

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00317/2014

Order Reserved on : 07.04.2016

Date of Order: 28.04.2016

CORAM

HON'BLE MS. MEENAKSHI HOOJA ADMINISTRATIVE MEMBER

Rajasthan ESIC Doctors Association, Jaipur through its General Secretary Dr. R.P. Meena S/o Shri Ramesjwar Lal Meena, aged about 47 years R/o 639, Vidyut Nagar- A, Prince Road, Ajmer Road, Jaipur. At present posted at ESIC Model Hospital, Laxmi Nagar, Jaipur-6 (Rajasthan)

.....Applicant

(By Advocate Mr. R.D. Meena)

VERSUS

1. Union of India through Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. Director General, ESI Corporation Panchdeep Bhawan, C.I.G. Marg, New Delhi- 110001.
3. Medical Commissioner, ESI Corporation, Panchdeep Bhawan, C.I.G. Marg, New Delhi- 110001.
4. Medical Superintendent, ESIC Model Hospital, Laxmi Nagar, Jaipur (Raj)

.....Respondents

(By Advocate Mr. T.P. Sharma)

**ORDER**

This OA has been filed by the Rajasthan ESIC Doctors Association, Jaipur through its General Secretary Dr. R.P. Meena aggrieved by the action of non-payment of conveyance allowance by the Respondents to the Doctors of ESIC Model Hospital Laxmi Nagar, Jaipur since January 2013 without any reason, seeking the following relief :

- (i) Direct the respondents to disburse the entire amount of conveyance allowance to the concerned doctors immediately which is due since January, 2013.

- (ii) Direct to respondents to pay the conveyance allowance regularly and on monthly basis in future also.
- (iii) Direct to respondents to pay the interest @ 18% p.a. on the due amount.
- (iv) The applicant have a common interest and same cause of action, therefore they are filing this Original Application through General Secretary of their Association, therefore kindly permit the application to file this Original Application.
- (v) Any Other order or direction, which this Hon'ble Tribunal deems fit and proper, in favour of the applicant.

2. The OA came up for consideration and hearing on 21.03.2016 (Part-heard) which was continued on 07.04.2016.

When the matter came up for consideration, the Ld. Counsel for applicant, with reference to the averments made in the OA, submitted that the applicant is the ESIC Doctors Association, Jaipur (registered on 13<sup>th</sup> March, 2014 with the रजिस्ट्रार संस्थाएं under Rajasthan Institution (संस्था) Registration Act 1958 Annexure A/2 and is being represented in this OA through its General Secretary Dr. R.P. Meena. The members of the Association, particularly those who are working as Medical Officers/Specialists in ESIC Model Hospital Jaipur are aggrieved with non-payment of conveyance allowance for visits to patients in the Hospital after duty hours since January 2013 and have submitted several representations in individual capacity as well as through the Association (filed collectively as Annexure A/1) but the respondents have not paid any heed to the payment of their genuine dues, hence this OA.

3. Counsel for applicant further submitted that the Employee State Insurance Corporation (ESIC) is a statutory body under the Ministry of Labour, Government of India, and the Medical Officers/Specialists working in ESIC are allowed pay and perks, including conveyance allowance, as applicable in the Central

Government Health Scheme (CGHS). In this regard, on the basis of the recommendations of the 6<sup>th</sup> Pay Commission, Government of India, Ministry of Health and Family Welfare, New Delhi issued Office Memorandum dated 28<sup>th</sup> April 2009 (Annexure A/3) revising the rates of conveyance allowance per month w.e.f. 01.09.2008 as admissible to Central Health Service (CHS) doctors working in Hospitals/Dispensaries under Central Government for visiting Hospitals or for paying domiciliary visits outside duty hours and performing other official duties. Thereafter vide letter dated 13.05.2009 (Annexure A/4), the ESIC Headquarter also made these rates for conveyance allowance applicable to ESIC Doctors w.e.f. 01.09.2008. He further submitted that as evident from Annexure A/5 and A/6 Doctors working in other ESIC Hospitals for e.g. at Delhi, Noida, Indore, Chandigarh, Baddi, Gurgaon, Ranchi, Bangluru, Guwhati etc. are getting conveyance allowance and medical officers/specialists of ESIC Model Hospital, Laxmi Nagar, Jaipur were also being paid this conveyance allowance up to December 2012 and thereafter without any reasons or notice etc this allowance has been stopped since January, 2013.

4. Counsel for applicant also submitted, as a clarification, that Doctors of ESIC are posted in Hospitals and Dispensaries and those posted in Hospitals (as the case of the present applicants is) make visits to Hospital after duty hours to see patients in the Hospital only as required, and those posted in Dispensaries visit patients at their houses/residences which are called Domiciliary visits. In this connection he also submitted that Circular/Orders pertaining only to Domiciliary visits are not applicable to the ESIC Doctors visiting Hospitals after duty hours. He further added that reference of the Hospital visit made by the Doctors (after duty hours) is also kept in

the record of the concerned patient maintained in the Hospital. Counsel for applicant also averred that as may be seen from Office Memorandum dated 02.09.1998 (Annexure A/9) the provisions of maintenance of log book for the hospital visits/other duties outside the duty hours have been dispensed with.

5. Counsel for applicant also submitted that the Medical Commissioner during his visit to ESIC Model Hospital, Jaipur on 23.11.2013, heard the concerned doctors and after listening to all the facts directed the then Medical Superintendent to disburse the said allowance as per CGHS rules and as per the declaration of the doctors, but the same was not disbursed. The doctors also filed representations collectively (Annexure A/1) but to no heed has been paid. Counsel for applicant therefore prayed to direct the respondents to disburse the conveyance allowance which is due since January 2013 and the OA be allowed including relief no. 8(iv) permitting the applicant to file this OA through General Secretary of Rajasthan ESIC Doctors Association, Jaipur as they have a common interest and same cause of action.

6. Per contra, Id. counsel for respondents, reiterated the points raised in the reply including the preliminary objections that the applicant Association is Registered only with the Registrar of Institutions, Government of Rajasthan and has not been approved by ESIC (which is a registered body under the Ministry of Labour and Employment) and is therefore not entitled to any relief as claimed in the OA. With regard to the merit of the case, counsel for respondents submitted that the applicants are entitled to claim conveyance allowance as per CGHS OM dated 28.04.2009 (Annexure A/3) and ESIC communication dated 13.05.2009 (Annexure A/4) and they were being paid accordingly upto

December 2012. As per the aforesaid Office Memorandum (Annexure A/3) the Doctors are required to furnish a declaration showing the details of the journeys performed, for which conveyance allowance is being claimed, in the prescribed format. However, on receipt of certain serious complaints, and on account of audit objections and audit team also observing irregularities in the claims, the conveyance allowance of Doctors have been referred to the Vigilance Branch of the Hqrs, New Delhi from January 2013. He also submitted that the ESIC Hospital at Jaipur has been under reconstruction from 2010 and sometimes the claims included more visits than the indoor patients.

7. Counsel for respondents also referred to ESIC Circular dated 27.08.2014 (Annexure R/1) issued on the basis of CGHS Circular dated 12.04.2013 in which certain Annexures have been prescribed for claiming conveyance allowance (and this CGHS Circular was itself issued on the basis of certain complaints) and contended that claims can only be cleared if the prescribed procedure are followed by the Doctors making the claims.

8. Counsel for Respondents also drew attention to Circular dated 18.05.2015 (filed as Annexure M/1 with MA No. 291/00365/2015 and taken on record) regarding payment of conveyance allowance on domiciliary visits. Further during the course of hearing, he submitted a copy of Circular of ESIC Headquarter dated 22.01.2016 together with OM dated 23<sup>rd</sup> October 2015 of the Ministry of Health and Family Welfare (also provided a copy to the counsel for applicant and which is kept on record) in which the procedure have been prescribed for claiming conveyance allowance for both domiciliary and Hospital visits and contended that if these procedures are followed the claims can be

duly considered. He submitted that thus in view of the complaints, investigation, the matter pending with the Vigilance Department and the OA, is in a way premature and prayed for the dismissal of the OA.

9. Rebutting the contentions of the counsel for Respondents, counsel for applicant submitted that the applicant Association of ESIC Doctors, Jaipur being registered, is entitled to file OA as all members have common cause of grievances and action as no conveyance allowance is being paid to them, without any notice or reasons since January 2013. He further contended that ESIC Circular dated 27.08.2014 (filed as Annexure R/1) by the Respondents relates to Domiciliary visits and is therefore not applicable to the present applicants who are posted in Hospitals and are claiming conveyance allowance on visit made to Hospitals after duty hours and not for Domiciliary visits which are made by Doctors posted in Dispensaries, as clarified at the beginning of the arguments. Counsel for applicant also submitted that again Circular of ESIC dated 18.05.2015 (Annexure M/1) also relates to Domiciliary visits and not to Hospital visits. He further added that Circular of ESIC dated 22.01.2016 submitted by the counsel for Respondents can have only prospective effect. Counsel for applicant also contended that payment cannot be refused merely because of audit objection or pendency of matter with Vigilance Department and further submitted there is no order of the Headquarter or the competent authority to deny payment of the same. He therefore prayed for the OA to be allowed.

10. Considered the aforesaid contentions and perused the records. The common grievance of the applicants (through their

Association) who are Doctors in ESIC Model Hospital, Jaipur is that they are not being paid conveyance allowance from January 2013 for visits made to Hospitals to see patients after duty hours. In the first place relief 8(iv) for filing this Original Application through the ESIC Doctors Association, Jaipur is allowed as the Applicant Association has put forth common cause of grievances of the Doctors working in ESIC Model Hospital, Jaipur.

11. On the merit of the case the main contention of the counsel for applicant is that they are entitled to receive conveyance allowance on the basis of OM issued by Government of India, Ministry of Health and Family Welfare on 28<sup>th</sup> April, 2009 (Annexure A/3) and implemented in ESIC w.e.f. 01.09.2008 vide Circular dated 13.05.2009 (Annexure A/4) and as per rates revised from time to time. However, without there being any notice/reasons they are being deprived of the same and even despite direction of certain visiting higher authorities i.e. the Medical Commissioner on 23.11.2013 the conveyance allowance has not been paid, though it is being paid in all other places in the country (refer Annexure A/5 and A/6) and despite the applicants having submitted several representations individually and through their Registered Association (filed as Annexure A/1 collectively) no heed is being paid. Further that there are no orders of the competent authority to deny the payment.

11. Counsel for applicant has also been at pains to distinguish between Doctors of ESIC posted in Dispensaries and making domiciliary visits (i.e. at the residences of the patients) and those posted in the ESIC Hospitals and making required visits to see patients of the Hospital after duty hours. It has also been his

contention that many of the Circulars referred to by the counsel for respondents relate only to domiciliary visits and not to Hospital visits and the requirement of maintenance of Logbook has been dispensed with as long back as in 1998 as per Annexure A/9 and the latest ESIC Circular dated 22.01.2016 submitted during the course of hearing by the counsel for Respondents can only have prospective effect.

12. Per contra, it has been the contention of the counsel for Respondents that payment of conveyance allowance is governed by certain directions and instructions of ESIC Headquarters, which are generally based on directions issued by the Ministry of Health & Family Welfare. As far as ESIC Model Hospital is concerned, counsel for Respondents submitted that on account of certain gross irregularities, including visits to Hospital even exceeding the number of indoor patients, and objections raised during the audit and the matter being taken up by the Vigilance Department at Headquarter, conveyance allowance is not being paid from January 2013. As brought out in the reply, the matter is pending with the Vigilance Department and until it is cleared by them, payment cannot be made and currently the Circular order dated 22.01.2016 of ESIC lay downs the prescribed procedure on the basis of which payment are to be made.

13. In this context, a perusal of the various OMs'/Circulars filed by the applicant and Respondents indicates the following position:

- (i) OM dated 28<sup>th</sup> April, 2009 of Ministry of Health & Family Welfare (Annexure A/3) – vide of this OA the rates of conveyance allowance for CHS Doctors working in Hospitals/Dispensaries for visiting Hospitals or paying domiciliary visits outside duty hours have been revised w.e.f. 01.09.2008 while laying down certain

conditions, especially condition in Para No. 6 regarding minimum visits. Further Para 7 prescribes that every Specialist/Medical Officer will have to furnish a certificate along with monthly pay bill that he is drawing conveyance allowance in fulfillment of condition No. 6.

- (ii) The aforesaid OM of the Ministry of Health & Family Welfare dated 28.04.2009 has been implemented in ESIC vide letter dated 13.05.2009 (Annexure A/4) w.e.f. 01.09.2008.
- (iii) ESIC Circular dated 27.08.2014 (filed as R/1 by the Respondents) which is based on Ministry of Health & Family Welfare Circular No. 2/2013 issued on 12.04.2013 relates to payment of conveyance allowance for domiciliary visits (emphasis supplied)
- (iv) Circular No. 2/2013 dated 12<sup>th</sup> April 2013 of Ministry of Health & Family Welfare (filed during the hearing by the counsel for Respondents being the basis of Circular of ESIC Circular dated 27.08.2014 Annexure R/1) relates to payment of conveyance allowance for domiciliary visits and prescribes certain Annexures A and B to be filled in for claiming the conveyance allowance.
- (v) Vide Circular of ESIC dated 18.05.2015 (filed as Annexure M/1 in MA No. 365/2015) it was clarified that Annexure A and B of CGHS Circular dated 12.04.2013 are required to be filled by Medical Officers for reimbursement of claims relating to domiciliary visits only.
- (vi) Vide OM of CGHS dated 23<sup>rd</sup> October 2015, the matter regarding payment of claim for domiciliary visits was reviewed and the instructions contained in Circular dated 12<sup>th</sup> April, 2013 including the prescribed Annexures A and B were withdrawn and instructions contained in OA No. A-45012/03/2008- CHS.V dated 28<sup>th</sup> April 2009 were made applicable and the Doctors

were to submit a certificate in Annexure 'A' (copy of which was enclosed). However, Circular dated 23<sup>rd</sup> October 2015 pertains to Domiciliary visits only.

(vii) Further vide Circular of ESIC dated 22.01.2016, (filed during the course of hearing and kept on record) after examining the matter again regarding claiming of conveyance allowance, it has been clarified that :

1. Annexure -A of the instructions is declaration and required to be filled by doctor concerned claiming conveyance allowance for domiciliary visits or hospital visit after duty hours.
2. Annexure -B i.e. common logbook to be maintained at ESIC Dispensaries and ESIC Hospitals and necessary entries to be maintained by doctors claiming conveyance allowance for domiciliary visits or for hospital visits after duty hours.

The concerned DDO/DD(F) should pass the conveyance allowance claim only after verifying the logbook.

14. From the above position of OM/Circular it is clear that a well defined procedure has been laid down by ESIC vide Circular dated 22.01.2016 for claiming conveyance allowance for both Domiciliary and Hospital visits made by ESIC Doctors outside duty hours. However, there is force in the contention of counsel for applicant that this Circular which contains a declaration in Annexure 'A' and a logbook in Annexure 'B' for both Domiciliary and Hospital visits can only have prospective effect. As far as claims of conveyance allowance for Hospital visits made outside duty hours, prior to this Circular are concerned, the only OM/Circulars that are applicable for conveyance allowance for both Hospital visits and Domiciliary visits are the OM of the Ministry of Health & Family Welfare dated 28<sup>th</sup> April, 2009 (Annexure A/3) which has been made applicable in

ESIC vide letter dated 13.05.2009 (Annexure A/4) other Circular i.e. ESIC Circular dated 27.08.2014 (Annexure R/1), OM of Ministry of Health & Family Welfare dated 12<sup>th</sup> April 2013, Circular of ESIC dated 18.05.2015 (Annexure M/1), CGHS OM dated 23<sup>rd</sup> October, 2015, all relate to Domiciliary visits and not to visits to Hospitals outside duty hours and therefore cannot be said to be applicable to the Doctors posted in the ESIC Hospitals, which is the case of the present applicants.

16. Thus an inference can be drawn that prior to 22.01.2016 ESIC Doctors working in Hospitals are to be paid conveyance allowance for visit to Hospital outside duty hours as per Annexure A/3 OM 28<sup>th</sup> April, 2009 of Ministry of Health & Family Welfare adopted by ESIC vide its letter dated 13.05.2009 (Annexure A/4).

17. However, It is also noted that the payment of conveyance allowance of the applicant Association and its members have been withheld from January 2013 on the basis of certain complaints, irregularities and audit objections and the matter is pending with Vigilance Department at Headquarter office. There is no doubt that the applicant ESIC Doctors are entitled to being paid the conveyance allowance as per the OM/Circulars and rates in force, but it is equally essential that proper verification and scrutiny of the claim is made, as the payment is made from public funds and the allowances are also quite considerable (reference RTI information filed with Annexure A/8 where in the year 2013 per month claim for each Doctor is Rs. 5676/-). If there are complaints and irregularities are found and there are audit objection and even vigilance is seized of the matter, then proper scrutiny is even more necessary.

18. In view of the above position, after considering all aspects of the matter, especially the relevant OMs/Circulars, it is deemed appropriate to dispose of the OA with certain directions. Accordingly it is directed that :

- (i) The Respondents will ensure that the claims by the ESIC Doctors for visits Hospitals outside duty hours have been filed by the applicants is in accordance with the certificate/Annexure prescribed as per O.M. of Ministry of Health & Family Welfare dated 28<sup>th</sup> April 2009 (Annexure A/3) made applicable in ESIC vide letter dated 13.05.2009 (Annexure A/4) for the period 2013 to 22<sup>nd</sup> January 2016. Any claim made thereafter would be as per procedure laid down in ESIC Circular dated 22.01.2016 (filed during hearing and taken on record)
- (ii) In view of the complaints, irregularities, audit objection and Vigilance Department at Headquarters of ESIC being seized of the matter as brought by the Respondents, whatever scrutiny is required, including cross verifying the claims with the entries in the Hospital record of patients, would be made to ensure that while no genuine claim is denied, no false claims are allowed.
- (iii) The respondents would carry out this exercise within a period of four months from the date of receipt of a copy of this order and the applicant being Registered Association of ESIC Doctors, Jaipur and responsible persons, looking after the health and well being of patients, would also fully co-operate in the matter and maintain the dignity and standing of their profession.

19. The disposal of the MAs' is as under:

- (i) MA No. 291/2015 filed by the applicant for amending the cause title was allowed on 29.10.2015 and Union of India through Secretary, Ministry of Health and Family Welfare was made Respondent No. 1 in place of

Ministry of Labour and Employment. In view of the aforesaid MA being allowed, MA No. 291/00073/2015, filed by Respondent for deleting Union of India, through Secretary, Ministry of Labour as Respondent No. 1 stands disposed of.

(ii) MA No. 291/00015/2016 filed by the applicant in the OA for grant of I.R. stands disposed of in view of the final order in the OA.

Accordingly the OA, and MAs as noted above, are disposed of as above with no order as to costs.

  
(MS. MEENAKSHI HOOJA)  
ADMINISTRATIVE MEMBER

Badetia/