

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00108/2018

Friday, this the 14th day of September, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

Akhil Parappuram, Aged 31 years, S/o M.Kunjappan,
Staff Nurse, ESIC Model Hospital,
Asramam, Kollam, Kollam District,
Residing at Parappuram House,
Varanad P.O., Cherthala, Alappuzha 688539. **Applicant**

(By Advocate – Mr. K.P.Harish)

V e r s u s

1. Employees State Insurance Corporation,
Head Quarters'Office, Panchdeep Bhawan,
C.I.G.Marg, New Delhi 110 002,
Rep. by its Director General.
2. The Deputy Director, Employees Insurance Corporation,
Headquarters Office, Panchadeep Bhavan,
New Delhi 110 001.
3. The Medical Superintendent,
ESIC Model Hospital,
Asramam, Kollam, Kollam District, Kerala 691001
4. The Assistant Director (Admn),
ESIC Model Hospital,
Asramam, Kollam, Kollam District, Kerala 691001..... **Respondents**

(By Advocate – Mr. Sandesh Raja)

This Original Application having been heard and reserved for orders on 11.9.2018, the Tribunal on .09.2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member:

This Original Application is filed by the applicant challenging

Annexure A.5 order dated 23.01.2018 cancelling the temporary posting/diversion of the applicant.

2. The brief facts of the case are that applicant, who joined as staff nurse at ESIC Noida, Delhi as early in 06.06.2011 and his wife Smt.Sumi Ramachandran also working as a staff nurse at ESIC Hospital Asramam, Kollam. Though they have married for 4 years, no issues in the wedlock. In order to pursue infertility treatment, a temporary diversion was granted to the applicant at ESIC Hospital Asramam, Kollam, Kerala. By a reference letter from ESIC Model Hospital, Asramam, Kollam, the applicant started infertility treatments protocols from N.S.Hospital, Kollam and the treatment is in middle. Meanwhile, surprisingly the temporary diversion was cancelled and the applicant is asked to rejoin at ESIC Hospital, Noida, Delhi. Being aggrieved by the action of the respondents, the applicant has approached this Tribunal seeking a direction to the respondents to allow him till the infertility treatment is over.

3. This Tribunal vide an interim order dated 30.01.2018 stayed the operation of the Annexure A5 order qua the applicant till next posting date and the same is being extended from time to time.

4. Notices were issued. Respondents put appearance through counsel and filed detailed reply statement.

5. It is submitted on behalf of the respondents that Employees State Insurance Corporation (ESIC for short) took over three ESIS Hospitals from the State Government by ESIC at different point of time. One of these Institutions, Parippally Medical College was handed back to Kerala Government due to administrative reasons, which resulted in an excess of 107 Staff Nurses in the Kerala Region. Retaining Surplus Staff, apart from administrative irregularity may also attracts adverse remarks by CAG during their audit.

6. It is further submitted by the respondents that while there was a surplus of Staff Nurses in the ESIC Hospitals in Kerala, ESIC Medical College Hospital, Gulbarga had an acute shortage of Staff Nurses. It is mandatory to meet laid down MCI norms of Staff Before renewal inspection by the MCI for grant of permission to the Medical College. It is contended by the

respondents that in the offer of appointment issued to Staff Nurses, one of the condition stipulated is that the official is liable to be transferred to any other Hospital of ESIC in the country during his/her service in the ESIC. It is submitted that as per addendum dated 29.1.2018 "The transfer/Posting Order is issued in public interest and the officials concerned shall be entitled for TA/DA and joining time etc. as per Rules.

7. Applicant has filed rejoinder and reiterated the pleadings in the O.A. It is further submitted by the applicant that by Annexure A2, the applicant and his wife was referred by the respondent ESIC Model Hospital, Asramam, Kollam to N.S. Hospital, Kollam to pursue fertility treatment. Thereafter the applicant and his wife were proceeding with the treatment in the referral hospital. While so, the ESIC Model Hospital, Asramam, Kollam has changed their referral hospital and the applicant was referred to SBM Hospital, Karunagappally, Kollam vide Annexure A7. It is submitted by the applicant that Exh. P6 shows that the applicant and his wife were in their 3rd cycle of IVF treatment and their infertility treatment is in the middle way and relieving the applicant at this point of time will cause much prejudice and hardship.

8. We have heard Mr. K.P.Harish, learned counsel for the applicant and Mr. Sandesh Raja, learned Standing Counsel for the respondents. We have also considered the rival submission and perused the pleadings in the O.A.

9. During the course of arguments, the learned counsel for the applicant Mr.K.P.Harish, earnestly prayed that the case of the applicant and his wife may be considered on sympathetic grounds as the treatment for which the applicant sought temporary diversion is in midway and requires another three months time to complete the process. Hence he prayed for retaining the applicant for another three months at the present place of posting.

10. It is an admitted fact that the applicant was posted on diversion to ESIC Hospital Asramam, Kollam on his own request in order to pursue infertility treatment and his wife was also working at the said Hospital as a staff nurse. It is also an admitted fact that by a reference letter from ESIC Model Hospital, Asramam, Kollam, the applicant started infertility treatments protocols from N.S. Hospital Kollam and the treatment is in the midway.

This Tribunal find force in the submission of the applicant that the cancellation of temporary diversion will adversely affect his on going treatment which has been recommended and referred by their own hospital. We also find force in the submission made by the applicant that ESIC Model Hospital, Asramam, Kollam has changed their referral hospital and the applicant was now referred to SBM Hospital, Karunagappaly, Kollam. This referral letter is issued on 27.7.2018 and hence we are of the considered view that the balance of convenience is in favour of the applicant that in case if the applicant's temporary diversion is cancelled and posted back to his parent Hospital at Noida, the very purpose of his temporary diversion is jeopardised midway and no fruitful result would be gained by the applicant on his temporary diversion on his own request.

11. Considering the peculiar facts and circumstances of the case, we are of the view that the applicant is to be permitted to continue at the present station of temporary posting for another three months so that he can complete the on going treatment of the applicant and his wife at the SBM Hospital, Karunagappaly, Kollam. Accordingly respondents are hereby directed that the applicant shall be permitted to continue at the present place of posting for a period of three months from the date of this order on extreme compassionate and humanitarian grounds. Thereafter applicant has to join at the new place of posting without fail.

12. O.A. is allowed on the above terms. The interim order dated 30.01.2018 which was being extended from time to time shall stand vacated automatically on expiry of three months period as mentioned above.

13. There will be no order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

sj*

List of Annexures of the Applicant

Annexure A-5 - A true copy of the office order No.07 of 2018 dated 23.01.2018 of the 2nd respondent.

Annexure A-1 - The true copy of the office order No.98 of 2016 dated 23.09.2016.

Annexure A-2 - A true copy of the referral form (Permissin Letter) issued from ESIC Model Hospital, Asramam, Kollam to N.S.Hospital, Kollam.

Annexure A-3 : A true copy of the office order No.36 of 2017 dated 31.3.2017 issued by the 2nd respondent.

Annexure A-4 - A true copy of the treatment certificate and prescription.

Annexure A6: A true copy of the representation submitted before the 1st respondent.

Annexure A7: A true copy of the referral form (Permission letter) issued by the ESIC, Model Hospital, Asramam, Kollam dated 27.07.2018.

List of Annexures of the Respondents

Nil.
