

FORM NO. 3
(Sec Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GWALIOR BENCH.

ORDER SHEET

41/06

Original Application No.

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(s)

Dr. B. Banikya
W.O.I 904/1

Respondent(s)

M. Chanda, G.N. Chakrabarty
S. Nath

Advocate for the Respondent(s)

B.C. Pathak & B. Pathak B.L.Y. St. Counsel
for O.A. No. 5-83

✓ CGSC

Notes of the Registry

Date
13.2.2006

Order of the Tribunal
Post on 15.2.2006.

This application is in form
is filed/C. for its. 50/-

deposited

No. 266319143

Dated 7.2.06

15.2.06
1/2
Dy. Registrar

Vice-Chairman

Heard Mr. M. Chanda, learned
counsel for the applicant, Mr. B.C.
Pathak, learned counsel for the
Respondents No. 3 and 5 and Ms. U.
Das, learned Addl. C.G.S.C. for the other
respondents.

The applicant is similarly situated
person like those applicants in O.A. Nos.
247/2004 and 36/2006. The applicant
is a Doctor under the Government of
Assam as Medical and Health Officer - I.
The Government of India and the
Employees' State Insurance Corporation

Contd/-

15.02.2006

(ESIC) in a meeting decided to take over the existing ESI Hospital run by the State Governments to convert into Model Hospital to be run by the ESIC. The ESIC conveyed the decision to the State Government for consent. The Government of Assam communicated the consent to the Government of India and ESIC and decided to hand over the ESI Hospital to ESIC. The present applicant and the applicants in O.A. Nos. 247/2005 were on deputation to the ESIC. While so the earlier applicants filed the Original Application No. 247/2004 and by order dated 03.01.2006 considered the terms and conditions contained in Memorandum of Understanding (MOU) entered between the parties and also observed as follows:-

"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 with 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."

Therefore, it is quite evident that six months time has been granted to the respondents for implementation of 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 reply statement.

Contd/-

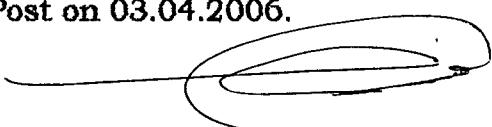
15.02.2006

Direction to be complied with will expire on 2nd July 2006. In the meantime, the materials place on record reveals that the respondents, ESIC is proceeding with selection for fresh Doctors from the open market. Four Doctors were selected. The apprehension of the applicants is that if such appointment is made he will be prejudicially affected/would be difficult in implementing the Court's order for want of vacancy. Therefore, the O.A. has been filed.

When the matter came up for admission hearing, this Court is of the view that notice has to be issued to the respondents. Accordingly, issue notice to the respondents. Six weeks time is given to the respondents to file reply statement.

Counsel for the applicant also insisted for an interim order to the effect that his interest should not be affected by virtue of such recruitment. On going to the materials place on record an interim order has to be granted. Therefore, this Court passes an interim order directing the respondents not to take action prejudicial to the interest of the applicant. In other words as far as the applicants are concerned, status quo as on today shall be maintained till the expiry of the period stipulated in the O.A. 247/2005.

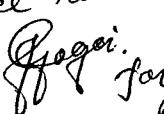
Post on 03.04.2006.



Vice-Chairman

Notice Received on behalf of
Regional Director, ESIC, R-4.

 20/02/06
 (C.K. Boora)
 Mrs. Inspector,

Notice received for Rs. No. 3 & 5

 for
 B.C. Pathak
 Advocate
 21/2/06

Notice received
 for R. I
 Alka Dar
 Addl Chie
 21/2/06.

/mb/

Notice and order
dt, 15/2/06 received 4.4.06.
on behalf of resp
MOS. 6.7.8. for Mrs.
M. Das, Advocate from
at Assam,

Shri Kumar Deka
Date. 23/2/06

Ms. U.Das learned Addl.C.G.S.C
appearing for respondent Nos.1,2 & 3.
and Mr.B.C.Pathak learned counsel
appearing for respondent appearing
Nos. 4 & 5 and Mrs. M.Das learned
counsel Government of Assam, appearing
for respondents No.6 & 7. and prays
for time to file written statement.
Four weeks time is granted. Post the
matter on 3.5.06. Interim order shall
continue.

Vice-Chairman

Notice & order sent
to D/Section for
issuing to resp. no-2,
by regd. A/D post.
~~(as)~~ 3/2/06. D/NO=258
DE 1/3/06.

27.4.2006

lm

It is reported that pleadings
are not complete in the matter. Reply
statement ~~was~~ not filed. Therefore,
let the case be listed for orders in
stead of hearing.

post on 16.5.2006.

Vice-Chairman

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

bb

~~4/2/06.~~ Notice duly served
~~(as)~~ on resp. no-2.

~~16/7~~ Service completed

31-3-06
No Reply statement
has been filed.

21
Pd. empty order
dated 4.4.06.

25
5.4.06

Received
Abha Das
Addl.C.G.S.C.
6/4/06
No. WIS has been filed.

26.4.06.

16-5-06

No. W.L.S has been
filed.

My

Pl. copy order
dated 17.5.06

17.5.06

order dt. 17/05/06
issuing to learned
advocate for both
the parties.

16-6-06

No. W.L.S has been
filed.

My

order dt. 19/06/06
issuing to learned
advocate for both
the parties.

*Cc
21/6/06*

19.7.2006

12.7.06
W.L.S filed by the
Respondent Nos. 1 to 5

Re:

W.L.S has been filed

My
18.7.06

Order dt. 19/7/06 issuing
to both side. *Cc
20/7*

bb

17.05.2006 No reply has been filed. Four
weeks time is granted.

Post on 17.06.2006. Interim
order will continue till such days.

Vice-Chairman

mb

19.06.2006 Mr. B. C. Pathak, learned
counsel for the respondents submitted
that

19.06.2006 Mr. B.C. Pathak, learned
counsel for the respondents sought
for time to file reply statement. He
also submitted that O.A. Nos. 36/2006
and 59/2006 are identical and same
issue is involved, therefore, this
case may be club together. Mr. M.
Chanda, learned counsel for the
applicant submitted that he has no
objection.

Post on 19.07.2006. Interim
order shall continue till next date.

Vice-Chairman

mb

Mr. B.C. Pathak, learned counsel
for the respondents submits that reply
statement has been filed. Mrs. U. Dutta,
learned counsel for the applicant
represented and submitted that some
time be allowed to file rejoinder.
Let it be done within two weeks.

Post on 3.8.2006. Interim order
will continue till the next date.

Vice-Chairman

03.08.2006 Present: Hon'ble Sri K.V. Sachidanandan, Vice-Chairman

Hon'ble Sri Gautam Ray, Administrative Member.

1-8-06

No rejoinder has been filed.

By

for comply order dated 3-8-06.

NS

When the matter came up for hearing, learned counsel Mr B.C. Pathak for the respondents submitted that he has already filed written statement. Mr S. Nath, learned counsel for the applicant submitted that he may be granted time to file rejoinder.

Post on 05.09.2006. Interim order will continue till the next date.

S
Member

Vice-Chairman

order dt. 3/8/06
issuing to learned
advocate's for both
the parties

Cap
4/8/06

No Rejoinder has
been filed.

M
4.9.06.

05.09.2006 Present: Hon'ble Sri K.V. Sachidanandan Vice-Chairman.

Mr R. Das, learned Counsel appeared instead of Mr B.C. Pathak, learned Counsel on behalf of the Respondents and submitted that he has already filed reply statement. Learned Counsel for the ^{Applicant} Respondents wanted to file rejoinder.

Post on 20.10.2006.
Interim order will continue till the next date.

/mb/

Vice-Chairman

An Rozabalnama filed
by Mr. R. Das, Advocate
for Respondents No. 1 to 5.

NS
4.9.06.

order dt. 5/9/06
issuing to learned
Advocate's for both
the parties.

Cap
6/9/06.

16.11.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

15 - H - 06

① Wts filed by R.No-
1 to 5.

Post on 20.11.2006 along with O.A.

② Respondent No-6-8
has not been filed

/mb/

Vice-Chairman

20.11.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

22
15.11.06.

Post on 20.12.2006.

H

Vice-Chairman

No rejoinder has
been filed.

/mb/

20.12.07 Counsel for the ~~xx~~ applicant submit
-d that he has received copy of the
written statement and prays for some
time to file rejoinder.

Post on 11.1.07. Interim order will
continue.

V

Vice-Chairman

pg

order dt. 20/12/07 11.1.07.
issuing to learned
advocates for both
the parties.

The counsel for the applicant has
submitted that the rejoinder is being
filed to-day. Let it be done. Post the
matter on 31.1.07. Interim order shall
continue.

Vice-Chairman

1m

No rejoinder has
been filed.

22
10.1.07.

order dt. 11/1/07 issuing
to learned advocates for
both the parties.

12.2.2007 Post on 14.3.2007. In the meantime
parties are directed ~~to complete~~ the comple-
the pleadings. Interim order shall con-
tinue till then.

Vice-Chairman

/bb/

22
16/1/07.
No rejoinder has
been filed.

22
9.2.07

order dt. 12/2/07
issuing to learned
Advocate's for
both the parties.

*(Ans)
13/2/07.*

14.3.2007

Learned counsel for the Applicant
sought for further time to file rejoinder.
Let it be done. Post on 24.04.2007.

(Ans)

Member

Vice-Chairman

/bb/

13.3.07
1) W/s has been filed
on 1 to 5.

2) No rejoinder has been
filed.

NT

13.3.07

23-4-07

24.4.07. Mr.S. Nath Counsel for the
applicant prays for some more time to file
rejoinder. Mr. R. Das representing for
Respondent Nos.2,3,4&5. Mrs.M.Das
learned Addl.C.G.S.C. representing for
Respondent Nos. 6 & 7. Post the matter
before the next available Division Bench.

(Ans)
Member(A)

(Ans)
Member(J)

1m

① W/s filed by R.No
1 to 5.
② No W/s filed by
R.No- 6 to 8.
③ No rejoinder has
been filed.

*(Ans)
23.4.07.*

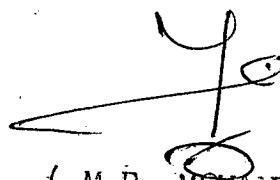
Rejoinder not
filed.

*(Ans)
8.05.08.*

✓ OA/CP/RA/ME No. 41 /2006

Order dated 25.3.2008

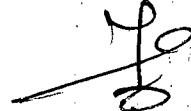
Call the matter for hearing
on 9.5.08.


(M.R. MOHANTY)
Vice-Chairman

09.05.2008 For the reasons recorded separately, the
O.A. stands disposed of.

Received for signature
Dr B. Beriyy
Lm
~~for
25/5/08~~


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

10

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

O.A. Nos. 36,41 and 59 of 2006

DATE OF DECISION: 09.05.2008

Dr.P.K.Sharma & Ors (O.A.No.36 of 2006)

Dr.B.Banikya (O.A.No.41 of 2006)

Dr.(Mrs)S.Kotoky & Ors.(O.A.No.59 of 2006)

.....Applicant/

Dr.J.L.Sarkar, (O.A.No.36 of 2006)

Mr. M.Chanda (O.A.No.41 of 2006).

Mr.M.Chanda (o.a.No.59 of 2006)

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Mrs. M.Das, State of Assam

Mr.R.Das, for Respondent Nos.1 to 5

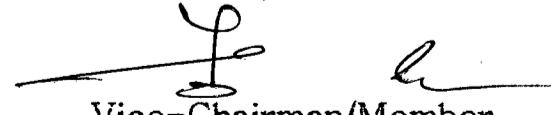
..... Advocate for the
Respondents

CORAM

THE HON'BLE MR.MANORANJAN MOHANTY, VICE-CHAIRMAN

THE HON'BLE MR.KIUSHI HIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No


Vice-Chairman/Member

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 36, 41 and 59 of 2006

Date of Order: This the 9th Day of May, 2008.

**HON'BLE MR.MANORANJAN MOHANTY, VICE-CHAIRMAN
HON'BLE MR.KHUSHIRAM, ADMINISTRATIVE MEMBER.**

O.A.NO.36 of 2006

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

Applicants

By Advocate Dr.J.L.Sarka, Mr.M.Chanda,

(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 Advocate Dr.J.L.Sarkar



-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
Panchdeep Bhawan
Kotla Road
New Delhi-110002
3. **The Medical Commissioner,**
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,
Guwahati-781021
Assam

Respondents

By Advocate Mrs. M.Das, State of Assam.
Mr.R.Das, for Respondent Nos.1 to 5

S
D

O.A.No.41 of 20061. Dr.Bires Banikya

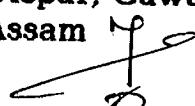
S/O. Late Chandra Banikya Umesh
 Working as Medical Officer on deputation
 ESI Model Hospital.
 Beltola, Guwahati-22
 Assam.

Applicant

By Advocate Mr.M.Chanda, Mr. S.Nath

-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
 Panchdeep Bhawan
 Kotla Road
 New Delhi-110002
3. The Medical Commissioner,
 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,
 Guwahati-781021
 Assam

Respondents

By Advocate Mrs. M.Das, State of Assam.
 Mr.R.Das, for Respondent Nos.1 to 5

O.A.NO.59 OF 2006

1. Dr.(Mrs.) Savita Kotoky
 W/O Shri Dilip Kumar Kotoky
 Working as Medical Officer on deputation
 ESI Model Hospital,
 Beltola, Guwahati-22
 Assam

2. Dr.(Mrs.)Manjima Baishya]
 W/O Dr. Narendra Nath Ganguly
 Working as Medical Officer on deputation
 ESI Model Hospital.
 Beltola, Guwahati-22
 Assam

Applicants.

By Advocate Mr.M.Chanda, Mr.S.Nath

-Versus-

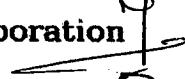
1. The Union of India
 Represented by the Secretary to the
 Government of India
 Ministry of Labour and Employment
 New Delhi.

3. The Director General
 Employee's State Insurance Corporation
 Panchdeep Bhawan
 Kotla Road
 New Delhi-110002

3. The Medical Commissioner,
 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, Guwahati-781021 Assam

Respondents

By Advocate Mrs. M.Das, State of Assam.
Mr.R.Das, for Respondent Nos.1 to 5

ORDER (ORAL)

M.R.MOHANTY,V.C:

The Applicants of all these three cases are Doctors, engaged by the State Government(Assam) in ESI Hospitals/Dispensaries. Employees State Insurance Corporation (in short, ESIC) decided to take over the management of the ESI Hospitals. While taking over management of the ESI Hospitals, the ESI Corporation entered into a Memorandum of Understanding (with the State of Assam) to take over services of the Doctors of ESI Hospitals. The matter, relating to absorption of those Doctors in the Services of ESI Corporation, was taking sometime and, pending completion of the formalities, the Doctors were shown to be on deputation from the State Services to ESIC Services. Since there was considerable confusion, those Doctors approached this Tribunal in O.A.No.247 of 2004; which was disposed of on 03.01.2006 with direction to the ESI Corporation,

to absorb such of the Doctors, who were continuing on deputation basis, in the services of ESI Corporation. However, the question of the date of absorption was left to be decided by the authorities of ESI Corporation. Since this Tribunal did not fix the date, with effect from which the Doctors were to be absorbed in ESI Corporation, the Corporation carried the matter (in W.P(C) No.3464 of 2007) to the Hon'ble Gauhati High court. During the pendency of the matter before the Hon'ble Court, the Corporation issued orders, on 17.09.2007 and on 08.10.2007, absorbing those Doctors in the Services of ESI Corporation. The Hon'ble High Court disposed of the said Writ Petition on 12.03.2008; because the matter relating to fixing the date of absorption was, by that time, pending before this Tribunal, in O.A.No.39 of 2008 being filed by the Doctors. The said case (O.A.No.39 of 2008) has already been disposed of on 11.04.2005 by this Tribunal, virtually, remitting the matter back to the ESI Corporation to take a decision pertaining to fixing the date with effect from which Doctors are/were to be shown absorbed in the Corporation. While taking such decision, the ESI Corporation has been asked to keep in mind the case of Doctors of Kerala, who are stated to have been absorbed in ESIC with effect from the date of their deputation.

2. During the pendency of aforesaid litigations, there was direct recruitment of Doctors by the ESI Corporation for the Hospitals in which the present Applicants are/were continuing on deputation basis. In the said premises, they apprehended that they may be repatriated. Therefore, the Applicants approached this Tribunal with the present Original Applications Nos. 36, 41 and 59 of 2006 filed under Section 19 of the Administrative Tribunals Act, 1985 and obtained interim

orders not to be repatriated till disposal of the issues initially raised in O.A. No.247 of 2004.

3. Heard Dr.J.L.Sarkar, learned counsel appearing for the Applicants in O.A. No.36 of 2006; Mr.M.Chanda, learned counsel appearing for the Applicants in O.A.No.41 and 59 of 2006 and Mr.R.Das, learned counsel appearing for the ESI Corporation. We have also heard Mrs. Manjula Das, learned counsel appearing for the State of Assam.

4. Since it is stated that the Applicants of all these three cases have already been absorbed in ESI Corporation vide orders dated 17.09.2007 and 08.10.2007 (with effect from 01.01.2006) there remains no apprehension now for their repatriation to the services of Assam State.

5. Since ESI Corporation is only to take decision, now, to fix the date from which the Doctors are to be absorbed in ESI Corporation, the Applicants should immediately file their representation to the ESI Corporation (as directed by us, on 11.4. 2008, in O.A.No.39 of 2008) by 15.05.2008.

6. For the reason of the aforesaid discussions, all the three cases now stand disposed of.

7. Send copies of this order to all the Applicants and to the Respondents of these cases in the address given in the O.As and free copies of this order be also handed over to the counsel appearing for the parties.



(KHUSHIRAM)
ADMINISTRATIVE MEMBER



09/05/08

(M.R.MOHANTY)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

File No. 9/Sl/08
Court Officer.

OA No. 36/06, 6/06, 1/06, 2 59/06
File No. 36/06, 6/06, 1/06, 2 59/06
Court Officer.

CASE NO.NAME OF PARTIESDATE OF JUDGMENTFiled by
Advocate
on 09/05/08

1. O.A. NO. 247/2004 P.K. Barman & ors 03.01.2006
-vs-
U.O.I. & ors

2. O.A. NO. 36/2006 P.K. Sharma & ors 08.02.2006
-vs-
U.O.I. & ors (Interim order)

3. M.P 121/2006 ESIC 20.11.2006
122/2006 -vs- (order of vacating
123/2006 Bikesh Banikya & ors status quo)

4. WP (C) NO. 3464/2007 ESIC 12.03.2008
-vs-
P.K. Barman & ors (order of Hon'ble H.C.)

5. O.A. NO. 39/2008 P.K. Sharma & ors 11.04.2008
-vs-
U.O.I. & ors (order of Hon'ble
eAT)

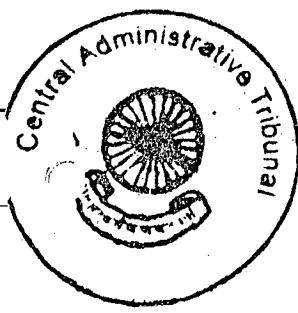
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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 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 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 -

64

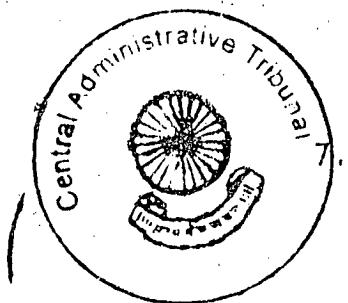
2

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
Pnchadeep 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.

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.



68
ORDER (ORAL)SIVARAJAN, S. (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:-

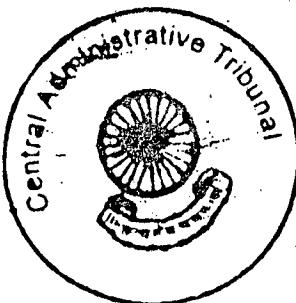
8.1 That the Hon'ble Tribunal be pleased to direct the Respondents to give the cadre pay and allowances to the applicants at ESIC norms and at par with that of their counterparts in the ESIC w.e.f. 04.04.2003, with all consequential service benefits.

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



9pt

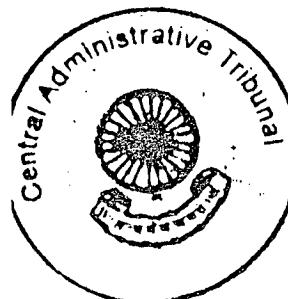
69

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 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.

Op/

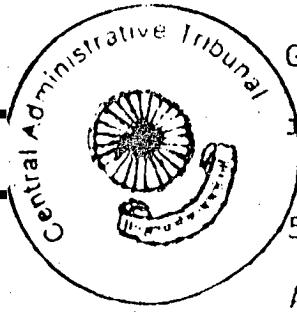
3. We have heard Dr.J.L.Sarkar assisted by Mr.M.Chanda, learned counsel appearing for the applicants. Mr. B. C. Pathak, learned counsel for the ESIC and Mrs.M.Das, learned Govt. Advocate for the State of Assam. Dr. Sarkar submits that according to the MOU and as per the draft terms of absorption which 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 "Incase, 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.

Gpt



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



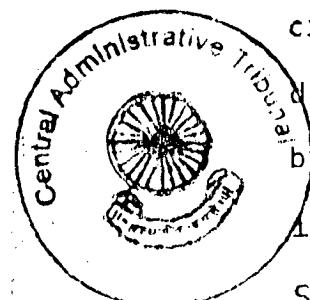
9/2

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.

GPA



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.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

Date of Application : ...12/01/06.

Date on which copy is ready : ...12/01/06.

Date on which copy is delivered : 12/01/06.

Certified to be true copy

N. Srinivas
Section Officer (Jud)
C. A. T. Court
C. A. T. Court
C. A. T. Court

SL No. 37

28

FORM NO. 2
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI, A.R.H.

25/6

8-2-06

28

Model Hospital
Guwahati-2

BLAD SHEET

36/06

Original Application No.

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(s) Dr. P.K. Sharma from (18)

Respondent(s) U. O. I. from

Advocate for the Applicants J.L. Sarkar, M. Chanda, G.N. Chakrabarty

S. Nath

CGSC

Advocate for the Respondent(s)

By St. Counsel

Order of the Tribunal

Notes of the Registry

Date:

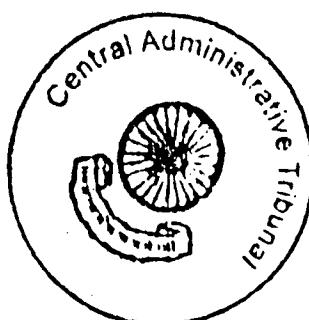
08.02.2006 Present: Hon'ble Sri K. V. Sachidanandan,
Vice-Chairman

Heard Dr. J.L. Sarkar, learned
counsel for the applicants. Mr. G. Baishiya,
learned Sr. C.G.S.C. on behalf of
respondents No. 1 to 4 was present.

The applicants are all Doctors under
Government of Assam as Medical and
Health Officer - I. The Government of
India and the Employees' State Insurance
Corporation (ESIC) in a meeting decided to
take over the existing ESI Hospital run by
the State Governments to convert into
Model Hospital to be run by the ESIC. The
ESIC conveyed the decision to the State
Government for consent. The Government
of Assam communicated the consent to
the Government of India and ESIC and
decided to hand over the ESI Hospital to
ESIC. The applicants were on deputation
to the ESIC. While so they have filed the

Contd. 2

Contd.



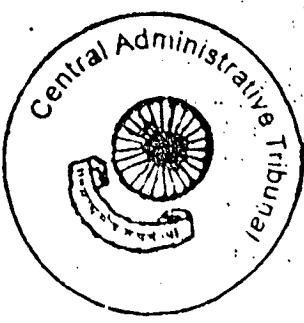
Original Application No. 247/2004 and by order dated 03.01.2006 considered terms and conditions contained in Memorandum of Understanding (MOU) entered into between the parties and also observed as follows :-

"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 with 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."

Therefore, it is quite evident that six months time has been granted to the respondents for implementation of 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 reply statement.

Direction to be complied with will expire on 2nd July 2006. In the meantime, the materials placed on record reveal that the respondents, ESIC is proceeding with selection for fresh Doctors from the open market. Four Doctors have already been selected. The apprehension of the applicants is that if such appointment is made they will be prejudicially affected/ would be difficult in implementing the Court's order for want of vacancy. Therefore, the O.A. has been filed.

Contd/-



08.02.2006

When the matter came up for admission hearing, this Court is of the view that notice has to be issued to the respondents. Accordingly, issue notice to the respondents. Six weeks time is given to the respondents to file reply statement.



Counsel for the applicants also insisted for an interim order to the effect that their interest should not be affected by virtue of such recruitment. On going through the materials placed on record, this Court passes an interim order directing the respondents not to take action prejudicial to the interest of the applicants. In other words as far as the applicants are concerned, status quo as on today shall be maintained till the expiry of the period stipulated in O.A. 247/2005.

Post on 24.03.2006.

Sd/ VICE CHAIRMAN

Date of Application : 8.2.06
Date on which copy is ready : 8.2.06
Date on which copy is delivered : 8.2.06
Certified to be true copy

N S J P
Section Office - (J) dl
C. A. T. Guwahati Bench
Guwahati

8/2/06

2566
8-2-06
Central Admin. Tribunal
Guwahati

प्रतिलिपि की तिथि अपेक्षित दिन की तिथि	स्टाप और फोलियो की अपेक्षित दिन तथा सुचित करने की तिथि	अपेक्षित स्टाप और फोलियो देने की तिथि	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी	आवेदक को प्रतिलिपि देने की तारीख
14-3-08	14-3-08	14-3-08	17-3-08	17-3-08

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 Corp.

versus

Dr. Preansit Barman & others

Respondent

Opposite Party

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

Mr. R. Das.

Mr. S. Bhattacharjee

Appellant

For

Petitioner

For

Opposite Party

In the matter of :-

1. The Employees State Insurance Corporation being represented by the Medical Superintendent, E.S.I.C. Model Hospital, Beldia, P.O. Guwahati - 781022, District : Kamrup (Metr^o), Assam.
2. The Union of India, being represented by the Secretary to the Govt. of India, Ministry of Labour and Employment, New Delhi.
3. The Director General, Employees State Insurance Corporation, Panchadeep Bhawan, Kotla Road, New Delhi - 110002.
4. The Medical Commissioner, Employees State Insurance Corporation, Panchadeep Bhawan, Kotla Road, New Delhi - 110002.
5. The Regional Director, Employees State Insurance Corporation, Bamunimaidan, P.O. Guwahati - 781021.
6. The Medical Superintendent, Employees State Insurance Corporation, Model Hospital, Beldia, P.O. Guwahati - 781022.

... WRIT PETITIONERS

- Versus -

1. Dr. Premjit Barman,
2. Dr. Pranab Kumar Sarma,
3. Dr. Pradip Kumar Bordoloi,

4...

4. Dr. Nalini M^ohan Das,
5. Dr. Nava Kumar G^opi,
6. Dr. Apurba Kumar Saikia,
7. Dr. Tarun Kr. Bhuyan.
8. Dr. Bhaben Rong^on
9. Dr. Kabin Tumung.
10. Dr. (Mrs.) Sikha Sarma.
11. Dr. Karabi Kalita.
12. Dr. Chandan Choudhury.
13. Dr. Dipak Chanchal B^orb^ora.
14. Dr. (Mrs.) Mandira Sarma.
15. Dr. (Mrs.) Parinita Hazarika.

(Serial No's. 1 to 15 above) are all -
working as Medical Officers (on deputation),
from the Govt. of Assam, at the Employees
State Insurance Corporation Model Hospital,
Beltola, P.O. Guwahati - 781022.
District : Kamrup (Metr^o), Assam.

... RESPONDENTS

M. S. G. Guhathata

16. The Commissioner & Secretary to the
Govt. of Assam, Labour & Employment
Department, Assam Sachivalaya, Dispur,
P.O. Guwahati - 781006.
17. The Secretary to the Govt. of Assam,
Labour & Employment Department,
Assam Sachivalaya, Dispur,
P.O. Guwahati - 781006.

- 8 - 4 -

18. The Administrative Medical Officer,
Employees State Insurance Scheme,
Government of Assam, 200 Narangi Road,
P.O. Guwahati - 781021,
District : Kamrup (Metr^o), Assam.

... PRO FORMA RESPONDENTS/
RESPONDENTS NOS 6 - 8 OF
O.A.247/04.

19. The Central Administrative Tribunal,
Principal Bench,
being represented by its Chairman,
C.A.T., Principal Bench, Copernicus
Marg, New Delhi - 110001.

20. The Central Administrative Tribunal,
Guwahati Bench,
being represented by its Section
Officer (Judicial) Rajgarh Main Road,
P.O. Guwahati - 781005.

... RESPONDENTS

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			W.P(G) NO 3464/07
BEFORE HON'BLE THE CHIEF JUSTICE MR. J. CHELAMESWAR HON'BLE MR. JUSTICE MR. I.A. ANSARI			
12.03.2008			
<i>Chelameswar, CJ:</i>			
<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>			

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:-			
<p>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.</p> <p>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.</p> <p>8.4 That the Hon'ble Tribunal be pleased to direct the respondents to refix the pay of the applicant with immediate effect.</p> <p>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.</p>			
<p>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.</p>			
<p>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</p>			

Ass. High Court-8/01-80.000 absorb the Respondent No.1 to 15 into service of the writ

Noting by Officer or
Advocate

Serial
No.

Date

Office notes, reports, orders or proceedings
with signature

petitioner² in terms³ of the memorandum of understanding
dated 26.12.2002 within a period of six months from the date
of receipt of the order.

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
brought 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.

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.

Sd/- J Chelameswar
Chief Justice

Sd/- J. A. Ansare
Judge

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6/11/3-08

CERTIFIED TO BE TRUE COPY			
Notary Public			
Date.....	7	3	08
Superintendent (Copying Section)			
Gauhati High Court,			
Authorised U/ 73, Oct 1, 1872			

2008
T7-3-08

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A.No. 39 of 2008

Guwahati, this the 11th April, 2008

CORAM: The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman
The Hon'ble Mr. Khushiram, Member [Administrative]

1. Dr. Pranab Kr. Sarma.
2. Dr. Pranjit Barman
3. Dr. Pradip Kr. Bordoli
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. [Mrs.] Sikha Sarma
11. Dr. Karabi Kalita
12. Dr. Chandan Choudhury
13. Dr. Dipak Chancal Borbora
14. Dr. [Mrs.] Mandira Sarma
15. Dr. Biresh Banikya
16. Dr. [Mrs.] Savita Katoky
17. Dr. Manjima Baishya.

[All are working as General Duty Medical Officers in the ESIC Model Hospital, Beltola, Guwahati-22, Assam under the Employee's State Insurance Corporation. They are on deputation from Govt. of Assam].

By Advocate Mr. M.Chandra

Applicants

Versus

1. The Union of India
Represented by the Secretary to the
Government of India,
Ministry of Labour and Employment
New Delhi-110 001

2. Employee's State Insurance Corporation,
Represented by the Director General
Employee's State Insurance Corporation
Panchdeep Bhawan,
C.I.G. Marg [near Bal-Bhawan], New Delhi-110 002.

3. The Director General
Employee's State Insurance Corporation
Panchdeep Bhawan



45

C.I.G. Marg [near Bal-Bhawan] New Delhi-11-002

4. The Medical Commissioner
 Employee's State Insurance Corporation
 C.I.G. Marg [near Bal-Bhawan] New Delhi 110 002

5. The Regional Director,
 Employee's State Insurance Corporation,
 Bamunimaidan, Guwahati 781021, Assam

6. The Superintendent
 Model Hospital
 Employee's State Insurance Corporation
 Beltola, Guwahati-781022, Assam

7. Govt of Assam
 Represented by the Secretary to the Government of Assam,
 Labour and Employment Department,
 Dispur, Guwahati-781006

8. The Commissioner and Secretary to the
 Labour and Employment Department,
 Dispur, Guwahati 781006

9. The Administrative Medical Officer,
 ESI Scheme, Government of Assam,
 Zoo Narangi Road, Guwahati 781 021

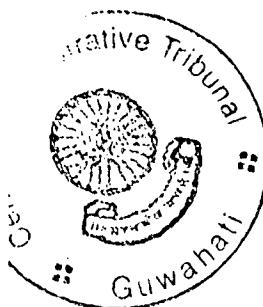
Respondents

By Advocates Mr.G.Baishya, Senior Standing Counsel for the Union of
 India and Mr. R.Das for Respondent No.2

O.A. No.39/2008] ORAL ORDER DATED 11.04.2008]

MANORA NJAN MOHANTY, VICE-CHAIRMAN:-

It is alleged that Doctors [17 in number] of ESI Corporation [initially
 came on deputation from the Assam State Govt. Service] were absorbed in
 ESIC with effect from 01.01.2006; although similarly placed Doctors of
 Kerala State were absorbed with effect from 01.01.2003; for which
 representations were submitted claiming absorption [in ESIC] from anterior
 dates. During pendency of the said grievances with the Respondents, the



aforesaid. 17 Doctors have approached this Tribunal with the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 with following prayers:-

"8.1 That the Hon'ble Tribunal be pleased to declare that the applicants are entitled to the benefit of absorption w.e.f.04.04.2003 i.e. from the date of taking over the ESIC Model Hospital from State of Assam in the light of the draft terms of absorption contained in the Corporation letter dated 03.06.2005 and also in the light of the decision of the Corporation to extend the benefit of absorption to the deputationists working in Asramam ESIC Model Hospital, Kerala i.e. from the date of taking over of the Asramam Hospital by the ESIC i.e. w.e.f. 01.01.2003.

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to pass necessary order/orders granting the benefit of absorption to the applicants w.e.f. 04.04.2003 by modifying the impugned letter dated 29.12.2005, 31.03.2006, 08.08.2007, 08.10.2007 and any other letter where date of absorption of the applicants indicated as 01.01.06.

8.3 Costs of application.

8.4 Any other relief[s] to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper."

2. On 27.02.2008, while asking to issue notices to the Respondents at

pre-admission stage, learned Senior Standing Counsel for the Central Govt. was also asked to obtain instructions. A copy of the order dated 27.02.2008 was supplied to learned Senior CGSC on 04.03.2008. Notices were actually issued to the Respondents on 05.03.2008. No reply has ~~yet~~ been filed by the Respondents as yet. No instructions have yet been provided to learned Sr. CGSC in the matter by the Respondents. However, Mr. R.Das,

learned Counsel has entered appearance on behalf of the ESI Corporation.



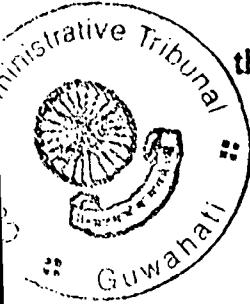
3. Heard the Counsels appearing for the parties.

4. In an earlier round of litigation in O.A.247/2004 [before issuance of orders for their absorption] the point in issue, raised now in the present case, was also raised and answered [with the following words] by this Tribunal on 03.01.2006:-

"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." [emphasis supplied by us]

5. Thus, rightly, the Division Bench of this Tribunal [vide order dated 03.01.2006 rendered in OA 247/2004] left the policy matters to the consideration of the ESI Corporation. While absorbing the Applicants, the Respondent Organisation has omitted to absorb the Applicants with effect from the date of their deputation [from State Govt. of Assam] to ESI Corporation; for which grievances were raised before the authorities of ESI Corporation, rightly, by submitting representation. They have also raised the question of discrimination; for the ESIC alleged to have absorbed similarly placed Doctors of Kerala with effect from the date of their deputation absorption in ESIC.

6. Since this case involves a policy matter [pertaining to absorption of the Applicants with effect from the date of their deputation or from the date



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of absorption etc.] and since the grievances of the Applicants [raised in shape of representations dated 25.10.2007 under Annexure-XXIV series] on the said point are stated to be still pending with the Director General of ESI Corporation, without any waste of time, this case is, hereby, disposed of [at admission stage] with direction to the Respondents to treat the copy of the present Original Application as a joint representation [of the Applicants] addressed to the Respondents and consider the same/the grievances of the Applicants [as noted in para 1 above] and pass necessary consequential orders expeditiously, preferably within 120 days from the date of receipt of a copy of this order. Each of the Applicants shall remain free to put up their individual representations [giving all details about themselves; which they should do by 15th of May 2008] and the Respondents should take the same into consideration, while considering the grievance in general. While considering the case in hand, the Respondents should examine as to whether in cases of the Doctors of Kerala, the ESI Corporation has absorbed them with effect from the date of their ~~absorption~~^{deputation} from any anterior date and, if that is so, then they should not discriminate the Applicants.

7. Send copies of this order to all the Applicants and all the Respondents in the address given in the Original Application and free copies of this order be also handed over to the Advocates appearing for both

sides.



Sd/-
Manoranjan Mohanty
Vice Chairman
Sd/-
Khushiram
Member (A)

TRUE COPY

प्रतिलिपि

अनुभाग अधिकारी

Section Officer (Judi)

Central Administrative Tribunal

जनरल अफफिस

Guwahati Bench

Guwahati-5 Assam-781006

JK 95

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION

41/06

1. a) Name of the Applicant:- Dr. B. B. Panikar
b) Respondents :- Union of India & Ors
c) No. of applicant:-
2. Is the application in the proper form :- Yes/No.
3. Whether name & Description and address of all the papers been furnished in cause title:- YES/NO.
4. Has the application been duly signed and verified: YES/NO.
5. Have the copies duly signed :- YES/NO.
6. Have sufficient number of copies of the application been filed:- YES
7. Whether all the annexures parties are impleaded:- YES/NO.
8. Whether English translation of documents in the Language:- YES/NO.
9. Is the application is in time :- YES/NO.
10. Has the Vakalatname/MEMO/of Appearance/Authorisation, filed:- YES/NO.
11. Is the application by IPO/BD/FOR Rs. 50/-: 266319143
12. Has the application is maintainable :- YES/NO.
13. Has the impugned order original duly attested been filed:- YES/NO.
14. Has the legible copies of the annexures duly attested filed:- YES
15. Has the Index of documents been filed all available:- YES/NO.
16. Has the required number of enveloped bearing full address of the respondents been filed :- YES/NO
17. Has the declaration as required by item 17 of the form:- YES/NO.
18. Whether the relief sought for arises out of the Single:- YES/NO.
19. Whether the interim relief is prayed for :- YES/NO.
20. In case of condonation of delay is filed is it supported:- YES/NO.
21. Whether this case can be heard by SINGLE BENCH/DIVISION BENCH:
22. Any other points :-
23. Result of the scrutiny with initial of the Scrutiny Clerk:-
The application is in order

AN OFFICER

DEPUTY REGISTRAR

10-2-06

Page 29 not visible

10/2/06

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

G. A. R. 6

[See Rule 22 (1)]

RECEIPT

No. 1788

Date 10/2/2006

Received from Dr. B. Banikya with

Letter No. OA 4106 dated 20.....

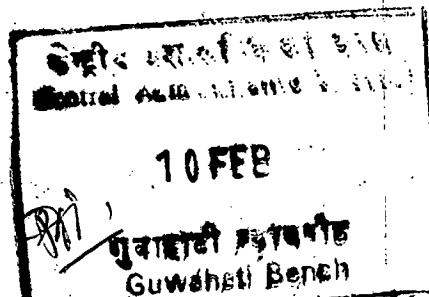
the sum of Rupees Fifteen only

In cash/by IPO on account of service charges for exam result
by bank draft in payment of

Signature

Rs. 15/-


Cashier



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 41 /2006

Dr. [Biresh] Banikya

-Vs-

Union of India & Ors

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

05.11.1990 Applicant appointed as medical and Health officer under the Dept. of Health.

25.04.2003 Applicant was placed on deputation under the ESI Model Hospital, Beltola, Guwahati.

16.02.2001- Govt. of India and the Employee's State Insurance corporation (ESIC) in a meeting decided to take over the existing ESI Hospitals run by the State Governments and to convert them into "Model Hospitals" to be run by the ESIC.

17.5.01, 07.11.02 The ESIC conveyed the above stated decision to the Govt. of Assam and asked for consent.
(Annexure-I & II)

22.11.02 and 12.12.02- The Govt. of Assam communicated its consent to the Govt. of India and the ESIC and decided to hand over the ESI Hospitals at Beltola, Guwahati to the ESIC as proposed.

04.04.2003- Memorandum of understanding (MOU) was signed by the representatives of the Govt. of Assam and the ESIC whereby the ESI Hospitals at Beltola, Guwahati was handed over to the ESIC w.e.f 4.4.2003.
(Annexure- III)

10.04.2003- Notification was issued by the Govt. of Assam whereby the services of the applicant were placed under the disposal of the Model Hospitals, Beltola under ESIC on deputation basis initially for a period of one year w.e.f 4.4.2003.
(Annexure- IV)

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29.03.2003 Govt. of Assam extended the deputation period for another one year w.e.f 4.4.2004.
(Annexure-V)

13.07.2004 ESIC doctors issued a letter where it was stated that period of deputation of doctors and staff of the model hospital shall be three years from the date of taking over the Hospital.
(Annexure-VI)

17.9.2003- Govt. of Assam forwarded the options of the applicant to the ESIC.
(Annexure-VII)

29.9.2003- Medical Supdt: ESIC Hospitals, Beltola asked information's from the Govt. of Assam and desired that the options ought to have been exercised by the Govt. of Assam.
(Annexure-VIII)

29.03.2004- The Commissioner and Secretary to the Govt. of Assam, Deptt. of Labour and Employment sent the information's desired by the ESIC in their letter dated 29.9.2003 and also communicated the terms and conditions for deputation of the applicant and other deputationists in the Model Hospitals, ESIC, Beltola. Further, the ESIC was requested to take necessary action for releasing the pay to the deputationists from the date of their joining on deputation as per options exercised by them individually. Their service records were also forwarded therewith.
(Annexure-IX)

12.01.2004- Applicant submitted his representation for fixation of his pay and allowances/cadre pay as per ESIC norms to the Medical Commissioner, New Delhi.
(Annexure-X)

27.05.2004- ESI Doctors' Association, Assam wrote to the ESIC urging for release of pay and allowances of the applicant at ESIC norms but with no results.
(Annexure-XI)

30.11.2004- By the letter dated 30.11.04 it has been arbitrarily decided to grant 10% deputation allowance to the applicant who are working in deputation in violation of the conditions laid down in FRSR as well in violation of the conditions laid down in MOU as well as Director General ESI letter dated 10.01.03.
(Annexure-XII)

10.01.2003- The Director General, ESIC issued in his D.O letter that deputationist are entitled to draw as per their option either to get pay of the deputationist fixed under normal rules or to draw pay of the post in parent department plus deputation allowances as per

Govt. of India's rules and this option of choosing pay scales has to be made as a Hospital unit and not individually.

(Annexure-XIII)

03.06.2005- Medical Commissioner, ESIC, forwarded copy of the draft terms and conditions for permanent absorption of the applicant including other staffs who are working on deputation basis in the ESI Model Hospital, Beltola seeking views and comments of the Govt. of Assam, if any, requesting the Govt. of Assam to furnish the reply within a period of 3 months otherwise it will be presumed that the Govt. of Assam is in agreement with the draft terms and conditions prepared by the ESIC and communicated through letter dated 03.06.05.

It is further stated in the communication dated 03.06.05 that the Corporation wants to expedite the process of absorption since the issue is long pending and there are litigations from some of the States.

(Annexure- XIV)

03.01.2006- The Hon'ble Tribunal passed judgment and order dated 03.01.06 in O.A. No. 247/04 directing the respondent ESIC to proceed and implement the draft terms and conditions as agreed by the Govt. of Assam for absorption of the deputationist within a period of 6 months.

(Annexure-XV)

27.01.2006/02.02.06- Respondents Corporation after judgment and order dated 03.01.06, resorted to fresh recruitment of general duty Medical Officers and accordingly offer of appointment has been issued at least to 4 Doctors when already 26 doctors (20 deputationists doctors and 6 regular doctors of the Corporation) are already working as against the total strength of 26 general duty Medical Officers as such applicant are apprehending that the respondents in order to avoid the implementation of the provisions contained in the MOU as well as to avoid the implementation of the judgment and order dated 03.01.06 started the process of fresh recruitments of the Medical Officers in order to repatriate the applicant in their parent organisation.

(Annexure-XVI)

03.01.2006- Applicants of O.A.No. 247/2004 apprehending their repatriation before implementation of the judgment and order dated 03.01.2006 again approached this Hon'ble Tribunal through O.A.No. 36/2006 and, the Hon'ble Court after hearing the parties were pleased to pass an interim order of status quo in favour of the applicants.

(Annexure-XVII)

Hence this Original application before the Hon'ble Tribunal.

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PRAYERS

1. That the Hon'ble Tribunal be pleased to direct the Respondents to allow the applicant to continue in service on deputation basis till completion of exercise of absorption of the applicant in terms of the judgment and order dated 03.01.2006 passed in O.A. No. 247/2004 as well as in terms of MOU.
2. That the Hon'ble Tribunal be pleased to declare that applicant are entitled to be considered for absorption in terms of Memorandum of Understanding as well as in terms of the judgment and order dated 03.01.2006 passed in O.A. No. 247/2004 by this Hon'ble Tribunal as well as in terms of MOU.
3. Costs of the application.
4. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

MOU

Interim order prayed for.

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

1. That during the pendency of the Original Application the Hon'ble Tribunal be pleased to pass order of status quo till disposal of the Original Application.
2. That the Hon'ble Tribunal be pleased to direct the respondent ESIC to allow the applicant to continue in service on deputation basis till disposal of this Original Application.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

Title of the case: O.A. No. 41 /2006

K. Dr. Biresh Kumar Banikya. : Applicant.
 Versus -
 Union of India & Others. : Respondents.

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Filed by

Ram
 Advocate

Date: 16. 02. 06

Dr. Biresh Banikya

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 41 /2006

BETWEEN:

1. Dr. Biresh Banikya,
S/o- Late Chandra Banikya Umesh.
Working as Medical officer on deputation,
ESI Model Hospital,
Beltola, Guwahati-22,
Assam.

...Applicant.

-AND-

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
Panchdeep Bhawan
Kotla Road,
New delhi-110002.
3. The Medical Commissioner,
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,

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1. Filed by the applicant
through: Subegato Nath
Advocate
10-02-2006

Dr. Biresh Banikya

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,
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 the apprehension of repatriation in the parent department in total violation of Memorandum of Understanding (for short MOU) signed by the Govt. of Assam, as well as ESIC on 04.04.2003 and also in violation of the judgment and order passed on 03.01.2006 by this learned Tribunal in O.A. No. 247/2004, in case of similarly situated employees, wherein it has been directed to ESIC to proceed with the matter and to implement the terms and conditions contained in the Memorandum of Understanding and the draft terms of absorption to the effect agreed by the State Govt. in their written statement within a period of six months from the date of receipt of this order, hence this Original Application.

2. Jurisdiction of the Tribunal.

Dr. Birendra Bandyopadhyay

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.

4. Facts of the Case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India, he belongs to SC community. Applicant is presently working as General Duty Medical Officer, on deputation basis in the ESI Model Hospital, Beltola, Guwahati, Assam. The applicant is a Medical and Health Officer, Gr. I of the Govt. of Assam. He was initially appointed on 05.11.1990 as Medical and Health Officer under the department of Health, Labour and Employment, Govt. of Assam and he was placed on deputation on 25.04.2003 under the ESI Model Hospital, Beltola, Guwahati, Assam.

4.2 That under the initiative of the Ministry of Labour and Employment, Govt. of India, the employee's state insurance Corporation (herein after called as ESIC) in its meeting held on 16.02.2001 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 17.05.2001 and letter No. V-13/14/1/2001-Med.1 (Col. II) dated 07.11.2002 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.

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(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).

4.3 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 ESI Hospital at Beltola, Guwahati to the ESIC and Communicated the State Governments decision to ESIC and Govt. of India vide letter bearing 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 04.04.2003 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-III).

4.4 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 service of the applicant also under the disposal of the Model Hospital, Beltola, under ESIC on deputation w.e.f 04.04.2003. 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 29.03.2004 of Govt. of Assam, it has been extended for another year w.e.f 04.04.2004 which would expire on 04.04.2005. Further, the ESIC authorities vide their letter

Dr. Birendra Banikya

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 the hospital which means that the period of deputation of the applicant will now expire on 04.04.2006.

(Copy of notification dated 10.4.2003, dated 29.3.2004 and letter dated 13.07.2004 are annexed hereto for perusal of Hon'ble Tribunal as Annexures- IV, V and VI respectively).

4.5 That while placing the service of the applicant 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 applicant alongwith others for their acceptance for pay and allowances as per ESIC norms or otherwise, during the period of deputation. The applicant submitted his option on 14.6.2003, which was 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 applicant alongwith other similarly situated Medical Officers 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 along with application dated 12.5.2003 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-VII).

4.6 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 applicant 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).

4.7 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/Pl.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 inter alia that necessary action be taken for releasing the salaries/cadre pay to the deputationists from the date of taking over of the Model Hospital i.e. 04.04.2003 as per option exercised by them individually and the service records of the applicant was also forwarded therewith.

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

4.8 That the applicant, following submission of his option, had been persuading for fixation of his pay and allowances/cadre pay as per ESIC norms but with no result whatsoever. The applicant submitted representation which was 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 applicant as per ESIC norms w.e.f 4.4.2003. But the respondents with their unusual apathy appear to be not at all alive on the issue. It is relevant to mention here that the ESI Doctors Association has been recognized by Govt. of Assam and the applicant is the member of the association. As such the said association persuaded the Respondents for payment of cadre pay to the applicant but with no result.

Dr. Birendra Banikya.

(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).

4.9 That the applicant most respectfully beg to submit that the respondents are not only showing their apathy in the matter of pay of the applicant as stated above but have been acting in similar fashion in the matter of permanent absorption of the applicant 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 applicant. As such the applicant alongwith other staffs deputed to ESIC Hospital, Beltola submitted representations on 04.11.2003 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 applicant therefore did not submit his option for absorptions without proper clarification/ modification of the conditions objected by him although some of them submitted conditional options. The representation dated 22.11.03 aforesaid signed by 84 numbers of employees under deputation, including the applicant 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.

- 4.10 That the Head quarter office of the ESIC, New Delhi vide its letter no. A-37/18/1/2003-DM (HQ) dated 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.
- 4.11 That the applicant most respectfully begs to state that his service was placed under the ESIC in the interest of public service and following the MOU, mutually agreed upon by the Govt. of Assam and the ESIC. But unfortunately the applicant is neither getting his cadre pay as per the settled laws or MOU nor his case of permanent absorption in the ESIC is being taken due care of. As such the applicant is being denied justice and his present uncertain position has become a matter of great concern and anxieties for him.
- 4.12 That the Hon'ble Tribunal be pleased to direct the respondent Corporation 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.
- 4.13 That similarly situated employees, being highly aggrieved for non-consideration of their absorption as well as for non-payment of salary as per ESIC norms and more particularly in view of the impugned order

Dr. Biresh Banikya.

bearing letter No. A-11 (11)-3/2003- DM (HQ) dated 30.11.2004, whereby HQ. Office of ESIC have sanctioned only 10% of deputation allowance with the ceiling of Rs. 500/- per month to the applicant and thereby virtually denied the payment of pay scales in ESIC norms, in such compelling circumstances many of the similarly situated employees/doctors, who were placed on deputation like the present applicant approached this Hon'ble Tribunal through O.A. No. 247/2004 and also challenged the impugned order dated 30.11.2004, which was issued in violation of the decision arrived at by the respondent ESIC with the Govt. of Assam as per Memorandum of Understanding. However, the applicant at the relevant point of time did not approached this Hon'ble Tribunal but he is similarly situated employee like those applicants of O.A. No. 247/04 and entitled to similar benefits in the matter of absorption in ESI Model Hospital, Beltola.

Copy of the order dated 30.11.2004 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- XII.

4.14 That it is stated that the Director General, ESIC in his D.O letter No. U. 11/11/Assam/1/03-DM (HQ) dated 10.01.2003, it has been made clear by the Director General that deputationist are entitled to draw as per their 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's rules and this option or choosing pay scales has to be made as a Hospital unit and not individually, therefore it is clear that subsequent impugned letter dated 30.11.2004 has been issued by the respondents Corporation contrary to the decision arrived at in the MOU to deny the legitimate claims of the applicant to draw scale of pay as per ESIC norms, since the applicant specifically opted ESIC pay scales, therefore, it appears that the conduct of respondent Corporation is not fair in dealing with the applicant and their causes. It also appears that the

Dr. Birendra Barikya.

impugned order dated 30.11.2004 is contrary to the opinion expressed by the Director General of the Corporation in his letter dated 10.01.2003.

Copy of the D.O letter dated 10.01.03 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- XIII.

4.15 That your applicant further begs to say that the Medical Commissioner ESIC, New Delhi vide letter bearing No. A-37 (18) 1/03-MED. IV dated 03.06.2005 it is informed to the Secretary, Govt. of Assam that a draft term and condition for absorption has been prepared and sent herewith for State Govt. employees who have been in deputation in ESIC Model Hospital, Beltola, Assam which was taken over by the ESIC on 04.04.2003, therefore, now 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 Government and subject to State Govt. and employees concern accepting the term of absorption. It is requested further that the enclosed draft terms and condition may please be examined and the views and acceptance of the terms by the State Govt. may be communicated so that draft terms can be placed for approval of the ESIC. Once these terms are finalized, 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, grievance etc. directly from individual or the Union. It is further stated that since the matter is pending for long and there are litigations from some States, therefore, it has been requested to offer views and comments of the State Govt. if any taking in view of the relevant service rules as early as possible and in any case within a period of 3 months so that the matter may be taken up with the ESIC. It is also made clear that in case nothing is heard from the Govt. of Assam within 3 months it would be presumed that the Govt. of Assam is on agreements with the proposed terms.

Therefore, it is quite clear from the Corporation letter dated 03.06.2005 that they are considering the absorption of the applicant in terms of the condition laid down in Memorandum of Understanding signed by the Govt. of Assam and ESIC authority.

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

4.16 That it is stated that this learned Tribunal finally decided the O.A. No. 247/2004 vide its judgment and order dated 03.01.2006 with the following observation and direction:

"6. We have considered the rival submissions. There is no dispute that the applicants are 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 applicant 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.

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.

It is quite clear from the observation and direction of the learned Tribunal issued upon the respondents Corporation 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. But surprisingly immediately after passing of the judgment and order dated 03.01.2006 by this Hon'ble Tribunal, the respondents have started fresh recruitment of Medical officers by issuing offer of appointment to the fresh recruits. It would be evident from the offer of appointment issued by the ESIC vide letter bearing Nos. A-12 (13)-4/2003-Me. IV-Col. IV dated 27.01.2006 and 02.02.2006, whereby four Doctors, namely; Dr. Worshim Khamrang, Dr.

Poppy Hazarika, Dr. Monikanchan Saikia and Dr. Chongtham Nandamani have been issued offer of appointment. In this connection it may be stated that ESI Model Hospital Beltola, Assam is a 50 (fifty) bed Hospital and as per norms total sanctioned post of General duty Medical Officers is 26 only and now 20 doctors/Medical Officers including the applicant are working on deputation basis and 6 (six) regularly appointed Corporation Doctors are also working in the aforesaid Hospital and thereby altogether 26 doctors/Medical Officers are working against the total strength of 26 Medical Officers. Therefore, the applicant is apprehending that in order to defeat the legitimate claim of absorption of the applicant, the respondents Corporation have resorted to fresh recruitment of Medical Officers in the Model Hospital at Beltola with the sole intention to avoid implementation of the judgment and order dated 03.01.2006 passed by this learned Tribunal in O.A. No. 247/2004, knowing fully well that already 26 Medical Officers are working in the said Model Hospital against the total strength of 26 Medical Officers as such action of the respondents Corporation smacks malafide and such action is also in violation of the MOU and contrary to the order/direction passed by this Hon'ble Tribunal in the judgment and order dated 03.01.2006.

In the circumstances stated above strong suspicion has arisen in the mind of the present applicant that in the event of appointment of new recruits the Corporation may repatriate the applicant in his parent organisation apprehending such an action, the present applicant is approaching before this Hon'ble Tribunal to protect the rights and interests of the applicant by passing an appropriate order/direction upon the respondents Corporation to allow the applicant to continue on deputation under the respondents Corporation till completion of the entire exercise of absorption as per terms contained in the MOU and also as per directions/order passed by this Hon'ble Tribunal in the judgment and order dated 03.01.2006 in O.A. No. 247/2004 where 6 months time have been granted by the learned Tribunal to implement the terms and

conditions contained in the MOU and the draft terms of absorption to the effect agreed to by the State Govt. in their written statement. Since the applicant is similarly situated like the applicants in O.A. No. 247/2004, therefore he is entitled to the benefit of judgment and order dated 03.01.2006, therefore, the Hon'ble Court be pleased to restrain the respondents to pass any adverse order of repatriation till consideration of his case for absorption.

Therefore, Hon'ble Court be pleased to direct the respondents to allow the applicant to continue in service in the ESI Model Hospital at Beltola, Assam till the process of absorption is completed.

Copy of the judgment dated 03.01.2006 judgment dated 03.01.2006 and memorandum dated 27.01.06, 02.02.06 are enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- XV and XVI (Series) respectively.

4.17 That it is stated that when the MOU has been signed by the State Government as well as by the Corporation, it has been decided to set up a model Hospital out of existing Hospital by way of upgrading and modernizing the existing one under the scheme of Model Hospital and the Govt. of Assam also agreed on such proposal and given their consent and accordingly the Govt. of Assam handed over the ESI Model Hospital, Beltola to the ESIC with all assets, liabilities and existing infrastructures including the existing staff gazetted and non-gazetted those who were working in ESI Hospital placing them on deputation basis.

In the circumstances stated above a duty cast upon the respondents Corporation to absorb the applicant in terms of the MOU as well as in terms of the judgment and order dated 03.01.2006 passed by this Hon'ble Tribunal

4.18 That your applicant apprehending repatriation at any moment in view of fresh recruitment of Medical Officers beyond the total strength of 26

Medical Officers in the Model Hospital, Beliaghata, as such approaching this Hon'ble Tribunal. Therefore, the Hon'ble Court be pleased to pass an appropriate interim order protecting the right and interest of the applicant so that applicant shall not be repatriated to his parent organisation till consideration of his case for absorption as per direction contained in the judgment and order dated 03.01.2006 of this learned Tribunal.

4.19 That your applicant further begs to say that the applicants of O.A. No. 247/2004, apprehending their repatriation before implementation of the judgment and order dated 03.01.2006 again approached this Hon'ble Tribunal through O.A. No. 36/2006 (Dr. P.K. Sarma & Ors. -Vs- U.O.I & Ors.), and the Hon'ble Tribunal after hearing the parties was pleased to pass an ad-interim order of status quo in favour of those applicants on 08.02.2006. The applicant being similarly situated like those applicants of O.A. No. 36/2006 entitled to similar protection of law, therefore, the Hon'ble Court be pleased to pass order of status quo in favour of the applicant as an interim measure till completion of absorption by the respondents Corporation in terms of the judgment and order dated 03.01.2006 passed in O.A. No. 247/2004.

(A Copy of the order dated 08.02.2006, passed by the Hon'ble Tribunal in O.A. No. 36/2006 is enclosed and marked as Annexure-XVII).

4.20 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 applicant being similarly situated Medical Officer like those applicants in O.A. No. 247/04 entitled to the benefit of judgment passed by this Hon'ble Tribunal on 03.01.2006 i.e. to consider his case for absorption as well as payment of pay and allowance as per ESIC norms at

least from the date of his joining at ESI Model Hospital, Beltola on deputation.

- 5.2 For that, it has been agreed upon by the ESIC as well as by the Govt. of Assam by signing the MOU on 04.04.2003 for permanent absorption of the applicant on the basis of their option in the upgraded ESI Model Hospital, Beltola and also in terms of the direction contained in the judgment and order dated 03.01.2006 passed in O.A. No. 247/2004 filed by the similarly situated employees.
- 5.3 For that, the applicant has acquired a valuable legal right for consideration of his absorption in the ESI Model Hospital, Beltola set up by the ESIC, in terms of the MOU signed on 04.04.2003 and also in view of the direction issued by this Hon'ble Tribunal upon the respondent Corporation in the judgment and order dated 03.01.06 passed in O.A. No. 247/04 as such passing of any order of repatriation after the judgment and order dated 03.01.2006 by the learned Tribunal amounts to violation of MOU signed on 04.04.2003 as well as such action will amount to violation of the direction passed by the learned Tribunal on 03.01.2006.
- 5.4 For that, fresh recruitments beyond the sanctioned strength of 26 General Duty Medical officers led to the presumption that the applicant who are now working on deputation may be repatriated to their parent department in the event of fresh recruitment of Medical Officers, which will also defeat the claim of the applicant and the same shall violate the doctrine of legitimate expectation.
- 5.5 For that, the respondents knowing fully well that already 20 doctors are working on deputation basis and 6 Medical Officers belongs to ESIC are already working against the total strength of 26 Medical Officers as per ESIC norms as such fresh recruitment beyond the strength of 26 Medical Officers, therefore, applicant may be repatriated by the authority of the

Model Hospital in order to maintain the sanctioned staff strength as per FSIC norms.

5.6 For that, applicant apprehending repatriation at any moment as soon as new recruits will join in the ESI Model Hospital at Beliaghata.

5.7 For that, decision to make fresh recruitment of Medical Officers by the respondent Corporation is contrary to the provision of permanent absorption agreed upon by the respondent Corporation in the MOU signed on 04.04.2003 as well as same is also in violation of assurance given to the Govt. of Assam through Corporation letter dated 03.06.2005 as well as such action is in violation of the direction passed by this Hon'ble Tribunal in its judgment and order passed on 03.01.2006.

5.8 For that respondents resorted to fresh recruitment to avoid implementation of the judgment and order dated 03.01.2006 passed by this Hon'ble Tribunal.

5.9 For that decision of the Corporation to resort to fresh recruitment is contrary to the object laid down in the Corporation letter dated 17.05.2001 (Annexure- I) for setting up of Model Hospital by the Corporation.

6. Details of remedies exhausted.

That the applicant states that there is no scope to submit any representation at this moment, in view of the threat repatriation, and there is no service rule to submit any appeal to the Higher Authority except approaching this Hon'ble Tribunal.

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

The applicant further declares that he 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 applicant 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 allow the applicant to continue in service on deputation basis till completion of exercise of absorption of the applicant in terms of the judgment and order dated 03.01.2006 passed in O.A. No. 247/2004, as well as in terms of MOU.
- 8.2 That the Hon'ble Tribunal be pleased to declare that applicant is entitled to be considered for absorption in terms of Memorandum of Understanding as well as in terms of the judgment and order dated 03.01.2006 passed in O.A. No. 247/2004 by this Hon'ble Tribunal as well as in terms of MOU.
- 8.3 Costs of the application.
- 8.4 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: -

Dr. Birendra Bani Kya

9.1 That during the pendency of the Original Application the Hon'ble Tribunal be pleased to pass order of status quo till disposal of the Original Application.

9.2 That the Hon'ble Tribunal be pleased to direct the respondent ESIC to allow the applicant to continue in service on deputation basis till disposal of this Original Application.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I.P. O. No.	:	26 G 319143
ii) Date of Issue	:	07.02.06
iii) Issued from	:	G.P.O, Bawali
iv) Payable at	:	G.P.O, Bawali

12. List of enclosures.

As given in the index.

Dr. Birendra Banikya.

VERIFICATION

¶ I, Dr. Biresh ~~Kumar~~ Banikya, S/o- Late Chandra Banikya Umesh, aged about 45 years, working as Medical Officer in the E.S.I Model Hospital, Beltola, Guwahati-22, Assam 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 10th day of February 2006.

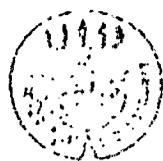
Dr. Biresh Banikya.

20-

Annexure - I

21-

28



EMPLOYEES' STATE INSURANCE CORPORATION
PANCIIDEEP BHAWAN: KOTLA ROAD: NEW DELHI
IN SWARUP
DIRECTOR GENERAL.

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

Dated: 17 May, 2001

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-Mod.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

Affected
Advocate

possible one Hospital in each State for modernization and for direct funding 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,

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

Copy to:- Secretary to the concerned State Govt./DMC(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, Ballal, Phulwari Sharif, Ranchi, Margaon, Baroda, Ballabhgarh, Purwana, Indira Nagar, Eernakulam, Rourkela, Pondicherry, Jalpur, Jalandhar and Sahibabad.

29. (DR.(BBS.) NALINI TANDON)
BY 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-Mod.I(Col.II) ...

Dated: 7.11.2002

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

Subject :- Setting up of Model Hospital

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.
With due convey the consent of State Govt. at the earliest.

Yours faithfully,

(DR. A.K. KHOKHAR)

DY. MEDICAL COMMISSIONER

Regional Director/DMCs(Zonal) with the request to pursue the matter at operational level with the State Govt.

Director, ESI Scheme

Medical Branch-II/Construction Branch with seven spare copies for every Headline Assistant.

DY. MEDICAL COMMISSIONER

Attested
for Advocate

SCHEDULE 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.

-25-

(A) ACTION TO BE TAKEN BY THE ESIC/OPC/STATE

- i) Creation of posts as per ESI norms, positing 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 enquires are pending or are committed, 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 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

*Atul
Jain
Advocate*

25 - 5 -

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
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~~ in between the representatives of the ESIC & the Govt. of Assam & in the interest of Public Service, the service of the following Doctors (M & H.O.T) are hereby placed under the disposal of Model Hospital, Beltola, under ESI Corporation on deputation w.e.f. 4-4-03.

1. Dr. G. R. Sarma	MS (C. Surgery)
2. Dr. (Mrs.) K. Borpujari	MD (Ped)
3. Dr. C. P. Choudhury	MD (O & Gynae)
4. Dr. (Mrs.) S. Kataki	DA (Anaes)
5. Dr. (Mrs.) M. Hazarika	MD (Path)
6. Dr. (Mrs.) M. Sarma	MD (O & Gynae)
7. Dr. D.C. Barbarah	MD (GMed)
8. Dr. (Mrs.) M. Baishya	MD (O & Gynae)
9. Dr. N.M. Das	IGO (Gynae)
10. Dr. (Mrs.) M. Sarma	MS (ENT)
11. Dr. N.K. Gogoi	MD (Ophthal)
12. Dr. T.N. Goswami	MD (Anaes)
13. Dr. (Mrs.) P. Hazarika	DA
14. Dr. (Mrs.) S. Sikha Sarma	MBBS
15. Dr. Ajit Kumar Sajna	DCH (ped)
16. Dr. Pranjit Barman	IGO (Gynae)
17. Dr. T.K. Bhuyan	DIH (Onc, Medicine)
18. Dr. P.K. Bordoloi	MS (SSurg.)
19. Dr. P.K. Sarma	BDO (Ent.)
20. A.K. Saikia	MS (Ophth)
21. Dr. B. Banikya	MBBS
22. Dr. K. Tumung	MBBS
23. Dr. (Mrs.) Hiranmay Sarma	MBBS
24. Dr. Kabori Kalita	MBBS
25. Dr. Mrs.) Bina Patir	MBBS
26. Dr. B. Rongsong	MBBS
27. Dr. (Mrs.) Monimali Bonkataki	MBBS, PGDMCH (IGNOU)

Contd...2/-

Attested
For Advocate

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

29. Dr. (Mrs.) S. Lahkar MBBS

2. **Assam Legislative Assembly**
Sd/ **B. Dasgupta**,
Secretary to the Govt. of Assam
Government to apply Labour and Employment Departmental rules

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

Copy to: _____

copy to : -

1) The Deputy Medical Commissioner, ESI Corporation, Panchdeep Bhawan, Kotla Road, New Delhi. Any office order issued earlier in this regard from this Deptt. should be treated as concerned.

2. The Regional Director, ESIC, Assam, Bamunimaidan, Guwahati-21.

3. The Supdt. Model Hospital, ESIC, Beltola.

4. The Administrative Medical Officer, T/C, M.C.M. (Assam) ESI Schemes Assam, Zoo-Narengi Road, Guwahati-21.

5. The Health & Family Welfare Deptt., Dispur.

6. The Accountant General (AE), 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,

Vanderbilt 11/19/1969

Secretary to the Govt. of Assam
Labour and Employment Department

1960-1961 (Continued) 1961-1962
1961-1962 (Continued) 1962-1963
1962-1963 (Continued) 1963-1964
1963-1964 (Continued) 1964-1965

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 [REDACTED] the incumbents deputed to Model Hospital, ESI Corporation, Beltola vide this Deptt's Notification NO.GLE.121/2003/8, dt. 10-4-2003 and NO.GLR.121/2003/9, dt. 17-4-2003 for [REDACTED] under the same terms and conditions communicated vide this Department's letter NO.GLR.153/2003/Pt.I/159 dt. 29-3-2004.

Sd/- B.B. Hagger,

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, Panohdoop Bhawan, Kotla Road, New Delhi.
- 2) The Regional Director, ESI Corporation, Assam, Banuimaidan, 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, Banuimaidan, Guwahati-21. He is requested to publish the Notification in the next issue of Assam Gazette.

By order etc.,

2/3/04
Under Secretary to the Govt. of Assam
Labour and Employment Department.

*Atul
Jain
Advocate*

July 13, 2004

To,

The Director ESI Scheme, Govt. of Assam, Guwahati

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

Sir./Madam,

The standing committee of BSC Corporation in its 166-th meeting held on 8.6.04 has approved deputation of doctors & other staff of state Govt. to various ESIC model Hospitals in the State 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 ~~with~~ with the decision on their absorption is being taken in due course.

I am faithfully
R. K. Nayak

H. Director (red)

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

Attested
S. S. Nayak
Private

31
32

GOVERNMENT OF ASSAM
LABOUR AND EMPLOYMENT DEPTT. DISPUR.

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

From: Smti 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. H.)

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. 2003.

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

By order etc.,

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

Alfredo
Sant. Advocate

33

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. Bora	DMCW MD (Paed)
3. Dr. (Mrs.) Makan Sarma	(MD (O&G))
4. Dr. P.K. Bordoloi	MS (Surg)
5. Dr. C. Choudhury	MD (O&G), FLCOG
6. Dr. (Mrs) S. Kataki	DA (Anaesth)
7. Dr. (Mrs) Mala Hazarika	DCP (C. Paed)
8. Dr. Ajit Kumar Sarma	DCH (Paed)
9. Dr. D.C. Borborah	MD (Med)
10. Dr. N.M. Das	MD (O & G)
11. Dr. P.K. Sarma	DLO (ENT)
12. Dr. N.K. Gogoi	D.O (Ophth)
13. Dr. A.K. Saikia	MS (Ophth)
14. Dr. T.K. Bhuyan	DIN (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. Tunung	MBBS
25. Dr. B. Rongpong	MBBS

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

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

34

RECEIVED	13.0.
16/5/03	16/5/03
J. L. S. Hospital	
Guwahati-28	

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

Sir,

With ref. to sub. cited above we the following 26 (Twenty six) GDMO (In the rank of M & MO-I) would like to inform you that we all have given option for drawing pay & other allowances/pdmissible 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-28, 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	<i>DR. G.R. Sarma</i>
2.	Dr. P.K. Bordoloi	MS(Surg)	Rs.11,025/-	1st June,2003	<i>DR. P.K. Bordoloi</i>
3.	Dr. (Mrs) K. Bora	DM&W, MD (Paed)	Rs. 11,425/-	Stagnation increment w.e.f Nov 2002	<i>DR. K. Bora</i>
4.	Dr. Ajit Kumar Sarma	DCH(Paed)	Rs. 9,400/-	July,2003	<i>DR. Ajit Kumar Sarma</i>
5.	Dr. N.K. Gogoi	DO(Opth)	Rs. 6,425/-	Dec,2003	<i>DR. N.K. Gogoi</i>
6.	Dr. Dr. A.K. Saikia	MS(Opth)	Rs.6,425/-	Feb, 2004	<i>DR. A.K. Saikia</i>
7.	Dr. (Mrs.) S. Kataki	DA(Anaesth)	Rs. 9,725/-	Aug,2003	<i>DR. S. Kataki</i>
8.	Dr. J.N. Goswami	MD(Anaesth)	Rs. 7,100/-	1st Oct,2003	<i>DR. J.N. Goswami</i>
9.	Dr.(Mrs.) P.Hazarika	DA(Anaesth)	Rs.6,425/-	Dec,2003	<i>DR. P.Hazarika</i>
10.	Dr. D.C. Borborah	MD(G.Med)	Rs.7,100/-	1st Nov,2003	<i>DR. D.C. Borborah</i>
11.	Dr. P.K. Sarma	DO(ENT)	Rs.6,850/-	1st Aug,2003	<i>DR. P.K. Sarma</i>
12.	Dr.(Mrs.) M.Sarma	MS(ENT)	Rs.6,075/-+Rs.175/- = Rs.6,250/-	EB Crossing w.e.f Aug, 2002	<i>DR. M.Sarma</i>
13.	Dr.(Mrs.) M. Hazarika	DCH(C.Patho)	Rs.9,400/-	1st Aug, 2003	<i>DR. M. Hazarika</i>
14.	Dr.T.K. Bhuyan	DM(Occ.Med)	Rs.6,425/-	Dec,2003 (L.E.C. rec'd)	<i>DR. T.K. Bhuyan</i>
15.	Dr.(Mrs.) M.Sarma	MD(O&G)	Rs.11,425/-	Stagnation increment w.e.f Dec, 2002	<i>DR. M.Sarma</i>
16.	Dr. C. Choudhury	MD(O&G), IICM	Rs. 10,050/-	Jan,2004	<i>DR. C. Choudhury</i>
17.	Dr. N.M.Das	MD(O&G)	Rs.6,850/-+Rs.250/- = Rs.7,100/-	w.e.f March, 2003	<i>DR. N.M.Das</i>
18.	Dr.(Mrs.) M.Baishya	MD(O&G)	Rs. 6,425/-	Oct,2003	<i>DR. M.Baishya</i>
19.	Dr. Pianjit Barman	MD(O&G)	Rs.6,250/-	1st Feb,2004	<i>DR. Pianjit Barman</i>
20.	Dr.B.Banikya	MBBS	Rs.6,075/-	Nov,2003	<i>DR. B.Banikya</i>
21.	Dr.(Mrs.) S.Lahkar	MBBS	Rs.5,550/-+Rs.175/- = Rs.5,725/-	w.e.f. April, 2003/-	<i>DR. S.Lahkar</i>
22.	Dr.(Mrs.) Hiranmayee Sharma	MBBS	Rs.5,375/-	July 2003	<i>DR. Hiranmayee Sharma</i>
23.	Dr.(Mrs.) Sikha Sarma	MBBS	Rs.5,200/-	Oct,2003	<i>DR. Sikha Sarma</i>
24.	Dr. Karabi Kalita	MBBS	Rs.5,200/-	Nov,2003	<i>DR. Karabi Kalita</i>
25.	Dr. K. Tumong	MBBS	Rs.5,200/-	1st Nov,2003	<i>DR. K. Tumong</i>
26.	Dr. B. Rongsong	MBBS	Rs.5,080/-	Nov,2003	<i>DR. B. Rongsong</i>

Abdul
Jah
Advocate

at. 23-9-2003.

To,

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

Sub:- 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 ~~25~~ 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 the equivalent terms, quoting the relevant~~
~~rules under which the option has been exercised by the Govt.~~

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 these 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 ~~and~~ 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 books, leave accounts etc.
are required at this end for scrutiny and making
relevant entries of pay fixation etc.

*Abeswar
Gohar
Advocate*

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)
(P. Baruah)
By. Director (Admn)
For Medical Superintendent

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

By. 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. 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 incumbents
sent to Model Hospital, ESI Corporation.~~Ref : Your letter NO.432-A-23/11/1/2003 dt. ~~_____~~

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 in every case the deputationists may exercise 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. ESIIC, Govt. of India.

(4) The Foreign Employer is to ensure recoveries of the subscription 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.M NO.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/-

*Abhijit
Jain
Advocate*

(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.

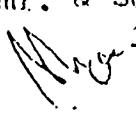
(15) All other terms and conditions will be Governed by the Rules and Regulations of the Govt. State of Assam.

~~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 their individual requirement 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,



Cominr. & 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, Banunimaoidan, Guwahati-21.
- 3) The Administrative Medical Officer, ESI Schemes, Assam, 200-Nerengi 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.GE³XI/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.

40 - 29 -
Beltola: Guwahati-22

ESIC Model Hospital

ANNEXURE - X

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.

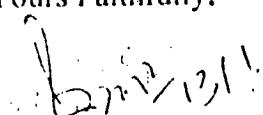
New Delhi-02

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 persual.

Yours Faithfully,


Medical Superintendent.

ESIC Model Hospital,

Beltola, Guwahati-22, Assam
নির্মলা প্রধান / Medical Supdt.
মি.সি.সি. মডেল হাসপাতাল / ESIC Model Hospital
পুরুষ পুরস্কৃতি - 22 / Beltola, Guwahati - 22

Altest
Sub
Advocate

41
ASSAM STATE DEPUTATIONISTS' ASSOCIATION

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

(Recognised by Govt. of Assam Vide Notification No. ABP. 38/93/26 Date : 25/04/1997)

Adviser :

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. H.M. Das

Treasurer :

Dr. (Ms) K. Bora

Executive Members :

Dr. H.K. Sarma

Dr. B. Dahiya

Dr. (Ms) L.L. Hazarika

Dr. (Ms) S. Bora

Dr. (Ms) M. Baishya

Dr. (Ms) M. Sarma

(Geswani)

Dr. K. Tiwari

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

Date 27/05/04

To,

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

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

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.4.2.2003) 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.

Conti II

(II)

Atul
Advocate

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. Gen. Secretary :
Dr. N.M. Das

Treasurer :
Dr. (Ms) K. Bora

Executive Members :
Dr. H.K. Sarma
Dr. B. Buniya
Dr. (Ms) M. Hazarika
Dr. (Ms) S. Bora
Dr. (Ms) M. Baishya
Dr. (Ms) M. Sarma
(Goswami)
Dr. K. Timung

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

Date 27/05/03

(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).

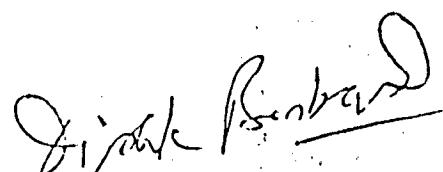
We honestly claim that we the deputationists doctors & staff are now working as per the norms of the ESI Corporation (Model) Hospital w.e.f 4.4.2003.

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

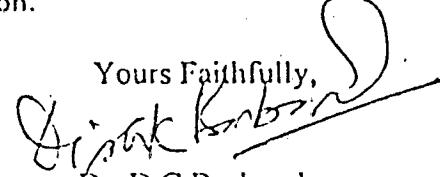

Dr. D.C. Borborah

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

192-16113-100

- 43. - - 34 -

THE

Amherst, ~~XI~~

Annexure-XIII

Ranjeet modern/pab 57

SPEED POST

पुरुषालय
HEADQUARTERS OFFICE
कांचारी राज्य बीगा निवास
EMPLOYEES' STATE INSURANCE CORPORATION
पंचदीप भवन, रोड़ा.आई.जी.रोड़, नई दिल्ली-02
PANCHDEEP BHAWAN, C.I.G. ROAD, NEW DELHI-02

फ़ॉक्स नं 011-23234092-93
TEL: 011-23234092-93

फ़िरा नं 011-23234537 .
Fax: 011-23234537

WHITE CINNAMON ORGANIC

Dato: 30/11/04

The Medical Superintendent,
ESI Model Hospital,
Beltola, ASSAM.

Sir,

I am to refer to your office letter No 432.A-27/19/1/2003-ESI/1707 with the dated 22/06/04 on the above subject and to convey the Director General's approval for payment of State Govt. of Assam's pay scales plus "10% deputation allowance subject to the maximum of Rs. 500/- per month in respect of staff on deputation to ESI Model Hospital, Assam.

This issues with the concurrence of FC vide notes at page 51/N of the
R.N.C. Model Hospital, Assam.

Yours faithfully,

521

(DR. S.K.JAIN
DY. MED. COMMISSIONER)

Copy to: The Commissioner and Secretary to the State Govt. of Assam, Labour and Employment Dep'tt. Dispur, Guwahati w.r.t. their letter number GLR/153/2003/Pl.1/158 dated 29/03/04 addressed to Medical Superintendent, ESI Model Hospital, Assam.

DY. MED. COMMISSIONER

Affected
free advocate

44
45
EMPLOYEES' STATE INSURANCE CORPORATION

प्राप्तिप नाम, असाम राज्य, नं. 100-11000
PANCHDEEP BIJAVAJI, KOTLA ROAD, NEW DELHI-110001

By Dua,
General

Annexure-XIII

D.O. No. U.11/11/Assam/1/03-DM(HQ)
Dated the 10th January, 2003.

Dear Sh. Basumatary,

Kindly refer to the discussions held in the meeting between the representatives of ESI Corporation and State Government on 30.12.02 in your chamber regarding the terms and conditions in connection with handing over the ESI Hospital, Belatola to ESI Corporation by the State Government. In this connection, the draft Memorandum of understanding received by this office has been examined and our views on various issues thereon, are as under: -

1. As regards handing over of infrastructure of the hospital excepting the land to ESI Corporation is concerned, it is clarified that, as a matter of policy, Corporation constructs hospitals out of its own corpus and hands over the same to State Governments for running the ESI Scheme. Since the title of the land is vested in the name of the Corporation, it is not possible to hand over the infrastructure while retaining the land thereof.
2. The MOU also specifies that individual option either to accept Corporation pay scale or State Government pay scale plus deputation allowance from the Officer/ Staff will be called for. 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.

~~DEPARTMENTAL EMPLOYEE HAS TO PAY SAME AS IN HOSPITAL~~

Affed
Advocate

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3. It has also been proposed that the administrative officer of the hospital will be on deputation from State Govt. with the Corporation. This is again not in conformity with policy of the Corporation relating to model hospitals.
4. It has also been laid down in the MOU that Corporation will consider local educated unemployed youth of the State against the future need of manpower of the hospital. Such a restriction on Corporation has not been found to be acceptable as staff/ Officers are recruited as per Recruitment Regulations for the post in the Corporation and posts are advertised centrally by the Corporation.

With regards,

Yours sincerely,


(Dr. AJAY DUA)

SK. Basumatary,
Secretary to the Govt. of Assam,
Assam Sachivalya,
Dispur
Guwahati.

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,
The Govt. of _____
Gauhati (Assam)

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

Sir/Madam:

I am to enclose herewith draft terms of absorption of your State Govt. employees who have been deputed to ESIC Model Hospital, Beltola, Assam, which was taken over by us on 4.4.2003. 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. and employees concerned accepting the terms of absorption. The draft terms and conditions may please be gone through your views and acceptance of these terms may please be communicated so that draft terms can be placed for approval of the ESIC Corporation. Once these terms are finalized, 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. any representation viz. grievance etc. directly from individual of 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

*After 1st
July 2005*

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.

Enclo: As Above.

Yours faithfully

[DR. (MISS) KAMLESH KALRA]

MEDICAL COMMISSIONER

Copy to:-

The medical Superintendent, ESIC Model Hospital, Beltola, Assam for information with the above to give wide publicity to these terms of absorption through notice board etc. including in legal 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 indicated.

DY. DIRECTOR (MED)

103
ANNEXURE-A

(Proposed to be circulated vide no. A-37(18)1/03- Med IV dated 03.06.2005

DRAFTS 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 Departmental 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. 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 wants exercise 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" of 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 /Superannuation/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 and 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 for 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 and conditions of services) regulations, 1959 as amended from time to time.

- 11) No employee, against whom any disciplinary proceeding is pending or who is under going 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 and condition of service) regulations, 1959.
- 13) Leave accumulated in respect of an 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 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 recovery 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 calculated vide no. A. 37(18) 1 /03. Med. IV dt. 3.6.2005

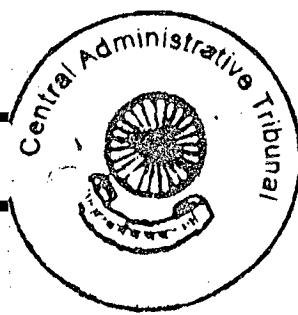
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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 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 Applicants.

(All are working as Medical Officers in the EST 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 -

*Appeal
for Advocate*

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
Pnchadeep 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.

The Secretary
to the Government of Assam
Labour and Employment Department
Dispur, Guwahati-781 006
Assam.
7. The Administrative Medical Officer
ESI Scheme, Government of Assam
Zoo Narangi Road
Guwahati - 781 021
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.

ORDER (ORAL.)SIVARAJAN, S. (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."

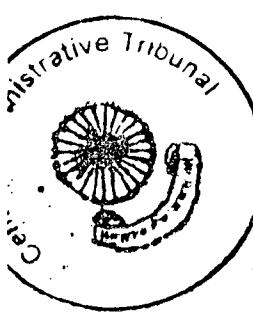
2. The case of the applicants is that the ESIC had entered into a Memorandum of Understanding (for short MOU) dated 26.12.2002 (Annexure-3) containing the terms and conditions under which the services of the applicants and other staff of the State Government deputed in the ESI Model Hospital have to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

Apf



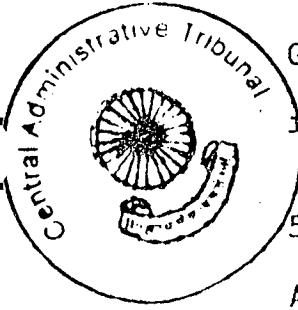
3. We have heard Dr. J. L. Sarkar assisted by Mr. M. Chanda, learned counsel appearing for the applicants, Mr. B. C. Pathak, learned counsel for the ESIC and Mrs. M. Das, learned Govt. Advocate for the State of Assam. Dr. Sarkar submits that according to the MOU and as per the draft terms of absorption 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 "Incase, 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.

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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



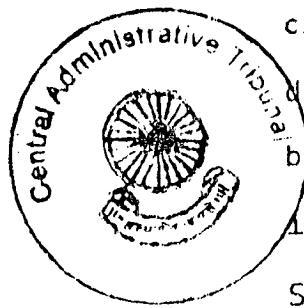
Gpt

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.

gpa



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 N.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.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

Date of Application :12/01/06.

Date on which copy is ready :12/01/06.

Date on which copy is delivered : 12/01/06.

Certified to be true copy

N. S. Jaiswal
Section Officer (Judi)
C. A. T. Court
Chhati-5.
(21/06/06)



60 - Annexure - XVI (Series)
HEADQUARTERS' OFFICE
मुख्यालय
कर्मचारी राज्यीय निधि
EMPLOYEES' STATE INSURANCE CORPORATION
पंचदीप भवन, राजी आवास, नई दिल्ली-02
PANCHDEEP BHAWAN, C.I.G. ROAD, NEW DELHI-02
Date: 24/11/2006
Dated: 24/11/2006
प्रमाण सं: 011-23234092-93
Tel: 011-23234092-93
फैक्स सं: 011-23234537
Fax: 011-23234637
http://esic.nic.in

No. A-12(13)- 1/ 2003-Med.IV-Col.IV

MEMORANDUM

Subject: Offer of appointment to Dr. Worshim Khanrang for the post of Insurance Medical Officer, Grade-II, in the Employees' State Insurance Corporation.

Reference his/her application for recruitment to the above post and subsequent interview, the undersigned is directed to say that on the recommendations of the Selection Board, Dr. Worshim Khanrang is offered a post of IMO Grade-II in the Employees' State Insurance Corporation. As recommended by the Selection Board he/she will be allowed to draw an initial pay of Rs.8000 - 275 - 13,500/- plus Non-Practicing Allowance at the usual rule as admissible. He/She will also be entitled to other allowances as admissible.

2. In case, the candidate belongs to a Scheduled Caste/Scheduled Tribe/OBC Community, his/her appointment will be provisional and will be subject to verification of his/her claim that he/she belongs to a Scheduled Caste/Scheduled Tribe/OBC Community through proper channel. If his/her claim of belonging to Scheduled Caste/Scheduled Tribe/OBC Community is found to be false OR if the verification reveals that the claim of the candidate to belong to Other Backward Classes or not to belong to cream layer is false, his/her services will be terminated forthwith without assigning any reason and without prejudice to such further action that may be taken under the Indian Penal Code for production of false certificate. For this purpose, he/she is required to produce original documents on the basis of which he/she claims to be a Scheduled Caste/Scheduled Tribe/OBC candidate. (This para is applicable to SC/ST/OBC candidates only).
3. The appointment and service will be subject to the following further terms and conditions :

- (i) It will be on temporary basis for the present.
- (ii) He/She will be governed by the "Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959" (as amended from time to time) and other Rules/Regulations/Instructions applicable to the employees of the ESI Corporation.
- (iii) He/She will be on probation for a period of two years which may be extended at the discretion of the Corporation in the individual cases and his/her service will be liable to termination during the period of probation or during the temporary tenure of appointment on one month's notice/permanent tenure of appointment on three month's notice in writing on either side in terms of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959.

Provided that if the services are terminated forthwith on such termination, he/she shall be entitled to claim a sum equivalent to the amount of his/her pay plus allowances for a period of notice at the same rates which he/she was drawing immediately before the termination of his/her services or as the case may be for the period by which such notice falls short of one month/three months.

*After 24/11/2006
Advocate*

(iv) He/She will be posted at

ESI MODEL HOSPITAL, BULANDSHAHAR

he/she will be liable to be posted anywhere in India and also required to undertake tours.

(v) He/She will be governed by the Govt. of India's New Contributory Pension Scheme effective from 01.01.2004 as implemented in ESI Corporation.

(vi) He/She will not be entitled to TA/DA and joining time etc. either for appearing for medical examination or for joining the post in the Employees' State Insurance Corporation.

(vii) The Corporation does not undertake to provide any residential accommodation to its employees. However, if accommodation is made available, it will be incumbent upon him/her to live in such accommodation on terms and conditions as may be applicable.

(viii) In case, he/she is holding a post in Central/State Government/Central/State Autonomous Body, his/her appointment will be on immediate absorption basis as envisaged in the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. No.48010/5/85-Estt. (C) dated 31.01.1986 and Government of India, Department of Pension and Pensioners' Welfare O.M. No.4/12/85/P&PW, dated 31.03.1987 and no lien will be allowed to be retained on the permanent post, if any, in the parent office. All his/her connection with the Government/Autonomous Body will be severed on his/her release for appointment in the Employees' State Insurance Corporation and he/she will not be allowed to revert to his/her parent cadre.

4. Unless he/she is a citizen of India, he/she has to produce a certificate of eligibility/affidavit.

5. He/she will be required to take an oath/make an affirmation of allegiance to the Constitution of India at the time of his/her appointment.

6. He/she will ordinarily not be eligible for appointment under the Corporation, if he/she has more than one living spouse. A declaration in this regard should be submitted alongwith his/her acceptance of offer.

7. In case, he/she is at present employed in some Central Govt./State Govt./Autonomous Body etc., he/she may please intimate the fact to this office alongwith his/her acceptance, giving complete name and address etc. of his/her present employer. He/She may also please intimate as to whether he/she had been medically examined by any Competent Medical Board at the time of his/her previous employment.

8. In case, he/she accepts the post on terms and conditions mentioned in the preceding paragraphs, he/she should follow the following steps for joining the post:-

i) He/She should convey his/her unconditional acceptance in writing to the undersigned by name immediately.

ii) He/She should fill-up the enclosed Police Verification/Attestation Form in duplicate, enclosed with this offer, and send it to the undersigned by name alongwith self-attested passport size photograph affixed on the top right hand corner of the Attestation Form. Two self-attested passport size photographs may also be sent alongwith filled form.

iii) The offer of appointment to Dr. Norshim Khamrang, will be subject to his/her being found medically fit by a Standing Medical Board and as such he/she is advised to contact the Chairman, Standing Medical Board/Medical Superintendent, ESI Hospital,

CUM CDC, DIAMOND HARBOUR ROAD, TOKA, KOLKATA

alongwith two passport size photographs. A formal letter about his/her medical

examination addressed to the concerned Medical Board is enclosed. In the event of his/her being found medically fit, the Medical Board will issue a Fitness Certificate and on the basis of the same, he/ she must join duties immediately.

iv) After obtaining the Medical Certificate, must report for duty

**MEDICAL SUPDT., ESI MODEL HOSPITAL, BELTOLA, GUWAHATI,
ASSAM**

original and three attested copies of each of these certificates at the time of joining duties failing which he/she will not be allowed to join duty :-

- a) Matriculation Certificate showing the date of birth;
- b) M.B.B.S. Degree;
- c) House job etc.;
- d) Registration Certificate from the Medical Council;
- e) Scheduled Caste/Scheduled Tribe/OBC Certificate, if applicable;
- f) Relieving Order from his present employer, if any;
- g) Medical Certificate declaring medically fit.

9. Dr. Worshim Khamrang is further informed that all the procedures mentioned in Para-8 on pre- page & above must be completed and he/she should join duties latest by 24.02.06, failing which the offer of appointment shall stand cancelled and any further correspondence shall not be entertained.

10. Dr. Worshim Khamrang is also informed that his/her offer of appointment is without prejudice to the right of the ESI Corporation to terminate his/her services consequent upon a receipt of an adverse report on the verification of his/her Character and Antecedents and veracity of Caste/Community Certificate (if any) by the appropriate authority.

To,

Dr. Worshim Khamrang,
Sisakheti Village,
Ukhrul Distt.,
Manipur

FOR DIRECTOR GENERAL

Copy forwarded for information and necessary action to :-

1. MS. ESIIMH, ASSAM

the position of joining or with the request that Dr. Worshim Khamrang otherwise of may please be intimated to this office in due course. Personal file of Doctor concerned.

2.

2/2
C. R. NAGESWARAN
संयुक्त नियंत्रिता, Joint Director (M)
काम बोर्ड अधिकारी/ESI (Eq)
कृष्ण रोड: NEW DELHI



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मुख्यालय
HEADQUARTERS OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION
पंचदीप भवन, सी.आर.जी.धोडा, नई दिल्ली-02
PANCHDEEP BHAWAN, C.I.G. ROAD, NEW DELHI-02

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INFORMATION/650

4

फोन नं: 011-23234092-93
Tel: 011-23234092-93
फैक्स नं: 011-23234537
Fax: 011-23234637
<http://esic.nic.in>

No. A-12(13)- 4/ 2003-Me.IV-Col.IV

Date: 27/1/2006

To,

The Chairman,
Standing Medical Board,
ESI Hospital Complex,
Basaidarapur, Ring Road,
New Delhi.

The Director(Medical),
ESIC Hospital,
K.K. Nagar,
CHENNAI-78

The Medical Superintendent,
ESIC Hospital & ODC(EZ),
24-Parganas(South),
Kolkata(W.B.)

**Subject: Medical Examination for appointment to the post of IMO Gr.II in the
ESI Corporation.**

Sir/Madam,

I am directed to say that Dr. Worshim Khamrang is required to be medically examined by the Standing Medical Board to ascertain his/her physical fitness for appointment to the post of IMO Gr.II in the E.S.I. Corporation in Group 'A' post carrying the scale of pay of Rs.8000 - 275 - 13,500/- (which is a medical post.) I am, therefore, to request that his/her medical examination may kindly be arranged immediately and the report of the Medical Board is forwarded to this office immediately, thereafter.

Dr. Worshim Khamrang is, therefore, being directed to contact your office in person along with this letter at 9.00 A.M. sharp for the purpose upto 14.02.06 on any working day.

Yours faithfully,

Copy also forwarded for information and necessary action to:

FOR DIRECTOR GENERAL

1. MS. ESI DMH, ASSAM

2. D. Worshim Khamrang

He/She is advised to get himself/herself medically examined by the Medical Board at the address given above on the scheduled date and time. Please note that he/she may invariably take two-passport size photographs alongwith him/her at the time of appearing for his/her medical examination. He/She is further advised to contact the office of the Chairman of the Medical Board at the address mentioned above by 14.02.06 (on any working day).

3. For personal file.

श. प्राप्त नगर
C. R. NAGESWARAN
संयुक्त दिव्यांशु/Joint Director (M)



ESIC Hospital
Kolkata, Guwahati-22

मुख्यालय
HEADQUARTERS OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION
पंजदीप भवन, रोड आई.जी.रोड, नई दिल्ली-02
PANCHDEEP BHAWAN, C.I.G. ROAD, NEW DELHI-02

दूरध्वांग नं: 011-23234092-93
Tel: 011-23234092-93

फैक्स नं: 011-23234637
Fax: 011-23234637
<http://esic.nic.in>

64-
Date 01/02/06

IM4/10/06/2006 4

No. A-12(13)- 4/ 2003-Me.IV-Col.IV

Date: 2/2/2006

To,

The Chairman,
Standing Medical Board,
ESIC Hospital Complex,
Basaidarapur, Ring Road,
New Delhi.

The Director(Medical),
ESIC Hospital,
K.K. Nagar,
CHENNAI-78.

The Medical Superintendent,
ESIC Hospital & ODC(EZ),
24-Parganas(South),
Kolkata(W.B.).

Subject: Medical Examination for appointment to the post of IMO Gr.II in the
ESI Corporation.

Sir/Madam,

I am directed to say that Dr. Poppy Hazarika is required to be medically examined by the Standing Medical Board to ascertain his/her physical fitness for appointment to the post of IMO Gr.II in the E.S.I. Corporation in Group 'A' post carrying the scale of pay of Rs.8000 - 275 - 13,500/- (which is a medical post.) I am, therefore, to request that his/her medical examination may kindly be arranged immediately and the report of the Medical Board is forwarded to this office immediately, thereafter.

Dr. Poppy Hazarika is, therefore, being directed to contact your office in person along with this letter at 9.00 A.M. sharp for the purpose upto 24.02.06 on any working day.

Yours faithfully,

FOR DIRECTOR GENERAL

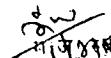
Copy also forwarded for information and necessary action to:

1. MS, ESIMH, ASSAM

2. Dr. Poppy Hazarika

He/She is advised to get himself/herself medically examined by the Medical Board at the address given above on the scheduled date and time. Please note that he/she may invariably take two-passport size photographs alongwith him/her at the time of appearing for his/her medical examination. He/She is further advised to contact the office of the Chairman of the Medical Board at the address mentioned above by 24.02.06 (on any working day).

3. For personal file.


MANJU SWAMINATHAN

examination addressed to the concerned Medical Board is enclosed. In the event of his/her being found medically fit, the Medical Board will issue a Fitness Certificate and on the basis of the same, he/she must join duties immediately.

iv) After obtaining the Medical Certificate, must report for duty to Dr. Poppy Hazarika

**MEDICAL SUPDT., E SI MODEL HOSPITAL, BELTOLA, XX
GUNAHATI, ASSAM**

original and three attested copies of each of these certificates at the time of joining duties failing which he/she will not be allowed to join duty :-

- Matriculation Certificate showing the date of birth;
- M.B.B.S. Degree;
- House job etc.;
- Registration Certificate from the Medical Council;
- Scheduled Caste/Scheduled Tribe/OBC Certificate, if applicable;
- Relieving Order from his present employer, if any;
- Medical Certificate declaring medically fit.

9. Dr. Poppy Hazarika is further informed that all the procedures mentioned in Para-8 on pre-page & above must be completed and he/she should join duties latest by 03.03.06, failing which the offer of appointment shall stand cancelled and any further correspondence shall not be entertained.

10. Dr. Poppy Hazarika is also informed that his/her offer of appointment is without prejudice to the right of the ESI Corporation to terminate his/her services consequent upon a receipt of an adverse report on the verification of his/her Character and Antecedents and veracity of Caste/Community Certificate (if any) by the appropriate authority.

To,

FOR DIRECTOR GENERAL

Dr. Poppy Hazarika,
C/o Mr. Pritam Hazarika,
Office of the Director,
Food and XI Civil Supplies,
Bhangaon, Guwahati

Copy forwarded for information and necessary action to :-

MS., ESIMH, ASSAM

the position of joining or with the request that otherwise of Dr. Poppy Hazarika may please be intimated to this office in due course.

2. Personal file of Doctor concerned.

মান্তু স্বামীনাথ

MANJU SWAMINATHAN

মান্তু স্বামীনাথ (বি) ডি. ডিসিসি. মেডিকেল

মান্তু স্বামীনাথ (বি) ডি. ডিসিসি. মেডিকেল

মান্তু স্বামীনাথ (বি) ডি. ডিসিসি. মেডিকেল



मुख्यालय
HEADQUARTERS OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION
पंचदीप भवन, रोड़.आई.जी.रोड, नई दिल्ली-02
PANCHDEEP BHAWAN, C.I.G. ROAD, NEW DELHI-02

Registered Addressee

प्रमाण सं: 011-23234082-93
Tol: 011-23234092-93
फैक्स सं: 011-23234637
Fax: 011-23234637
<http://oslc.nlc.in>

No. A-12(13)- 4/ 2003-Med.IV-Col.IV

Date: 2/21/2006

MEMORANDUM

Subject: Offer of appointment to Dr. Poppy Nagarkar for the post of Insurance Medical Officer (Grade-II in the Employees' State Insurance Corporation).

Reference his/her application for recruitment to the above post and subsequent interview, the undersigned is directed to say that on the recommendations of the Selection Board, Dr. Poppy Hazarika is offered a post of IMO Grade-II in the Employees State Insurance Corporation. As recommended by the Selection Board he/she will be allowed to draw an initial pay of Rs.8000/- 275 - 13,500/- plus Non-Practicing Allowance at the usual rate as admissible. He/She will also be entitled to other allowances as admissible.

2. In case, the candidate belongs to a Scheduled Caste/Scheduled Tribe/OBC Community, his/her appointment will be provisional and will be subject to verification of his/her claim that he/she belongs to a Scheduled Caste/Scheduled Tribe/OBC Community through proper channel. If his/her claim of belonging to Scheduled Caste/Scheduled Tribe/OBC Community is found to be false OR if the verification reveals that the claim of the candidate to belong to Other Backward Classes or not to belong to cream layer is false, his/her services will be terminated forthwith without assigning any reason and without prejudice to such further action that may be taken under the Indian Penal Code for production of false certificate. For this purpose, he/she is required to produce original documents on the basis of which he/she claims to be a Scheduled Caste/Scheduled Tribe/OBC candidate. (This para is applicable to SC/ST/OBC candidates only).

3. The appointment and service will be subject to the following further terms and conditions:

- (i) It will be on temporary basis for the present.
- (ii) He/She will be governed by the Employees' State Insurance Corporation(Staff and Conditions of Service), Regulations, 1959 (as amended from time to time) and other Rules/Regulations/Instructions applicable to the employees of the ESI Corporation.
- (iii) He/She will be on probation for a period of two years which may be extended at the discretion of the Corporation in the individual cases and his/her service will be liable to termination during the period of probation or during the temporary tenure of appointment on one month's notice/permanent tenure of appointment on three month's notice in writing on either side in terms of Employees' State Insurance Corporation(Staff and Conditions of Service) Regulations, 1959.

Provided that if the services are terminated forthwith, on such termination, he/she shall be entitled to claim a sum equivalent to the amount of his/her pay plus allowances for a period of notice at the same rates which he/she was drawing immediately before the termination of his/her services or as the case may be for the period by which such notice falls short of one month/three months.

(iv) He/She will be posted at

ESI MODEL HOSPITAL, BELTOLA, GUWAHATI, ASSAM

for the present but he/she will be liable to be posted anywhere in India and also required to undertake tours.

(v) He/She will be governed by the Govt. of India's New Contributory Pension Scheme effective from 01.01.2004, as implemented in ESI Corporation.

(vi) He/She will not be entitled to TA/DA and joining time etc. either for appearing for medical examination or for joining the post in the Employees' State Insurance Corporation.

(vii) The Corporation does not undertake to provide any residential accommodation to its employees. However, if accommodation is made available, it will be incumbent upon him/her to live in such accommodation on terms and conditions as may be applicable.

(viii) In case, he/she is holding a post in Central/State Government/Central/State Autonomous Body, his/her appointment will be on immediate absorption basis as envisaged in the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. No.28016/5/85-Estt.(C), dated 31.01.1986 and Government of India, Department of Pension and Pensioners' Welfare O.M. No.4/12/85/P&PV, dated 31.03.1987 and no lien will be allowed to be retained on the permanent post, if any, in the parent office. All his/her connection with the Government/Autonomous Body will be severed on his/her release for appointment in the Employees' State Insurance Corporation and he/she will not be allowed to revert to his/her parent cadre.

4. Unless he/she is a citizen of India, he/she has to produce a certificate of eligibility/affidavit.

5. He/she will be required to take an oath/make an affirmation of allegiance to the Constitution of India at the time of his/her appointment.

6. He/she will ordinarily not be eligible for appointment under the Corporation, if he/she has more than one living spouse. A declaration in this regard should be submitted alongwith his/her acceptance of offer.

7. In case, he/she is at present employed in some Central Govt./State Govt./Autonomous Body etc., he/she may please intimate the fact to this office alongwith his/her acceptance, giving complete name and address etc. of his/her present employer. He/She may also please intimate as to whether he/she had been medically examined by any Competent Medical Board at the time of his/her previous employment.

8. In case, he/she accepts the post on terms and conditions mentioned in the preceding paragraphs, he/she should follow the following steps for joining the post:-

i) He/She should convey his/her unconditional acceptance in writing to the undersigned by name immediately.

ii) He/She should fill-up the enclosed Police Verification/Attestation Form in duplicate, enclosed with this offer and send it to the undersigned by name alongwith self-attested passport size photograph affixed on the top right hand corner of the Attestation Form. Two self-attested passport size photographs may also be sent alongwith filled form.

iii) The offer of appointment to Dr. Poppy Hazarika will be subject to his/her being found medically fit by a Standing Medical Board and as such he/she is advised to contact the Chairman, Standing Medical Board/Medical Superintendent, ESI Hospital,

CUM ODC, DIAMOND HARBOUR ROAD, JOKA, KOLKATA

alongwith two passport size photographs. A formal letter about his/her medical

68 - 82 -

examination addressed to the concerned Medical Board is enclosed. In the event of his/her being found medically fit, the Medical Board will issue a Fitness Certificate and on the basis of the same, he/ she must join duties immediately.

iv) After obtaining the Medical Certificate, must report for duty to Monikanchan Saikia

**MEDICAL SUPPT., ESI MODEL HOSPITAL, BELTOLA, GUWAHATI,
ASSAM**

original and three attested copies of each of these certificates at the time of joining duties failing which he/she will not be allowed to join duty :-

- a) Matriculation Certificate showing the date of birth;
- b) M.B.B.S. Degree;
- c) House job etc.;
- d) Registration Certificate from the Medical Council;
- e) Scheduled Caste/Scheduled Tribe/OBC Certificate, if applicable;
- f) Relieving Order from his present employer, if any;
- g) Medical Certificate declaring medically fit.

9. Dr. Monikanchan Saikia is further informed that all the procedures mentioned in Para-8 on pre-page & above must be completed and he/she should join duties latest by 03.03.06, failing which the offer of appointment shall stand cancelled and any further correspondence shall not be entertained.

10. Dr. Monikanchan Saikia is also informed that his/her offer of appointment is without prejudice to the right of the ESI Corporation to terminate his/her services consequent upon a receipt of an adverse report on the verification of his/her Character and Antecedents and veracity of Caste/Community Certificate (if any) by the appropriate authority.

To,

FOR DIRECTOR GENERAL

Dr. Monikanchan Saikia,
C/o Mr. H.N. Chutia,
Ministry of Surface Transport (Highway),
Rajpath Road, Guwahati-781 003

Copy forwarded for information and necessary action to :-

1. MS, ESI MH, ASSAM

the position of joining or with the request that otherwise of may
Dr. Monikanchan Saikia please be intimated to this office in due course. Personal file of Doctor concerned.

2.

MANJU SWAMINATHAN
एसी नियन्त्रक (वैद्य) Director (Medical)
कोरोनोवायरस विग्रह (मु.) ESI Corporation
इंडिया नवी लिमिटेड



मुख्यालय
HEADQUARTERS OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION
पंचदीप भवन, री.आई.जी.रोड, नई दिल्ली-02
PANCHDEEP BHAWAN, C.I.G. ROAD, NEW DELHI-02
REGISTERED ADDRESS
राजधानी सं: 011-23234092-93
फ़ॉक्स सं: 011-23234537
फ़ॉक्स सं: 011-23234637
हैरेल्स: <http://esic.nic.in>

No. A-12(13)- 4/ 2003-Med.IV-Col.IV

Date: 2/2/2006

MEMORANDUM

Subject: Offer of appointment to Dr. Monikanchan Saikia for the post of Insurance Medical Officer Grade-II in the Employees' State Insurance Corporation.

Reference his/her application for recruitment to the above post and subsequent interview, the undersigned is directed to say that on the recommendations of the Selection Board, Dr. Monikanchan Saikia is offered a post of IMO Grade-II in the Employees' State Insurance Corporation. As recommended by the Selection Board he/she will be allowed to draw an initial pay of Rs.8000 - 275 - 13,500/- plus Non-Practicing Allowance at the usual rate as admissible. He/She will also be entitled to other allowances as admissible.

2. In case, the candidate belongs to a Scheduled Caste/Scheduled Tribe/OBC Community, his/her appointment will be provisional and will be subject to verification of his/her claim that he/she belongs to a Scheduled Caste/Scheduled Tribe/OBC Community through proper channel. If his/her claim of belonging to Scheduled Caste/Scheduled Tribe/OBC Community is found to be false OR if the verification reveals that the claim of the candidate to belong to Other Backward Classes or not to belong to cream layer is false, his/her services will be terminated forthwith without assigning any reason and without prejudice to such further action that may be taken under the Indian Penal Code for production of false certificate. For this purpose, he/she is required to produce original documents on the basis of which he/she claims to be a Scheduled Caste/Scheduled Tribe/OBC candidate. (This para is applicable to SC/ST/OBC candidates only).
3. The appointment and service will be subject to the following further terms and conditions :
 - (i) It will be on temporary basis for the present.
 - (ii) He/She will be governed by the Employees' State Insurance Corporation(Staff and Conditions of Service) Regulations, 1959 (as amended from time to time) and other Rules/Regulations/Instructions applicable to the employees of the ESI Corporation.
 - (iii) He/She will be on probation for a period of two years which may be extended at the discretion of the Corporation in the individual cases and his/her service will be liable to termination during the period of probation or during the temporary tenure of appointment on one month's notice/permanent tenure of appointment on three month's notice in writing on either side in terms of Employees' State Insurance Corporation(Staff and Conditions of Service) Regulations, 1959.

Provided that if the services are terminated forthwith, on such termination, he/she shall be entitled to claim a sum equivalent to the amount of his/her pay plus allowances for a period of notice at the same rates which he/she was drawing immediately before the termination of his/her services or as the case may be for the period by which such notice falls short of one month/three months.

- 70 - 78/ 25

(iv) He/She will be posted at
ESI MODEL HOSPITAL, BELTOLA, GUWAHATI, ASSAM

for the present but he/she will be liable to be posted anywhere in India and also required to undertake tours.

(v) He/She will be governed by the Govt. of India's New Contributory Pension Scheme effective from 01.01.2004 as implemented in ESI Corporation.

(vi) He/She will not be entitled to TA/DA and joining time etc. either for appearing for medical examination or for joining the post in the Employees' State Insurance Corporation.

(vii) The Corporation does not undertake to provide any residential accommodation to its employees. However, if accommodation is made available, it will be incumbent upon him/her to live in such accommodation on terms and conditions as may be applicable.

(viii) In case, he/she is holding a post in Central/State Government/Central/State Autonomous Body, his/her appointment will be on immediate absorption basis as envisaged in the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. No.28016/5/85-Estt.(C), dated 31.01.1986 and Government of India, Department of Pension and Pensioners' Welfare O.M. No.4/12/85/P&PW, dated 31.03.1987 and no lien will be allowed to be retained on the permanent post, if any, in the parent office. All his/her connection with the Government/Autonomous Body will be severed on his/her release for appointment in the Employees' State Insurance Corporation and he/she will not be allowed to revert to his/her parent cadre.

4. Unless he/she is a citizen of India, he/she has to produce a certificate of eligibility/affidavit.

5. He/she will be required to take an oath/make an affirmation of allegiance to the Constitution of India at the time of his/her appointment.

6. He/she will ordinarily not be eligible for appointment under the Corporation, if he/she has more than one living spouse. A declaration in this regard should be submitted alongwith his/her acceptance of offer.

7. In case, he/she is at present employed in some Central Govt./State Govt./Autonomous Body etc., he/she may please intimate the fact to this office alongwith his/her acceptance, giving complete name and address etc. of his/her present employer. He/She may also please intimate as to whether he/she had been medically examined by any Competent Medical Board at the time of his/her previous employment.

8. In case, he/she accepts the post on terms and conditions mentioned in the preceding paragraphs, he/she should follow the following steps for joining the post:-

i) He/She should convey his/her unconditional acceptance in writing to the undersigned by name immediately.

ii) He/She should fill-up the enclosed Police Verification/Attestation Form in duplicate, enclosed with this offer and send it to the undersigned by name alongwith self-attested passport size photograph affixed on the top right hand corner of the Attestation Form. Two self-attested passport size photographs may also be sent alongwith filled form.

iii) The offer of appointment to Dr. Monikanchan Saikia will be subject to his/her being found medically fit by a Standing Medical Board and as such he/she is advised to contact the Chairman, Standing Medical Board/Medical Superintendent, ESI Hospital, EUM ODC, DIAMOND HARBOUR ROAD, JOKA, KOLKATA

alongwith two passport size photographs. A formal letter about his/her medical



मुख्यालय
HEADQUARTERS OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION
पंचदीप भवन, सी.आई.जी.रोड, नई दिल्ली-02
PANCHDEEP BHAWAN, C.I.G. ROAD, NEW DELHI-02

फोन नं: 011-23234092-93
फैक्स नं: 011-23234637
Email: 011-23234637
<http://esic.nic.in>

No. A-12(13)- 4/ 2003-Me.IV-Col.IV

Date: 21/2/2006

To,

The Chairman;
Standing Medical Board,
ESI Hospital Complex,
Basadarapur, Ring Road,
New Delhi.

The Director(Medical),
ESIC Hospital,
K.K. Nagar,
CHENNAI-78.

The Medical Superintendent,
ESIC Hospital & ODC(EZ),
24-Parganas(South),
Kolkata(W.B.).

Subject: Medical Examination for appointment to the post of IMO Gr.II in the
ESI Corporation.

Sir/Madam,

I am directed to say that Dr. Monikanchan Saikia is required to be medically examined by the Standing Medical Board to ascertain his/her physical fitness for appointment to the post of IMO Gr.II in the E.S.I. Corporation in Group 'A' post carrying the scale of pay of Rs.8000 - 275 - 13,500/- (which is a medical post.) I am, therefore, to request that his/her medical examination may kindly be arranged immediately and the report of the Medical Board is forwarded to this office immediately, thereafter.

Dr. Monikanchan Saikia is, therefore, being directed to contact your office in person along with this letter at 9.00 A.M. sharp for the purpose upto 24.02.06 on any working day.

Yours faithfully,

Copy also forwarded for information and necessary action to:

1. MS. E.SIMH, ASSAM

2. Dr. Monikanchan Saikia

He/She is advised to get himself/herself medically examined by the Medical Board at the address given above on the scheduled date and time. Please note that he/she may invariably take two-passport size photographs alongwith him/her at the time of appearing for his/her medical examination. He/She is further advised to contact the office of the Chairman of the Medical Board at the address mentioned above by _____ (on any working day).

3. For personal file.

RN
MANJU SWAMINATHAN
3rd Floor (F-16) /Dg Director
Employees' State Insurance Corporation (ESIC)



मुख्यालय
HEADQUARTERS OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION
पंथदीप भवन, रोड आई.जी.रोड, नई दिल्ली-02
PANCHDEEP BHAWAN, C.I.G. ROAD, NEW DELHI-02

IMO/2006/07/08/psb

1

Registered A.D.

पूर्वान्तर: 011-23234092-93
Tel: 011-23234092-93
फैक्स नं: 011-23234637
Fax: 011-23234637
<http://esic.nic.in>

No. A-12(13)- 4/ 2003-Med.IV-Col.IV

Date: 21/1/2006

MEMORANDUM

Subject: Offer of appointment to Dr. Chongtham Mandamani
for the post of Insurance Medical Officer Grade-II in the
Employees' State Insurance Corporation.

Reference his/her application for recruitment to the above post and subsequent interview, the undersigned is directed to say that on the recommendations of the Selection Board, Dr. Chongtham Mandamani is offered a post of IMO Grade-II in the Employees' State Insurance Corporation. As recommended by the Selection Board he/she will be allowed to draw an initial pay of Rs.8000 - 275 - 13,500/- plus Non-Practicing Allowance at the usual rate as admissible. He/She will also be entitled to other allowances as admissible.

2. In case, the candidate belongs to a Scheduled Caste/Scheduled Tribe/OBC Community, his/her appointment will be provisional and will be subject to verification of his/her claim that he/she belongs to a Scheduled Caste/Scheduled Tribe/OBC Community through proper channel. If his/her claim of belonging to Scheduled Caste/Scheduled Tribe/OBC Community is found to be false OR if the verification reveals that the claim of the candidate to belong to Other Backward Classes or not to belong to cream layer is false, his/her services will be terminated forthwith without assigning any reason and without prejudice to such further action that may be taken under the Indian Penal Code for production of false certificate. For this purpose, he/she is required to produce original documents on the basis of which he/she claims to be a Scheduled Caste/Scheduled Tribe/OBC candidate. (This para is applicable to SC/ST/OBC candidates only).
3. The appointment and service will be subject to the following further terms and conditions:
 - (i) It will be on temporary basis for the present.
 - (ii) He/She will be governed by the Employees' State Insurance Corporation(Staff and Conditions of Service) Regulations, 1959 (as amended from time to time) and other Rules/Regulations/Instructions applicable to the employees of the ESI Corporation.
 - (iii) He/She will be on probation for a period of two years which may be extended at the discretion of the Corporation in the individual cases and his/her service will be liable to termination during the period of probation or during the temporary tenure of appointment on one month's notice/permanent tenure of appointment on three month's notice in writing on either side in terms of Employees' State Insurance Corporation(Staff and Conditions of Service) Regulations, 1959.

Provided that if the services are terminated forthwith, on such termination, he/she shall be entitled to claim a sum equivalent to the amount of his/her pay plus allowances for a period of notice at the same rates which he/she was drawing immediately before the termination of his/her services or as the case may be for the period by which such notice falls short of one month/three months.

(iv) He/She will be posted at
ESI MODEL HOSPITAL, BELTOLA, GUWAHATI, ASSAM

he/she will be liable to be posted anywhere in India and also required to undertake tours.

(v) He/She will be governed by the Govt. of India's New Contributory Pension Scheme effective from 01.01.2004 as implemented in ESI Corporation.

(vi) He/She will not be entitled to TA/DA and joining time etc. either for appearing for medical examination or for joining the post in the Employees' State Insurance Corporation.

(vii) The Corporation does not undertake to provide any residential accommodation to its employees. However, if accommodation is made available, it will be incumbent upon him/her to live in such accommodation on terms and conditions as may be applicable.

(viii). In case, he/she is holding a post in Central/State Government/Central/State Autonomous Body, his/her appointment will be on immediate absorption basis as envisaged in the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. No.28016/5/85-Estt.(C), dated 31.01.1986 and Government of India, Department of Pension and Pensioners' Welfare O.M. No.4/12/85/P&PW, dated 31.03.1987 and no lien will be allowed to be retained on the permanent post, if any, in the parent office. All his/her connection with the Government/Autonomous Body will be severed on his/her release for appointment in the Employees' State Insurance Corporation and he/she will not be allowed to revert to his/her parent cadre.

4. Unless he/she is a citizen of India, he/she has to produce a certificate of eligibility/affidavit.

5. He/she will be required to take an oath/make an affirmation of allegiance to the Constitution of India at the time of his/her appointment.

6. He/she will ordinarily not be eligible for appointment under the Corporation, if he/she has more than one living spouse. A declaration in this regard should be submitted alongwith his/her acceptance of offer.

7. In case, he/she is at present employed in some Central Govt./State Govt./Autonomous Body etc., he/she may please intimate the fact to this office alongwith his/her acceptance, giving complete name and address etc. of his/her present employer. He/She may also please intimate as to whether he/she had been medically examined by any Competent Medical Board at the time of his/her previous employment.

8. In case, he/she accepts the post on terms and conditions mentioned in the preceding paragraphs, he/she should follow the following steps for joining the post:-

i) He/She should convey his/her unconditional acceptance in writing to the undersigned by name immediately.

ii) He/She should fill-up the enclosed Police Verification/Attestation Form in duplicate, enclosed with this offer and send it to the undersigned by name alongwith self-attested passport size photograph affixed on the top right hand corner of the Attestation Form. Two self-attested passport size photographs may also be sent alongwith filled form.

iii) The offer of appointment to Dr. Chongtham Bandamani will be subject to his/her being found medically fit by a Standing Medical Board and as such he/she is advised to contact the Chairman, Standing Medical Board/Medical Superintendent, ESI Hospital, CUM ODC, DIAMOND HARBOUR, ROAD, JOKA, KOLKATA

alongwith two passport size photographs. A formal letter about his/her medical

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examination addressed to the concerned Medical Board is enclosed. In the event of his/her being found medically fit, the Medical Board will issue a Fitness Certificate and on the basis of the same, he/ she must join duties immediately.

iv) After obtaining the Medical Certificate, Dr. Chongtham Nandamani must report for duty

**MEDICAL SUPDT., ESI MODEL HOSPITAL, BELTOLA, GUWAHATI,
ASSAM**

alongwith the following papers/documents in original and three attested copies of each of these certificates at the time of joining duties failing which he/she will not be allowed to join duty :-

- a) Matriculation Certificate showing the date of birth;
- b) M.B.B.S. Degree;
- c) House Job etc.;
- d) Registration Certificate from the Medical Council;
- e) Scheduled Caste/Scheduled Tribe/OBC Certificate, if applicable;
- f) Relieving Order from his present employer, if any;
- g) Medical Certificate declaring medically fit.

9. Dr. Chongtham Nandamani is further informed that all the procedures mentioned in Para-8 on pre-page & above must be completed and he/she should join duties latest by 03.03.06, failing which the offer of appointment shall stand cancelled and any further correspondence shall not be entertained.

10. Dr. Chongtham Nandamani is also informed that his/her offer of appointment is without prejudice to the right of the ESI Corporation to terminate his/her services consequent upon a receipt of an adverse report on the verification of his/her Character and Antecedents and veracity of Caste/Community Certificate (if any) by the appropriate authority.

To,

FOR DIRECTOR GENERAL

Dr. Chongtham Nandamani,
Sagolband Salam Leikai,
Meinothong,
Imphal - 795 001
Manipur

Copy forwarded for information and necessary action to :-

MS, - ESIIMH, - AGS/AM

the position of joining or with the request that Dr. Chongtham Nandamani otherwise of may

2. please be intimated to this office in due course.
Personal file of Doctor concerned.

Manju
MANJU SWAMINATHAN
Chairman (Dr.) Director (Medical)
ESI Corporation
Guwahati

*After
Lata
Advocate*

25-26 No. 87

Annexure-XVII

FORM 9
(See Rule 22)
CENTRAL ADMINISTRATIVE TRIBUNAL
COMMITTEE

25/6/

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Case No. 36/06

36/06

Original Application No.

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(s) Dr. P.K. Sharma et al (18)

Respondent(s) U.O. I (EMI)

Advocate for the applicants M. Chanda, G.N. Chakrabarty
S. Naith

Advocate for the respondent(s) C.G.S.C
Silly St. Counsel

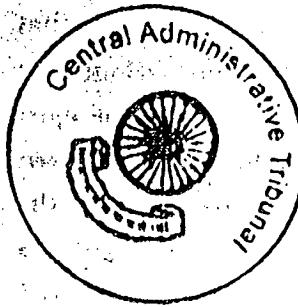
Advocate for the respondent(s)

Notes of the Registrar etc. Order of the Tribunal

08.02.2006 Present: Hon'ble Sri K. V. Sachidanandan,
Vice-Chairman

Heard Dr. J.L. Sarkar, learned
counsel for the applicants. Mr. G. Baishya,
learned Sr. C.G.S.C. on behalf of
respondents No. 1 to 4 was present.

The applicants are all Doctors under
Government of Assam as Medical and
Health Officer - I. The Government of
India and the Employees' State Insurance
Corporation (ESIC) in a meeting decided to
take over the existing ESI Hospital run by
the State Governments to convert into
Model Hospital to be run by the ESIC. The
ESIC conveyed the decision to the State
Government for consent. The Government
of Assam communicated the consent to
the Government of India and ESIC and
decided to hand over the ESI Hospital to
ESIC. The applicants were on deputation
to the ESIC. While so they have filed the



Affected
Adv. Advocate

Contd...2

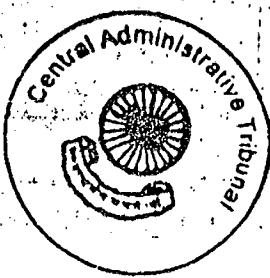
Original Application No. 247/2004 and by order dated 03.01.2006 considered terms and conditions contained in Memorandum of Understanding (MOU) entered into between the parties and also observed as follows:-

"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 with 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."

Therefore, it is quite evident that six months time has been granted to the respondents for implementation of 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 reply statement.

Direction to be complied with will expire on 2nd July 2006. In the meantime, the materials placed on record reveal that the respondents, ESIC is proceeding with selection for fresh Doctors from the open market. Four Doctors have already been selected. The apprehension of the applicants is that if such appointment is made they will be prejudicially affected/ would be difficult in implementing the Court's order for want of vacancy. Therefore, the O.A. has been filed.

Contd/-



08.02.2006

When the matter came up for admission hearing, this Court is of the view that notice has to be issued to the respondents. Accordingly, issue notice to the respondents. Six weeks time is given to the respondents to file reply statement.

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Counsel for the applicants also insisted for an interim order to the effect that their interest should not be affected by virtue of such recruitment. On going through the materials placed on record, this Court passes an interim order directing the respondents not to take action prejudicial to the interest of the applicants. In other words as far as the applicants are concerned, status quo as on today shall be maintained till the expiry of the period stipulated in O.A. 247/2005.

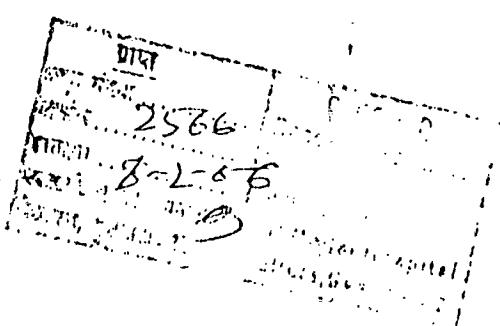
Post on 24.03.2006.

Sd/ VICE CHAIRMAN

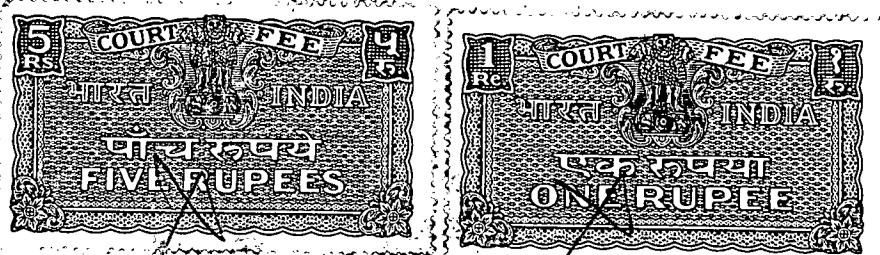
Date of Application : 8.2.06
 Date on which copy is ready : 8.2.06
 Date on which copy is delivered : 8.2.06
 Certified to be true copy

N.C. 33/2/06
 Section Officer (33/2/06)
 C. A. T. G. Subash Verma
 Ouwahe 2006

8.2.06



Affidavit
Leela
Parwate



VAKALATNAMA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O. A. No. 41 /2006

@@ Dr. Birendra Banikya.

...Applicant(s)

-Vs-

U. O. I. Sons.

...Respondent(s)

Know all men by these presents that the above named Applicant do hereby appoint, nominate and constitute Sri Manik Chanda, Sri Subrata Nath and Sri Advocate(s) and such of below mentioned Advocate(s) as shall accept this VAKALATNAMA to be my/our true and lawful Advocate(s) to appear and act for me/us in the above noted case and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filing in or taking out papers, deeds of composition etc. for me/us and on my/our behalf and I/We agree to ratify and confirm all such acts to be mine/our for all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocate(s) shall be bound to appear and/or act on my/our behalf.

In witness whereof, I/We hereunto set my/our hand on this the 10th day of February 2006.

Received from the Executant, Mr. _____ And accepted
satisfied and accepted. Senior Advocate will lead me/us in the case.

Advocate

Advocate

Advocate

Subrata Nath

R. D.

383

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Dr. Birendra Banikya.

NOTICE

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From:

Sibratu Nath
Advocate

To:

Shri G. Bashya
Dr. G.G. S. C.

To: Mrs. M. Das.

Govt. Advocate, Assam.

Subr. O. A. No. — 106 (Dr. B. Banikya vs. U.O. I & ors)

Sir/Madam,
Find please enclosed herewith a copy of the
O. A. This is for your information and
necessary action.

Please acknowledge receipt of the same.

Received

Yours sincerely

S. Nath
Advocate

10/2

(Dr. Bashya)
Dr. G.G. S. C.

(Mrs. M. Das.)

Govt. Advocate,
Assam.

I undertake to handover
Copies of the O. A. to Shri G. Bashya
and Mrs. M. Das.

Sibratu Nath.
Advocate
10/2

DISTRICT: KAMRUP

VAKALATNAMA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI



O.A. NO. 41 OF 2006

Dr. BIRESH BANIKYA

APPLICANT
PETITIONER

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS
OPPOSITE PARTY

NO. 3 & 5
Medical Superintendent

Know all men by these presents that the above named RESPONDENT Medical Superintendent do hereby nominate, constitute and appoint Sri/ Smti B.C. PATHAK, B.C. PATHAK & MANAS TALUKDAR Advocate and as such of the undermentioned Advocates as shall accept this Vakalatnama to be my/our true and lawful Advocates to appear and act for me/us in the matter noted above and in connection therewith and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filing in or taking out papers, deeds of composition etc. for me/us and on my/our behalf and I/We agree to ratify and confirm all acts to be done by the said Advocates as mine/ours for all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocate will be bound to appear and act on my/our behalf.

In Witness Whereof I/We hereunto set my/our hand on this 14th Day of Feb '06

A K CHOUDHURI
BHUBANESWAR KALITA
CHINMOY CHOWDHURY
MANORANJAN DAS
B.C. PATHAK
NISHITENDU CHOUDHURY
BOLIN SARMA
MANIK CHANDA
S C KEYAL

H K MAHANTA
DR. (MRS) M PATHAK
NIRAN BARAH
DINAMANI SARMA
DILIP BARUA
P J SAIKIA
JOY DAS
DIPENJYOTI DUTTA
SUNIT SAIKIA

B. PATHAK
DEEPAK BORA
NEELAKHI GOSWAMI
JULI GOGOI
AMVALIKA MEDHI
JAVED ALI HASAN
GUNAJIT BAISHYA

Received from the executant,
satisfied and accepted

Mr/Ms.....
Will lead me/us in the case

And Accepted

B. C. Pathak
Advocate

Advocate

And Accepted

Biresh Pathak
Advocate

And Accepted

Advocate

Advocate

Advocate

प्राप्तिक्रमिक
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : AT GUWAHATI

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78-
O.A. No. 41/2006

Dr. Biresh Banikya

Applicant

- VS -

Union of India and Others

Respondents

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

The written statements of the respondents are as follows:

1. That a copy of the original Application No.41/2006 (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 vide letter No.38016/1/2005-55-1 dated 17.1.2005. The respondents have gone through the contents of the application and understood the contents thereof.
2. That same 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

Filed by
Deepti Chakrabarty
Advocate

legal entity and is a juristic person who can sue or could be sued 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 its 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 levels of with power, authority and official hierarchy.

(ii) That the Corporation vide its D.O. letter No. V-13/14/1/2001-Med.I dated 17.5.2001 wrote to the Chief Secretaries of different states and thereby informed that the E.S.I. Corporation at its last Meeting held on 16.2.2001 had decided to set up some Model Hospitals in different states with a view to improve the quality of medical services being provided to the E.S.I.'s beneficiaries in various states and to serve as a benchmark for up-gradation

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of the other Hospitals in the states. By the said letter it was also made clear about the object and reason for the setting up of such Model Hospitals.

(iii) That the Corporation in its 121st Meeting held on 14th December, 2001 approved the Memorandum and the proposal for modernization of one Hospital in each state as Model Hospital. Accordingly the Corporation in its 122nd Meeting held on 20.2.2002 considered the matter of setting up of Model Hospitals. Amongst other, the Meeting resolved that the staffing of the proposed Model Hospitals will be as per E.S.I norms and standards approved by the Corporation. Except the posts of Medical Superintendents, Joint Director/Deputy Director (Administration and finance), all staff will be taken from the State Government concerned on deputation. In case the State Government is unable to provide the requisite number of staff, the corporation will be free to appoint persons on part-time or contract basis till such time staff is provided. According to the said resolution, the existing E.S.I. Hospital in Beltola, Guwahati, Assam was also considered to be converted to a Model Hospital. The said proposal was approved by Standing Committee on 2.7.2001

(iv) That the Government of Assam conveyed its consent thereby favouring taking over of E.S.I. Hospital (Beltola) as a Model Hospital by the E.S.I. This was communicated vide Letter No. GLR.131/2001/123 dated 22.11.2002. The Government of Assam, again, vide their letter No. GLR.131/2001/169 dated 16.12.2002, Constituted a Committee for the decision making process to prepare the ground and modalities for handing over the E.S.I. Hospital including the staffing pattern. In response, the Corporation also constituted a eight member Committee for handing over and taking over of the said Hospital. This was communicated vide letter No. U-16/25/Model/Assam/2002-Med.II dated 17.12.2002.

(v) That the Government of Assam again wrote to the Government of India regarding the process of handing over the E.S.I., Hospital, Beltola and informed the Government of India that it had decided to handover the E.S.I. Hospitals of mutually agreed terms and conditions. But in the Meeting held on 26.12.2002 when the MOU was prepared and presented, the E.S.I. representative did not agree on certain issues relation to the local recruitment in respect of certain posts on the basis of Corporation's norms. Therefore, the said MOU was sent to the Government of India for a decision for final settlement. This was communicated vide letter No. GLR.131/2001/170 dated 30.12.2002. The Corporation vide its D.O. letter No. V.11/11/Assam/1/03-DM(HQ) dated 10.11.2003 informed the Government of Assam about the views of the Corporation on the issues incorporated in the draft MOU. With regard to the issue regarding the handing over of the infrastructure of the Hospital except the land to the Corporation, the Corporation made it clear that since the title of the land is vested in the Corporation, it would not be possible to handover the infrastructure which retaining the land thereof. It was further made clear that the terms and conditions regarding deputation and 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 allowances as per Government of India rules. This option for choosing pay scales was to be made as a Hospital Unit and not individual. It was also clarified that the demand for posting of administrative officer from the State Government on deputation was not in confirmative with the policy of the Corporation relating to Model Hospitals. The matter demand let down in the MOU appointment of unemployed youth of the State against the future need of manpower, was also clarified as not acceptable so far as the Staff/officers are recruited as per statutory recruitment regulation and the post are advertised centrally by the Corporation. The Government of Assam, however, accepted the terms and conditions of E.S.I. Corporation and took a final decision to handover the hospital to the Corporation vide its letter

No. GLR.131/2001/Pt.1/12 dated 17.2.2003 and also requested the Corporation to fix a date for such handing over and taking over. The Corporation, accordingly, informed the Government of Assam by fixing 31.3.2003 for such handing over and taking over. This was communicated vide letter No. U-16/25/Model/Assam/2002-Med.II dated 28.3.2003.

(vi) That ultimately, a MOU was signed between the representatives of the Corporation and the Government of Assam excluding the matter regarding employment/appointment of staff etc. and the matter of Hospital Advisory Committee as suggested in the draft MOU marked as 'A' and 'B' in the said MOU and specifically with the foot-note in that regard. The MOU was signed on 4.4.2003. The Government of Assam vides their letter No. GLR.153/2003/Pt.I/158 dated 29.3.2004 accepted the various terms and condition of deputation of as many as 25 numbers of doctors. By the said communication, the Government of Assam made it clear that the deputationist will be entitled to retain their Grade pay of their parent department plus 10% deputation allowance. The Government of Assam placed the services of the doctors w.e.f. 4.4.2003 on deputation to the Model Hospital vide their Memo No. GLR.121/2003/8-A dated 10.4.2003. The answering respondents crave the leave of this Hon'ble Tribunal to allow them to rely upon and to refer the contents of the said MOU dated 4.4.2003 and the letter dated 29.3.2004 at the time of hearing of the case.

(vii) That the period of deputation of the incumbents deputed to Model Hospital was further extended by one year w.e.f. 4.4.2004 by the Government of Assam vide Memo No. GLR.153/2003/Pt.I/159-A dated 29.3.2004.

(viii) That in the mean time, the doctors numbering as many as 19 approached this Hon'ble Tribunal through the O.A. No. 247/2004 and thereby sought relief for grant of pay and allowances at per with the counterparts in the Corporation w.e.f. 4.4.2003 with all consequential services benefits,

sought quashing of the impugned order dated 30.11.2004 to re-fix the pay of the doctors with immediate effect and for formulation of detailed terms and condition for permanent absorption. This Hon'ble Tribunal heard all the sides, perused the records and observe that the date of fixation of pay and allowances on the basis of MOU or as per draft terms of absorption as to whether that should be from the date of deputation or from the date they joined, duty are all matters which the E.S.I.C. has to consider and to take expeditious decision. The Hon'ble Tribunal also held that the draft terms and condition as in Annexure - A to the MP 125/2005 has been approved by the State Government. Therefore, this Hon'ble Tribunal directed the respondent to proceed the matter and to implement the terms and condition contained in the MOU and the draft terms of absorption to the effect agreed by the State Government within a period of six months from the date of receipt of the order.

- (ix) That the Corporation has created various posts for E.S.I.C. Model Hospital, Beltola, Guwahati, Assam, consequent upon taking over the said hospital vide letter No. U-16/18/1/ESIC/chin chwad/2003-Med.IV dated 10.1.2006. According to the said sanction letter the 26 numbers of G.D.M.O. post and 13 numbers of specialists has been created among other various post. On the other hand, the Corporation issued letter of appointment to as many as four direct recruit Medical Officer as Insurance Medical Officer, Grade - II, out of which only one has joined in service.
- (x) That the Standing Committee of the Corporation finalized the terms and condition of absorption of the State Government Employees uniformly for its all the Model Hospitals including that of Guwahati, Assam. This was communicated by the Corporation through Letter No. A-37(18)1/2003-DM(HQ.) dated 24.2.2006. By the said letter the approved terms and conditions of absorption was also enclosed. It was also clarified that the said terms and conditions be circumstances among the employees and also for their either

for absorption or for repatriation. It was also made clear that such employee must tender resignation from the service of the parent department and the acceptance of the same by the State Governments. Certain employees were categorized and excluded from the preview of absorption while the format for such exercise of option were also enclosed. The Corporation has also given clear direction to all the Model Hospitals the procedure and steps to be followed and taken in the exercise of absorption of employees vide letter No. A-37(18)1/2003-DM(HQ) dated 24.2.2006. By the said policy decision taken by the Standing Committee in its Meeting held on 13.12.2005 also made it clear that the effective date of absorption of employees will be 1.1.2006. This has been fixed as a matter of policy decision keeping in mind to avoid administration inconvenience of working out and recovering leave, salary and pension contribution from the respective State Government and maintaining the uniformity in the date of absorption of all employees. The Corporation, a gown, vide their letter No. A-37(18)1/2005-DM(HQ)/1174 dated 17.3.2006 further made it clear that certain clarification has been made by the Director-General of the Corporation to the terms and conditions of absorption. By the said communication, the Corporation also directed the various Medical Superintendents of Model Hospitals to complete the process of absorption of Group 'C' and 'D' employees by the first week of April and in any case latest by 10.4.2006. It was also made clear that the cases of GDMOs, Specialists and other Group 'A' and 'B' employees for whom the Director General is the appointing authority, be scrutinized by the Committee and forwarded with the recommendation to Head Quarter by 10.4.2006 positively. Accordingly, as stated above the process of absorption is being completed very soon.

(xi) That the Government of Assam again raised some objection relating to the terms of absorption vide their letter No. GLR.131/2001/Pt-III/70 dated 9.3.2006. The Corporation considered the said issue of the Government of Assam and

clarified the same vide their letter No. A-37(18)1/2005-DM(HQ) dated 31.3.2006.

(xii) 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.

(xiii) 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.

(xiv) 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.

The answering respondents also state that this application is not maintainable as the same has been filed prematurely as the Order dated 3.1.2006 passed by this Hon'ble Tribunal in O.A. No. 247/2004 is yet to be fully complied with and implemented. Unless that is done, on or before 2.7.2006 or within such extended period, if any such extension is sought and granted, nothing could be challenged relating to the matter of absorption.

The answering respondents crave the leave of this Hon'ble Tribunal to allow the respondents to rely upon and refer to the statements made in the written statements in O.A. No.36/2006 to be as statements made in this application. The annexure annexed to the said O.A. 36/2006 above may also be considered as annexure appended to these written statements.

4. That with regard to para 1 that with regard to the statements made in para 1 of the Application, the respondents reassert that the instant Application is premature and is liable to be dismissed with cost. However, the applicant in this O.A. was not the applicant in O.A. No.247/2004.
5. That with regard to statements made in para 2 and 3, the respondents have no comment to offer.
6. That with regard to statements made in para 4.1, the respondents state that these being matter of records, nothing is admitted which are not borne on such records.
7. That with regard to the statements made in para 4.2 to 4.20, the answering respondents crave the leave of this Hon'ble Tribunal to allow the respondents to rely upon and refer to

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the statements made in the written statements in O.A. No.36/2006 to be as statements made in this application. The annexure annexed to the said O.A. above considered as annexure appended to this O.A. also.

8. That with regard to para 5.1 to 5.9 That with regard to the statements made in para 5.1 to 5.8, the answering respondents state that the grounds put forwarded by the applicants are without any substance and not bases on any legal provision. Hence, the grounds shown by the applicants cannot sustain in law and as such the application is liable to be dismissed as futile and without any merit. The settled provision of law is that the deputationists have no right to claim absorption. If it is so, a deputationist cannot impose precondition for such absorption unless rules permit. However the respondents beg to state that the direct recruitment made is irrelevant in this case as the recruitment so made relates to the vacancy of New Delhi as clarified herein above.

9. That with regard to the statements made in para 6 and 7, the respondents state that the application has been filed without any basis as stated above. Hence, there cannot be any alternative remedy to re-agitate their claim afresh, which has been sealed and seized by the order dated 3.1.2006 in O.A. NO. 247/2004.

10. That with regard to the statements made in para 8.1, 8.2, 8.3 and 8.4, the respondents state that in view of the facts and circumstances of the case and the provisions of law the applicants are not entitle to any relief whatsoever as prayed for and the application is dismissed with cost. It is also submitted that the order dated 3.1.2006 passed by this Hon'ble Tribunal in O.A. No. 247/2004 is being implemented within the time framed and the process is rigorously on and it is expected that the process would be completed by 3.7.2006 if not within such extended time if at all permitted by this Hon'ble Tribunal. As stated hereinabove,

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the provisions of MOU dated 4.4.2003 as executed between the authorities except the excluded clauses has already been superceded by the approved terms and conditions of absorption which has got the cognizance of this Hon'ble Tribunal which are specific and detail in nature and the process of absorption is being carried out as per provisions of the said terms and conditions which are nothing but specific clauses of the General Clauses of the MOU. Hence, the application is futile and in tenable in law and liable to be dismissed with cost.

11. That with regard to the statement made in para 9.1 and 9.2, the respondents respectfully submitted that under the above facts and circumstances and the provisions of law the interim order of stay is liable to be vacated and or be modified as this Hon'ble Tribunal may deem fit and proper.

In the premises aforesaid, it is respectfully prayed that your Lordship's would be pleased to hear the parties, peruse the records of the case and after hearing the parties and perusing the records would also be pleased to dismiss the application with cost.

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Verification

I, Shri Dr. Parimal Mopsi, at present working as the Medical Superintendent in the office of the ESIC Model Hospital, Beliola, being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para 2, 5, 8, 9 and 10 are true to my knowledge and belief, those made in para 3, 4, 6 and 7 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 12th day of July, 2006 at Guwahati.

Parimal Mopsi

चिकित्सा अधीक्षक
 DEPONENT: Medical Superintendent
 कृत्यानि आदर्श अस्पताल
 ESIC Model Hospital
 बेलिला / Beliola,
 गुवाहाटी / Guwahati-22

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NOTICE

From:

B. C. Pathak
Advocate, CAT Ghy Bench

Date: 12/7/06

To:

M. Chanda

Advocate, Guwahati.

Subject: WS filed in OA. 41/2006
(Dr. Biresh Bani kya -vs- U O L 2005)

Sir,

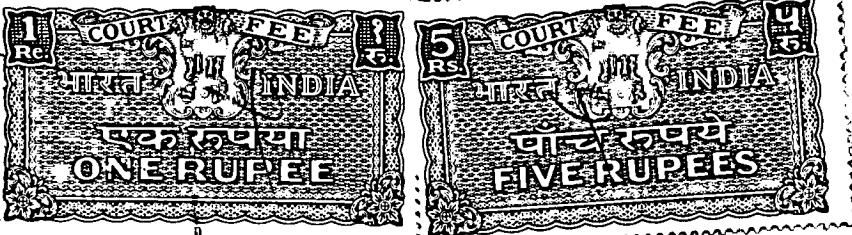
Please find enclosed herewith a copy of the aforesaid
WS in OA. 41/2006 filed in the
Hon'ble Central Administrative Tribunal, Guwahati Bench. on 12/7/06
Kindly acknowledge the receipt of the same.

Yours sincerely,

Received copy:

Richa Chanda
Advocate 12/7

B.C. Pathak
Advocate
12/7/06



04 SEP 2006

DISTRICT: Kamrup (Metro)

গুৱাহাটী নথৰটা
Guwahati Bench

VAKALATNAMA
IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM AND ARUNACHAL PRADESH)

In the Court of The Central Administrative Tribunal at Guwahati.
Constitution Bench.

O. A. NO. 41 OF 2006.

Dr. Bisheshi Banikya APPLICANT, PLAINTIFF
APPELLANT
PETITIONER

VERSUS -

The Union of India & ORS

DEFENDANT
RESPONDENT'S
OPP. PARTY

Know all men by these presents that the abovenamed E.S.I. C. & U.O.I. being authorised and represented by Sri Parimal Maji do hereby nominate, constitute, and appoint Sri R. Das and Ms. T. Das Advocates (by Respondent Nos. 1 to 5) Advocate and such of the undermentioned Advocates as shall accept this Vakalatnama to be my/our true and lawful Advocate to appear and act for me/us in the matter noted above and in connection therewith and for that purpose to do all acts whatsoever in that connection including depositing or drawing money filing in or taking out papers, deeds of composition etc. for me/us and on my/our behalf and I/we agree ratify and confirm all acts to be done by the said Advocates as mine/ours to all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocate will be bound to appear and act on my/our behalf.

In witness whereof I/we hereunto set my/our hand on
this 30th day of August 2006

J. M. Choudhury
S. R. Bhattacharjee
C. K. Sarmah Baruah
Girish Mishra
A. Sherif
Hamidur Rahman
Kamal Kr. Nandi
Ranjit Das

Subrata Nath
S. P. Das Choudhury
S. P. Deb Roy
Sumoti Chakraborty
Ranjit Kr. Baruah
Nabasmita Gogoi
Lalit Kr. Minda
Rakhee Bhattacharjee
Ms. Ranushree Das

Received from the
Executive, satisfied
And accepted

Mr.
will lead me/us in this case

✓ St. Advocate

Advocate 30/8/06

Advocate

Accepted.
RanuDas
Advocate 30-8-06

(RANJIT DAS)
Advocate for the
(Respondents Nos. 1 to 5)

Advocate for the
Respondent Nos.
1 to 5

N. B! - Photocopy of Govt. Letter
No. S-38016/1/2005-55-1,
dt. New Delhi 17-1-2005
enclosed.



Parimal Maji
Medical Superintendent
কেন্দ্ৰীয় নিৰ্বাচনী অধিদল
ESIC Model Hospital
গুৱাহাটী / Guwahati-22

Enc. 19 (R) 51

F. No. S-38016/1/2005-SS-I
Government of India
Ministry of Labour & Employment

New Delhi, dated 17.01.2005.

To,
The Director General,
ESI Corporation,
New Delhi

Subject: Forwarding of Court Cases – regarding.

Sir,

I am directed to forward herewith a notice under Rule 29 of the Central Administrative Tribunal Rules of Practice, 1993 received from CAT, Guwahati Bench, Guwahati for necessary action and defend the case on behalf of UOI under intimation to this Ministry:

to request that
Yours faithfully,

S. Kumar AV
(Arun Kumar)
Section Officer.

Encl.: As above.

MS may also
be required to defend
on behalf of Govt of India
MOI

14.1.2005

JK

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M

Enc. 19 (R)
DG P.O.
Date 18/1/05

W. K. Chakrabarty