

**Central Administrative Tribunal  
Ernakulam Bench**

OA/180/00001/2017

Tuesday, this the 14<sup>th</sup> day of August, 2018

CORAM

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

**Hon'ble Mr.Ashish Kalia, Judicial Member**

1. Dr.Asokan Pillai K.P.  
Deputy Medical Superintendent  
Employees State Insurance Corporation Hospital  
Paripally, Kollam.
2. Dr. R.P.Jayasree  
Deputy Medical Superintendent  
employees State Insurance Corporation Hospital  
Ezhukone, Kollam.

Applicants

[Advocate: Mr. Sunil Jacob Jose]

**versus**

1. Union of India, represented by the Secretary  
Ministry of Health & Family Welfare  
Nirman Bhavan, New Delhi-110 001.
2. Union of India represented by the Secretary  
Ministry of Labour & Employment  
Shram Shakti Bhavan, New Delhi-110 001.
3. The Director General  
Employees State Insurance Corporation  
Headquarters Office, Panchadeep Bhavan, CIG Marg  
New Delhi-110 002.
4. The Medical Superintendent  
Employees State Insurance Corporation Hospital  
Ezhukone, Kollam-691 505.
5. The Medical Superintendent  
Employees State Insurance Corporation Hospital  
Parippally, Kollam-691 574.

Respondents

Advocates:

[Ms.P.K.Latha, ACGSC for R1 & 2]

[Mr. Sandesh Raja for R3 to 5]

The OA having been finally heard on 8<sup>th</sup> August, 2018, this Tribunal delivered the following order on 14<sup>th</sup> August, 2018:

**ORDER**

**By E.K.Bharat Bhushan, Administrative Member**

This OA is filed by Dr.Asokan Pillai K.P. and Dr. R.P.Jayasree, both Deputy Medical Superintendents, under Employees State Insurance Corporation (ESIC). The first applicant joined service of ESIC on 1.10.1985 while the particular hospital was under the State Govt of Kerala, and is a Pediatrician. At present, he is Deputy Medical Superintendent, ESIC Hospital, Parippally, Kollam. The 2<sup>nd</sup> applicant joined service of ESIC on 11.3.1985 and is at present Medical Superintendent, ESIC Hospital, Ezhukone, Kollam and is a ENT Specialist. The age of superannuation in ESIC till 2016 was 60 years and under this age condition, the applicants were expected to superannuate with effect from 30.11.2016.

2. Govt of India, being seized of the acute shortage of doctors in the government sector and resultant deficiencies in health care system, decided to enhance the age of superannuation of Central Govt doctors to 65 years with immediate effect vide order dated 31.5.2016, a copy of which is available at Annexure A1. As can be seen, Annexure A1 order related to all participating units of Central Health Service (CHS) and the Department of Personnel & Training was required to make necessary amendments in the Fundamental Rules 56 and other Central Services Rules incorporating the decision. The Department of Personnel & Training (DoPT) issued a notification on the very same date i.e., 31.5.2016 amending Fundamental Rules, 1922 wherein Rule 56 (bb) stood substituted with 65 years in place of 60 years. A photocopy of the Notification

brought out as Gazette of India Extraordinary dated 31.5.2016 is at Annexure A2. The contention of the applicants is that by virtue of Annexure A1 order, they are eligible to continue in service till attaining the age of 65 years.

3. The reason for raising this contention is a provision in the Employees State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959, which governs regulation of service in the Corporation. Under Regulation 7 which *inter-alia* provides for Pay, Leave, Provident Fund and Age of Retirement and Conditions of Service of employees as provided in the Second Schedule drawn as per Regulations 7(2). Against 'the age of retirement', the following is provided: "*As may be prescribed from time to time by the Central Government in respect of corresponding category of Central Government Servants in Rule 56 of the Fundamental Rules.*". This implied that the Government of India's decision as well as the Fundamental Rules relating to the age of retirement would be automatically applicable to ESIC doctors as well.

4. However, respondents No.3 did not choose to act on these expected lines. As the two applicants were to retire on 30.11.2016 on attaining the age of 60 years, the age of superannuation stipulated prior to 31.5.2016 and as the authorities competent continued to be silent, separate representations were submitted to the 3<sup>rd</sup> respondent. This was, when other Government related bodies such as the Railway Board moved with speed to enhance the age of superannuation of doctors to 65 years with effect from 31.5.2016 (Annexure A7). Concerned about the inaction on the part of the respondents, the applicants filed OA No.961 of 2016 before this Tribunal and this Tribunal, by interim order dated 23.11.2016, directed respondents 2 & 3 to take a final decision in the matter and further permitted the applicants to continue in service of ESIC till

then (Annexure A8). Challenge to this order before the Hon'ble High Court of Kerala in OP(CAT) No. 305 of 2016 did not succeed. Finally the 3<sup>rd</sup> respondent issued an order dated 30.12.2016 enhancing the age of superannuation of Non-Teaching Specialists, General Duty Medical Officers and Medical Officers in the cadre of Dental, Ayurveda and Homeopathy in ESIC to 65 years with immediate effect (Annexure A10). The applicants allege that by delaying the effect of the age enhancement, clearly decreed under the Employees State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959, the 3<sup>rd</sup> respondent was acting solely with the purpose of denying the applicants the said benefit and ensuring that they were forced to retire as per the earlier age limit.

5. As grounds, the applicants contend that Annexure A1 has been made applicable to all participating units of CHS, and ESIC, as a participating unit of CHS, is expected to make it applicable automatically. Further, the Presidential Order and subsequent amendment to Fundamental Rules as FR 56(bb) is automatically applicable to ESIC as per Second Schedule drawn as Regulation 7(2) of Employees State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959. The delay in adopting the enhanced retirement age has proven to be costly for the applicants and it has been engineered solely to deprive them of the enhancement ordered through the Presidential decree.

6. Affidavits have been filed by 1<sup>st</sup> & 2<sup>nd</sup> applicants to the effect that there was an attempt made to stop them from discharging their duties with effect from 31.12.2016. However, in view of the interim order of this Tribunal, the applicants refused to pay heed to these attempts. It is maintained therein that the attempt to terminate the services of the applicants w.e.f. 31.12.2016 was in direct violation of the interim order passed by this Tribunal. Counter affidavits were

filed on behalf of the 4<sup>th</sup> and 5<sup>th</sup> respondents denying the charges.

7. It is submitted therein that in the order passed by this Tribunal on 23.11.2016, applicants in that OA who are also the applicants here, were permitted to continue in service of the ESIC until respondents 2 & 3 take a final decision in the matter. The applicants are allowed to continue till that day and are not entitled to continue thereafter. Only if the order is given retrospective effect can Annexure A10 order work to the advantage of the two applicants. The counter affidavits also go on to describe the aggressive interactions between the applicants and the respondents in the hospital premises, which brings no credit to the ESIC.

8. Respondents 3 to 5 also filed a detailed reply. They argue that under Rule 17 (2) (a) of the Employees State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959, it is stated thus:

*“The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay.”*

From this, the respondents have chosen to infer that any decision of the Central Government will first have to be adopted and in case of any departure from the said Rules, it should have the prior approval of the Central Government. The decision of the Central Government was **adopted** by the Corporation only on 30.12.2016 and the enhancement in retirement age will take effect only from that date. The applicants, considering that they had attained the age of 60 years on 30.11.2016, would not get that benefit.

9. The applicants have filed a rejoinder, which has not been countered.

10. Sri Sunil Jacob Jose, learned counsel appeared on behalf of the applicants, Smt.P.K.Latha, learned ACGSC appeared for respondents 1&2 and Sri Sandesh Raja, learned counsel appeared on behalf of respondents 3 to 5. The facts of the case are clear and the issue also well defined. The two applicants would have attained the erstwhile age of superannuation on 30.11.2016. Before this date i.e, 31.5.2016, the Presidential Order was issued enhancing the age of superannuation as 65 for doctors under Central Health Service. The applicants contend that due to the provision in the Employees State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959, under 7(2) of the said Regulations and the provision included in the Second Schedule, the following is given:

*“The regulations relating to the grant of leave, benefit of gratuity and provident fund to the employees and the age at which they shall retire or shall be retired from service, shall be as set out in the Second Schedule”.*

The Second Schedule, in turn, provides that the age of retirement in the Corporation shall be ***“as may be prescribed from time to time by the Central Government in respect of corresponding category of Central Government Servants in Rule 56 of the Fundamental Rules”***. The applicants see this as providing for automatic *adoption* of the enhanced age of superannuation in ESIC. The official respondents, on the other hand, contend that any Government of India decision would not become a Rule in ESIC until it is *adopted* by the Corporation. In other words, notwithstanding that the Presidential Order had been followed by appropriate amendment as FR 56 (bb) and the provision in Regulation 7(2) - Second Schedule of the Employees State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959, the enhancement

in retirement age will be applicable only when the Corporation issues their own orders on the basis of a Resolution of its Board of Directors.

11. We find this argument completely specious. We understand that this benefit would have accrued to three doctors under ESIC, two of whom are applicants in this OA. We do not know why the employer Corporation went to such extreme ends in order to deny the benefit to these personnel. The contention raised that Rule 17(2)(a) of the same Regulation specified that they shall be applicable only if made into Rule by the Corporation, in no way nullifies the clear provision made in the Regulation with regard to the age of retirement. Doctors are a category who are in short supply and the same is presumably the case with ESIC as well. Due to these reasons, we are at a loss to understand why the Corporation is so hesitant in continuing to utilize the services of the applicants. In fact, the reason for delay in *adoption* of the Central Government decision for several months till the date of superannuation of the applicants has passed, appears to give an impression that there were motives at work which are not so apparent. Under the circumstances and after considering all pleadings, we allow the OA. The reliefs sought in the OA are allowed in full. There shall be no impediment placed in the path of the applicants for continuing their services on the ground of their having crossed 60 years. No order as to costs.

**(Ashish Kalia)**  
**Judicial Member**

**(E.K.Bharat Bhushan)**  
**Administrative Member**

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**Annexures produced by the applicants:**

- Annexure A1: Copy of the order No.A.12034/1/2014-CHS-V dated 31.5.2016.
- Annexure A2: Copy of the notification,published in Gazette of India Extraordinary dated 31.5.2016.
- Annexure A3: Copy of the relevant portion of the Minutes dated 6.9.2016.
- Annexure A4: Copy of the communication dated 21.11.2016 of the 3<sup>rd</sup> respondent addressed to the 2<sup>nd</sup> respondent.
- Annexure A5: Copy of the representation dated 4.11.2016 of the 1<sup>st</sup> applicant.
- Annexure A6: Copy of the representation dated 2.11.2016 of the 2<sup>nd</sup> applicant.
- Annexure A7: Copy of the order No.E(P&A) 1-2016/RT-16 dated 31.5.2016 of the Ministry of Railways, Government of India.
- Annexure A8: Copy of the order dated 23.11.2016 of this Tribunal in OA No.961/2016.
- Annexure A9: Copy of judgment of the Hon'ble High Court of Kerala in OP (CAT) No.305/2016, dated 1.12.2016.
- Annexure A10: Copy of the order No.A-40/11/13/1/2016-Med.VI dated 30.12.2016.
- Annexure A11: Copy of the transfer request of the applicant dated 31.7.2017 with its covering letter dated 5.8.2017.
- Annexure A12: Copy of the relevant portion of the Annual Report 2016-17.

**Annexure produced by the respondents:**

- Annexure R4(a): Copy of the relieving order dated 30.12.2016 issued by the 4<sup>th</sup> respondent.
- Annexure R5(a): Copy of the relieving order dated 31.12.2016 issued by the 5<sup>th</sup> respondent.