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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No... 247/2004

R.A/C.P No.....

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SECTION OFFICER (Judl.)

13/11/17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Org. App/Misc. Petn/Cont. Petn/Rev. Appl..... 247/04.....

In O.A. _____

Name of the Applicant(s) Dr. P.K. Sharma & ors (19)

Name of the Respondent(s) U.O.I & ors.

Advocate for the Applicant M. Chanda, G.N. Chakrabarti
S. Nath, S. Chaudhary

Counsel for the Railway/C.G.S.C. ✓

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

29.10.2004

This application in form
is filed/C.F. No. 101
deposited vide B.O.
No. 206/114862
Dated 9.10.04

28/10/04
Dy. Registrar

Heard Mr.M.Chanda, learned counsel
for the applicant. Mr.B.C.Pathak, lear-
ned.Addl.C.G.S.C. was present on behalf
of the respondents.

O.A. is admitted, call for the rec-
ords, returnable by four weeks. List it
for orders on 3.12.2004.

10/11/04
Member (A)

Steps taken with
envelops.

Pas.

3.12.2004

Mr. S. Nath, learned counsel for
the applicant and mr. B.C. Pathak,
learned Addl. C.G.S.C. for
respondents 1 and 2 and Learned
Advocate for the Respondents 3, 4 and
5 were present.

On the plea of counsel for the
respondents six weeks time is given
to file written statement. List on
21.1.2005 for orders.

10/11/04
Member (A)

Notice & order
sent to D/Section
for issuing
to
resp. No. 1 to 8,
by regel.
A/D Post.
10/11/04

mb

28.1.2005 Let the matter be listed on 10.2. for orders.

Notice duly served on Respondents No. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

Member

bb

11.2.2005 present: The Hon'ble Mr.M.K.Gupta, Member (J).

The Hon'ble Mr.K.V.Prahladan, Member (A).

Since there is no representation made by the Respondents and no reply has been filed despite the fact that they were granted six weeks time to do the needful on 3.12.2004, In the interest of justice we grant them six weeks further time to file reply.

Adjourned to 31.3.2005.

Member (A)

Member (J)

bb

31.3.2005 Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

Inspite of a specific direction issued for filing written statement, no written statement has been filed by the respondents as on today. Mr. B. Pathak, learned counsel representing Mr. B.C. Pathak, learned counsel for the respondents submits that the applicant had filed amended application and therefore some more time is required for filing written statement. Post on 28.4.2005. written statement, if any, in the meantime.

Vice-Chairman

28.4.05. On behalf of Mr.B.C.Pathak learned counsel for the Respondents a submission is made that some more time is required for filing written statement. Post the matter on 24.5.05.

Vice-Chairman

lm

2-12-04
3/2-awaited.
4 No-w/s has been
B.TED.

2.12.04
Mr. P.B. Das Gupta
Mr. S.U. Ahmed and
Mr. P.S. Bhattacharyya
Advocates submitted
Vakalatnams on behalf
of Resp. No 3, 4 & 5.

Notice duly served
on resp. Nos. 1, 3, 4, 5, 6, 7
and 8.

3/2/05

10-2-05
No w/s has been
B.TED

4-2-05

30-3-05

No w/s has been B.TED. mb

11.4.05
Consolidated petition
submitted by the Applicant.

27-4-05

7A 247/04

Notes of the Registry	Date	Order of the Tribunal
<u>20.5.05</u> No written state. against the petition Consolidated petit- -tion. for.	20.5.2005 mb	List on 24.6.2005 for hearing. In the meantime, written statement, if any.
<u>1.6.05</u> W/s filed by the Respondent Nos. 1 to 5.	24.6.2005 mb	Post on 21.7.2005. The respondents shall produce record also.
<u>4.7.05</u> Rejoinder filed by the Applicant.	21.7.2005 mb	Mr. M. Chanda, learned counsel for the applicant is present. However, Mr. C. Pathak, learned counsel for the re- spondents has filed letter of absence and junior submitted that the case may be adjourned. Post on 01.08.2005.
<u>22.7.05</u> Additional Rejoinder submitted by the Applicant.	25.7.2005 mb	Mr. M. Chanda, learned counsel for the applicant and Mr. D. C. Pathak, lea- rned counsel for the respondents are present. They submitted that this case can be disposed of on 11.8.2005. Post on 11.8.2005.
<u>11.8.05</u> The case is ready for hearing.	11.8.05 mb	There was a n/a. 16.8.05

K. D. Bhatnagar
Member (A)

G. V. S.
Vice Chairman

K. D. Bhatnagar
Member

G. V. S.
Vice Chairman

K. D. Bhatnagar
Member

G. V. S.
Vice Chairman

16.8.05. After hearing Mr. J.L. Sarkar learned counsel for the applicant and Mr. B.C. Pathak, learned counsel for the Respondents, we are of the view that the detail arguments will be required. Post the matter before the next available Division Bench.

[Signature]
Member

[Signature]
Vice-Chairman

lm

06.10.2005 Present : Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman

Hon'ble Mr. M.K. Misra,
Administrative Member.

Heard Mr. J.L. Sarkar
Heard Mr. J.L. Sarkar,
learned counsel for the applicant,
B.C. Pathak, learned counsel for
the ESI and Mrs. M. Pathak,
learned Government Pleader for
the State of Assam.

After hearing the learned
counsel for the parties, we feel that
this matter which has to be
considered very elaborately in view
of the stand taken by Mr. B.C.
Pathak, learned counsel for the
ESI. Post the matter before the
Division Bench after vacation.

Mr. J.L. Sarkar, learned
counsel for the applicant has
brought to our notice letter bearing
D.O. No. U.11/11/Assam/03-DM
(HQ) dated 10th January 2003
issued by the Director General.

CANCELLED

19.8.05

W/s has been filed
on 19.8.05

19.8.05

The case is ready
for hearing as
per record. W/s and
Rejoinder filed
by the parties.

[Signature]
5.10.05

GA 247/09

06.10.2005 Present: Hon'ble Mr. Justice G.
Sivarajan, Vice-Chairman

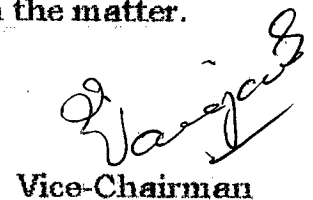
Hon'ble Mr. M.K. Misra,
Administrative Member.

Heard Mr. J.L. Sarkar,
learned counsel for the applicant,
B.C. Pathak, learned counsel for
the ESI and Mrs. M. Pathakⁱⁿ Das
learned Government Pleader for
the State of Assam.

After hearing the learned
counsel for the parties, we feel that
this matter which has to be
considered very elaborately in view
of the stand taken by Mr. B.C.
Pathak, learned counsel for the
ESI. Post the matter before the
Division Bench after vacation.

Mr. J.L. Sarkar, learned
counsel for the applicant has
brought to our notice letter bearing
D.O. No. U.11/11/Assam/03-DM
(HQ) dated 10th January 2003
issued by the Director General,
ESI Corporation to the Secretary to
the Government of Assam,
Guwahati. In view of this pendency
of this application will not stand in
the way of the ESI Corporation for
taking decision in the matter.


Member


Vice-Chairman

mb

10.11.2005

post before the next Division Bench


Vice-Chairman

bb

Order dt. 6/10/05
sent to D/section
for issuing to
Mrs M. Das, Counsel
for the state of Assam
and Mr. B.C. Pathak
counsel for the E.S.I.C.

Class
26/10/05 D/No = 1536
1535
Dt = 27/10/05

2 - 1 - 06

The case is ready
for hearing as
required WCs and
Rejoinder.

31
2.1.06

3.1.2006

Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

The O.A. is disposed of in terms of the order.

Member

Vice-Chairman

bb

23.1.06

C. Copy of the Judgt has been collected by the applicant and the copy of the Judgt has been handed over to the L/Adv. for the B.C. Patrak and Mr. B.C. Patrak Advocate for the Deptt.

22.2.06

As per order dt. 17.2.06 para 4 MP.No.17/06 the name of applicant No.4, has been corrected in the original Judgt dt. 3.1.06.

The C. Copy of the corrected Judgt has been collected by the L/Adv. for the applicant and a copy of the same has been sent to the office for forwarding to the L/Adv. for the Resp. Dm.

Received corrected copy of Judgt.

Kiromar Sana

23/2/06

for G.A. Assam

PUC - Memo No. HC, XXI 19, 838-42/RM. Dtd 5.7.08
received from The Asst. Registrar (B),
Gauhati High Court, Gauhati.

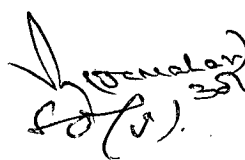
The order dated 12.03.2008 passed
in NP(c) No. 3464/07 may kindly be
seen at Flag A'.


The Employees State Insurance
Corporation filed the above mentioned
NP(c) before the Hon'ble Gauhati High
Court against the judgment/order dated
3.01.2006 passed in OA No. 247/04.
The Hon'ble High Court dismissed the
NP(c) No. 3464/07 on 12.03.2008 at
admission stage with an observation as:

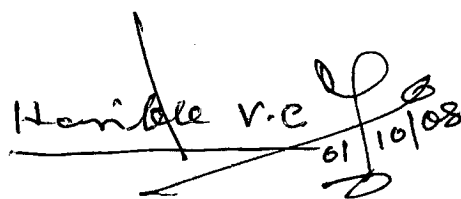
"In view of the fact that the writ
petitioner has already taken a decision to
absorb the respondents with effect from 1.1.2006,
the grievances of the writ petitioner, in our
view, is only marginal and do not call for
adjudication in this writ petition. The writ
petition is, therefore, dismissed at the
admission stage."

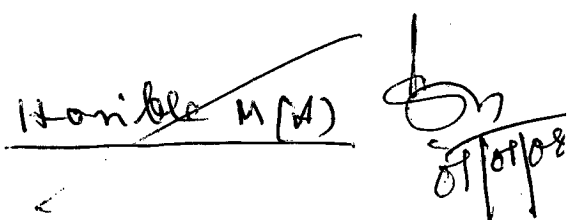
Submitted the same for favour of
kind perusal please. This may be
placed before the Hon'ble Vice-Chairman
and Hon'ble Member(A) for their Lord-
ships' kind perusal.

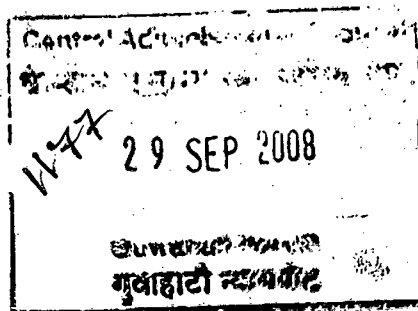
RS 30/9


Registrar
30/9/08


Dy. Registrar
11/10/08


Hon'ble V.C.
01/10/08


Hon'ble M(A)
01/10/08



SO (Jad.)
Put-up with CR
29/09/08

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from
Civil Rule

W.P. (C) No. 3464 of 2007

Appellant
Petitioner

The Employees State Insurance Corpn.

Versus

Dr. Pranjit Barman & others

Respondent
Opposite Party

Mr, S.R. Bhattacharjee (Sr. Adv)

Appellant
For
Petitioner

Mr, R. Das.

Mr. S. Bhattacharjee.

Respondent
For

Opposite Party

G.A. Assam

Mr. M. Chandra

Mr. S. Choudhury

Mr. S. Ghosh

Advs. for
Cause No.

Noting by Officer or
Advocate

Serial
No.

Date

Office notes, reports orders or process
with signature

SO (J)
NS
29-9-08

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

W.P(C) NO. ~~3464/07~~ 3464/07

BEFORE
HON'BLE THE CHIEF JUSTICE MR. J. CHELAMESWAR
HON'BLE MR. JUSTICE MR. I.A. ANSARI

12.03.2008

Chelameswar, CJ:

Heard Mr. S.R. Bhattacharjee, learned Senior Counsel appearing for the writ petitioner and Mr. B.C. Das, learned Senior Counsel appearing for the Respondent No.1 to 15.

Aggrieved by the order of the learned Central Administrative Tribunal in Original Application No. 247/2004 dated 03.01.2006, the 2nd Respondent therein preferred the present writ petition.

Respondent Nos. 1 to 15 herein are employees of the State of Assam, who have been working with the writ petitioner on deputation with effect from various dates, details of which are not necessary to discuss for the present purpose.

Undisputed facts are that the State of Assam and the writ petitioner entered into a Memorandum of Understanding dated 26.12.2002 wherein it was agreed that the Respondent No.1 to 15 herein would be absorbed in the service of the writ petitioner, if such respondents, opt to be absorbed. It is the case of the Respondent Nos. 1 to 15 in the abovementioned original application that all of them exercised their option to be absorbed in the service of the writ petitioner. Notwithstanding their exercise of such option the writ petitioner has not taken any final decision to absorb them. Therefore, the Respondent No.1 to 15 filed the abovementioned Original Application No.247/2004 before

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

the learned Central Administrative Tribunal, Guwahati Bench with the prayer as follows:-

8.1 That, the Hon'ble Tribunal be pleased to direct the Respondents to give the cadre pay and allowances to the applicants at ESIC norms and at par with that of their counterparts in the ESIC w.e.f. 04.04.2003 with all consequential service benefits.

8.2 That the Hon'ble Tribunal be pleased to set aside and quash the order bearing letter No. A.II(II)-3/2003-DM(HQ) dated 30.11.04.

8.4 That the Hon'ble Tribunal be pleased to direct the respondents to refix the pay of the applicant with immediate effect.

8.5 That the Respondents be directed to formulate the detailed terms and conditions for permanent absorption of the applicants in accordance with law and without any prejudice to the interest/ prospects of the applicants and to absorb them thereafter in the ESIC on their individual option within a reasonable time frame."

It is also the grievance of the Respondent No. 1 to 15 that though they have been serving under the writ petitioner, they are not being paid on par with the other employees of the writ petitioner. Therefore they sought that their emoluments be brought at par with the employees of the writ petitioner. The writ petitioner by communication dated 30.11.2004 decided to give only limited relief, but did not choose to bring their emoluments on par with the employees of the ESIC. It was further prayed before the Tribunal that the writ petitioner be directed to absorb each of the Respondent No.1 to 15 into the service of the ESIC with effect from actual date of their joining the service of the writ petitioner.

The Tribunal after elaborate consideration of the matter came to the conclusion that as there is no dispute regarding absorption of the applicant/ Respondent No. 1 to 15 either between the State of Assam and the writ petitioner or between the abovementioned respondents and either of the abovementioned parties, directed the writ petitioner to

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	<p>petitioner in terms of the memorandum of understanding dated 26.12.2002 within a period of six months from the date of receipt of the order.</p> <p>The grievance of the writ petitioner is that though the writ petitioner is agreeable to absorb the Respondent Nos. 1 to 15 (as a matter of fact have already been absorbed by two communications dated 17.09.2007 and 08.10.2007 with effect from 01.01.2006) the impugned order of the Tribunal did not specify the date with effect from which these respondents are required to be absorbed. The grievance of the writ petitioner is that the Tribunal ought to have fix an effective date for absorption of the respondents. We are not inclined to go into the question for the reason that it is bought to our notice that during pendency of writ petition, as already indicated above, the writ petitioner took decision to absorb the Respondent Nos. 1 to 15 with effect from 01.01.2006, but not with effect from the date on which each of the Respondents joined service of the writ petitioner on deputation. Such decision of the writ petitioner fixing the date of absorption w.e.f. 01.01.2006 has already been assailed by the Respondent No.1 to 15 in Original Application No.39/2006, which is now to be decided by the Tribunal in the abovementioned matter.</p> <p>In view of the fact that the writ petitioner has already taken a decision to absorb the Respondents with effect from 01.01.2006, the grievances of the writ petitioner, in our view, is only marginal and do not call for adjudication in this writ petition. The writ petition is, therefore, dismissed at the admission stage.</p>

Sd/- I.A. ANSARI
JUDGE

Sd/- J. CHELAMESWAR
CHIEF JUSTICE

Contd...

Memo No. HC.XXI.....19, 838-42...../R.M. Dtd.....29/08.....

Copy forwarded for information and necessary action to: -

1. The Commissioner & Secretary, Govt. of Assam, Labour & Employment Department, Assam Sachivalaya, Dispur, P.O. Guwahati-781 006.
2. The Secretary, Govt. of Assam, Labour & Employment Department, Assam Sachivalaya, Dispur, P.O. Guwahati-781 006.
3. The Administrative Medical Officer, Employees State Insurance Scheme, Govt. of Assam, Zoo Narengi Road, P.O. Guwahati-781 021, Dist.- Kamrup (Metro), Assam.
4. The Central Administrative Tribunal, Principal Bench, represented by its Chairman, C.A.T. Principal Bench, Copernicus Marg, New Delhi-110 001.
5. The Central Administrative Tribunal, Guwahati Bench, represented by its Section Officer (Judicial), Rajgarh Main Road, P.O. Guwahati-781 005.

By Order

Asstt. Registrar (B)
Gauhati High Court, Guwahati.

29/9/08

13

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 247 of 2004.

DATE OF DECISION: 03.01.2006.

Dr. Pranjit Barman & 18 Others

APPLICANT(S)

Dr. J. L. Sarkar & Mr. M. Chanda

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

RESPONDENT(S)

Mr. B. C. Pathak & Mrs. M. Das

ADVOCATE(S) FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN

THE HON'BLE MR N. D. DAYAL, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not?
 3. Whether their Lordships wish to see the fair copy of the Judgment?
 4. Whether the judgment is to be circulated to the Other Benches?
- no
yes

Judgment delivered by Hon'ble Vice-Chairman.

G. Sivarajan

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 247 of 2004

Date of Order: This, the 3rd day of January, 2006

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR N.D.DAYAL, ADMINISTRATIVE MEMBER.

1. Dr. Pranjit Barman
2. Dr. Pranab Kr. Sarma
3. Dr. Pradip Kr. Bordoloi
4. Dr. Nalini Mohan Das
5. Dr. Nava Kr. Gogoi
6. Dr. Apurba Kr. Saikia
7. Dr. Tarun Kr. Bhuyan
8. Dr. Bhaben Rongson
9. Dr. Kabin Tumung
10. Dr. Gunabhi Ram Sarma
11. Dr.(Mrs) Sikha Sarma
12. Dr. Karabi Kalita
13. Dr. Chandan Choudhury
14. Dr. Dipak Chancel Borbora
15. Dr.(Mrs) Mandira Sarma
16. Dr. Ajit Kr. Sarma
17. Dr. (Mrs) Kanan Bora
18. Dr. (Mrs) Makan Sarma
19. Dr. (Mrs) Parinita Hazarika Applicants.

(All are working as Medical Officers in the ESI Model Hospital, Beltola, Guwahati-22, Assam under the Employee's State Insurance Corporation. They are on deputation from Govt. of Assam).

By Advocates Dr. J. L. Sarkar, Mr. M. Chanda, Mr. S. Nath,
Mr. G. N. Chakraborty & Mr. S. Choudhury.

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Labour and Employment
New Delhi.
2. The Director General
Employee's State Insurance Corporation
Panchadeep Bhawan
Kotla Road
New Delhi - 110 002.
3. The Medical Commissioner
Employee's State Insurance Corporation
Panchadeep Bhawan
Kotla Road
New Delhi - 110 002.
4. The Regional Director
Employee's State Insurance Corporation
Panchadeep Bhawan
Kotla Road
New Delhi - 110 002.
5. The Superintendent
Model Hospital
Employee's State Insurance Corporation
Beltola, Guwahati-781 022
Assam.
6. The Commissioner and Secretary
to the Government of Assam
Labour and Employment Department
Dispur, Guwahati-781 006.
7. The Secretary
to the Government of Assam
Labour and Employment Department
Dispur, Guwahati-781 006
Assam.
8. The Administrative Medical Officer
ESI Scheme, Government of Assam
Zoo Narangi Road
Guwahati - 781 021
Assam.

.....Respondents.

By Mr.B.C.Pathak, Advocate for the ESIC and Mrs. M. Das,
Govt. Advocate, State of Assam.

O R D E R (ORAL)

SIVARAJAN, J. (V.C.) :

The applicants 19 in number are working as Medical Officers in the ESI Model Hospital, Beltola, Guwahati, Assam, (under the Employee State Insurance Corporation (for short ESIC) on deputation from the Government of Assam. They have filed this application seeking for the following reliefs:-

"8.1 That the Hon'ble Tribunal be pleased to direct the Respondents to give the cadre pay and allowances to the applicants at ESIC norms and at par with that of their counterparts in the ESIC w.e.f. 04.04.2003, with all consequential service benefits.

8.1A That the Hon'ble Tribunal be pleased to set aside and quash the order bearing letter No. A-11(11)-3/2003-DM(HQ) dated 30.11.04.

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to refix the pay of the applicant with immediate effect.

8.3 That the Respondents be directed to formulate the detailed terms and conditions for permanent absorption of the applicants in accordance with law and without any prejudice to the interest/prospects of the applicants and to absorb them thereafter in the ESIC on their individual option within a reasonable time frame."

2. The case of the applicants is that the ESIC had entered into a Memorandum of Understanding (for short MOU) dated 26.12.2002 (Annexure-3) containing the terms and conditions under which the services of the applicants and other staff of the State Government deputed in the ESI Model Hospital have to be absorbed in the ESIC. It is

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stated that pursuant to the terms and conditions contained in the MOU the applicants and the other staff were asked to give their option to accept the scale of pay in respective cadre/categories of posts in the ESIC as per the existing norms/rules of the ESIC and that the applicants, pursuant to same, had given their option as early as in 2003. It is ^{by the} grievance of the applicants that they are not being paid pay and allowances of the ESIC opted for by them till date. It is also stated that the ESIC had prepared a draft terms of absorption (Annexure-A to the M.P.125/2005) and forwarded the same to the State Government which has not been finalised so far. It is stated that in Clause-3 of the draft terms of absorption it is provided that an employee opting for absorption has to resign from the State Government service and his absorption in Corporation service will take effect from the date of deputation in ESIC or from the date he joins the duty in the ESIC whichever is earlier. It is also stated that Clause-12 of the draft also provides that pay of an absorbed employee will be fixed as per Fundamental Rules of Govt. of India and Regulation 7(4) (a) of ESIC (Staff & Condition of Service) Regulations, 1959. The grievance of the applicants, as can be seen from the reliefs, is that the ESIC has not so far implemented the MOU and the draft scheme which prejudicially affects them. ESIC has filed its written statement. The applicants have filed rejoinder. Respondents 6 & 7 have also filed written statement.

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3. We have heard Dr.J.L.Sarkar assisted by Mr.M.Chanda, learned counsel appearing for the applicants, Mr. B. C. Pathak, learned counsel for the ESIC and Mrs.M.Das, learned Govt. Advocate for the State of Assam. Dr. Sarkar submits that according to the MOU and as per the draft terms of absorption which are undisputed documents the applicants are entitled to pay and allowances applicable to ESIC once it is opted by the applicants and that they are being denied of such benefits in spite of their opting for the same. Dr. Sarkar also submits that the stand taken by the ESIC is that the draft terms and conditions sent to the State Government has not yet been approved by the State Government. Counsel took us to the communication dated 3.6.2005 issued by the ESIC to the Secretary to the State of Assam forwarding the draft terms and conditions for the approval of the State Government and submitted that in the said communication it is specifically stated by the ESIC that "Incse, we do not hear from you within three months we will presume that you are in agreement with the proposed terms" but the ESIC is not proceeding with the matter under one pretext or the other. Counsel further submits that the ESIC must be directed to expedite the implementation of the MOU and the draft terms of absorption. Counsel further submits that the Corporation must also be directed to disburse the pay and allowances applicable to their counterparts in the ESIC from 2003 onwards urgently and to implement the other terms and conditions also.

[Handwritten signature]

4. Mr. B. C. Pathak, counsel appearing for the ESIC submits that the ESIC has brought out a scheme in the 122nd Meeting of the ESIC held on 20.2.2002 for setting up model ESI Hospitals in 15 places in different States and it is pursuant to the said scheme an MOU has been entered into between the Representatives of ESIC and the Government of Assam. Counsel further submits that the MOU did not contain all the terms and conditions for the absorption of the State Government staff deputed to the ESI Model Hospital and the Corporation has prepared a draft terms and conditions in the matter of absorption of such staff which was forwarded to the Government of Assam for their approval as early as on 3.6.2005 but the matter is delayed solely for the reason that the State Government did not respond to the same. Counsel also submits that the Corporation is concerned not only with the State of Assam but also with the Model Hospitals set up in 14 other States and that a uniform terms and conditions have to be approved. Counsel further submits that it is only thereafter the question of disbursement of pay and allowances to the applicants and to the other staff as per ESIC norms can be decided. Counsel also pointed out that having regard to the lengthy procedure involved in the matter of absorption of the deputationists including the approval from the Central Government some substantial time is required for its implementation

5. Mrs. M. Das, Govt. Advocate for the State of Assam, submits that the State of Assam has filed a written

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statement wherein the State Government had practically approved the draft terms and conditions and therefore there is no difficulty for the ESIC to proceed with the matter. Mrs. Das further submits that the State Government has already instructed the Corporation to release pay and allowances to the deputationists as per the ESI norms and therefore there is no difficulty in making payment to the applicants and other staff.

6. We have considered the rival submissions. There is no dispute that the applicants the State Government employees who are sent on deputation in the ESI Model Hospital under the ESIC. There is also no dispute that an MOU was entered into in regard to the terms and conditions of absorption of the applicants and other staff in the ESIC. However, the stand taken by the ESIC is that it did not contain all the terms and conditions and a draft terms and conditions was prepared and sent to the State Government for their approval. True, the State Government did not sent any reply. However, the State Government in its written statement has practically agreed to the draft terms of absorption prepared and sent by the ESIC. In such circumstances, it is a matter for the ESIC to make the draft statement final taking into account the stand taken by the State Government in the written statement and to implement the same in respect of the doctors and all other State Government employees working on deputation in the ESI Model Hospital and being absorbed in the ESIC.

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7. The applicants have got a case that they are entitled to get pay and allowances from 2003 onwards since they have submitted their option in terms of the MOU and the draft terms of absorption, particularly in view of the clauses contained in the MOU and in the draft terms of absorption to the effect that they will be absorbed from the date of deputation in ESIC or from the date they joining duty whichever is earlier. According to us, these are all matters which the ESIC has to consider and expeditious decision has to be taken.

8. Now, that the draft terms and conditions contained in Annexure-A to the M.P.125/2005 has been practically approved by the State Government we direct the ESIC to proceed with the matter and to implement the terms and conditions contained in the MOU and the draft terms of absorption to the effect agreed to by the State Government in their written statement within a period of six months from the date of receipt of this order. If, on such implementation the applicants are entitled to pay and allowances, needless to say it has to be given to them from the date of their joining duty in the ESI Model Hospital.

The Original Application is disposed of as above.


(N.D. DAYAL)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 247 of 2004

Date of Order: This, the 3rd day of January, 2006

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR N.D.DAYAL, ADMINISTRATIVE MEMBER.

1. Dr. Pranjit Barman
 2. Dr. Pranab Kr. Sarma
 3. Dr. Pradip Kr. Bordoloi
 4. Dr. Nalini Kr. Bordoloi
 5. Dr. Nava Kr. Gogoi
 6. Dr. Apurba Kr. Saikia
 7. Dr. Tarun Kr. Bhuyan
 8. Dr. Bhaben Rongson
 9. Dr. Kabin Tumung
 10. Dr. Gunabhi Ram Sarma
 11. Dr.(Mrs) Sikha Sarma
 12. Dr. Karabi Kalita
 13. Dr. Chandan Choudhury
 14. Dr. Dipak Chancel Borbora
 15. Dr.(Mrs) Mandira Sarma
 16. Dr. Ajit Kr. Sarma
 17. Dr. (Mrs) Kanan Bora
 18. Dr. (Mrs) Makan Sarma
 19. Dr. (Mrs) Parinita Hazarika
- Applicants.

(All are working as Medical Officers in the ESI Model Hospital, Beltola, Guwahati-22, Assam under the Employee's State Insurance Corporation. They are on deputation from Govt. of Assam).

By Advocates Dr. J. L. Sarkar, Mr. M. Chanda, Mr. S. Nath,
Mr. G. N. Chakraborty & Mr. S. Choudhury.

- Versus -

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 217 / 2004

BETWEEN

1. Dr. Pranjit Barman.
2. Dr. Pranab Kr. Sarma.
3. Dr. Pradip Kr. Bordoloi.
4. Dr. Nalini Mohan Das.
5. Dr. Nava Kr. Gogoi.
6. Dr. Apurba Kr. Saikia.
7. Dr. Tarun Kr. Bhuyan.
8. Dr. Bhaben Rongson.
9. Dr. Kabin Tumung.
10. Dr. Gunabhi Ram Sarma.
11. Dr.(Mrs.) Sikha Sarma.
12. Dr. Karabi kalita.
13. Dr. Chandan Choudhury.
14. Dr. Dipak Chancal Borbora.
15. Dr. (Mrs) mandira sarma.
16. Dr. Ajit. Kr. Sarma.
17. Dr. (Mrs) kanan Bora.
18. Dr. (Mrs.) Makan Sarma.
19. Dr. (Mrs) Parinita Hazarika.

(All are working as medical officers in the ESI model Hospital, beltola, Guwahati-22, assam under the Employee's State Insurance Corporation. They are on deputation from Govt. of Assam).

...Applicants.

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,

Pranab Kr. Sarma

Ministry of Labour and Employment
New Delhi.

2. The Director General
Employee's State Insurance Corporation
Panchdeep Bhawan
Kotla Road,
New delhi-110002.
3. The Medical Commisssioner,
Employee's State Insurance Corporation
Panchdeep Bhawan
Kotla Road,
New delhi-110002.
4. The Regional director,
Employee's State Insurance Corporation,
Assam.
Bamunimaidam,
Guwahati-781021, Assam.
5. The Superintendent,
Model Hospital,
Employee's State Insurance Corporation,
Beltola,
Guwahati-781022, Assam.
6. The Commissioner and Secretary to the
Government of Assam,
Labour and Employment Department,
Dispur, Guwahati-781006
Assam.
7. The Secretary to the Government of Assam,
Labour and Employment Department,
Dispur, Guwahati-781006'
Assam.
8. The Administrative Medical Officer,
ESI Scheme, Government of Assam,
Zoo Narangi Road,

Pramod Kr. Samra

Guwahati-781021,
Assam.

... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made not against any particular order but against non-payment of pay and allowances/cadre pay as per the scale of the employee's state Insurance Corporation to the applicants under deputation and their permanent absorption in the employees state Insurance Corporation since the taking over of the ESI Hospital at Beltola by the Employees State Insurance Corporation w.e.f 04.04.2003 under their model hospital scheme as per the memorandum of understanding dated 04.04.2003, signed by the Authorities of the Respondent corporation and the Government of Assam.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

Purnali Kr. Sanna

4. Facts of the Case.

4.1 That the applicants are a citizen of India and as such they is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicants pray for permission to move this application jointly in a single application under section 4(5)(a) of the Central Administrative Tribunal (procedure) rules 1985 as the relief's sought for in the application by the applicants are common.

4.3 That the applicants were initially appointed as medical officers by the Govt. of Assam, under the Department of Health/Labour and Employment and they joined as Medical and Health Officers-I on different dates. Their respective dates of joining under the Govt. of Assam are shown hereunder; -

Sl.No. Name of the applicants Date of Initial Joining

1.	Dr. Pranjit Barman.	25.07.1994.
2.	Dr. Pranab Kr. Sarma.	03.08.1989.
3.	Dr. Pradip Kr. Bordoloi.	25.09.1979
4.	Dr. Nalini Mohan Das.	24.12.1990.
5.	Dr. Nava Kr. Gogoi.	31.01.1991.
6.	Dr. Apurba Kr. Saikia.	30.06.1993.
7.	Dr. Tarun Kr. Bhuyan.	14.12.1990.
8.	Dr. Bhaben Rongson.	22.11.1996.
9.	Dr. Kabin Tumung.	24.11.1995.
10.	Dr. Gunabhi Ram Sarma.	25.03.1975.
11.	Dr.(Mrs.) Sikha Sarma.	06.10.1995.
12.	Dr. Karabi kalita.	06.11.1995.

Pranab Kr. Sarma

13.	Dr. Chandan Choudhury.	01.01.1985.
14.	Dr. Dipak Chancal Borbora.	05.11.1990.
15.	Dr. (Mrs) Mandira sarma.	14.07.1994.
16.	Dr. Ajit. Kr. Sarma.	23.12.1983.
17.	Dr. (Mrs) kanan Bora.	22.10.1975.
18.	Dr. (Mrs.) Mekan Sarma.	21.10.1975.
19.	Dr. (Mrs) Parinita Hazarika.	17.12.1990.

4.4 That under the initiative of the Ministry of Labour and Employment, Govt. of India, the employee's state insurance Corporation (hereunder called as ESIC) in its meeting held on 16.2.2001 decided to set up some "model hospitals" in all the states by upgrading the existing ESI Hospitals run by different state Governments in respective states and taking over those hospitals under the fold of the ESIC. Pursuant to the decision, the authorities of the ESIC vide their D.O letter no. V-13/14/1/2001-Med.1 dated 17.5.2001 and letter no. V-13/14/1/2001-med.1 (Col.II) dated 7.11.2002 requested the concerned state governments including the Govt. of Assam to accord their consent. The terms and conditions of deputations of staff and inventories were also annexed to the letter-dated 17.05.2001.

(Copy of letter dated 17.05.2001 and letter dated 7.11.2002 are annexed hereto for perusal of Hon'ble Tribunal as Annexure-I and II respectively).

4.5 That in response to the proposal aforesaid, the Labour and Employment department, Government of Assam decided to give consent on the proposal and to hand over the

Pramod Kr. Sarma

ESI Hospital at beltola, Guwahati to the ESIC and Communicated the State Governments decision to ESIC and Govt. of India vide letter no. GLR 131/2001/123 dated 22.11.2002 and No. GLR 131/2001/125 dated 12.12.2002 respectively. Thereafter series of correspondences were made and meetings were held between the authorities of the ESIC and the Govt. of Assam in order to work out the detailed modalities of handing over/taking over of the ESI hospital, deployment of Staff and terms and conditions thereof etc. Eventually a memorandum of understanding (MOU) was signed on 4.4.2003 by the officials of the ESIC and the Govt. of Assam whereby the ESI Hospital at Beltola was handed over to the ESIC w.e.f 4.4.2003.

(Copy of memorandum of understanding dated 4.4.2003 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-III).

- 4.6 That pursuant to the MOU dated 04.04.2003, all the officers and staff working in the ESI Scheme under the Govt. of Assam were placed under the disposal of the ESIC. Accordingly, the Labour and Employment Department, Govt. of Assam vide its notification no. GLR.121/2003/8 dated 10.4.2003 placed the services of the applicants also under the disposal of the Model Hospital, Beltola, under ESIC on deputation w.e.f 4.4.2003. Initially the tenure of deputation for one year w.e.f 4.4.2003 and thereafter vide notification no. GLR.153/2003/Pt. I/159 dated 29.3.2004 of Govt. of Assam, it has been extended for another year w.e.f

Pranab Kr. Sarma

4.4.2004 which would expire on 4.4.2005. Further, the ESIC authorities vide their letter no. A-11(11)1/03-DM(HQ) date 13.7.2004 communicated to the Govt. of Assam that the period of deputation of doctors and staff of the model hospital shall be three years from the date of taking over of the hospital which means that the period of deputation of the applicants will now expire on 4.4.2006.

(Copy of notification dated 10.4.2003, dated 29.3.2004 and letter dated 13.7.2004 are annexed hereto for perusal of Hon'ble Tribunal as Annexures- IV, V and VI respectively).

4.7 That while placing the services of the applicants under the disposal of the ESIC, the detailed terms and conditions of the deputation were not precisely spelt out. Subsequently the ESIC invited options from the applicants for their acceptance for pay and allowances as per ESIC norms or otherwise, during the period of deputation. The applicants submitted their options individually on 14.6.2003 which were forwarded to the medical superintendent, ESI model Hospital, Beltola by Govt. of Assam vide its letter no. GLR.153/2003/Pt.I/133 dated 17.9.2003. the applicants opted for the pay and other allowances/cadre pay as per ESIC norms, and furnished their respective date of increments etc. also vide their joint application dated 12/13.05.2003.

(Copy of letter dated 17.9.2003 alongwith application dated 12.5.2003 is annexed hereto

Ranab Kr. Samra

for perusal of Hon'ble Tribunal as Annexure-VII).

4.8 That thereafter, the medical superintendent, ESIC Hospital, Beltola vide his letter no. 432-A-23/11/1/2003-Estt./1660 dated 29.9.2003 addressed to the Secretary to the Govt. of Assam, Labour and Employment department sought certain informations regarding options exercised by the applicants and wanted that the options should have been exercised by the Govt. of Assam.

(Copy of letter-dated 29.9.2003 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-VIII).

4.9 That in reply to the letter dated 29.9.2003 aforesaid, the Commissioner and Secretary to the Govt. of Assam, department of Labour and Employment vide his letter no. GLR-153/2003/Pt.I/158 dated 29.3.2004 communicated to the medical superintendent; Model hospital, ESIC, Beltola the detailed terms and conditions for deputation of doctors and staff to Model Hospital, ESI Corporation, Beltola. In the said letter it was requested interalia that necessary action be taken for releasing the salaries/cadre pay to the deputationists from the date of taking over of the hospital i.e. 4.4.2003 as per option exercised by them individually and the service records of all the applicants were also forwarded therewith.

Renuke Kr. Samra

(Copy of letter-dated 29.3.2004 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-IX).

4.10 That the applicants, following submission of their option, had been persuading for fixation of their pay and allowances/cadre pay as per ESIC norms but with no result whatsoever. The applicants submitted representations which were forwarded by the medical Superintendent; ESIC model Hospital, Beltola to the medical commissioner, ESIC New Delhi vide letter no. 432.13/19/1/2003-pay-fixation/128 dated 12.1.2004. Finding no response, the ESI doctors association, Assam vides its letter no. ESI/DA/OM/04/08 dated 27.5.2004 urged upon the Authorities of the ESIC to release the pay and allowances or cadre pay of the applicants as per ESIC norms w.e.f 4.4.2003. But the respondents with their surprisingly unusual apathy appear to be not at all alive on the issue. It is relevant to mention here that the ESI doctors association is recognized by Govt. of Assam and the applicants are the members of the association. As such the said association persuaded the Respondents for payment of cadre pay to the applicants but with no result.

(Copy of letter dated 12.1.2004 and dated 27.5.2004 are annexed hereto for perusal of Hon'ble Tribunal as Annexure-X and XI respectively).

Purnali Kr. Sarma

4.11 That the applicants beg to submit that they have been working in ESIC Model Hospital, Beltola for the last one and half year and during this period they have approached ESIC authorities for release of their pay and allowances at the ESIC norms on number of occasions. They have submitted representations individually and jointly on 11.4.2003, 16.5.2003, 14.06.2003, 17.9.2003, 12.01.2004, 11.3.2004 etc in addition to the letters written by the ESI Doctors association and Govt. of Assam reiterating their demand for pay their cadre etc. at the ESIC norms but with no result whatsoever.

4.12 That as per FR 9(25), under Appendix-5 as quoted in para 4.1, the pay of an employee appointed on deputation is regulated as under;-

"4. Exercise of option

4.1 An employee appointed on deputation/foreign service may elect to draw either the pay in the scale of pay of deputation/foregoing service post or his basic pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any".

It is evident from "swamy's Comilation of FRSR; part-I general Rules, page-441. The Rule has therefore been laid down by the Govt. beyond any doubt whatsoever, which is applicable in case of the applicants in the instant case.

Prenab Kr. Samra

(Copy of Swamy's Compilation page 441 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XII).

4.13 That the ESIC in its original scheme of proposed Hospital (Annexure-I), clearly mentioned in the terms and conditions annexed to the scheme that during the period of deputation the employees will have the option either to get pay of the deputationists fixed in the deputation post or to draw pay of the post held by him in his parent department plus deputation allowance. The same thing was expressly provided in the MOU dated 4.4.2003(Annexure-III) which was further reiterated in the terms and conditions for deputation of doctors and staff to model Hospital, ESIC, specified by the Govt. of Assam vide it's letter dated 29.3.2004(Annexure-IX). Accordingly, the ESIC invited option also from the applicants and the applicants exercised their options electing to get pay and allowances/cadre pay as per ESIC norms. But even thereafter, the applicants have not been given the pay and allowances as per ESIC norms which is arbitrary, malafide, unjust and contrary to the settled rules.

4.14 That applicants beg to submit that their entitlement and demand for pay at ESIC norms is not only in conformity with the dictates of law but one of the pre-conditions of their deputation to the ESIC model Hospital as expressly provided in the MOU. It is also relevant to mention here that the applicants are

Prenab Kr. Sarma

discharging the same duties and responsibilities which their other counterparts in the ESIC are doing but they are getting the ESIC scale of pay whereas the applicants are not, which is discriminatory. As such denial of ESIC pay to the applicants is a breach of condition of deputation, unfair, illegal opposed to the principles of natural justice and violative of the Article 14 and 16 of the Constitution of India.

- 4.15 That the applicants most respectfully beg to submit that the respondents are not only showing their apathy in the matter of pay of the applicants as stated above but have been acting in similar fashion in the matter of permanent absorption of the applicants in the ESIC. In the MOU dated 4.4.2003, it has been specially mentioned that the officers and staff deputed to ESIC are absolutely free to give their option for permanent absorption in the ESIC as per existing rules of the Govt/ESIC.

The ESIC vide its letter no. A-37(18)1/2003-DM(HQ) dated 9.10.2003 and letter no. 432-A-27/19/1/203-Estt. dated 10.11.2003 respectively notified some terms and conditions for absorption of the employees deputed to ESIC Model Hospital and invited options from the employees for their permanent absorption on the terms and conditions laid down, or for their repatriation as the case may be. The terms and conditions for absorption laid down by the ESIC contained some provisions which were inconsistent with law and prejudicial to the interest of the applicants.

Premab K. Sarma

As such the applicants alongwith other staffs deputed to ESIC Hospital, Beltola submitted representations in 4.11.2003 and 22.11. 2003 to the Govt. of Assam seeking some clarifications and objecting to some of the terms and conditions of absorptions, detrimental to their interests as specified in the letter dated 9.10.2003 and dated 10.11.2003 of the ESIC. The applicants therefore did not submit their options for absorptions without proper clarification/modification of the conditions objected by them although some of them submitted conditional options. The representation dated 22.11.03 aforesaid signed by 84 nos. of employees under deputation, including the applicants herein, was forwarded to the Secretary the Govt. of Assam, labour and Employment Department; by the Administrative Medical Officer, ESI scheme, Govt. of Assam vide its letter No. APO/Model Hosp/deputed staff/representation/03/6991 dated 2.12.2003 wherein it was stated that uncertainty prevailing with regard to permanent absorption of officers and staff of ESI Hospital, Beltola on deputation from Govt. of Assam to ESIC.

(Copy of letter dated 9.10.2003, dated 10.11.2003, representations dated 4.11.2003, dated 22.11.2003 and letter dated 2.12.2003 are annexed hereto for perusal of Hon'ble Tribunal as Annexures-XIII, XIV, XV, XVI and XVII respectively).

4.16 That the Head quarter office of the ESIC, New Delhi vide its letter no. A-37/18/1/2003-DM(HQ) dated

Prenab K. Sarma.

27.8.2004 has instructed the medical superintendent, ESI model Hospital, Beltola to conduct a comparative study of the recruitment Rules(R/R) of the ESIC and that of the Govt. of Assam in respect of Posts, pay, qualifications etc so as to ascertain the suitability of the employees deputed to the ESIC Model Hospital, Beltola for their permanent absorption.

(Copy of letter-dated 27.8.2004 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XVIII).

4.17 That the applicants most respectfully beg to state that their services were placed under the ESIC in the interest of public service and following an MOU, mutually agreed upon by the Govt. of Assam and the ESIC. But unfortunately the applicants are neither getting their cadre pay as per the settled laws or MOU nor their case of permanent absorption in the ESIC is being taken due care of. As such the applicants are being denied justice and their present uncertain position has become a matter of great concern and anxieties for them.

4.17A That the Hon'ble Tribunal be pleased to direct the respondent corporation to give to give due weightage to the experience of past services, specialization and their seniority, under the state respondent, in the matter of subscription, allotment of scale of pay, and in the matter of fitment in the Model Hospital.

Purnali Kr. Sarma

4.18 That due to non-receipt of their cadre pay and allowances as per ESIC norms the applicants have been suffering great financial losses and due to inaction of the respondents to formulate a mutually agreed upon terms and conditions for their permanent absorption as per rules, the applicants are now landed into an unsettled position which is detrimental to the interest of public service. As such finding no other alternative, the applicants are approaching this Hon'ble tribunal for protection of their right and interests and it is a fit case for the Hon'ble Tribunal to interfere with, directing the respondents to pay the salary of the applicants at ESIC norms w.e.f 4.4.2003 with all consequential service benefits and to take steps for permanent absorption of the applicants in the ESIC on the basis of terms and conditions to be framed without prejudice to the interests of the applicant, and as per Law, giving due weight age to their, past service, experience under the Govt. of Assam and accordingly, refix the cadre pay of the applicants.

4.19 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that, the applicants are entitled to get their cadre pay and allowances at ESIC norms w.e.f the date

Purnali Kr. Sarma

of their deputation i.e from 4.4.2003 in terms of FR 9(25).

5.2 For that, it was expressly provided in the proposed scheme of model Hospital of ESIC that the employees under deputation to the Model Hospital, ESIC would be at liberty to elect either the pay of deputation post in the ESIC or the basic pay of their post in the parent department plus the deputation allowance and as such it was a condition for deputation.

5.3 For that, the condition stated in Para 5.2 above was specially mentioned in the MOU dated 4.4.2003 also which is the basic instrument concerning the instant deputation of the applicants in ESIC- (ANNEXURE-III)

5.4 For that, the Govt. of Assam in its letter dated 29.03.04 specified the terms and conditions for deputation of Doctors and staff to Model Hospital, ESIC, Beltola wherein the ESIC was requested to take necessary action for releasing the salaries to the deputationists from the date of their joining on deputation as per option exercised by them i.e. the pay at the ESIC norms w.e.f. 04.04.03. (ANNEXURE-IV)

5.5 For that, the ESIC invited options from the applicants for their cadre pay and the applicants exercised their options electing to get their cadre pay and allowances at ESIC norms which they are legitimately entitled to.

5.6 For that, the applicants have been discharging the same duties and responsibilities which their other

Purab K. Sen

counterparts in the ESIC are doing and they are similarly situated and as such the applicants are entitled to get the pay and allowances which their other counterparts in the ESIC are getting i.e. pay and allowances at ESIC norms.

- 5.7 For that the MOU provides for permanent absorption of the applicants in the ESIC.
- 5.8 For that the terms and conditions subsequently laid down by the ESIC for permanent absorption of the applicants are inconsistent with law and prejudicial to the interests of the applicants.
- 5.9 For that the services of the applicants were placed under the disposal of the ESIC for the interest of public service and following an MOU agreed upon by the ESIC and the Govt. of Assam.
- 5.10 For that the applicants submitted number of representations praying for release of their cadre pay and allowances at ESIC norms but not acted upon.
- 5.11 For that the applicants submitted representations for formulating terms and conditions for their permanent absorption as per law but with no result.
- 5.12 For that denial of cadre pay and allowances to the applicants at the ESIC norms and inaction for their permanent absorption in the ESIC is arbitrary, unjust, malafide, contrary to law, opposed to the principles of

Purnab Kr. Sarma

natural justice and violative of the MOU as well as of Articles 14 and 16 of the Constitution of India.

6. Details of remedies exhausted.

That the applicants state that they have exhausted all the remedies available to them and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicants further declare that they had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicants humbly pray that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to direct the Respondents to give the cadre pay and allowances to the applicants at ESIC norms and at par with that of their

Punab Kr. Samra

counterparts in the ESIC w.e.f. 04.04.2003, with all consequential service benefits.

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to refix the pay of the applicant with immediate effect.

8.3 That the Respondents be directed to formulate the detailed terms and conditions for permanent absorption of the applicants in accordance with law and without any prejudice to the interest/prospects of the applicants and to absorb them thereafter in the ESIC on their individual option within a reasonable time frame.

8.4 Costs of the application.

8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to direct the Respondents to give the cadre pay and allowances of the applicants from the current month as per ESIC norms, pending disposal of this application.

9.2 That the Respondents be directed that pendency of this application shall not be a bar to the Respondents for considering the representations of the applicants for granting their pay etc. at ESIC norms and their permanent absorption in the ESIC.

Puneet Kr. Sharma

10.
This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No.	20G114862.
ii) Date of Issue	8.10.04
iii) Issued from	GPO, Guwahati.
iv) Payable at	GPO, Guwahati

12. List of enclosures.
As given in the index.

Purnab Kr. Sarma

VERIFICATION

I, Dr. Pranab Kumar Sarma S/o late Pratap Chandra Sharma, aged about 47 years, working in the office of the E.S.I. Corporation, one of the petitioner in the instant petition, duly authorized by the others do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact. And I sign this verification on this the 28th day of October, 2004.

Pranab K. Sarma



EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN: KOTLA ROAD: NEW DELHI

UMAN SWARUP
 DIRECTOR GENERAL.

DO No.V-13/14/1/2001-Med.I

Dated: 17 May, 2001

Dear Shri

The ESI Corporation at its last meeting held on 16.2.2001, chaired by the Hon'ble Union Labour Minister, had decided to set up some Model Hospitals in different States, with a view to improving the quality of medical services being provided to the ESI beneficiaries in various States, and to serve as a bench mark for upgradation of the other hospitals in the States.

2. The proposed 'Model Hospitals' will be selected out of existing hospitals which will be upgraded and modernized so that all requisite infrastructure facilities, staff and equipment as per the norms of the ESIC are available in the hospitals. Under the Scheme of 'Model Hospitals', the buildings will be renovated and expanded, wherever required, proper landscaping and horticultural work will also be carried out. Equipment required for proper functioning of the various departments shall be procured and qualified staff posted as per norms. The expenditure on maintenance and operation of the hospital is also likely to be met by the ESIC, subject to clearance by the Corporation at its next meeting.

3. Basic details of the Scheme of 'Model Hospitals' have already been furnished to the State Government vide letter No. V-13/14/2/2000-Med.I dated 23rd January, 2001. We had also requested the State Governments to let us have their suggestions with regard to the hospital to be selected, under the Model Hospital Scheme in their State. After considering the suggestions received from various State Governments, the ESI Hospital at ----- in your State is proposed to be taken up under the Model Hospital Scheme. While selecting the Hospital, important issues like the size of the Hospital, accessibility, IP No. in the Region and other such parameters have been taken into account.

4. The Scheme for Model Hospital has been formulated after studying in detail the quality of medical services being provided through the ESI Hospitals in the State, the maintenance and running of these hospitals by the State Governments, in particular. There has been a great deal of dissatisfaction amongst the beneficiaries towards the ESI medical services provided through the State run hospitals and this has also been the subject of criticism at various forums, including from the beneficiaries and the representatives of the industry. As you would be aware, the ESI Scheme is unique in that, the funds for the Scheme are primarily contributed by the beneficiaries and the Industry. Their representatives on the Corporation have repeatedly been suggesting that there is a need to upgrade the quality of medical services being provided. The Scheme of 'Model Hospital' is being formulated with a view to selecting as far as

True Copy
 Advocate
 28/10/04.

possible one Hospital in each State for modernisation and for direct funding and management by the ESI Corporation.

5. You are requested to kindly convey the consent of the State Government to the proposal for taking up ESI Hospital at ----- in your State under the Scheme of "Model Hospital, along with other information sought vide letter No. V-13/14/2/2000-Med.I dated 23rd January, 2001. The 'No Objection' of the State Government may kindly be sent by 15th June, 2001, to enable us to take the Scheme during the current year in your State.

With

Yours sincerely,

(Suman Swarup)

Chief, Secretary to Govt. of A.P., Assam, Bihar, Jharkhand, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Orissa, Pondicherry, Rajasthan, Punjab, U.P.

Copy to :- Secretary to the concerned State Govt./DMO(Zonal)/Regional Director/Director of A.P., Assam, Bihar, Jharkhand, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Orissa, Pondicherry, Rajasthan, Punjab, U.P. with the request to pursue the matter at their level. The hospitals selected for Model Hospital in different States are Nacharam, Ballola, Phulwari Sharif, Ranchi, Margaon, Baroda, Ballabgarh, Porwanco, Indira Nagar, Eernakulam, Rourkela, Pondicherry, Jaipur, Jalandhar and Sahibabad.

(DR.(MRS.) NALINI TANDON)
DY. MEDICAL COMMISSIONER



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11/11/02

EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN, KOTLA ROAD, NEW DELHI

No.V-13/14/1/2001-Med.I(Col.II)

Dated:7.11.2002

To

The Secretary,
Govt. of Assam/Jharkhand/Goa/Himachal Pradesh/
Karnataka/Uttar Pradesh/Bihar

Subject :- Setting up of Model Hospital

Sir,

Please refer to this Office D.O. letter even No. dated 17.5.2001 (Copy enclosed for your ready reference) regarding setting up of the Model Hospital in your State.

It is informed that this Office has not received consent from your Govt. for setting up of Model Hospital in your State. It is once again informed that the expenditure incurred on developing and running the hospital will be entirely borne by the ESI Corporation. It is therefore requested that the consent in this regard may be forwarded to this Office immediately, so that the further necessary action in this regard may be taken by this Office.

Terms & Conditions for deputation of staff and inventories are annexed. Please convey the consent of State Govt. at the earliest.

Yours faithfully,

(DR. A.K. KHOKHAR)
DY. MEDICAL COMMISSIONER

Copy to :-

1. Regional Director/DMCs(Zonal) with the request to pursue the matter at personal level with the State Govt.
2. Director, ESI Scheme
3. Medical Branch-II/Construction Branch with seven spare copies for every dealing Assistant.

DY. MEDICAL COMMISSIONER

True copy
Advocate
28/10/04

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SCHEME FOR DEVELOPING MODEL HOSPITALS

ESI Corporation is providing comprehensive health care services through a network of Hospitals, Diagnostic Centres and Dispensaries. Most of these facilities are being managed by the State concerned. Since the State Governments have expressed that they are facing financial constraints and find it difficult to staff and equip all the Hospitals as per ESI norms, ESIC in its meeting held on 16th February, 2001 approved setting-up of one Model Hospital in each State.

2. The proposed Model Hospitals will be set-up by upgrading the existing Hospitals and modernising their facilities as per ESI norms or by setting-up new hospitals. These Hospitals will aim at providing comprehensive secondary care services in general specialities, emergency care, critical care and all support services.

3. The basic aim and objectives of these Hospitals will be :

- i) Provision of adequate secondary patient care to the beneficiaries.
- ii) Ensure provision of out-patient services alongwith out reach programme etc..
- iii) Ensure cost effective services through regular monitoring of medical services..
- iv) Provide training to the staff working within the Hospitals so that they are up dated about the advancement in their specialities.

4. To ensure that the Hospitals function properly, all the engineering services for the building construction/maintenance, electricity, sewage disposal, water etc., will be provided as per laid down norms by ESIC.

5. The expenditure on re-organising the services, as well as day-to-day management of the hospitals will be borne by the ESIC beyond the ceiling. This will also ease the financial burden on the State Governments.

6. The State Government concerned will ensure a proper referral policy and posting of the staff as per ESI norms.

7. The following actions are to be taken by the ESIC and the State Government immediately for development of the Model Hospital.

A) ACTION TO BE TAKEN BY THE ESI CORPORATION:

- i) Creation of posts as per ESI norms, posting of Medical Superintendent, Dy. Director (Administration), Dy. Director (Finance) through ESIC and requisitioning of other staff from the State Government on deputation, as well as appointment of contractual staff wherever required. While taking the staff of the State Government on deputation, any staff against whom departmental/vigilance enquiries are pending or are incomplete shall not be taken on deputation.
- ii) Drawing-up of a referral policy in the catchment area as well so that the Model Hospitals receive the patients requiring OPD and other services.
- iii) Formal taking-over of the hospital building, equipment, furniture and other items through an approved Committee comprising of Medical Superintendent, Regional Director representative of the State Government/Director, ESI Scheme and a representative of Construction Division.
- iv) Direct funding of the hospital by ESIC, from the date of taking over of the hospital.

B) ACTION TO BE TAKEN BY THE STATE GOVERNMENT:

- i) Conveying of consent to hand-over the designated Hospital alongwith staff to be deputed as requisitioned by ESIC.
- ii) Handing-over of building and all existing equipment, staff and inventories.
- iii) Transfer of old records of the Hospital (which are required) to ESI Directorate or elsewhere as decided by the State Government.
- iv) Formulation of referral policy in consultation with ESIC.

MEMORANDUM OF UNDERSTANDING

ON THE OUTCOME OF DISCUSSION IN BETWEEN REPRESENTATIVE OF THE ESIC NEW DELHI AND GOVT. OF ASSAM HELD ON 26TH DECEMBER IN GUWAHATI REGARDING HANDING OVER OF ESI HOSPITAL BELTOLA TO ESIC FOR UPGRADATION TO A MODEL HOSPITAL

In pursuance of the decisions arrived at in the meeting of the ESIC held on 16th Feb/2001 regarding upgradation of the ESI hospital, Beltola to a MODEL HOSPITAL and the decisions communicated to the Govt. of Assam vide DO No. V-13/14/2002-Med-dated 17/5/2001 and taking into consideration all the parameters for better facilities to be extended to the beneficiaries under the ESI Act, 1948, the Labour and Employment department, Govt. of Assam have decided to give consent on the proposal of ESIC and to handover the ESI Hospital, Beltola to ESIC for its upgradation to a MODEL HOSPITAL, and communicated the State Govt.'s decision to ESIC and Govt. of India vide letter No. GLR 131/2001/123 dated 22/11/2002 and No. GLR 131/2001/125 dated 12/12/2002 respectively.

And whereas, in response to the RD's letter, 3-V. 21/23/99-BFT dated 2/12/2002 and in consideration of the terms and considerations communicated vide letter no V - 13/14/2001/Med-(call-II) dated 7/12/02 the Labour and Employment Department and Govt. of Assam have decided to handover the ESI Hospital Beltola to ESIC on 31/12/2002 for its upgradation to a "MODEL HOSPITAL" by the ESIC on terms and consideration communicated to secretary, Ministry of Labour vide letter No. GLR 131/2001/169 dated 16/12/2002.

And now, it is, therefore, in pursuance of the RD's letter No 43-V-21/23/99-BFT dated 23/12/2002 and taking into consideration of the decision of the joint meeting held on 26/12/2002 at Guwahati, the Govt. of Assam is pleased to handover the ESI Hospital Beltola with all the existing infrastructure of the ESI Hospital, Beltola to ESIC for its upgradation on 31/12/2002 on the terms and consideration that the existing staff (Gazetted and Nongazetted) working in the ESI Hospital, Beltola and ESI dispensaries (where necessary) indicated in the enclosed Annexure as well as in the other existing staff under ESI scheme in Assam will be placed at the hospital of ESIC on deputation under the existing rules of the Govt./ESIC as per requirement of the ESIC norms.

✓ And whereas, the officers and staff of the ESI Hospital, Beltola and officers and staff of ESI dispensaries are placed at the disposal of ESIC initially on deputation, they are asked to give their option to accept the scale of pay in respective of cadre/categories of posts in the ESIC as per existing norms/rules of the ESIC.

And now, it is also further indicated that the officers and staff deputed to ESIC are absolutely free to give their option for permanent absorption in the ESIC as per existing rates of the Govt./ESIC.

Cont..2

True copy
Advocate
28.10.04

4.4.03

And whereas, the complete setup of the ESI hospital, Beltola under the ESI scheme in Assam as provided in the ESI Act, 1948 is handed over to ESIC as mutually agreed terms and conditions and in consideration of the socio-economic conditions of the people in the areas, the ESIC will extend their all facilities to the beneficiaries under the ESI Act, 1948 as well as to the people of Assam in general.

And whereas, the matter of further employment in the cadre of doctors, specialists and other medical, paramedical staff on contractual basis. The other staff against the posts in Hospital management information system including computers, Public relations, training and EME programmes etc. in all the functional areas of MODEL HOSPITAL has been agreed by the ESIC to be employed as sponsored by labour and Employment department, Govt. of Assam for appointment by the ESIC. The ESIC will take further action on these agreed terms and conditions as per rules of ESIC.

It is also decided to constitute a Hospital Advisory Committee for MODEL HOSPITAL, Beltola for taking steps for up gradation of the hospital suiting to the condition of Assam with representative of the Govt. of Assam. The committee will monitor the development activities and purchase of materials and equipments for up gradation of the Hospital.

The ESI Hospital Beltola is formally handed over to ESIC on today for its up gradation to a MODEL HOSPITAL in the interest of secret security of the industrial workers in particular as well as the people of Assam in general.

Para "A and "B" are not accepted by the representatives of ESIC. This proposal will be sent to HQ, ESIC for consideration.

Signature of the representative
Of ESIC
(Taking Over)

Signature of the State Govt.
Representative
(Handing Over)

GOVERNMENT OF ASSAM
LABOUR AND EMPLOYMENT DEPARTMENT.

ORDERS BY THE GOVERNOR (MAM) AND
NOTIFICATION

Dated Dispur, the 10th April, 2003.

No. GLR.121/2003/8 : In pursuance of the decision of the Govt. vide letter NO. GLR.131/2001/Pt/12, dt. 17-2-2003 ~~and MOU signed on 4-4-03~~ in between the representatives of the ESIC & the Govt. of Assam & in the interest of Public Service, the service of the following Doctors (M & HOI) are hereby placed under the disposal of Model Hospital, Beltola, under ESI Corporation deputation w.e.f. 4-4-03.

- | | |
|----------------------------------|----------------------|
| 1. Dr. G. R. Sarma | MS (Surgery) |
| 2. Dr. (Mrs.) K. Bora | DCP, MD (Ped) |
| 3. Dr. C. Choudhury | MD (O & Gyne) |
| 4. Dr. (Mrs.) S. Katak | DA (Anaes) |
| 5. Dr. (Mrs.) M. Hazarika | DCP (Path) |
| 6. Dr. (Mrs.) M. Sarma | MD (O & Gyne) |
| 7. Dr. D.C. Barbarah | MD (GMed) |
| 8. Dr. (Mrs.) M. Baishya | MD (O & Gyne) |
| 9. Dr. N.M. Das | DCO (Gyne) |
| 10. Dr. (Mrs.) M. Sarma | MS (ENT) |
| 11. Dr. N.K. Gogoi | DCO (Opthal) |
| 12. Dr. T.N. Goswami | MD (Anaes) |
| 13. Dr. (Mrs.) P. Hazarika | DA |
| 14. Dr. (Mrs.) Sikha Samanta | MBBS |
| 15. Dr. Ajit Kumar Sarma | DCH (ped) |
| 16. Dr. Pranjit Barman | DCO (Gyne) |
| 17. Dr. T.K. Bhuyan | DCP (Occ, Medicine) |
| 18. Dr. P.K. Bordoloi | MS (Surg.) |
| 19. Dr. P.K. Sarma | BLO (Ent) |
| 20. A.K. Saikia | MS (Oph) |
| 21. Dr. B. Banikya | MBBS |
| 22. Dr. K. Tumung | MBBS |
| 23. Dr. (Mrs.) Hiranmay Sarma | MBBS |
| 24. Dr. Kaberi Kalita | MBBS |
| 25. Dr. Mrs.) Bina Patir | MBBS |
| 26. Dr. B. Rongsong | MBBS |
| 25. Dr. (Mrs.) Mausumi Borkatoki | MBBS, PGDMCH (IGNOU) |

*True copy
Advocate
28.10.04*

[Signature]

28. Dr. (Mrs.) Dipti Devi MBBS
29. Dr. (Mrs.) S. Lahkar MBBS

Secretary to the Govt. of Assam
Labour and Employment Department

Memo No. GLR.121/2003/8-A, Dated Dispur, the 10th April, 2003.

Copy to :-
1) The Deputy Medical Commissioner, Any office order issued earlier
ESI Corporation, Ranchdeep Bhawan, in this regard from this Deptt.
Kotla Road, New Delhi, should be treated as cancelled.

2. The Regional Director, ESIC, Assam, Bamunimaidan, Guwahati-21.
3. The Supdt. Model Hospital, ESIC, Beltola.
4. The Administrative Medical Officer, I/C, ESIC Schemes Assam, Zoo-Narengi Road, Guwahati-21.
5. The Health & Family Welfare Deptt., Dispur.
6. The Accountant General (M&E), Assam, Beltola, Guwahati-21.
7. The P.S. to Minister, Labour and Employment Deptt., Assam, Dispur.
8. The Deputy Director, Assam Government Press, Bamunimaidan, Guwahati-21. He is requested to published the Notification in the next issue of Assam Gazette.
9. All Doctors concerned.
10. Personal File.

By order etc.

Secretary to the Govt. of Assam
Labour and Employment Department

GOVERNMENT OF ASSAM
LABOUR AND EMPLOYMENT DEPARTMENT.

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 29th March, 2004.

NO.GLR. 153/2003/Pt.I/159,: The Governor of Assam is pleased to ~~extend the period of deputation~~ of the incumbents deputed to Model Hospital, ESI Corporation, Beltola vide this Deptt's Notification NO.GLR.121/2003/8, dt. 10-4-2003 and NO.GLR.121/2003/9, dt. 17-4-2003 for ~~the period of another one year upto 31-3-2004~~ under the same terms and conditions communicated vide this Department's letter NO.GLR.153/2003/Pt.I/158 dt. 29-3-2004.

Sd/- B.B. Haggjer,

Commr. & Secretary to the Govt. of Assam
Labour and Employment Department.

Memo NO.GLR.153/2003/Pt.I/159-A, Dated Dispur, the 29th March.04.

Copy to :-

- 1) The Deputy Medical Commissioner, ESI Corporation, Panohdeep Bhawan, Kotla Road, New Delhi.
- 2) The Regional Director, ESI Corporation, Assam, Bamunimaidan, Guwahati-21.
- 3) The Medical Supdt. Model Hospital, ESI Corporation, Beltola.
- 4) The Administrative Medical Officer, ESI Schemes, Assam, Zoo-Narengi Road, Guwahati-21.
- 5) The Health & F. W. Deptt., Dispur.
- 6) The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-29.
- 7) The P.S. to Minister, Labour & Employment Deptt., Assam, Dispur.
- 8) Person concerned.
- 9) Personal File.
- 10) The Deputy Director, Assam Govt. Press, Bamunimaidan, Guwahati-21. He is requested to publish the Notification in the next issue of Assam Gazette.

By order etc.,

*True copy
Advocate
28.10.04*

28/3/04
Under Secretary to the Govt. of Assam
Labour and Employment Department.

ESIC

No. A-11(11) 1/03 - DM (H&S)

July 13, 2004

To,

The Director ESI Scheme, Govt. of Assam, Guwahati

Subj: Deputation of Doctors & other Staff of State Govt to
ESIC Medical Model Hospital regarding absorption.

Sir./Madam,

The standing committee of ESI Corporation in its 166th meeting held on 8.6.04 has approved deputation of doctors & other staff of State Govt to various ESIC model Hospitals in the States as follows —

"The period of deputation of staff of the model Hospital shall be three years from the respective dates of taking over of each Hospital. By the end of three years the staff has to either get itself ~~being worked~~ absorbed in ESIC as per terms & conditions being worked out for the purpose of or revert to State Govt."

Accordingly, in the interest of smooth running of these hospitals, their doctors and other working staff may be retained on deputation basis for the said three years ~~upto~~ while the decision on their absorption is being taken in due course.

Yours faithfully

R. K. Nayak

H Director (Med)

* Copy to the Medical Superintendent,
ESIC Model Hospital, Guwahati.

True copy
Advocate
28.10.04.

GOVERNMENT OF ASSAM
LABOUR AND EMPLOYMENT DEPTT. DISPUR.

NO.GLR.153/2003/Pt.I/133 Dated Dispur, the 17th Sept. 2003.

From: Smt P. Gupta,
Joint Secretary to the Govt. of Assam,

To: The Medical Superintendent,
ESI Model Hospital, Beltola,

Sub: ~~Option of pay of Doctors and Staff on deputation~~
~~at ESI Model Hospital, Beltola.~~

Sir,

I am directed to forward herewith the option of pay in respect of all the Doctors and the staff deputed to ESI Model Hospital, Beltola, Guwahati as per list enclosed alongwith the liabilities and Service Records for taking necessary action at your end.

Yours faithfully,

(A) [Signature]
17-9-03

Joint Secretary to the Govt. of Assam,
Labour and Employment Department, Dispur.

MEMO.NO.GLR.153/2003/Pt.I/133-A, Dated Dispur, the 17th Sept 03

Copy to:- The Administrative Medical Officer, ESI Scheme, Assam, Guwahati - 21 for information with reference to her letter NO.PAY/ Option/Liability/Service Record/Deputation/MH/ 03/3724 dtd. 4-7-2003.

By order etc.,

Joint Secretary to the Govt. of Assam,
Labour and Employment Department, Dispur.

True copy
Encl
Advocate
28.10.04

List of Doctors who have exercised their options for pay and allowances as per ESIC Norms.

<u>Name of Doctor</u>	<u>Qualification</u>
1. Dr. G. R. Sarma.	MS (Surg)
2. Dr. (Mrs) K. Bera	DMCW, MD (Paed)
3. Dr. (Mrs.) Makani Sarma	(MD (O&G))
4. Dr. P. K. Bordoloi	MS (Surg)
5. Dr. C. Choudhury	MD (O&G), FLCOG
6. Dr. (Mrs) S. Katak	DA (Anaesth)
7. Dr. (Mrs) Mala Hazarika	DCP (C. Full)
8. Dr. Ajit Kumar Sarma	DEH (Paed)
9. Dr. D. C. Borborali	MD (Med)
10. Dr. N. M. Das	MD (O & G)
11. Dr. P. K. Sarma	DLO (ENT)
12. Dr. N. K. Gogoi	D.O (Oph)
13. Dr. A. K. Saikia	MS (Oph)
14. Dr. T. K. Bhuyan	D.H (Occ. Med)
15. Dr (Mrs) P. Hazarika	DA (Anaesth)
16. Dr. (Mrs) M. Baishya	MD (O & G)
17. Dr. (Mrs) Mandira Sarma	MS (ENT)
18. Dr. Pranjit Barman	MD (O & G)
19. Dr. B. Banikya.	MBBS
20. Dr (Mrs) S. Lahkar.	MBBS
21. Dr (Mrs) Hiranmayee Sharma	MBBS.
22. Dr (Mrs) Sikha Sarma	MBBS
23. Dr (Mrs) Karabi Kalita	MBBS
24. Dr. K. Tumung	MBBS
25. Dr. B. Rongsong	MBBS

To
The Medical Commissioner
ESI Corporation, Panchdeep Bhawan,
Kotla Road, New Delhi-110002

Through The Medical Superintendent ESI Model Hospital,
Belitola, Assam, Guwahati-28

- 35 -

RECEIVED	130.
16/5/03	16/5/03

Sub : Option for accepting Pay & other Allowances as per ESI Corporation Norms.

Sr.

With ref. to sub. cited above we the following 26 (Twenty six) GDMO (in the rank of M & HO-1) would like to inform you that we all have given option for drawing pay & other allowances admissible as per ESI Corporation Norms.

In the pay-Scale of Rs. 4390-90-4480-120-5200-175-6065-EB-6600-250-8100-325-11025-400-11425/-, the Basic Pay with due date of next increment of all the doctors have been mentioned below for early Pay-Fixation.

* A Pay Scale At Par with the Central Pay-Scale for the State Medical & Health Officer -I is under consideration by the Govt. of Assam.

* The date of entry of a Medical Officer/Specialist at State Service must be counted as the date of entry in ESIC to protect the Grade & Pay of the respective Officer.

Annexure - 26 pay-slips of Doctors in serial Nos

Copy to: The Regional Director, ESI Corporation, Guwahati-21, Assam. Thanking You.

Yours faithfully

Sl.no.	Name of Doctors.	Designation	Basic Pay	Due Date of Increment	Signature.
1.	Dr. G.R. Sarma.	MS(Surg.)	Rs. 11,425/-	Stagnation increment w.e.f Sept 2002	[Signature]
2.	Dr. P.K. Bordoloi	MS(Surg)	Rs. 11,025/-	1st June, 2003	[Signature]
3.	Dr. (Mrs) K. Bora.	DMEW, MD (Paed)	Rs. 11,425/-	Stagnation increment w.e.f Nov, 2002	[Signature]
4.	Dr. Ajit Kumar Sarma.	DCH(Paed)	Rs. 9,400/-	July, 2003	[Signature]
5.	Dr. N.K. Gogoi	DO(Oph)	Rs. 6,425/-	Dec, 2003	[Signature]
6.	Dr. Dr. A.K. Saikia.	MS(Oph)	Rs. 6,425/-	Feb, 2004	[Signature]
7.	Dr. (Mrs.) S. Kalaki	DA(Anaesth)	Rs. 9,725/-	Aug, 2003	[Signature]
8.	Dr. J.N. Goswami	MD(Anaesth)	Rs. 7,100/-	1st Oct, 2003	[Signature]
9.	Dr. (Mrs.) P. Hazarika	DA(Anaesth)	Rs. 6,425/-	Dec, 2003	[Signature]
10.	Dr. D.C. Borboraib	MD(G.Med)	Rs. 7,100/-	1st Nov, 2003	[Signature]
11.	Dr. P.K. Sarma.	DLO(I.N.)	Rs. 6,850/-	1st Aug, 2003	[Signature]
12.	Dr. (Mrs.) M. Sarma	MS(I.N.T)	Rs. 6,075/- + Rs. 175/- = Rs. 6,250/-	EB Crossing w.e.f Aug, 2002	[Signature]
13.	Dr. (Mrs.) M. Hazarika	DCP(C.Patho)	Rs. 9,400/-	1st Aug, 2003	[Signature]
14.	Dr. T.K. Bhuyan	DH(Occ. Med)	Rs. 6,425/-	Dec, 2003	[Signature]
15.	Dr. (Mrs.) M. Sarma	MD(O&G)	Rs. 11,425/-	Stagnation increment w.e.f Dec, 2002	[Signature]
16.	Dr. C. Choudhury	MD(O&G), 11606	Rs. 10,050/-	Jan, 2004	[Signature]
17.	Dr. N.M. Das	MD(O&G)	Rs. 6,850/- + Rs. 250/- = Rs. 7,100/-	w.e.f March, 2003	[Signature]
18.	Dr. (Mrs.) M. Baishya	MD(O&G)	Rs. 6,425/-	Oct, 2003	[Signature]
19.	Dr. Pranjit Barman	MD(O&G)	Rs. 6,250/-	1st Feb, 2004	[Signature]
20.	Dr. B. Banikya	MBBS	Rs. 6,075/-	Nov, 2003	[Signature]
21.	Dr. (Mrs.) S. Lahkar.	MBBS	Rs. 5,550/- + Rs. 175/- = Rs. 5,725/-	w.e.f April, 2003/-	[Signature]
22.	Dr. (Mrs.) Hiranmayee Sharma	MBBS	Rs. 5,375/-	July 2003.	[Signature]
23.	Dr. (Mrs.) Sikha Sarma	MBBS	Rs. 5,200/-	Oct, 2003	[Signature]
24.	Dr. Kamabi Rallia	MBBS	Rs. 5,200/-	Nov, 2003.	[Signature]
25.	Dr. K. Tunung	MBBS	Rs. 5,200/-	1st Nov, 2003	[Signature]
26.	Dr. B. Rongsonq	MBBS	Rs. 5,080/-	Nov, 2003	[Signature]

36-

E.S.I. MODEL HOSPITAL
BELTOLA, GUWAHATI-22
ASSAMANNEXURE - VIII (13)

No. 432-A-23/11/1/2003-Estt. 1660

dt. 23-7-2003.

To,

The Secretary, to the Govt. of Assam
Labour & Employment Department,
Dispur, Guwahati-6.Subj:- Option of Pay & allowances of Doctors
& Staff on deputation to ESI Model
Hospital, Beltola, Guwahati.

Sir,

With reference to the abovementioned subject,
I am directed to inform you that the option of Pay & allowances
of Doctors & staff forwarded by Govt. of Assam vide letter No.
GLR.153/2003/pt-I/133 dt. 17-09-03 is received in this office.

After examination of the aforesaid option,
it appears that the Govt. of Assam has only forwarded the ~~XXXX~~
individual options submitted by the Doctors & staff with the
particulars of all the Doctors & staff in two statements. But as
per guidelines & norms ~~the option should have been exercised by the Govt. of~~
~~Assam for the employees of the ESI Model Hospital, Beltola, Guwahati.~~
~~the option should have been exercised by the Govt. of~~
~~Assam for the employees of the ESI Model Hospital, Beltola, Guwahati.~~

In view of above, it is requested kindly to
forward the following information to this office:-

~~1) Whether the Govt. of Assam has exercised the option on/~~
~~behalf of the employees for their pay & allowances.~~

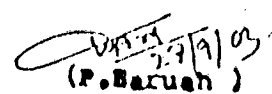
2) The Rules under which the option as above has been exer-
cised i.e. the Rules of the Govt. of Assam which governs the
terms & conditions of pay ~~XXXXXX~~ fixation etc. of
deputationist staff.

3) The individual service records of all the 25 Doctors are
not forwarded with the abovementioned letter. The service
records, service books/service cards, leave accounts etc.
are required at this end for scrutiny and ~~XX~~ making
relevant entries of pay fixation etc.

True copy
Advocate
28.10.04.

The information/Records as above may kindly be forwarded to this office at an early date, so that necessary action at this end may be taken immediately.


Yours faithfully,


(P. Baruah)

Dy. Director (Admn)

For Medical Superintendent

Copy to:- 1) The Administrative Medical Officer, ESI Scheme
Assam, Zoo-Narengi Road, Guwahati-21 for information
and necessary action.


Dy. Director (Admn)

GOVERNMENT OF ASSAM
LABOUR AND EMPLOYMENT DEPARTMENT.

NO.GLR.153/2003/Pt.I/158, Dated Dispur, the 29th March, 2004.

From : Shri B.B. Hagjer, IAS,
Commr. & Secretary to the Govt. of Assam.

To : The Medical Supdt., Model Hospital,
ESI Corporation, Beltola, Guwahati-22.

Sub : ~~Terms and conditions for deputation of Doctors and staff to Model Hospital, ESI Corporation, Beltola~~

Ref : Your letter NO.432-A-23/11/1/2003 dt. ~~22-4-2003~~

Sir,

With reference to the letter on the subject quoted above, I am directed to communicate the following terms and conditions of deputation for the incumbents deputed to the Model Hospital, ESI Corporation, Beltola under Govt. of India vide this Deptt's Notification NO.GLR.121/2003/8, dt. 10-4-2003 and NO.GLR.121/2003/9 dt. 17-4-2003.

1. The deputationists will be entitled to retain their grade pay plus 10% deputation allowances subject to maximum of Rs. 500/- p.m. when the transfer is within the same station and 20% of the employees basic pay subject to a maximum of Rs. 1000/- only p.m. in other cases on the condition that deputation allowance plus basic pay shall not exceed Rs. 17,000/- only p.m. ~~on the pay scale of the deputationists as per the option subject to the conditions laid down in Govt. of Assam Finance Deptt's O.M. NO.FEG.102/61/132 dt. 10-5-65, NO.FEG.29/74/230 dt. 22-1-91, NO.FEG.13/92/Pt/13, dt. 3-5-94 and NO.FEG.13-92/Pt/29, dt. 16.7.99 (Copy enclosed).~~

(2) Joining time pay of the incumbents while proceeding and on returning from Foreign Service i.e. Model Hospital, ESI Corporation, Beltola will be paid by the borrowing authority as admissible under Rules.

(3) Leave salary and pension contribution etc. will have to be borne by the Foreign Employer i.e. ESIC, Govt. of India.

(4) The Foreign Employer is to ensure recoveries of the sub^{sts}cription towards G.I. Schemes from the deputationist and take necessary action for crediting the amount as per Clause I.B. of State Govt. Employee G.I. Schemes, 1983 as Circulated vide Finance (A&F) Deptt's O.MNO.FM.58/81/24 dt. 25-2-83 (copy enclosed).

(5) ~~The deputationists will be Governed by the State Govt. Leave Rules.~~

(6) The Foreign Employer shall offer the medical facilities not inferior to those which the employee would have enjoyed in the Govt. services but for their deputation.

Contd...2/-

True copy
As per
Advocate
28.10.04

(7) The Foreign Employer will be liable to pay the leave salary in respect of disability leave granted to the deputationists on account of any disability incurred in and through Foreign service under ESIC even if such liabilities manifest themselves after the termination of the Foreign service.

(8) The deputationists will not be allowed to join any pension or G.P.F. under the Foreign Employer.

(9) Deputationists will be paid by the Foreign Employer travelling allowances for their journey to take-up the assignments and to return therefrom (including family members) as admissible.

(10) The whole expenditure in respect of any compensatory allowances for the period of leave and or at the end of the Foreign services till the incumbents joins their parent Department under the State Govt. will be borne by the Foreign Employer.

(11) The deputationists will be entitled to travel concession from the Foreign Employer in the scale they are entitled to under the State Govt. and the cost of such concession will be borne by the Foreign Employer.

(12) The deputationist shall furnish returns of movable and immovable properties owned by them to the Government.

(13) The outstanding Govt. dues, if any, will be paid by the deputationists during their deputation and the Foreign Employer will have to take responsibility to credit the amount to the State Govt. Revenue regularly.

(14) The date of commencement and termination of their Foreign Service shall be regulated in accordance with the provisions of the Assam Fundamental Rules and Subsidiary Rules.

(15) All other terms and conditions will be Governed by the Rules and Regulations of the Govt. State of Assam.

~~You are therefore requested kindly to take necessary action for release of the deputationists from their service and their deputation on super grade on salary scale of Rs. 1000-1500-2000 by 1st April 1954.~~

The service history of 25 Nos. of Doctors are enclosed herewith for favour of your necessary action.

Encls :- As above.

Yours faithfully,

[Signature]

Comr. & Secretary to the Govt. of Assam
Labour and Employment Deptt.

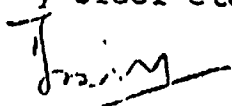
[Signature]

Memo NO.GLR.158/2003/Pt.I/158-A, Dated Dispur, the 29th March, 04.

Copy to :-

- 1) The Deputy Medical Commissioner, ESI Corporation, Panchdeep Bhawan, Kotla Road, New Delhi.
- 2) The Regional Director, ESI Corporation, Assam, Banunimaidan, Guwahati-21.
- 3) The Administrative Medical Officer, ESI Schemes, Assam, Zoo-Narengi Road, Guwahati-21,
- 4) The Health & F. W. Deptt. Dispur, Guwahati-6.
- 5) The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-29 with reference to their letter NO.GE/XI/L&E/ESI Model Hospital/5925, dt. 19-9-03.
- 6) The P.S. to Minister, Labour and Employment Deptt., Assam, Dispur.
- 7) Person concerned.

By order etc.,



Commr. & Secretary to the Govt. of Assam
Labour and Employment Department.

.....

Beltola: Guwahati-22

ESIC Model Hospital

ANNEXURE - X 63

No.432.13./19/1/2003-Pay-Fixation./ 128 Dt.12.01.2004

From:- Medical Superintendent,

ESIC Model Hospital, Beltola

Guwahati-22

To The Medical Commissioner,

ESIC, Panchdeep Bhawan, Kotla Road,

New Delhi-02

Sub: Representation of Doctors & Staff ESIC Model Hospital, Beltola, Assam for Early Pay-Fixation during the Deputation Period.

Madam,

I beg to forward herewith the representation submitted individually by all Doctors & staff of ESIC Model Hospital, Beltola, which is self-explanatory in itself. The representation of all other deputationists will be sent in successive batch-wise manner, some of the same have been sent at present for your kind perusal.

Yours Faithfully,

[Signature]
Medical Superintendent,

ESIC Model Hospital,

Beltola, Guwahati-22, Assam

निकिता अशोक / Medical Supdt.

ज.र.क., अरुण स्मार्ट / ESI Model Hospital

पिन-781022 / Beltola, Guwahati - 22

True copy
@ Advocate
26.10.04

ASSAM HOSPITALS ASSOCIATION, ASSAM

Head Office : E.S.I. Hospital, P.O. Khanapara, Guwahati - 22

(Recognised by Govt. of Assam vide Notification No. ABP, 90/93/26 Date : 25/04/1997)

Advisor :

Dr. D. Das
Dr. C. Choudhury

President :

Dr. N.K. Gogoi

Vice President :

Dr. (Ms) L. Hazarika

General Secretary :

Dr. D.C. Borbora

Asst. Gen. Secretary :

Dr. N.M. Das

Treasurer :

Dr. (Ms) K. Dora

Executive Members :

Dr. H.K. Sarma
Dr. B. Banerjee
Dr. (Ms) L. Hazarika
Dr. (Ms) S. Dora
Dr. (Ms) A. Das
Dr. (Ms) A. Sarma
(Goswami)
Dr. K. Thung

Ref. No. ESI/DA/OM/04/08

Date 27/05/04

To,

The Medical Commissioner,
ESI Corporation of India,
"Panchdeep Bhawan", Kotla Road,
New Delhi-02

Ref. No. ESI/DA/OM/04/08

Date: 27.5.2004

Sub: Payment of the ESIC Pay & Allowances to the Deputationists of
the ESIC Model Hospital, Beltola, Guwahati-22.

Respected Madam,

This is in continuation of our previous letter No.ESI/DA/OM/04/02 dt. 23.2.04 whereby we demanded to pass orders to release the Pay & Allowances of the ESIC to deputationists on the strength of the written individual option to accept the Pay & Allowances of the ESIC of India as sought from your end. It is the prerogative of the deputationists either to elect (opt) the pay scales of the Parent Deptt. plus Deputational Allowances or to get the Pay & Allowances of the Foreign Deptt. without having any discretion on the part of the Foreign Deptt. to dictate or to guide. On this count our choice was to claim and accept the Pay and Allowances of the ESIC and not of the Parent Deptt. Also according to the Memorandum Of Understanding (MOU) signed by the ESIC and the Govt. of Assam we are free to accept the ESIC Pay and Allowances as per our individual options.

It is worth mentioning that the Labour and Employment Deptt., the Govt. of Assam, Dispur, vide its letter No. GLR.153/2003/Pl.1/150 dt. 29.3.04 intimated you in clear terms the queries made by your office vide letter No. A-11/11/3/2003-DM(HQ) dt. 16.2.04 regarding the Terms and Conditions of Deputation of Doctors and Staff to the ESIC Model Hospital, Beltola, requesting you to take necessary action for releasing the Salaries to the deputationists from the date of handing over of the hospital. (i.e.4.4.2003) as per option already exercised by them individually. The said letter is nothing but an option by the State Govt. on behalf of the deputationists with particular reference to your letter No. 132-A-23/11/1/2003-Estt.1660 dt. 29.9.03.

Contd II

(11)

True copy
Advocate
28/5/04

Head Office : E.S.I. Hospital, P/O. Khanapara, Guwahati - 22
(Incorporated by Govt. of Assam vide Notification No. ADP. 90/93/26 Dato : 25/04/1997)

Ref. No. E.S.I./DA/04/04/08

Date 22/05/07

Adviser :

Dr. D. Das
Dr. C. Choudhury

President :

Dr. N.K. Gogoi

Vice President :

Dr. (Ms) L. Hazarika

General Secretary :

Dr. D.C. Borborah

Asst. Genl. Secretary :

Dr. N.M. Das

Treasurer :

Dr. (Ms) K. Dora

Executive Members :

Dr. H.K. Sarma
Dr. U. Banikya
Dr. (Ms) M. Hazarika
Dr. (Ms) S. Gora
Dr. (Ms) M. Baishya
Dr. (Ms) M. Sarma
(Goswami)
Dr. K. Timung

(II)

Option to serve in deputation is purely on consideration of financial benefit and the delay caused from your end to release the Pay & Allowances of the ESIC of India even after lapse of one year becomes a matter of concern for us to ventilate our demand once again without making any further correspondence with the State Govt. on this count (Pay & Allowances).

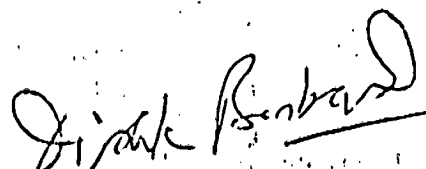
We honestly claim that we the deputationists doctors & staff are now working as per the norms of the ESI Corporation (Model) Hospital w.e.f 4.4.2003.

It is therefore, prayed that your good-self would realise the gravity of the situation as mentioned in our letter dated 23.2.04 and request you to act on it with immediate effect otherwise we would be compelled to seek justice from the Honourable Court.

Thanking You.

Yours Faithfully,

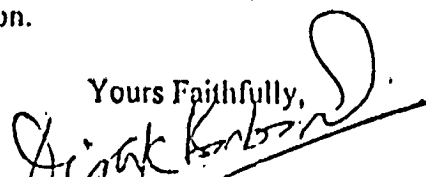

Dr. N.K. Gogoi
ESI Doctors' Association


Dr. D.C. Borborah
ESI Doctors' Association

Copy to:

1. The Director General, ESIC, "Panchdeep Bhawan", New Delhi for his kind information & necessary action.
2. The Secretary-cum-Commissioner, to the Govt. of Assam, Labour & Employment Deptt., Dispur for his kind information and necessary action.
3. The Secretary, to the Govt. of Assam, Law and Justice Deptt., Dispur for his kind information and necessary action.

Yours Faithfully,


Dr. D.C. Borborah
ESI Doctors' Association

pay by one increment *plus* Dearness Allowance(s) including interim relief, if any, admissible to a person in parent cadre post exceeds the emoluments comprising pay *plus* Dearness Allowance(s) including interim relief, if any, at the maximum of the ex cadre post.

4. Exercise of option

4.1 An employee appointed on deputation/foreign service may elect to draw either the pay in the scale of pay of deputation/foreign service post or his basic pay in the parent cadre *plus* Deputation (Duty) Allowance thereon *plus* personal pay, if any.

4.2 The borrowing authority should obtain the option of the employee *within one month* from the date of joining the ex cadre post unless the employee has himself furnished the option.

4.3 The option once exercised shall be final. However, the employees may revise the option under the following circumstances which will be effective from the date of occurrence of the same:—

(a) When he receives pro forma promotion or is appointed to non-functional selection grade in his parent cadre;

(b) When he is reverted to a lower grade in his parent cadre;

(c) When the scale of pay of the parent post on the basis of which his emoluments are regulated during deputation/foreign service or of the ex cadre post held by the employee on deputation/foreign service is revised either prospectively or from a retrospective date;

(d) Based on the revised/same option of the employees, in the event of pro forma promotion/appointment to non-functional Selection Grade, revision of scales of pay in the parent cadre, the pay of deputationists will be refixed with reference to the revised entitlement of pay in the parent cadre. However, if the initial option was for the pay scale of the deputation post and no change in option already exercised is envisaged, the pay already drawn in deputation post will be protected if the pay refixed is less.

NOTE.—Revision in the rates of DA, HRA or other allowances either in the parent or borrowing organization shall not be an occasion for revision of the earlier option.

4.4 If the pay of an employee in his cadre post undergoes downward revision, the pay in the ex cadre post is also liable to be refixed on the basis of revised pay and in accordance with the revised option or existing option, if the employee does not revise his option.

5. Pay fixation

5.1 When an employee on deputation/foreign service elects to draw pay in the scale of pay attached to the ex cadre post, his pay may be fixed as under—

True copy
@h
Advocate
28.10.04

745-
22/10/03
67

ANNEXURE-III

23.10.03
Dr. P.K. Suman

EMPLOYEES' STATE INSURANCE CORPORATION
'PANCHDEEP BHAWAN', KOTLA ROAD, NEW DELHI-02

No. A-37(18)1/2003-DM(HQ)

Dated 09.10.03

To

The Medical Superintendent
ESI Model Hospital
Delhi-110014
Assam

Sl. No.	1103	Sl. No.	1103
Date	22.10.03	Date	22.10.03
Signature	Dr. P.K. Suman	Signature	Dr. P.K. Suman
Post	Medical Superintendent	Post	Medical Superintendent
Address	Kotla Road, New Delhi-110014	Address	Kotla Road, New Delhi-110014

Sub: Terms of absorption of State Govt. employees deputed to ESIC Model Hospital under ESI Corporation.

Sir,

I am directed to enclose herewith the terms of absorption of State Govt. employees who have been deputed to ESIC Model Hospital, for your consideration. It is proposed to absorb such employees in Corporation Service on their tendering resignation from State Govt. service, and acceptance of the same by the State Govt. You are, therefore, requested to circulate the enclosed terms & conditions of absorption among the employees deputed to the Model Hospital, calling for the option of each either for absorption in Corporation service or to get repatriated to respective parent cadres. It is, however, pointed out that option need not be called for from following employees as they cannot be absorbed in Corporation service, and have to be repatriated to their respective parent cadres.

- 1) Persons holding such posts in the State Govt. for which, no corresponding posts exist in the Corporation.
- 2) A person who has completed 56 years of age as on 1.9.2003.
- 3) An employee against whom any disciplinary proceeding is pending or being contemplated.
- 4) Persons deputed in excess of admissible posts as per ESIC Norms.

Receipt of this communications may please be acknowledged.

A copy of format in which option has to be exercised by each employee is also enclosed.

Encl: As above.

Yours faithfully,

(D. LAHIRI)
JT. DIRECTOR (MED.)

Copy to:-

1. The Secretary to the Govt. of _____, Ministry of _____ along with a copy of terms of absorption for information and necessary action.

JT. DIRECTOR (MED.)

True copy
@ Mr. Suman
Advocate
22/10/03

-46-

28

TERMS OF ABSORPTION

- 1) Option may be exercised by each employee either for absorption in Corporation service or for repatriation to the State Govt. service
- 2) Mere exercising of option for absorption in Corporation service shall not confer any right on any employee to claim absorption and the decision of the Corporation in the matter would be final.
- 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 on which his resignation is accepted by the State Govt. or from the date on which he joins duty whichever is later.
- 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 in equivalent grade on regular basis in the State Govt. service, whichever is later. Seniority of one 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.
- 5) Employees on absorption would continue to work at ESIC Model Hospital _____ at the discretion of the Corporation, but would render themselves liable for transfer to anywhere in India.
- ✓ 6) All Medical Officers recruited as GDMO by the State Govt., on absorption in Corporation service, shall be absorbed in the GDMO sub-cadre only irrespective of their qualifications.
- 7) An employee, on absorption in corporation service, shall have the option to get his past State Govt. service counted for combined pension in ESIC provided the State Govt. is agreeable to remit its proportionate pension liability for the period of service rendered by such an employee with it, including the period of deputation.

SECRETARY'S OFFICE

Alternatively, the employee can opt to get the pro-rata pensionary benefit from the State Govt. for the services rendered with the State Govt. (including the period of deputation) and in that event his past service in the State Govt. will not count for pension in ESI Corporation. Option in this regard shall be exercised within six months of absorption of an employee in the Corporation and option once exercised shall be treated as final.

- ✓ 8) In case an employee opts in favour of counting of his past service, he will be eligible to draw pension in accordance with the Rules of the ESI Corporation for the combined service under the State Govt. and that under ESI Corporation on the final retirement from ESI Corporation. If he resigns from service of the ESI Corporation, his resignation will be treated as resignation from State Govt. Service entailing for forfeiture of past services including that under the State Govt. and consequent loss of pensionary benefits for his service.
- 9) Order for counting of past service of an employee, if issued, will be issued only on receipt of proportionate pension liability from concerned State Govt.. Right to count previous service shall arise unless the proportionate pensionary liability of employee is discharged in full by the concerned State Govt.
- ✓ 10) Car advance and House Building advance obtained by an employee from his previous employer (State Govt.) have to be re-paid in full before his absorption in Corporation service is considered.
- 11) An officer on absorption in ESI Corporation service will be governed by ESIC (Staff & conditions of Service) Regulations, 1959 as amended from time to time.
- 12) No employee against whom any disciplinary proceeding is pending or being contemplated will be absorbed in the Corporation service.

RECEIVED

- 13) Pay of an absorbed employee will be fixed as per Rules.
- 14) Leave of any kind will not be transferred and leave accumulated in State Govt. service can be got encashed by an employee as per Rules prevailing in State Govt.

True copy
Adv. Gales
28/1/04

ESIC MODEL HOSPITAL
BELTOLA, GUWAHATI-22

NO. 432-A-27/19/1/2003-Estt/ 8

Dated the 10-11- /03

TO

Sri/Smti. Dr. P. K. Sarma, MD, MS
ESIC Model Hospital
Beltola, Guwahati-22

Sub:-

Terms of absorption of state Govt. Employees
deputed to ESIC Model Hospital, Beltola, Under
ESI Corporation.

Sir/Madam,

In terms of Hqrs. Office instruction communicated vide letter no. A-37(18)1/03-DM(HQ) dt. 9.10.2003, I am directed to enclose herewith the terms of absorption of State Govt. Employees deputed to ESIC Model Hospital, Beltola, Guwahati. Along with the terms of absorption a proforma of application form in Triplicate for permanent absorption is also enclosed for your consideration.

You are requested to go through the terms & Condition of absorption carefully and exercise your option either for permanent absorption in corporation service or to get repatriated to parent Department/Cadre in the prescribed proforma in duplicate.

Your Option may be forwarded immediately for communication to the Hqrs. Office at the earliest.

Encl:- As above.

Your's faithfully

(P. BARUAH)

Dy. Director (Adms)
For Medical Superintendent
ESIC Model Hospital
Beltola, Guwahati-22

Copy to The:-

1. Jt. Director (Med) ESIC Corporation, Kotla Road New Delhi for kind information. The receipt of letter No A-37(18)1/03-DM(HQ) dt. 9.10.03 is hereby acknowledged.
2. Secretary to the Govt. Of Assam, Labour & Employment Department, Dispur, Guwahati-6 for kind information and necessary action.
3. Administrative Medical Officer, ESI Scheme Assam Zoo Narengi Road, Guwahati-22 for information

Dy. Director (Admn)

True copy
@ Advocate
28/10/04

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TERMS OF ABSORPTION

1. Option may be exercised by each employee either for absorption in Corporation Service or for repatriation to the State Govt. service.
2. Mere exercising of option for absorption in corporation service shall not confer any right on any employee to claim absorption and the decision of the Corporation in the matter would be final.
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 on which he joins duty whichever is later.
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 in in equivalent grade on regular basis in the State Govt. service, whichever is later. Seniority of two or more State Govt. employees ~~absorbed~~ absorbed in the Corporation service would however, be fixed as per the seniority existing in the State Govt. prior to their absorption.
5. Employees on absorption would continue to work at ESIC Model Hospital Pillala, Ghy-22 at the discretion of the Corporation, but would render themselves liable for transfer to any where in India.
- 6) All Medical Officers recruited as GDMC by the State Govt. on absorption in Corporation service, shall be absorbed in the GDMC sub cadre only irrespective of their qualifications.
7. An employee, on absorption in corporation service, shall have the option to get his past State Govt. service counted for combined pension in ESIC provided State Govt. is agreeable to remit its proportionate pensionary liability for the period of service rendered by such an employee with it, including the period of deputation.

Alternatively, the employee can opt to get the pro-rata pensionary benefit from the State Govt. for the services rendered with the State Govt. (including the period of deputation) and in that event his past service in the State Govt. will not count for pension in ESI Corporation. Option in this regard shall be exercised within six months of absorption of an employee in the corporation and option once exercised shall be treated as final.

8) In case an employee opts in favour of counting of his past service he will be eligible to draw pension in accordance with the Rules of the ESI Corporation for the combined service under the State Govt. and that under ESI Corporation on the final retirement from ESI Corporation. If the resigns from service of the ESI Corporation, his resignation will be ^{treated} ~~treated~~ as resignation from State Govt. Service entailing for forfeiture of past service including that under the State Govt. and consequent loss of pensionary benefits for combined service.

9) Order for counting of past service of an employee, if so, opted will be issued only on receipt of proportionate pensionary liability from the concerned State Govt. Right to count the previous service shall not arise unless the proportionate pensionary liability of an employee is discharged in full by the concerned State Govt.

10) Car advance and House Building advance obtained by an employee from his previous employer (State Govt.) have to be re-paid in full before his absorption in corporation service is considered.

11) An Officer on absorption in ESI Corporation service will be governed by ESIC (Staff & Conditions of Service) Regulation, 1959 as amended from time to time

12) No employee against whom any disciplinary proceeding is pending or being contemplated will be absorbed in the Corporation service.

13) Pay of an absorbed employee will be fixed as per Rules.

14) Leave of any kind ^{E.S.} will not be transferred and leave accumulated in State Govt. service can be got encashed by an employee as per Rules prevailing in State Govt.

The copy
@ M. S. S. S.
Advocate
28.10.04

To
The Secretary,
Department Of Labour & Employment
Government of Assam,
Dispur, Guwahati

SUBJECT : TERMS AND CONDITIONS FOR ABSORPTION INTO ESIC.

Respected sir,

With due honour and respect we the deputed staffs and doctors of the ESI Model Hospital, Beltola, Guwahati want to draw the following few points for favour of your kind attention and needful.

1. The ESI Corporation of India has asked our option in regards of absorption into their organization and given us some terms and conditions.
2. We the deputed employees will submit our option for permanent absorption only through Government of Assam and Government of Assam has to release us for permanent absorption into ESIC.
3. In their conditions they asked us to resign from present post and join their organization, but we the deputed employees want absorption without resignation like BSNL, Drug analyst Dept. of India etc.
4. We want provision for return to state government job even after absorption if we are not satisfied with ESIC within a reasonable time, e.g. 3 years.
5. Whether the State government will give us Leave encashment or carry forward our leaves at credit to ESIC.
6. Whether the State government will carry forward the Pension benefit to ESIC or will give premature pension to its absorbed employees.
7. Whether the State government will carry forward the Gratuity benefit to ESIC or will encase it to its absorbed employees.
8. Half pay / Commuted leave have to be forwarded to ESI Corporation for its employees.
9. Government should be firm enough to press ESIC to protect Grade and maintain the seniority of the absorbed deputed employee after absorption into ESIC.
10. Carry forward all kinds of loan of its employees to ESIC.
11. All Specialists must be selected from the existing qualified deputed doctors.
12. All other senior cadres for paramedical and ministerial staffs must be selected from the existing deputed staffs.
13. Whether all the service and pensioner benefits etc. during the deputation period will be forwarded to the ESIC or will be encased.

Dated: 4-11-2003
ESI Model Hospital
Beltola, Guwahati

Yours Faithfully
Deputed
Staffs and Doctors of ESI Model Hospital
Beltola, Guwahati.

True copy
M. Chandra
Advocate
28.10.04.

- 54 - ANNEXURE - XVI

To,
The Chief Secretary to the Govt. Of Assam,
Labour & Employment Dept., Dispur, Guwahati, Assam

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D.D. Guwahati, Assam
28.5.2003
28.5.2003

Through proper channel

Sub : Objection regarding the Terms & Conditions for absorption into ESIC

Ref. No.A-37(18)/2003-DM(HQ)-----dated 09.10.03 & No.432-A-27/19/1/2003-Estt./-----
dated 10.11.2003

Sir,

With ref. to the letters cited above we have the honour to place the following few points for your kind consideration & also would like to humbly request you to overcome our following apprehensions :

Points are:

(1) Option: *Terms No.2* : 'Mere exercising of option for absorption in Corporation service shall not confer any right on any employee to claim for absorption'.....this is against the decision as per the MOU is concerned. So we request you kindly to have a look into the matter & kindly to press ESIC to modify this point so that nobody is deprived of *absorption* into ESIC after giving option for it.

(2) Resignation: *Terms No. 3* : "An employee opting for absorption in Corporation service has to *resign* from State Govt. Service". We all are deputed by the State Govt. into ESIC in our already existing ESI Hospital, Beltola of our State. As per rule the deputationists are *absorbed once they opt for it* after the expiry of the deputation period. We are free to exercise our option for absorption into ESIC as per the MOU & there were no pre-requisite Terms & Conditions. Many instances can be drawn where the employees are absorbed without getting resigned as per the instruction & reference of the Finance Estt.(A), Personnel (B) Dept. So same rule should be applied to us also. As there is provision to release the deputed employees, so we request the Govt. to release us for the purpose.

(3) "Whichever is later": (i) *Terms No.3* : "The absorption in Corporation service of an employee will take effect from the date on which his resignation (release after modification) is accepted by the State Govt. or from the date on which he joins duty whichever is later". The word "whichever is later" is replaced by the word "*whichever is earlier*" vide G.I.Dept. Of Per. & Trg., O.M. No.20011/1/2000- Estt.(D), dated the 27-th March, 2001 & takes effective from 14.12.1999 (order no. 13). In spite of that why it has been mentioned as "later" is not understandable to us. So, we request you to do the needful for modification of this point.

The point - from the date of joining duty—whether in ESIC or in deputation is not clear to us. We want it to be *effective from the date of deputation*.

(ii) *Terms No. 4* : "Seniority of an employee absorbed in Corporation will be determined either from the date from which one holds the post on deputation or from the date one holds the post in equivalent grade on regular basis in the State Govt. Service, "*whichever is later*". The word 'later' is replaced by the word '*earlier*' vide G.I Dept. Letter No. which is already mentioned.

(4) GDMO Sub-Cadre / Cadre: *Terms No. 6*: The deputationists will be '*absorbed as GDMO Sub-Cadre*' & not as GDMO Cadre. The definition of Cadre & Sub-Cadre may be clearly mentioned. If the general meaning of the words implied & ESIC recruited fresh one as Cadre & the *seniormost deputationists as Sub-Cadre* then it would be very injustice to us.

So we request you kindly to do the needful for giving equal justice to both categories.

True copy
@ Mr. J. K. Adv.
Advocate
28/10/04.

-55-

(5) Irrespective of Qualifications: *Terms No. 6:* We will be absorbed as GDMO Sub-Cadre (Cadre after modification) that is too 'irrespective of qualification'. Qualification should be a factor to be taken in account as per rule. It would be very unjust if GDMOs with PG qualification are considered as same as GDMO without PG qualification. So we request you to place the PG degree holders in the concerned Specialists *Sub-Cadre* category (not Specialists Cadre), where there are more than one PG degree holders in any specialty, with the same pay-scale but only with initial higher basic pay & the future scope of promotion to Specialist Cadre from Sub-Cadre so that the senior deputed PG degree holders are not deprived of in the future.

So we request you to do the needful for giving consideration to qualification & for selecting Specialists cadre & sub-cadre.

(6) Pension / gratuity benefit: *Terms No. 7:* We want to 'opt for the proportionate pensionary benefit' & that can be forwarded to ESIC on the date of absorption as per Sub-Rule 24 (a) of Rule 37 A of the CCS (Pension) Rule because all the senior employees whose service periods are about 15-25 yrs. will not be benefitted if pro-rata encashment are allowed.

So you are requested kindly to do the needful for the future welfare of its deputed employees.

(7) Past Service: *Terms No. 8:* We want to 'opt for counting our past service'. "If he resigns from service of ESI Corporation, his resignation will be treated as resignation from the State Govt. Service entailing for forfeiture of past service including that under the State Govt. and consequent loss of pensionary benefits for combined service". We want that his resignation may be treated as resignation from ESIC & not from the State Govt. & that may not entail for forfeiture of past service including that under ESIC & consequent pensionary benefit for combined service till resignation may either be encashed or forwarded to the State Govt.

So you are requested kindly to do the needful for counting our past services.

(8) Car Loan / House Building Advance: *Terms No. 10:* 'All advances have to be re-paid in full before absorption'. This is in itself an impractical condition as it would not be possible to return the loan amounts at such short notice. So we request you kindly to make agreement with ESIC in this regard.

(9) Pay-Fixation as per rule: *Terms No 13:* 'The pay of the "absorbed employees" will be fixed as per rule'. Under what Central Govt. Rule or formula (e.g. Fitment Formula etc.) pay will be fixed may be informed to us before absorption & whether the option for corporation pay during the deputation period has been accepted by the corporation is not known to us. Does by the word "pay of the absorbed employees" mean that the corporation pay will be allowed only after the absorption & not during the deputation period is not clear to us. As there are different pay-scale for different employees & within the same pay-scale there are different basic-pay upto the stage of stagnation increment, what rule/formula will be applied is not known to us. We want that the total numbers of the State Govt's increments already achieved or to be achieved before absorption may be accounted & adjusted with the corresponding increments of ESIC starting from the minimum pay-scale of the corporation. Initial higher basic pay may be considered only for those who deserve for it e.g. Higher qualification (MD/MS, Diploma holders etc.) There may be definite difference between those who have crossed the Efficiency Bar & those who have not crossed it i.e. between the junior & the senior employees; between the PG degree holders & the MBBS degree holders & these points may be considered while pay-fixation is being made so that nobody is deprived of his/her legitimate due. So we request you to press ESIC for favour of its deputed employees in this regard.

(10) Leave Encashment: *Terms No 14:* "Leaves of any kind will not be transferred" but this is possible to forward the leaves to ESIC on the date of absorption as per Sub-Rule 24 (b) of Rule 37 A of the CCS (Pension) Rule & as per Leave Rule para 5 of Swamy's Establishment and Administration (2003) because (i) the half / commuted leave cannot be encashed, (ii) after absorption the leaves at credit may not be available.

So we request you kindly to forward the leaves at credit.

11. MEMO, ADHOC.
GURGAON
28.5.2003
28.11.03
B

- 56 - 18

PF Account: The GPF subscription together with interest thereon at credit in the GPF Account can be forwarded / transferred to the GPF Account of ESIC on the date of absorption as per Sub-Rule 24 (a) of Rule 37 A of the CCS (Pension) Rule.

(12) Specialists Cadre & Sub-Cadre: All specialists cadre can be selected from only the existing deputed qualified doctors by the State Govt. either on the basis of (i) post-PG qualification years, (ii) years of service, (iii) seniority in Labour or Health Dept., (iv) Diploma with 5 yrs. or MD / MS with 3 yrs experience taking as equivalent.

And the other remaining PG degree holders, if possible, may be placed in the specialists sub-cadre in the concerned specialty with the provision/scope of spontaneous promotion to the specialists cadre depending on the availability of vacancy so that the senior deputed doctors are not deprived of their legitimate dues in future. The specialists sub-cadre may have the same pay-scale of GDMO cadre but with initial higher basic pay only.

The Govt. is requested kindly to press ESIC in this regard.

(13) Super-Specialists etc.: All other vacant & senior / junior posts of Super-specialists, other specialists, GDMOs, Dental surgeons, Ayurvedic doctors, Para-medical staffs, Ministerial & Grade IV employees etc can be selected by the State Govt. from the qualified preferentially local candidates of Assam during the deputation period before the recruitment process is taken over by ESIC after absorption.

So we request you kindly to do the needful for giving preference to local candidates of Assam in future recruitment

(14) Grade protection: We request you to protect the Grade of all the deputationists at all cost.

(15) Return back after absorption: We would like to request you to lay down provisions, if possible, for return back to the State Govt even after absorption *after a reasonable period*.

(16) We request you again that our long-due promotion till date in the State Govt. may be implemented retrospectively, otherwise a very senior deputed employee would be a very junior one on all India basis at no fault of his/her.

(17) There is no mention about the fixed date or probable period for absorption in the Terms & Conditions of ESIC unlike the Terms & Conditions of absorption of Tezpur Mental Hospital, BSNL, Drug Analyst Dept. etc.

So we request you to do the needful regarding this.

Yours faithfully,

Dated: 2nd Nov, 2003 : Guwahati-22: for deputed doctors & staff ESI Model Hospital, Beltola, Assam

Office of the A.M.
B.S. Bora, Asstt.
Guwahati

2852

28-11-03

OFFICE OF THE ADMINISTRATIVE MEDICAL OFFICER, ESI SCHEME, ASSAM:
ZOO NARENGI ROAD:.....GUWAHATI-21
No. APO/Model Hosp/Deputed Staff/Representation/03/6991 Dt. 21/2/03.

From: Administrative Medical Officer
ESI Scheme, Assam, Guwahati-21

To: ✓ Secretary to the Govt. of Assam,
Labour & Employment Deptt., Dispur,
Guwahati-6.

Sub: Uncertainty prevailing with regard to permanent
absorption of officers and staff of ESI Hospital,
Beltola on deputation from Govt. of Assam by ESIC.

Sir,

I have the honour to forward herewith a representation on the above subject signed by 84 Nos. of Staff under deputation to ESI Model Hospital, Beltola addressed to the Chief Secretary to the Govt. of Assam, Dispur, Guwahati-6 for favour of your necessary action.

Encl. - Representation as above. Yours faithfully,

Administrative Medical Officer
ESI Scheme, Assam, Guwahati-21.

True copy
@ Under
Advocate
28/10/04

2/2/03

Tel No 23234092-93

Fax No 011-23234537

Headquarter Office
Employees' State Insurance Corporation
Lanchdup Bhawan: CIG Road, New Delhi
WWW: esicindia.org.in

No A-37/18/1/2003-DM(HQ) Dated Aug 27, 2006

To, The Medical Superintendent
ESIC Model Hospital, Biltora, Gt-22 Ansan
Sub: Absorption of State Govt. Employees deputed to ESIC
Model Hosp under ESIC.

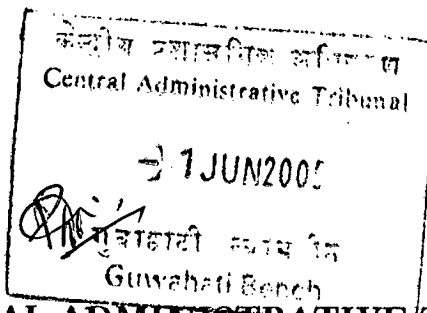
Sir / Madam,

Please find enclosed herewith a set of
Recruitment Regulations^(RR) in respect of Medical & paramedical
posts existing in ESIC. You are requested to conduct
a comparative study of these RR with the RRs of
corresponding posts in State Govt. so as to identify the
existing staff who do / do not possess the relevant
educational qualification & experience with reference
to ESIC RRs so that a decision for their
suitability for absorption in the appropriate pay-
scale in ESIC can be taken.

Further, you may please undertake a
comparative study of the existing pay-scales of staff
in your hospital vis-a-vis the corresponding pay
scales so that identification of corresponding
pay-scales is possible.

Yours faithfully
Dr (Mn) Pramila Stella
Director (Med) HS

True copy
Advocate
28/10/04
enclosure: as above
Received on
1834
6/9/04



Filed by
Advocate
11/6/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

O.A. NO.247/2004

Dr. Pranab Kumar Sarma & others...Applicant

-vs-

Union of India & others ...Respondents

(Written statements filed by the respondent No. 1 to 5)

The written statements of the respondents are as follows:

1. That a copy of the Original Application No. 247/2004 (hereinafter referred to as the "application") has been served on the respondents including the respondent No.1. The respondent No.1 has requested the Employees' State Insurance Corporation to defend the case on their behalf also vide letter F.No.38016/1/2005-SS-1 dated 17.1.2005. The respondents have gone through the same and understood the contents thereof.
2. That save and except those statements made in the application, which are specifically admitted, all other statements are hereby denied.
3. That before traversing the various statements made in the application the respondents begs to give a brief resume of the facts and circumstances of the case as under:

- (i) That the "Employees' State Insurance Corporation" (hereinafter referred to as the "corporation" is a statutory body established under "The Employees' State Insurance Act, 1948" (hereinafter referred to as the "Act"). The corporation is a body corporate having separate, distinct legal entity and a juristic person who can sue or could be should by its name. It is a State within the meaning of Article 12 of the Constitution of India. The corporation is constituted with a body of members as defined in the Act. The function of the corporation is also carried out and executed by two other bodies, namely, the "Standing Committee" (referred to as the "Committee") and the "Medical Benefit Council" (referred to as the "Council"). In addition to the above, there are "Regional Boards" which are also constituted under the Act to assist the functioning of the corporation in the different region of the country. The Act also provides that if in the opinion of the Central Government, the corporation or the Standing Committee persistently makes default in performing the duties imposed on it by or under the Act or abuses it powers, the Government may by notification in the Official Gazette, supersede the corporation or in the case of the Standing Committee, supersede in consultation with the corporation, the Standing Committee. The corporation, Standing Committee, Medical Benefit Council, Regional Boards require to discharge their functions within the parameters of the provisions of the Act, the Employees' State Insurance (General) Regulations, 1950 and the Employees' State Insurance (Central) Rules, 1950. Therefore all such matters relating to finance, manpower, management of hospitals including the conditions of service etc are carried out only after a decision taken by such statutory authorities at different level of with power, authority and official hierarchy.

- (ii) That the applicant doctors belong to the services of the Govt. of Assam and the Govt. of Assam has placed them on deputation vide Notification No. GLR.121/2003/8 dated 10.4.2003 (Annexure IV in the application) for a fixed term to the corporation under the Ministry of Labour, Govt. of India. The applicants are not yet absorbed in the services of the Corporation as there is no such rules or provisions for such absorption in the corporation. The matter of absorption has to be adopted and passed by a resolution by the highest policy making authority of the Corporation acting within the parameters of law and the statute by which the corporation has been established. That being a matter of policy decision vested with the discretion of the statutory authorities of the statutory corporation, this Hon'ble Tribunal may not interfere in such policy matter as the law in this regard is well settled. There is nothing to show on records that the respondents have ever acted illegally or arbitrarily in such policy matters or otherwise or such policy is vitiated with malafide or hostile discrimination.
- (iii) That the application is not maintainable. In fact, they have not submitted any petition/representation/appeal etc for their cause, if any. The applicants have called themselves as members of the "ESI Doctors' Association, Assam" which is not a recognized Association by the Corporation nor do the applicants represent all the Doctors on deputation to the corporation. There are 26 numbers of Doctors on deputation in the Corporation, but only 19 are joined as applicants in this application. So the so-called Association cannot represent on behalf of all the deputationists.
- (iv) That the Govt. of Assam, the parent department (the employer of the applicants) had opted Pay Scales of State Govt. plus deputation allowance for the applicants deputed to the ESI Hospital, Beltola, Assam vide notification No.

GLR153/2003/Pt.I/159 dated 29.3.2004 and the applicants are enjoying the said pay scale. Hence, the demand of the applicants for pay scale of the Corporation is not supported by any provision of law and valid without they being absorbed in the Corporation. In this connection it may be mentioned here that so far there has not been any policy formulation for absorption of such doctors on deputation in the corporation. It is not an isolated case like the present application before this Hon'ble Tribunal. The corporation is running their hospitals in other States also in the Union by adopting the same procedures and in the similar manner. If any policy decision is taken in future for absorption of such doctors, such policy decision and terms and conditions for such absorption shall be made uniformly applicable to all such doctors on deputation in the country including the State of Assam. Regarding absorption, the Corporation had circulated terms and conditions of absorption among the individual deputationist doctors and staff of all the 10 Model Hospitals taken over by the Corporation throughout the country. On receipt of feed back from all concerned, including the ESI Model Hospital, Beltola, it was felt as matter of policy that there was a need to review certain terms and conditions to bring in uniformity in the process which includes absorption of the employees of 10 different State Governments. The said terms and conditions are examined by the Corporation. Keeping in view the facts that the matter of absorption of the deputationist staff is being examined thoroughly and it is to be followed by a final policy decision to be taken by the members of the Corporation, the highest policy making authority and as such, the instant application is premature and the same is liable to be dismissed.

- (v) That the applicants have been paid the deputation allowances in addition to the pay scales as per the respective scales of the parent department. As the applicants have paid their salaries as per pay scales of the parent

department as agreed by the parent department and also the deputation allowance in agreed terms, there is no cause of action to justify filing of this instant application at this stage. The question of absorption of the applicant by the corporation is a matter of policy involving expenditure and the schemes of the corporation and such decision is to be taken at different levels by different statutory authorities and with the approval of the Central Government. Such matter of policy formulation, unless it is done and that too arbitrarily, is matter within the exclusive domain of the executives and the statutory authorities. Law is well settled that no court or Tribunal should interfere in such matter of policy decision. The answering respondents crave the leave of this Hon'ble Tribunal to allow them to produce such evidence/ records of payment of deputation allowances to the applicants at the time of hearing of the case.

- (vi) That the claims of the applicants relating to payment of salaries as per scales of the corporation and the matter of absorption are two different issues unconnected with each other and the same are not consequential to each other. Hence the application is hit by the provisions of Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 and the same is liable to be dismissed for seeking plural remedies by a single application.

PARAWISE REPLY:

4. That with regard to this statement made in the para 1 of the application the answering respondents deny the allegations made by the applicants and state that the Memorandum of Understanding dated 4.4.2003 which was signed by the representatives of the Corporation and the Govt. Of Assam has not settled the issue of fixation of pay and permanent

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absorption of the doctors on deputation. Immediately after receipt of the consent of the Govt. of Assam regarding the terms of deputation vide their notification dated 29.3.2004, the deputation allowance have been given to the applicants in addition to the pay scale of the parent department. Hence there is no cause of action for filing of this application as stated above and the same is liable to be dismissed with cost.

The copy of the Memorandum dated 4.4.2003 is annexed hereto as Annexure-R1.

5. That with regard to this statement made in the para 2, 3, 4.1 and 4.2 of the application the answering respondents have no comments to offer.
6. That the answering respondents have no comment to offer to the statements made in para 4.3, 4.4 and 4.5 of the application as the same are matter pertaining to records and nothing is admitted which is not supported by such records.
7. That with regard to the statements made in para 4.6 the answering respondents state that the statements made in this para are not totally correct. It is also not correct that all the staff working under the ESI Scheme, Assam were placed under the disposal of Corporation. Only the staff required under the norms for ESIC Hospital have been taken for and placed under the disposal on deputation from the ESI Scheme, Assam.
8. That with regard to the statements made in para 4.7, the answering respondents state that the Corporation did not invite any such alleged options directly for pay and

allowances as per ESIC norms from the applicants or any other staff on deputation. The options were invited through the Govt. of Assam, the parent department and the same have been submitted by the Govt. of Assam under their terms and conditions. The alleged options mentioned in the Annexure VII are not the option in true sense but are merely the demands of the deputationists forwarded by the Govt. of Assam without incorporating any terms and conditions as well as specific rules of the Govt. of Assam required in such cases. The Govt. of Assam, vide their letter No. GLR/2003/Pt.I/158 dated 29.3.04 conveyed the terms in respect of deputationist staff as a unit that they would be entitled to retain the grade pay plus deputation allowance subject to a maximum of Rs.500/- per month. The competent authority of the Corporation approved the deputation allowances at the same rates as admissible under the Rules of the respective State Governments with State Govt. salaries as per option exercised to that effect. These are made applicable from the date of taking over of Hospital. As such, demand for the pay scale of the ESI Corporation submitted by the applicants individually cannot be considered by the Corporation in absence of any definite law or policy guidelines.

9. That with regard to the statements made in para 4.8, the answering respondents state that since the Annexure VII did not specify the essential terms and conditions as well as consent; the matter was taken up with the authorities vide letter No. 432-A-23/11/1/2003-Estt/166C dated 29.9.03 (Annexure VIII of the application) followed by reminder dated

7.10.03, 27.10.03, 26.3.04 and ESI Head Quarter Office letter No. A-11/11/3/2003-DM(HQ) dated 16.2.04.

The copies of the letter dated 29.9.03, 7.10.03, 27.10.03, 26.3.04 and 16.2.04 are annexed as ANNEXURE-R2, R3, R4, R5 and R6 respectively.

10. That with regard to the statements made in para 4.9 of the application, the answering respondents state that the averments made in this para are not correct. In this connection the respondents state that the Govt. of Assam, Department of Labour and Employment it is letter dated 29.3.04 in para 1 opted for State Govt. scale plus deputation allowance. It, however, at the end speaks of options exercised by the deputationists staff individually. As the contents of the para 1 is directly contradictory to the vexed question of individual option of the staff, both can not be accepted and implemented. Therefore, the competent authority decided to give the deputation allowance as per State Govt. Rules and the deputation allowance. The competent authority of the corporation vide its D.O. No.U.11/11/Assam/1/03-DM(HQ) dated 10.1.2003 made it clear amongst other that the terms and conditions regarding deputation forwarded to the State Govt. by ESI Corporation mention about the option either to get pay of the deputationist fixed under normal rules or to draw pay of the post in parent department plus deputation allowance as per Govt. of India Rules. This option for choosing pay scales has to be made as a hospital unit and not individually.
11. That with regard to the statements made in para 4.10 and 4.11, the answering respondents state that the ESI Hospital Beltola was taken over as a Model Hospital primarily for the benefits of the beneficiaries under the Scheme. Therefore, the Corporation has given the first and foremost preference

to the creation of infrastructure facilities for better care and treatment to the beneficiaries and for the all round development of the Hospital. It is also relevant to mention here that under the Model Hospital Scheme, 10 Hospitals throughout the country from different State Governments have been taken over by the Corporation with hundreds of doctors and staff on deputation basis. Hence, it is not the matter of absorption and fixation of pay of one or two individual doctors but for all such employees on deputation and it is to be decided as a matter of policy by formulation of schemes etc in consultation with different authorities and official hierarchy and both the State and the Central Governments and on exercise of options by such employees. Such exercise will involve a huge financial as well as administrative implication on the part of the corporation and the Central Government. This is to be seen from the angle of earnings of the corporation and other technical feasibility and the economical viability.

The pay and allowances of the applicants as well as other deputationists have been given as per the options of the parent Department, i.e. the Govt. of Assam. The delay in granting these pay scales and deciding the rate of deputation allowance was predominantly due to routing the process through various administrative channels in the Govt. of Assam and the Corporation. The tenure of deputation of the applicants having since been fixed upto 4.4.2005, has now been extended upto 4.4.2006. Till date no policy has been formulated for the absorption of such deputationists.

12. That with regard to the statements made in para 4.12, the answering respondents state that while taking over the Hospital from the Govt. of Assam all the doctors and staff working were to be taken on deputation on "en mass" basis and it was not feasible to call for the option of pay scale from individual employees. Hence, the parent department, the Govt. of Assam was requested to give option on behalf of

their all employees as a unit. Further the Fundamental Rule 9(25) Part-1 (General Rules) are to govern the services of the Central Govt. Employees whereas the applicants do not fall in this category and they are regulated by the Rule and Regulations of the Govt. of Assam along with the terms and conditions of deputation agreed upon by the Memorandum of Understanding between the Corporation and the Govt. of Assam. Hence, the Rule quoted by the applicant is irrelevant in the present context.

13. That with regard to the statements made in para 4.13, the answering respondents state that the deputation allowance has been given after receipt of the terms from the Govt. of Assam vide their letter dated 29.3.2004 as per the decision of the competent authority of the corporation. As such the respondents have not done anything which may be termed as arbitrary, malafide, unjust and contrary to any settled provision of law.
14. That with regard to the statements made in para 4.14, the answering respondents state that no discrimination has been perpetrated against the applicants and the matter of absorption is yet to be resolved by the statutory authorities as stated above. The respondents state that the applicants deputationists are not similarly situated with those doctors/staff who are recruited directly by the corporation or who are working as regular employees in the establishments. Hence the applicants are a separate class by itself and they cannot be equated with the regular doctors of the corporation and there is no violation of the provisions of the Article 14 and 16 of the Constitution of India as alleged. It is also pertinent to mention here that nowhere in the Memorandum of Understanding it has been provided that the demands for pay and allowances will be settled on receipt of the options straightway. Until the applicants are finally absorbed in the Corporation, they will continue to be governed by the State

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Govt. Rules in respect of their pay and allowances and other service matters.

15. That with regard to the statements made in para 4.15, the answering respondents state that the period of deputation of the applicants are running upto 4.4.06. Now it is for the statutory authorities to take a policy decision with consultation with the Central and the respective State Governments as to whether the applicants and the other staffs are to be absorbed in the corporation or to go for further extension of the period of deputation. Unless such a policy decision is taken, nothing could be ascertained before 4.4.06. However, the sincerity of the Corporation is explicit from the fact that steps for absorption of the deputationists is already undertaken and the terms and conditions of the State Governments and options so exercised, if any, are under examination at the appropriate level.

Along with the ESI Model Hospital, Beltola in which the applicants are working, the said terms and conditions of absorption were circulated among the doctors and staff of the other 9 model Hospitals which were also taken over by the Corporation in different State Governments. Since references were received from various Hospitals regarding applicability and implications of terms and conditions circulated, as such a need was felt to modify the terms and conditions to suit it better with the requirements of the uniform acceptability. Since the modification of the terms and conditions is under process and the expiry of the period of deputation is not immediately near, the applicants have acted in haste and without waiting for a final decision on their absorption in the Corporation. As such the averments made by the applicants are premature and the application is liable to be dismissed.

16. That with regard to the statements made in para 4.16, the answering respondents state that the action taken for comparative study of recruitment rules existing in the

Corporation and the Govt. of Assam is a step towards examination and finalization of the process of policy decision with regard to absorption of the staff willing to be absorbed. It is the prerogative of the Corporation to ensure the suitability and the permanent requirement of the staff concerned before finalization of their absorption by examining all aspects suitability and permanent requirements as per norms of the corporation.

17. That with regard to the statements made in para 4.17, the answering respondents vehemently deny the correctness of these statements. The Memorandum of Understanding provided for option either from State Govt. Pay Scale plus deputation allowance or Employees' State Insurance Corporation pay scale. In the light of the option exercised by the Govt. of Assam vide letter dated 29.3.2004, the Corporation decided to pay State Govt. Pay Scale plus Deputation Allowance at the rate of 10% subject to a maximum of Rs. 500/- per month.
18. That with regard to the statements made in para 4.17 (A), the answering respondents state that the decision on permanent absorption will be taken only under the norms and settled rules before the expiry of the deputation period and action in this regard has already been initiated. However, it is absolutely dependent on the policy decision to be taken by the appropriate statutory authorities and the Central and the State Governments at the appropriate time and proper manner.
19. That with regard to the statements made in para 4.18, the answering respondents deny the correctness of these statements and state that it has already been decided to give all the staff working on deputation in the ESI Hospital, Beltola the Deputation Allowance as per the Govt. of Assam Rules in pursuance to the option exercised by the Govt. of

Assam. It is not a fit case where this Hon'ble may exercise any power to issue any direction to the respondents as the entire matter pertains to policy decision on the part of the executive. At this stage, the Hon'ble Tribunal also may not go into the pros and cons of the policy matter which is yet to take a shape and to be pronounced.

20. That with regard to the statements made in para 4.18A, 4.18B the respondents state that as stated above, it took some time in taking a decision and get approval from the authority in sanctioning and payment of deputation allowances to the applicants/staff and the delay was only in exhausting the required departmental and official procedures. This has been done in terms of the MOU and on agreed terms and conditions. It is not the fact that the deputation allowance is paid only after receipt of the notice from this Hon'ble Tribunal. It is also a fact that the applicants have accepted and received the payment with arrears.
21. That with regard to the statements made in para 4.18C, the respondents reiterate and reassert the foregoing statements made in this written statements and state that they have acted in terms of the MOU and on agreed terms and conditions and have not done anything which is contrary to such terms and conditions. In this connection it is stated that the corporation has no separate rules/regulation for absorption of staff on deputation. The respondents may absorb such staff by taking a special policy decision best suited to the functioning of the Hospital and as per requirements. The respondents are taking steps in that direction only and there is nothing illegal in doing so.
22. That with regard to the statements made in para 4.18D and 4.19 the respondents deny the correctness of the statements and state that the applicants have wrongly interpreted the provisions of 10 % deputation allowance and the provisions

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of Section 19(iv) of the Administrative Tribunal Act, 1985. The respondents once again state here that the process taken for payment of deputation allowance took some time as the matter was routed through the various channels of official hierarchy at the Central, State Governments and the hierarchy of the corporation and it being an ongoing process initiated much prior to the filing of the application, the provisions of Section 19(iv) of the A.T. Act, 1985 is not attracted. Moreover, this has not prejudiced the interest of the applicants. Therefore the applicant is filed with the ulterior motive to create undue pressure on the respondents and such action of the applicants deserved to be deprecated.

23. That with regard to the statements made in para 5.1 to 5.14, the answering respondents state under the given facts and circumstances of the instant case and under the settled provisions of law, the grounds shown to justify the interference by this Hon'ble Tribunal are not tenable in law and as such the application is liable to be dismissed with cost. In this connection the respondents respectfully submit that the law is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any claim for absorption. A deputationist has no vested right of absorption. The law is also well settled that the creation/abolition posts / cadres, amalgamation/bifurcation of departments including reconstitute and restructure the pattern and cadre/categories of services and posts are matter within the exclusive domain of the executives of the State as a matter of policy. A government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. The law is also well settled that the Government has the right to notify scheme or policy decision and right to issue amendment to such scheme or policy, where the Government cannot be compelled by the

Court to change its policy involving expenditure. The policy decision of the Government cannot be interfered by the Court. It is not for the Court to weigh the pros and cons of the policy. The change of policy involving change of service condition cannot be challenged by an application unless Constitutional validity of the change is challenged. In the instant case the claims of the applicants involves the question of creation of posts, expenditure and other multifarious matter pertaining the policy and the schemes of the respondents involving not only the claims of the applicants alone, but it includes a huge number of cases similar questions of staff on deputation in 9 other States. There is also nothing to show that the respondents have acted arbitrarily in any case or violated the provisions of the Article 14 and 16 of the Constitution or any other provisions of law as alleged. Hence the application is liable to be dismissed with cost as devoid of any merit or ground.

24. That the answering respondents have no comments to offer with regard to the statements made in para 6 and 7 of the application.
25. That with regard to the statements made in para 8.1 to 8.5 and 9.1 and 9.2, the answering respondents state that in any view of the matter and the facts and circumstances of the case and under the provisions of law, the applicant is not entitled to any relief whatsoever as prayed for in the application and the application is liable to be dismissed with cost as devoid of any merit.

In the premises aforesaid, it is therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall also be pleased to dismiss the application with cost.

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Verification

I, Shri DR. KALYAN KUMAR PAL, at present working as the MEDICAL SUPERINTENDENT in the office of the ESIC MODEL HOSPITAL, BELTOLA, GUWAHATI-22

being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 13 and 14 are true to my knowledge and belief, those made in para 4 and 9 — being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 31st day of May, 2005 at Guwahati.

Kalyan Kumar Pal

DEPONENT

चिकित्सा अधिकारी / Medical Supdt.
क.रा.बो., अदालत हस्पताल / ESI Model Hospital
बेलतला, गुवाहाटी - 22 / Beltola, Guwahati - 22

MEMORANDUM OF UNDERSTANDING

ON THE OUTCOME OF DISCUSSION, IN BETWEEN REPRESENTATIVE OF THE ESIC NEW DELHI AND GOVT. OF ASSAM HELD ON 26th DECEMBER IN GUWAHATI REGARDING HANDING OVER OF ESI HOSPITAL BELTOLA TO ESIC FOR UPGRADATION TO A MODEL HOSPITAL.

In pursuance of the decisions arrived at in the meeting of the ESIC held on 16th Feb/2001 regarding upgradation of the ESI hospital, Beltola to a MODEL HOSPITAL and the decisions communicated to the Govt. of Assam vide DO No. V-13/14/2002-Med-dated 17/5/2001 and taking into consideration all the parameters for better facilities to be extended to the beneficiaries under the ESI Act, 1948, the Labour and Employment department, Govt. of Assam have decided to give consent on the proposal of ESIC and to handover the ESI Hospital, Beltola to ESIC for its upgradation to a MODEL HOSPITAL and communicated the State Govt.'s decision to ESIC and Govt. of India vide letter No. GLR 131/2001/123 dated 22/11/2002 and No. GLR 131/2001/125 dated 12/12/2002 respectively.

And whereas in response to the RD's letter 3-V: 21/23/99-BIFT dated 2/12/2002 and in consideration of the terms and considerations communicated vide letter no V-13/14/2001/Med-(call-II) dated 7/12/02 the Labour and Employment Department and Govt. of Assam have decided to handover the ESI Hospital Beltola to ESIC on 31/12/2002 for its upgradation to a "MODEL HOSPITAL" by the ESIC on terms and consideration communicated to secretary, Ministry of Labour vide letter No. GLR 131/2001/169 dated 16/12/2002.

And now, it is, therefore, in pursuance of the RD's letter No 43-V-21/23/99-BIFT dated 23/12/2002 and taking into consideration of the decision of the joint meeting held on 26/12/2002 at Guwahati, the Govt. of Assam is pleased to handover the ESI Hospital Beltola with all the existing infrastructure of the ESI Hospital, Beltola to ESIC for its upgradation on 04/03/2003 on the terms and consideration that the existing staff (Gazetted and Nongazetted) working in the ESI Hospital, Beltola and ESI dispensaries (where necessary) indicated in the enclosed Annexure as well as in the other existing staff under ESI scheme in Assam will be placed at the hospital of ESIC on deputation under the existing rules of the Govt./ESIC as per requirement of the ESIC norms.

And whereas, the officers and staff of the ESI Hospital, Beltola & officers and staff of ESI dispensaries are placed at the disposal of ESIC initially on deputation, they are asked to give their option to accept the scale of pay in respective of cadre/categories of posts in the ESIC as per existing norms/rules of the ESIC.

And now, it is also further indicated that the officers and staff deputed to ESIC are absolutely free to give their option for permanent absorption in the ESIC as per existing rates of the Govt./ESIC. The deputation of Gazetted and Nongazetted Officers and Staff of Govt. of Assam will be on deputation initially for 1 (one) year.

Certified to be true Copy
Dilip Baruah
Advocate

76- 28

And whereas, the complete setup of the ESI Hospital, Beltola under the ESI scheme in Assam as provided in the ESI Act, 1948 is handed over to ESIC as mutually agreed terms and conditions and in consideration of the socio-economic conditions of the people in the areas, the ESIC will extend their all facilities to the beneficiaries under the ESI Act, 1948 as well as to the people of Assam in general.

And whereas, the matter of further employment in the cadre of doctors, specialists and other medical Officers, paramedical staff will be on contractual basis. The other staff against the posts in Hospital Management Information system including computers Public Relations, Training and CME Programmes etc. in all the functional areas of MODEL HOSPITAL has been agreed by the ESIC to be considered for employment on priority basis as sponsored by Labour and Employment Department, Govt. of Assam for appointment by the ESIC. The ESIC will take further action on these agreed terms and conditions as per rules of ESIC. The Officers and Staff deputed and on contractual basis will have to give their option for their absorption in ESIC after the period of deputation.

It is also decided to constitute a Hospital Advisory Committee for MODEL HOSPITAL Beltola for taking steps for upgradation of the hospital suiting to the condition of Assam with representative of the Govt. of Assam. The committee will monitor the development activities and purchase of materials and equipments for upgradation of the Hospital.

The ESI Hospital Beltola is formally handed over to ESIC on today for its upgradation to a MODEL HOSPITAL in the interest of social security of the industrial workers in particular as well as the people of Assam in general.

Paras A & B are not accepted by the representatives of ESIC. These proposals will be sent to H.Q. ESIC for consideration.

Signature of the representative
of ESIC.
(Taking over)

Signature
04/4/03
(ROMEN SAIKIA)
REGIONAL DIRECTOR ESIC

Signature of the State Govt.
representative.
(Handing over)

04-4-2003
(G. L. Senapati)

Secretary, Labour & Employment
Govt. of Assam

A. A. 23
Dr. (Hs) L. Hazarika

04/4/03
(DR. K. K. PAL)

Med. Supdt. B S I Model
Hospital, Beltola, Guwahati

04/4/2003
C. R. Paul
Director (R)
ESIC Guwahati

04-4-2003
(L. J. D. S. / 12)
DIRECTOR (RIM)
ESIC - GUWAHATI

E.S.I. MODEL HOSPITAL,
BELTOLA, GUWAHATI-22

ASSAM

No. 432-A-23/11/A/2003-Estt. 16.6.16/61 dt. 23-7-2003.

To,

The Secretary, to the Govt. of Assam
Labour & Employment Department,
Dispur, Guwahati-6.

Subject: Option of Pay & allowances of Doctors
& Staff on deputation to ESI Model
Hospital, Beltola, Guwahati.

Sir,

With reference to the abovementioned subject,
I am directed to inform you that the option of Pay & allowances
of Doctors & staff forwarded by Govt. of Assam vide letter No.
GLR.153/2003/pt-I/133 dt. 17-09-03 is received in this office.

After examination of the aforesaid option,
it appears that the Govt. of Assam has only forwarded the ~~individual~~
individual options submitted by the Doctors & staff with the
particulars of all the Doctors & staff in two statements. But as
per guidelines & norms, the option should have been exercised
by the Govt. of Assam in unequivocal terms quoting the relevant
Rules, under which the option has been exercised by the Govt. of
Assam.

In view of above, it is requested kindly to
forward the following information to this office:-

- 1) Whether the Govt. of Assam has exercised the option on
behalf of the Employees for their pay & allowances.
- 2) The Rules under which the option as above has been exer-
cised i.e. the Rules of the Govt. of Assam which governs the
terms & conditions of pay & allowances fixation etc. of
deputationist staff.
- 3) The individual service records of all the 25 Doctors are
not forwarded with the abovementioned letter. The service
records, service Books/service Cards, leave accounts etc.
are required at this end for scrutiny and ~~MA~~ making
relevant entries of pay fixation etc.

Certified to be true Copy.
D. P. Barua
Advocate

78- 100 2


The information/Records as above may kindly be forwarded to this office at an early date, so that necessary action at this end may be taken immediately.

Yours faithfully,


(P. Baruah)

By, Director (Admn)
For Medical Superintendent

Copy to:- 1) The Administrative Medical Officer, ESI Scheme
Assam, Zoo-Narengi Road, Guwahati-21 for information
and necessary action.


By, Director (Admn)

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E.S.I.C. MODEL HOSPITAL
BELTOLA GUWAHATI-22.

NO.432.A.23/11/1/2003-Estt. Dt. 07.10.2003. 101

To
The Secretary to the Govt. of Assam,
Labour & Employment Department
Dispur, Guwahati-6.

Subj:- Option of Pay & allowances of
Doctors and Staff on deputation
to E.S.I.C. Model Hospital, Beltola
Guwahati.

Sir,

With reference to abovementioned
subject, kindly refer to this office letter of even no dated
29.09.2003.

In this regard, I am to request you
forward the desired information to this office so that the
cases of fixation of pay and allowances of the deputationists
may be settle at an early date.

Further, it is also requested to kindly
forward the undermentioned information to this hospital.

1. Whether the Doctors posted on deputation are in Group "A"
cadre as per the Govt. of Assam Rules.
2. The Scale of pay of Assistant Metron is Rs. 4300/- to 9075/-.
Whether her cadre is Group "B" or Group "C" as per Govt.
of Assam Rules may be specified.

Your's faithfully,

(P. BARUAH)

By. Director (Admn.)

For Medical Superintendent

Copy to:-

The Administrative Medical Officer, ESI Scheme,
Assam, Guwahati-21 for information.

7/10
Certified to be true Copy.
Dilip Baruah
Advocate

7/10
पो. बरुआ/P. BARUAH
असम निदेशक (प्रशा.) / Deputy Director Admn.
असम सरकार / असम सरकार
ESI Model Hospital, Beltola Guwahati.

R4

ESIC MODEL HOSPITAL
BELTOLA, GUWAHATI-22.

ANNEXURE: R4

NO. 432-A-23/11/1/2003-Estt/ Dated the 27-10-2003

TO:-

The Secretary to the Govt. of Assam
Labour & Employment Department
Dispur, Guwahati-6.

Subj:-

Option of pay & allowances of Doctor's &
Other staff deputed to of ESIC Model Hospital
Beltola, Guwahati-22.

Sir,

With reference to the abovementioned subject,
kindly refer to the Govt. of Assam letter no GLR.153/2003/Pt-I
133 dated 17.9.2003 vide which Option of pay & allowances of
Doctor's and Other staff was forwarded by the Govt. of Assam.

In this regard, I am directed to refer to
this Office letters of even no dated 29.9.2003 and 7.10.2003
(Copies enclosed). We are yet to receive any information from the
Govt. of Assam asked for vide the mentioned letters.

The Option as mentioned above was forwarded to
Hqrs. Office ESI Corporation New Delhi, and the Hqrs. Office has
requested to this Office to forward a copy of the "Foreign
Service Terms" of the employees of Assam Govt. as per the State
Govt. rules.

It is therefore, requested you kindly to forward
a copy of Foreign Service Terms of State Govt. Employees along with
the information requested for vide the enclosed letters, at an
early date. So that the fixation of pay & Allowances Memo of
deputed deputationist may be done immediately.

Since the deputationists are pressing hard for
immediate settlement of their pay & allowances, So that
an early action in this regard is kindly solicited.

Yours faithfully

(R. DARUAH)
Dy. Director (Admn)
For Medical Superintendent
ESIC Model Hospital, Beltola
Guwahati-22.

Certified to be true Copy.
Dilip Baruah
Advocate

Enclos:- An above.

Copy to :- 1. The Administrative Medical Officer, ESI Scheme
Assam, Zoo Narengi Road, Guwahati-21 for
information.

Dy. Director (Admn)

RS

ERIC MODEL HOSPITAL
BOLTOLA, GUWAHATI-22

ANNEXURE : RS

No. 432-A-23/11/1/2003-lett.

Dt. 26-3-2004.

To,

The Commissioner & Secretary, to the Govt. of Assam
Labour & Employment Department,
Dispur, Guwahati-6.

Subj:- Option of Pay & allowances of Doctors &
Other staff deputed to ERIC Model Hospital
Boltola, Guwahati-22.

Sir,

Kindly refer to the letter No. A-11/11-3/2003/
D.M.(HQ) dt. 16-2-2004, issued from the Hqs. office, ESI Corpn.
New-Delhi (copy enclosed) regarding terms of deputation of state
Govt. employees.

It is requested kindly to arrange for furnishing
the requisite information for consideration of the Fixation of
Pay of Doctors & other staff on deputation immediately.

Further, I am also directed to forward herewith
a representation dt. 15-3-04 addressed to you of the staff of
ERIC Model Hospital, Boltola, Guwahati on deputation for early
Fixation of their pay & allowances as per their individual
Option for ESI Corporation Pay.

Furthermore, I am also directed to inform you
that the service records/Leave accounts of the Doctors on
deputation as have been requested vide this office letter of
even No. dt. 16-6-03, dt. 10-7-03, dt. 29-9-03, 7-10-03 & 27-10-03
have not been received yet from the Govt. of Assam, the reply to
any of these letters have been received. Due to non receipt of all
service records/Leave accounts of Doctors, the leave availed by
many Doctors are not regularised/annotated at this end. Further,
the due yearly increments of several Doctors have not been
granted yet.

The non receipt of the above information regarding
terms of deputation, service records and leave accounts is
adversely affecting the careers of the deputationist as well
as financial loss to them. Therefore, they are very frustrated &
have already started agitational programmes. These has adversely
affected the functioning of the Hospital.

It is therefore requested kindly to take
immediate necessary action & forward all the requisite
particulars/records at an early date.

A prompt early action is kindly solicited.

Encl:- As above.

Yours faithfully,

(P. Baruah)

Dr. Director (Admin)

For Medical Superintendent.

- Copy to:- 1) The Administrative Medical Officer, ESI Scheme Assam
for information and necessary action.
2) Shri. D. Lahiri, Jt. Director (Med), ESI Corpn. Kotla Road
New-Delhi for kind information
3) Dr. A.K. Khelhor, Director Medical (HQ), ESI Corpn.
for kind information and necessary action.

Certified to be true Copy.
Dilip Barua
Advocate

By. Director (Admin)

कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION
हिमचंदीप भवन, कोटला मार्ग, नई दिल्ली-110002
HIMCHANDI DEEP BHAVAN, KOTLA ROAD, NEW DELHI-110002

No. A-11/11-3/2003-DM(HQ)

Date: 16/02/04

To (1)
The Commissioner & Secretary to the
Govt. of Assam
Labour and Employment Deptt.,
Dispur, Guwahati.

SUBJECT: Representation of doctor and staff, ESIC Model Hospital
Beltoan, Assam for early pay fixation.

Sir,

Kindly refer to this office letter No. A-37-18/1/03-
DM(HQ) dated 09/10/03 on the above subject.

Terms and of deputation of State Govt. employees of
the ESIC Model Hospital, Beltoan have still not been furnished.
You are requested to furnish the same for consideration
without further delay.

Yours faithfully,

(D. LAHIRI)

JT. DIRECTOR (MED.)

Copy to: The MS, ESIC Model Hospital, Beltoan, Assam. It is
requested to get the reply expedited from the
State Govt.

JT. DIRECTOR (MED.)

Certified to be true Copy.
Dilip Baruah
Advocate

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Central Administrative Tribunal
4 JUL 2005
Dated: 04/07/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

leg
Filed by the applicants
through: Subrata Nath
Advocate
04/07/05

In the matter of: -

O.A. No 247 of 2004.

Dr. Pranab Kumar Sharma and ors.

..... Applicants.

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of: -

Rejoinder submitted by the applicants in
reply to the written statements
submitted by the Respondent No. 1 to 5.

The humble applicants abovenamed most humbly and respectfully state
as under:-

1. That with regard to the statements made in paragraph 3(i), (ii), (iii), (iv), (v) and (vi) of the written statements, the applicants beg to submit that the applicant Doctors were deputed to the respondent corporation following the signing of the Memorandum of Understanding (MOU) on 04.04.2003 between the Govt. of Assam and the respondents the Employees' State Insurance Corporation (ESIC). In the said MOU, two conditions were clearly spelt out which are as follows:-
 - (i) The officers and staff of the ESI Hospital, Beltola and officers and staff of ESI dispensaries, placed at the disposal of ESIC initially on deputation, would give their option to accept the scale of pay as per existing norms/rules of the ESIC, and

- (ii) They would be absolutely free to give their option for permanent absorption in the ESIC as per rules.

Even thereafter, the ESIC authorities vide their letter dated 09.10.2003 (Annexure-XIII to the O.A) and letter dated 10.11.2003 (Annexure-XIV to the O.A) notified the terms and conditions for absorption of the applicants in ESIC and also invited their options thereof. At this stage the contention of the respondents that "there is no such rules or provisions for such absorption in the corporation" is not only inconsistent and unsustainable but is illegal, arbitrary, malafide and unfair and as such subject to interference of this Hon'ble Tribunal. It is no more a matter of discretion for the authorities of the ESIC as stated, but it is bound by the conditions precedent as stated above, and as such discretion cannot be exercised without fairness or reasonableness.

Further, the applicants have filed this O.A in their individual capacity and as such it is immaterial whether the applicants are members of the ESI Doctors Association, Assam" or not or whether the said Association is recognized or not.

This apart, the Govt. of Assam has never opted the pay scales of state Govt. plus deputation allowance for the applicants as stated in para 3(iv) of the written statements which is clearly a misrepresentation of facts. The options were exercised on 14.6.2003 by the individual applicants and that too for pay and allowances/cadre pay as per ESIC norms only. Those options were forwarded by the Govt. of Assam vide its letter dated 17.9.2003 (Annexure-VII to the O.A) to the ESIC authorities in terms of the conditions of MOU and the communications thereafter. Further, the plea of uniform policy in 10 other states in this matter as stated in the written statements is also not relevant here since the matter of deputation of the applicants herein are governed by the MOU dated 04.04.2003 in specific and the communications thereafter and not a subject matter of the general policy of other states whatsoever. It is relevant to mention here that in

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some of the State of Haryana, the pay scale of the State Govt., Medical officers are better than the E.S.I regular Doctors.

Further, when the conditions of deputation of the applicants are expressly provided in the MOU aforesaid and the communications thereafter and when the applicants have exercised options for their cadre pay as per ESIC scales/norms pursuant to the above stated MOU etc. and also as per the general laws of deputation as laid by the Government, the payment of deputation as laid down by the government, the payment of deputation allowance and the pay of the parent department to the applicants as stated by the respondents are illegal, unfair and arbitrary and as such subject to judicial scrutiny.

The claims of salary as per ESIC norms and the matter of absorption in respect of the applicants are two basic conditions of the deputation of the applicants and the matters of the same deal. As such these two issues are integral parts of the issue in question and are irreparable and hence this application is not hit by the provisions of the Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 as wrongly contended by the Respondents.

2. That the applicants categorically deny the statements made in para 4, 7, 8, 9, 10, 12, 13, 17, 19, 20 and 22 of the written statements and further begs to state that the respondents deliberately have misrepresented and misconstrued the contents of the MOU dated 04.04.2003 and that of the letter No. GLR/2003/pt. I/158 dated 29.03.2004 of the Govt. of Assam in respect of pay and allowances of the doctors and staff deputed to the ESIC Hospital, Beltola. It was clearly spelt out interalia in the MOU dated 04.04.2003 that-

"..... the officers and staff of the ESI hospital, Beltola and officers and staff of ESI dispensaries are placed at the disposal of ESIC initially on deputation, they are asked to give their option to

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accept the scale of pay in respect of cadre/categories of posts in the ESIC as per existing norms/rules of the ESIC".

It is therefore clear that the cadre pay as per ESIC norms to the deputed Doctors and staff was a condition precedent to their deputation to the ESIC Hospital, Beltola. As such the contention of the respondents that the issue of fixation of their pay has not been steered in the MOU is simply the distortion of facts. The Govt. of Assam in its letter No GLR/2003/Pt-I/158 dated 29.3.2004 (Annexure-IX to the O.A) has also clearly requested the ESIC authorities to take necessary action for releasing the salaries to the deputationists from the date of their joining on deputation as per option already exercised by them individually. This was simply a repetition of the condition laid down in the MOU as stated above and the Govt. of Assam did never request the respondent department to pay deputation allowance as stated by them.

The contention of the respondents as averred in para 12 of the written statements that the provision of FR 9(25) part-I (General Rules) is not applicable in case of the applicants is erroneous in as much as that the ESIC is an instrumentality of the Govt. of India and is a state as defined under Article 12 and hence subject to the basic and fundamental rules framed by the Govt. of India.

As regards option, the same were exercised by the individual persons and not by the Govt. of Assam on their behalf as interpreted by the respondents. Their options dated 14.6.2003 were forwarded to the respondent authorities by the Govt. of Assam vide letter no. CLR. 153/2003/pt. I/133 dated 17.9.2003 (Annexure-VII to the O.A), whereby the applicants opted for the pay and allowances/cadre pay as per ESIC norms and not for State Govt. pay and deputation allowances. It is relevant to mention here that option cannot be exercised by Govt. of Assam on behalf of the applicants which have to be exercised by the individuals only as per laws and it was done accordingly. Further, the

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contention of the respondents that the corporation did not invite any option as such is also a misrepresentation of fact. The options were exercised by the applicants only after the same were invited by the ESIC authorities which is also evident from their letter dated 29.9.2003 (Annexure-VIII to the O.A), wherein the respondents acknowledged the receipt of the options and further demanded the service records of all the deputationist for their needful. However they observed that the option should have been exercised by the Govt. of Assam but nowhere mentioned that they did not invite such options, and as such it is wrong to contend that they did not invite options. It is also erroneous to contend that those options were not the options in true sense but merely the demands of the deputationists.

As such, the decision of the respondents to pay state Govt. scale of pay plus deputation allowance to the applicants is arbitrary, illegal, unfair, malafide and in clear violation of the MOU dated 04.04.2003 and the communications thereafter.

It is further relevant to mentioned here that the Govt. of Assam, vide letter bearing No. GLR.153/2003/Pt-I/77 dated 18.01.2005 while quoting the reference of letter dated 02.12.2004, has categorically held that the borrower is liable to pay the salaries to the deputationist, as per their option and also stated that since the Employees, Medical, Para medical and Ministerial staff have exercised their options, therefore, their pay and allowances may be released immediately. Hence it is quite clear that the applicants are entitled to cadre pay and allowance as per their option already exercised.

It is relevant to mention here that the ESI has adopted all rules and regulation of Central Govt., so recruitment and service matter of its employees are governed by F.R.S.R, CCS (CCA) Rule, 1965 and all other relevant rules of Central Government for Corporation employees.

As per Appendix- 5 of F.R.S.R Part-I, General Rules, 15th Edition, Section-1, Rule 4, it is stated as follows: -

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4. Exercise of option

4.1 An employee appointed on deputation/foreign service may elect to draw either the pay in the scale of pay of deputation/foreign service post or his basic pay in the parent cadre *plus* Deputation (Duty) Allowance thereon *plus* personal pay, if any.

4.2 The borrowing authority should obtain the option of the employee *within one month* from the date of joining the ex cadre post unless the employee has himself furnished the option.

4.3 The option once exercised shall be final. However, the employees may revise the option under the following circumstances which will be effective from the date of occurrence of the same: -

(a) When he receives pro forma promotion or is appointed to non-functional selection grade in his parent cadre;

(b) When he is reverted to a lower grade in his parent cadre;

(c) When the scale of pay of the parent post on the basis of which his emoluments are regulated during deputation/foreign service or of the ex cadre post held by the employee on deputation/foreign service is revised either prospectively or from a retrospective date;

(d) Based on the revised/same option of the employees, in the event of pro forma promotion/appointment to non-functional Selection Grade, revision of scales of pay in the parent cadre, the pay of deputationists will be refixed with reference to the revised entitlement of pay in the parent cadre. However, if the initial option was for the pay scale of the deputation post and no change in option already exercised is envisaged, the pay already drawn in deputation post will be protected if the pay refixed is less.

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Note. - Revision in the rates of DA, HRA or other allowances either in the parent or borrowing organization shall not be an occasion for revision of the earlier option.

4.4 If the pay of an employee in his cadre post undergoes downward revision, the pay in the ex cadre post is also liable to be refixed on the basis of revised pay and in accordance with the revised option or existing option, if the employee does not revise his option."

In view of the above rule, if the Govt. of India, as well as of ESIC, the present applicants are entitled to elect to draw either the pay in the scale of pay of deputation/foreign service post or his basic pay in the parent cadre plus deputation (duty) allowance. But in the instant case, the applicants already exercised their option to draw the pay scale of deputation post, therefore, question of denial of the same is highly arbitrary, unfair and contrary to the relevant rule of the Govt. of India which is adopted by the ESIC, since its inception.

Moreover, the total emoluments of each of the applicants in the parent department is much lower than even the starting total emoluments, with the minimum basic pay of the deputation post.

3. That the applicants categorically denies the statements made in Para 11, 14, 15, 16, 18 and 21 of the written statements and begs to state that it was clearly spelt out in the MOU dated 04.04.2003 that-

"..... it is also further indicated that the officers and staff deputed to ESIC are absolutely free to give their option for permanent absorption in the ESIC as per existing rules of the Govt./ESIC."

Hence, the plea taken by the respondents now that the issue of permanent absorption of the applicants is to be decided as a matter of policy formulation of schemes and that it will involve huge financial and

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administrative implication etc. are their after thoughts only and not sustainable. Further the contention of the respondents that the applicants are not similarly situated with those doctors/staff directly recruited by the Corporation or who are working as regular employees and the applicants are a separate class by itself is not tenable in the eye of law. The applicants are discharging the same functions, duties and responsibilities as the other direct recruitees or regular employees of the Corporation are doing and as such they are similarly situated.

Hence denial of cadre pay to the applicants at par with that of the other direct recruitees or regular employees as per ESIC norms is a sheer discrimination and opposed to the provisions of Article 14 and 16 of the Constitution of India. Further the contention of the respondents in Para 15 of the written statements that the matter of permanent absorption of the applicants or otherwise is a matter of policy decision which may be taken before expiry of their term of deputation i.e. 04.04.06 is a bad and unfair ploy resorted to by the respondents. Further, mere circulation of some terms and conditions of absorption of the applicants, many of which are prejudicial to the interest of the applicants does not bear and testimony of sincerity of the respondents as stated by them and keeps the fate of the applicants hanging in the balance until and unless the matter is finally settled.

This apart, the action initiated by the respondents for comparative study of recruitment rules of the corporation and the Govt. of Assam is a step which is unwarranted and a technique of delaying the matter in a planned way, specially in view of the facts that the permanent absorption of the applicants will be made only under the norms and settled rules of the corporation which the respondents themselves have admitted in Para 18 of the written statements and as such further comparative of rules is superfluous and malafide.

As such there is no impediments for the respondents to settle the matter of permanent absorption of the applicants in terms of the MOU

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without dragging the matter in flimsy and unsustainable premises as stated now by the respondents.

4. That the applicants categorically deny the statements made in Para 23 and 25 of the written statements and begs to state the MOU dated 04.04.2003 and the subsequent communications thereto from the very basis of the deputation in the instant case which clearly provide interalia that the doctors and staff who were placed under the ESIC Hospital, Beltola initially under deputation, would eventually be permanently absorbed. The ESIC authorities have also initiated some action in this direction, which is only to be finally settled now. As such there is no question of statutory rules or right of new policy of the respondents as to whether the applicants would be absorbed or not. The reference of deputationists in 9 other states as averred is also not relevant in the instant case. The applicants herein have acquired their valuable and legal rights for their pay and allowances and permanent absorption on the basis of the premises embodied in the MOU dated 04.04.2003 and the subsequent communications thereto. As such what survives now is the enforcement of the said rights of the applicants, which they are legitimately entitled to, and it is fit case for this Hon'ble Tribunal to interfere with, so as to protect the rights and interests of the applicants. Further, the claims of the applicants herein do not involve creation of posts etc. as averred by the respondents since they have taken the applicants on deputation only as per their existing requirements under the norms of the ESIC Hospital, which they also have fairly admitted in para 7 of their written statements. As such denial of cadre pay as per ESIC norms and permanent absorption of the applicants by the respondents are arbitrary, unfair, opposed to article 14 and 16 of the Constitution of India, and violative of the basic conditions of the MOU aforesaid which is a specific bi-partite agreement, the performance of which is mandatory under law. It is further submitted that for proper adjudication of the matter all relevant records/files, more

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particularly the file bearing No. A-37 (18) 1/2003-DM (HQ), and file bearing No. 432-A-27/90/1/2003-Estt. As well as file No. V-13/14/1/2001-Med.1 (Col. II) are necessary for perusal of the Hon'ble Tribunal. Therefore, Hon'ble Tribunal be pleased to direct the respondents to produce all relevant records/ files on the date of hearing as well as the original copy of the memorandum of understanding. Therefore, the grounds stated and the relief's sought for in the application are all bonafide, legitimate and in conformity with law and the application deserves to be allowed with costs.

5. That under the facts and circumstances stated above, the application deserves to be allowed with costs.

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VARIFICATION

I, Dr. Pranab Kumar Sharma, S/O Late Pratap Sharma, aged about 47 years, working in the office of the E.S.I corporation, one of the applicant in the instant Original Application, duly authorized by the others, do hereby verify that the statements made in paragraph 1 to 5 my knowledge and records and I have not suppressed any material fact.

And I sign this verification on this the 4th day of July, 2005

Pranab Sharma

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Central Administrative Tribunal
22 JUL 2005
Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Filed by me applicant
Shrikrishna Nath
21.07.05

In the matter of: -

O.A. No 247 of 2004.

Dr. Pranab Kumar Sharma and ors.

..... Applicants.

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of: -

Additional rejoinder submitted by the applicants following the issuance of letter No. A-37 (18) 1/03-Med.IV dated 03.06.2005 by the Respondents, framing thereby the Draft Terms of absorption of the applicants.

The humble applicants abovenamed most humbly and respectfully state as under; -

1. That the respondents have since issued their letter No. A-37 (18) 1/03-Med. IV dated 03.06.2005 now at a belated stage communicating the Govt. of Assam the Draft Terms of Absorption pertaining to the proposed permanent absorption of the employees who have been deputed to the ESI Model Hospital, Beltola, Assam including the applicants.

(Copy of the letter dated 03.06.2005 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 1).

2. That the terms laid down in para 3 of the aforesaid letter provides interalia that the absorption of the deputationists will take effect from the date of deputation in ESI Corporation or from the date they join the duty in the ESI Corporation whichever is earlier. As such it is clearly evident that the applicants will also be entitled to their cadre pay as per ESIC scale of pay with effect from the date of their deputation in the ESIC Hospital, Beltola. This development is respectfully submitted before the Hon'ble Tribunal for kind appraisal.
3. That under the facts and circumstances, the applicants humbly submit that they are entitled to the reliefs sought for, and the Original Application deserves to be allowed with costs.

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VARIFICATION

I, Dr. Pranab Kumar Sharma, S/o- Late Pratap Sharma, aged about 47 years, working in the office of the E.S.I corporation, one of the applicant in the instant Original Application, duly authorized by the others, do hereby verify that the statements made in paragraph 1 to 3 of this additional rejoinder are true to my knowledge and records and I have not suppressed any material fact.

And I sign this verification on this the 21st day of July, 2005

Pranab Sharma

EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAVAN: C.I.G. ROAD: NEW DELHI

No. A-37(18) 1/03-Med. IV

Dated June 3, 2005

To

The Secretary
To Govt. of

CHHATTISGARH (CASSAM)

3715
14-6-05
97.49
Scholar, Govt.

Sub: Terms and conditions of absorption of the State Govt.
employees working on deputation in the ESIC Model Hospital,
Bellatla, Assam

Sir/Madam,

I am to enclose herewith draft terms of absorption of your State Govt. employees who have been deputed to ESI Model Hospital, Bellatla, Assam which was taken over by us on 4-11-02. It is proposed to absorb such employees in the Corporation service on their tendering resignation from State Govt. service and acceptance of the same by the State Govt., and subject to State Govt's and employees concerned accepting the terms of absorption. The draft terms and conditions may please be gone through and your views and acceptance of these terms may please be communicated so that draft terms can be placed for approval of the ESI Corporation. Once these terms are finalised, option for absorption in ESIC services shall be entertained through the State Govt. only and not directly from employees. ESIC will not entertain any representation viz. grievance etc. directly from individual or the Union.

The draft terms and conditions of absorption are prepared keeping in view extant Govt. of India rules and instructions on the subject wherever applicable and possible.

As the matter has already been pending for long and there are litigations from some States, I request you to please offer your views and comments, if any, taking in view the relevant service rules, as early as possible, and in any case, within three months so that the matter can be taken up to the ESI Corporation. In case, we do not hear from you within three months we will presume that you are in agreement with the proposed terms.

Yours faithfully,

Encl: As above

[DR. (MISS) KAMLESH KALRA]
MEDICAL COMMISSIONER

Copy to:-

The Medical Superintendent, ESIC Model Hospital,
Bellatla, Assam - for information with the advice to give wide publicity to the terms of absorption through notice board etc. including in local language, but no notice should be given to individuals or to any union. Further, the matter may also be followed up with the respective State Govt. so that the time limit as above is adhered to.

BY: DIRECTOR (MED.)

ANNEXURE - A

(Proposed to be circulated vide no. A-37 (18) 1/03-Med. IV dt. 03.06.05)

DRAFT TERMS OF ABSORPTION

- 1.) Option may be exercised by each employee for absorption in Corporation service or for repatriation to the State Govt. service. This option may be exercised by each employee who has a minimum of 2 years' service left in the lending Department as on 01.01.2006.
- 2) Mere exercising of option for absorption in Corporation service shall not confer any right on any employee to claim absorption and the decision of the Corporation in the matter would be final based on consideration of due screening.
- ✓ 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 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. Before absorption an employee will be free to opt for separate institutional seniority i.e. 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 the Hospital and all officers in the pay scale of Rs.14300-18300 (current NFSG scale).
- 5) Employees on absorption would continue to work at ESIC Model Hospital _____ at the discretion of the Corporation, but they would be under all India transfer liability except for those who have opted for institutional seniority as stated in para 4 above.
- 6) All the Medical Officers recruited on posts of various designations by the State Govt. for General Duty Medical purposes, on

absorption in Corporation service shall be absorbed in the General Duty Medical Officer (Insurance Medical Officers) Sub-cadre only. However, if the doctors were appointed as specialist, irrespective of the fact whether a separate specialist cadre existed in the state Govt. or not they will be absorbed in specialist sub cadre of ESIC.

7) An employee, on absorption in corporation service, shall have the option to get his past State Govt. service counted for combined pension in ESIC, if the State Govt. pays the entire amount of proportionate pensionary liability as per Central Civil Services Pension rules. An undertaking from the State Govt. would be necessary in this regard that they would discharge their pensionary liability as per Central Civil Services Pension Rules within a reasonable period. Option by the employee in this regard shall be exercised within six months from the date of issue of absorption letter to the employee in the Corporation service. Option once exercised is final. The individual can also opt for carry forward of accumulated leave as per the rules, on the condition that the State Govt. pays the pro-rata pension contribution and leave salary contribution as per the Rule and in the event of any delay in getting this payment, the amount shall be deducted from the final "on account payment" at the end of the financial year in which the person(s) retired. The employee is free to opt to get their terminal payment like gratuity, pension and leave encashment etc. or can avail the accumulated leave before option and in this case for the purpose of pension rule they will come under the new contributory pension scheme of the Central Govt.

8) In case an employee opts in favour of counting of his past service, he will be eligible to draw pension in accordance with the Rules of the ESI Corporation for the combined service under the State Govt. and under ESI Corporation on the final retirement / continuation/ voluntary retirement from ESI Corporation. If he resigns from service of the ESI Corporation, his resignation will be treated as resignation from State Govt. Service entailing forfeiture of past services including that under the State Govt. and consequent loss of pensionary benefits for combined service.

9) For recoveries of the advances in respect of house building advance, motor car/ motor cycle / scooter advance obtained by an employee from his previous employer which are outstanding as on date of absorption in the Corporation service, an employee shall have to liquidate the advance by himself before absorption and if the State

Govt. desires, the balance outstanding with the interest as certified by the State Govt. can be deducted by ESIC and paid to the concerned State Govt. periodically.

10) An official on absorption in ESI Corporation service will be governed by ESIC (Staff & Conditions of Service) Regulations, 1959 as amended from time to time.

11) No employee against whom any disciplinary proceeding is pending or who is undergoing the period of penalty, will be absorbed in the Corporation service.

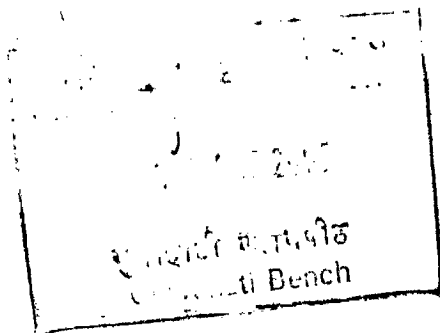
12) Pay of an absorbed employee will be fixed as per Fundamental Rules of Govt. of India and Regulation 7(4) (a) of ESIC (Staff & Condition of Service) Regulations, 1959.

13) Leave accumulated in respect of the employee in the State Govt. service will not be carried forward to ESIC and the employee may either avail of their leave or get encashment of leave from the concerned State Govt. as per their Rule. The duly calculated and audited leave encashment amount will be paid to the employee by ESIC after absorption only in case the State Govt. agrees for recovering the entire amount from the on account payment due to the State Govt. during the same financial year.

14) The accumulated GPF balance plus the interest thereon in respect of a deputationist shall be transferred to ESIC in his new GPF account opened in ESIC, irrespective of the fact whether the absorbee has opted to count his past service or not

(Proposed to be circulated vide no A-37 (18) 1/03-Med. IV dt. 03.06.05)

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Filed by :
The State of Assam
Respondent No. 6
Shreechandra
Mangla Assam
Dr. G. A. 12/1/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH

O.A.No. 247 / 2004

In the matter of:

O.A.No.247 of 2004

Dr.Pranab Kumar Sarma & ors.

-Vs-

Union of India & ors.

-And-

In the matter of:

Written statement on behalf of the
Respondent No. 6, (The
Commissioner and Secretary to the
Govt. of Assam, Labour and
Employment Department, Dispur,
Guwahati-6, Assam and Respondent
No.7 (The Secretary to the Govt. of
Assam, Labour and Employment
Department, Dispur, Guwahati-6,
Assam.

(Written statement on behalf of the respondent Nos.6 and 7 to
the application filed by the applicant)

I, Sri Charai Ram Phukan, Son of
Late Meda Ram Phukan aged about 58 years, Joint Secretary to the
Govt. of Assam, Labour and Employment Department, Dispur,
Guwahati-6 do hereby solemnly affirm and state as follows:

1. That I am the Joint Secretary to the Govt. of Assam, Labour and Employment Department, Dispur, Guwahati-6. Copies of the aforesaid application have been served upon the Respondent nos. 6 and 7. I have gone through the same and have understood the contents thereof as I have conversant with the facts and circumstances of the case. I am competent and authorized to file this written statement on behalf of the respondent No. 6 and 7. I do not admit any of the averments which are not specifically admitted hereinafter and the same are to be deemed as denied.

2. That with regard to the statements made in paragraphs 4.1 and 4.2 of the application the answering respondent has nothing to make comment on; it.

3. That the answering respondent admit the statements made in paragraph 4.3 of the application.

4. That with regard to the statements made in paragraphs 4.4 and 4.5 of the application the answering respondent begs to state that in response to the proposal for setting up the Model Hospital in the State communicated by the ESIC vide his letter dated 7.11.2002 under No. V.13/14/1/2001 Med .1(COL II). The Govt. of Assam by taking into consideration of all the parameters for better facilities to be extended to the beneficiaries under the ESEI Act, 1948 have decided consent of the proposal of ESIC and to hand over the ESI Hospital, Beltola to ESIC for its upgradation to the Model Hospital. Accordingly the Govt. of Assam communicated its decision to ESIC and Govt of India vide letter No. GLR 131/2001/123 dated 22.11.02

and no. GLR 131/2001/125 dated 12.2.2002 respectively. Consequently, a Memorandum of Understanding (MOU) was signed on 4.4.2003 by the authorities of the ESIC and Govt. of Assam and accordingly, the ESI Hospital of Beltoala with all the existing infrastructure was handed over to ESIC on 31.12.02 with the terms and condition that the existing staff (Gazetted and non-gazette) working in the ESI Hospital Beltoala, and ESI Dispensaries and other existing staff under ESI scheme in Assam will be placed at the Hospital of ESIC on deputation under the existing rules of the Govt. ESIC.

5. That with regard to the statements made in paragraphs 4.6 of the application it is stated that the officers and staff were so placed under the disposal of the ESIC on deputation basis initially for a period of one year which was subsequently extended from time to time and the last extension was made extending the period of deputation of the applicant till 4.4.06 vide order dated 30.4.2005.

6. That the answering respondent has admitted the statements made in paragraph 4.7 to 4.9 of the application.

7. That with regard to the statements made in paragraphs 4.10 of the application the answering respondent has nothing to make comment on it. He however does not admit any statement which are contrary to records.

8. That the answering respondent has admitted the statements made in paragraphs 4.11 to 4.19 of the application. He, however does not admit which are contrary to records.

9. That the answering respondent begs to state that so far the pay and allowances and permanent absorption in to ESI Corporation are concerned the Govt. of Assam clarified the matter in the terms and conditions issued vide the department's letter No. 153/2003/part 1/158 dated 29.3.2004 and No. GLR 153/2003/part-1/177 dated 18.1.05 and the Govt. of Assam requested the Corporation to take immediate action for releasing the pay and allowances of ESI Corporation to the deputationists as per option exercised by them with effect from 4.4.03.

Copies of the aforesaid two letters dated 29.3.2004 and 18.1.05 are annexed herewith and marked as Annexure-A and B respectively.

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VERIFICATION

I, Sri Chakkir Ram Thakur's, Son of Late Meda Ram Thakur's
58 aged about years, Joint Secretary to the
Govt. of Assam, Labour and Employment Department, Dispur,
Guwahati-6 do hereby do hereby state that the statements made in
paragaraphs 1,2,3,5,6,7 and 8 are true to my knowledge, those made
in paragaraphs 4 and 9 are being matter of records of the case derived
therefore which I believe to be true and the rest, are my humble
submissions before this Hon'ble Tribunal.

I have not suppressed any material facts and I have signed this
verification on this the 24th day of June, 2005 at Guwahati.


SIGNATURE

GOVERNMENT OF ASSAM
LABOUR AND EMPLOYMENT DEPARTMENT.

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NO.GLR.153/2003/Pt.I/158, Dated Dispur, the 29th March, 2004.

From : Shri B.B. Hagger, IAS,
Commr. & Secretary to the Govt. of Assam.

To : The Medical Supdt., Model Hospital,
ESI Corporation, Beltola, Guwahati-22.

Sub : Terms and conditions for deputation of Doctors and
staff to Model Hospital, ESI Corporation, Beltola.

Ref : Your letter NO.432-A-23/11/1/2003 dt. 29-9-2003.

Sir,

With reference to the letter on the subject quoted above, I am directed to communicate the following terms and conditions of deputation for the incumbents deputed to the Model Hospital, ESI Corporation, Beltola under Govt. of India vide this Deptt's Notification NO.GLR.121/2003/8, dt. 10-4-2003 and NO.GLR.121/2003/9 dt. 17-4-2003.

1. The deputationists will be entitled to retain their grade pay plus 10% deputation allowances subject to maximum of Rs. 500/- P.m. when the transfer is within the same station and 20% of the employees basic pay subject to a maximum of Rs. 1000/- only p.m. in other cases on the condition that deputation allowance plus basic pay shall not exceed Rs. 17,000/- only p.m. or the pay scale of the deputation post as per their option subject to the conditions laid down in Govt. of Assam Finance Deptt's O.M. NO.FEG.102/61/132 dt. 10-5-65, NO.FEG.29/74/230 dt. 22-1-91, NO.FEG.13/92/Pt/13, dt. 3-5-94 and NO.FEG.13-92/Pt/29, dt. 16.7.99 (Copy enclosed).

(2) Joining time pay of the incumbents while proceeding and on returning from Foreign Service i.e. Model Hospital, ESI Corporation, Beltola will be paid by the borrowing authority as admissible under Rules.

(3) Leave salary and pension contribution etc. will have to be borne by the Foreign Employer i.e. ESIC, Govt. of India.

(4) The Foreign Employer is to ensure recoveries of the subscriptions towards G.I. Schemes from the deputationists and take necessary action for crediting the amount as per Clause I.B. of State Govt. Employee G.I. Schemes 1983 as Circulated vide Finance (A&F) Deptt's O.MNO.FM.58/81/24 dt. 25-2-83 (copy enclosed).

(5) The deputationists will be Governed by the State Govt. Leave Rules.

(6) The Foreign Employer shall offer the medical facilities not inferior to those which the employee would have enjoyed in the Govt. services but for their deputation.

Contd...2/-

(7) The Foreign Employer will be liable to pay the leave salary in respect of disability leave granted to the deputationists on account of any disability incurred in and through Foreign service under ESIC even if such liabilities manifest themselves after the termination of the Foreign service.

(8) The deputationists will not be allowed to join any pension or G.P.F. under the Foreign Employer.

(9) Deputationists will be paid by the Foreign Employer travelling allowances for their journey to take-up the assignments and to return therefrom (including family members) as admissible.

(10) The whole expenditure in respect of any compensatory allowances for the period of leave and or at the end of the Foreign services till the incumbents joins their parent Department under the State Govt. will be borne by the Foreign Employer.

(11) The deputationists will be entitled to travel concession from the Foreign Employer in the scale they are entitled to under the State Govt. and the cost of such concession will be borne by the Foreign Employer.

(12) The deputationist shall furnish returns of movable and immovable properties owned by them to the Government.

(13) The outstanding Govt. dues, if any, will be paid by the deputationists during their deputation and the Foreign Employer will have to take responsibility to credit the amount to the State Govt. Revenue regularly.

(14) The date of commencement and termination of their Foreign Service shall be regulated in accordance with the provisions of the Assam Fundamental Rules and Subsidiary Rules.

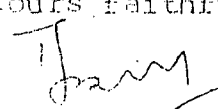
(15) All other terms and conditions will be Governed by the Rules and Regulations of the Govt. State of Assam.

You are, therefore, requested kindly to take necessary action for releasing the salaries to the deputationists from the date of their joining on deputation as per option already exercised by them individually.

The service history of 25 Nos. of Doctors are enclosed herewith for favour of your necessary action.

Enclo :- As above.

Yours faithfully,


Commr. & Secretary to the Govt. of Assam
Labour and Employment Deptt.

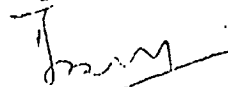
Contd....3/-

Memo NO.GLR.158/2003/Pt.I/158-A, Dated Dispur, the 29th March, 04.

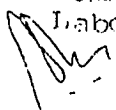
Copy to :-

- 1) The Deputy Medical Commissioner, ESI Corporation, Panchdeep Bhawan, Kotla Road, New Delhi.
- 2) The Regional Director, ESI Corporation, Assam, Banunimaidan, Guwahati-21.
- 3) The Administrative Medical Officer, ESI Schemes, Assam, Zoo-Narongi Road, Guwahati-21.
- 4) The Health & F. W. Deptt. Dispur, Guwahati-6.
- 5) The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-29 with reference to their letter NO.GE/XI/L&E/ESI Model Hospital/5925, dt. 19-9-03.
- 6) The P.S. to Minister, Labour and Employment Deptt., Assam, Dispur.
- 7) Person concerned.

By order etc.,



Commr. & Secretary to the Govt. of Assam
Labour and Employment Department.



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RECEIVED
Receipt No. _____
Date _____
Sign. _____
ESI Model Hospital
Beltola, Guwahati

109-

Annexure - B

-9-

(B)

GOVERNMENT OF ASSAM
LABOUR AND EMPLOYMENT DEPARTMENT
DISPUR

NO. GLR. 153/2003/Pt-I/177;

Dated Dispur, the 18th Jan/2005.

From : Shri C.R. Thakuria,
Jt. Secy. to the Govt. of Assam.

To : The Medical Supdt, Model Hospital,
ESI Corporation, Beltola, Guwahati-22.

Sub : Terms & condition of deputation of
Doctors and staff to Model Hospital,
ESI Corporation, Beltola, Guwahati.

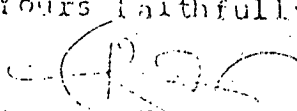
Ref : Your letter
NO. 432-A-23/2003/Estt-3258, dt. 2-12-2004.

Sir,

With reference to the letter on the subject quoted above, I am directed to say that as per Terms and Conditions of deputation communicated to Model Hospital, ESI Corporation, Beltola vide this Deptt's Notification NO. GLR. 153/2003/Pt/158, dt. 29/3/2004, the borrower is liable to pay the salaries to the deputationist as per their option. It may be stated that the Medical, Para-Medical and ministerial staff who were deputed to Model Hospital, ESI Corporation have already exercised their option to retain the salaries of the Corporation.

You are, therefore, requested kindly to take immediate action for releasing the pay and allowance of ESI Corporation to the deputationists as per option exercised by them w.o.f. 04/04/2003.

Yours faithfully,


Joint Secy. to the Govt. of Assam,
Labour and Employment Department.

DDMM