be taken into account in fixing his seniority subject to the condition that he would be given seniority from the date he had been holding the post on deputation or the date from which he had been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later. This O.M. was amended by O.M. dated 27.03.2001, which is reproduced as under:

"F. No. 20011/1/2000-Estt(D)
Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

New Delhi 110001

March 27, 2001

OFFICE MEMORANDUM

Subject : Seniority of persons absorbed after being on deputation.

The undersigned is directed to say that according to our O.M.No. 20020/7/80-Estt(D) dated May 29, 1986 (copy enclosed) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation,
  or
- the date from which he has been appointed on a regular basis to same or equivalent grade in his parent department, whichever is later.

2. The Supreme court has in its judgment dated December 14, 1999 in the case of Shri S.I. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi, JT 1999 (9) SC 597 has held that the words "whichever is later" occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term "whichever is later" occurring in the office memorandum dated May 29, 1986 by the term "whichever is earlier".

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the office memorandum dated May 29, 1986 the criteria contained in this Department Office Memorandum No. 14017/27/75-Estt(D)(pt) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous posts, may be followed.

4. These instructions shall take effect from the December 14, 1999 which is the date of the judgment of the Supreme Court referred to above.

5. In so far as personnel serving in Indian Audit and Accounts Departments are concerned, these instructions are issued in

केन्द्रीय प्रशासनिक अधिकरण CENTRAL ADMINISTRATIVE TRIBUNAL KOCHI BENCH

consultation with the Comptroller and Auditor General of India. However, these orders (in keeping with paragraph 4 of the Office Memorandum dated May 29, 1986 as referred to above) will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the C&AG from time to time.

6. The above instructions may be brought to the notice of all concerned for information, guidance and necessary action.

Sd/-
(K.K. Jha)
Director (Establishment)

To:
All Ministries/Departments of the Government of India."

7. The O.M. dated 27.03.2001 rules the field of these O.As. According to the applicants, the clause 4 of Annexure A-2 circular dated 30.12.2005 contain the same terms and conditions as incorporated in the O.M. dated 27.03.2001 (Anenxure A-9). The relevant part of the clause 4 of the circular dated 30.12.2005 is extracted as under:

"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 hold the post in equivalent grade on regular basis in the State Govt. service, whichever is earlier. Seniority of two or more State Govt. employees absorbed in the Corporation service would, however, be fixed as per the seniority existing in the State Govt. prior to their absorption.....".

Therefore, making the applicants who entered service much earlier to the party respondents, junior to them is an unmerited punishment inflicted upon them without giving an opportunity of being heard. It is arbitrary and violative of Article 14 of the Constitution of India. The stand of the respondents is that the above terms and conditions of absorption are applicable for the purpose of inter se seniority only to the employees who joined the ESIC with effect from 01.01.2003 after getting relieved from the parent department with effect from 31.12.2002, therefore, the

applicants who joined the ESIC later will be juniors to the doctors who had joined on 01.01.2003. The respondents relied on the clarificatory letter of the Section Officer, ESIC, New Delhi, dated 02.03.2009 which impliedly superseded the clause 4 of the Annexure A-2 circular, by stating that the seniority of all the four Medical Officers including the applicants who joined the hospital after 01.01.2003 would be in accordance with the date of joining on deputation. This clarification does not show evidence of consideration of the relevant issues. Being contrary to the O.M. dated 27.03.2001 and Annexure A-2 and the decision of the Apex Court, the said clarificatory letter is ab initio null and void.

8. The respondents have been unjust, unfair and arbitrary in mechanically holding their absorption on 01.01.2003 as sacrosanct without bothering to understand the O.M. dated 27.03.2001 and the judgement of the Apex Court in ***Sub Inspector Rooplal and Another vs. L.T. Governor through Chief Secretary, Delhi and Others***, (2000) 1 SCC 644. There is no justifiable reason to wipe out the length of service of the applicant in the same grade in the parent department. There was no delay on the part of the applicants in joining the ESIC on being relieved by the Government. Being on study leave granted by the Government, is a part of service. It cannot be cited as a reason to disentitle the applicant in O.A. No. 15/11 of her legitimate seniority over the party respondents. By utilising the study leave to enhance her competence, she is equipped to provide better service. All instructions of the ESIC in running the ESI Scheme are to be followed by the State while running the State Insurance service on behalf of the ESIC. Therefore, in the facts and

circumstances of the O.As, as held by the Apex Court in **K. Madhavan vs. Union of India**, (1987) 4 SCC 566, 'deputation' may be regarded as a 'transfer' from one government department to another. It cannot wipe out the length of service in the post from which a an employee has been transferred and if a government servant holding a particular post is transferred to the same or equivalent post in another government department, the period of his service in the post before his transfer ought to be taken into consideration. In **Attar Singh Kaushik vs. Secretary/Commissioner, Transport Department and Another**, (2008) 1 SCC 400, the Apex Court held that it is axiomatic that those who were senior in the parent department in the equivalent post should continue to be senior in the deputed post unless there exists a statutory rule to the contrary. In ***Sub Inspector Rooplal and Another vs. L.T. Governor through Chief Secretary, Delhi and Others***, (2000) 1 SCC 644, the Apex Court held that "....if he has already been holding (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from the date he has been holding the post on deputation, or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later." Therefore, in the facts and circumstances of these O.As, making the applicants junior to those who entered service much later than them is an unmerited punishment for no fault on their part.

9. In the light of the above, these O.As succeed. The Memorandum No. A-33/14/Promotion/Absorption/Kerala-Med.IV dated 23.09.2010 showing the applicants junior to the party respondents is quashed. The 2nd respondent is directed to restore the seniority of the applicants as reflected in the provisional gradation seniority list dated 17.07.2008 in accordance with clause 4 in Annexure A-2 circular dated 30.12.2005 within a period of 60 days from the date of receipt of a copy of this order.

10. The O.As are allowed as above with no order as to costs.

(Dated, the 12th April, 2012)

sd/-

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

sd/-

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.

केन्द्रीय प्रशासनिक अधिकरण CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH एर्णाकुलम न्यायपीठ

CERTIFIED TRUE COPY
Date 19/4/2012

Deputy Registrar