

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/000283/2017

Dated this Tuesday the 13th day of March 2018
CORAM

**HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MR. E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

Dr. Sushma S., Aged 55 years,
 W/o K. Rajan,
 Specialist Grade II (ENT) Employees Insurance Corporation
 Medical College Hospital Parippally, Kollam,
 (Presently on Diversion to Model Super Specialty Hospital)
 Ashramam Kollam),
 Residing at Chingamana,
 Pada – South, Karunagappally, Kollam District. **Applicant**

[By Advocate Mr.P.V.Mohanan]

Versus

1. Deputy Director (Medical Administration),
 Employees' State Insurance Corporation, Head Quarters Office,
 Panchdeep Bhavan, C.I.G.Road, New Delhi 02.
2. The Medical Superintendent,
 Employee State Insurance Corporation,
 Model Super Specialty Hospital, Ashramam,
 Kollam 691 574.

... **Respondents**

(By Advocate Mr.Sandesh Raja))

(This application having been finally heard on 01.03.2018 and, the Tribunal on 13/03/2018 delivered the following in the open court.)

ORDER

Per: E.K. Bharat Bhushan, Administrative Member:

O.A. No. 180/00283/2017 is filed by Dr. Sushma S. working as Specialist Grade II (ENT) in the Employees State Insurance Corporation (ESIC) Hospital, Parippally, Kollam, at present on diversion to Model

Super Specialty Hospital, Ashramam. She is aggrieved by the proceedings No. A-22/13/1/2009-Med.IV dated 30.03.2017, by which she has been transferred to ESIC Hospital Thirunelveli, Tamil Nadu.

2. The reliefs sought in the O.A. are as under:

“(i) To call for the records leading Annexure A1 proceeding dated 30.3.2017 and set aside the same in so far as it transfers the applicant as Specialist (ENT) from Employees State Insurance Corporation Parippalli to Employees State Insurance Corporation, Thirunelveli, Tamil Nadu.

(ii) To direct the respondent to retain the applicant as Specialist Grade II (ENT) Employees State Insurance Corporation Hospital, Paripally Kerala (on diversion to Employees State Insurance Corporation Model Super Specialty Hospital, Ashramam) forthwith.

(iii) Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice. “

3. When the O.A. was taken up for admission on 3.4.2017 after hearing the counsel on both sides this Tribunal ordered that *status quo* as on that date is to be maintained *qua* the applicant.

4. The applicant is an M.B.B.S. with DLO (ENT) who was sponsored by the Kerala Public Service Commission for appointment as Assistant Insurance Medical Officer at ESIC Dispensary, Kulasekharapuram. She joined the position on 3.1.1994. As per the policy decision of ESIC, employees in ESIC hospitals in various States were offered absorption in ESIC under the Govt. of India. The Director General, ESIC approved the

absorption of State Govt. Staff working on deputation in ESIC hospital at Parippally and Ezhukone w.e.f 4.3.2011. Accordingly, the applicant was absorbed as Insurance Medical Officer Grade II in ESIC Hospital, Ezukone w.e.f. 4.3.2011.

5. By proceedings dated 21.9.2011 the applicant came to be selected as Specialist Grade II (ENT) by ESIC and appointed as such (Annexure A3). She joined at ESIC Hospital, Paripally w.e.f. 16.2.2012. According to her contention she is liable to be transferred only to ESIC Hospitals at Ezhukone, Udyogamandalam or Ashramam in the State of Kerala on exigency of service and not outside the State of Kerala. When the Parippally ESIC Hospital was delinked and transferred under agreement with the State Govt.; the applicant along with 12 other Medical Officers opted to remain in ESIC Hospital without change in conditions of service. In the meanwhile she was moved to Ashramam w.e.f. 12.12.2016.

6. Applicant states that she is a permanent resident of Karunagappally and her husband was a State Govt. employee who retired during the year 2015. She has been repeatedly seeking a transfer to ESIC Model Super Specialty Hospital, Ashramam but with no success. She is the only Specialist Grade II working on diversion to ESIC Model Super Speciality Hospital Ashramam. As per the gradation list produced by the applicant, one Dr. R. Biju, Specialist Grade I (ENT) has been continuing to work at Model Super Specialty Hospital Ashramam for over eight years whereas the normal tenure of posting of an incumbent in one station is three years.

7. As grounds, the applicant states that there is no public interest or

exigency of service warranting her transfer from ESIC Paripally to ESIC Hospital, Thirunelvelli. She is not governed by All India Transfer liability as she is not borne on All India Seniority of ESIC. She has not completed three years in her present station and is being prematurely transferred out for no meaningful reasons. She has personal problems such as her medical treatment and impending marriage of her daughter which justify her retention at Ashramam.

8. Even though an interim order to maintain *status quo* was ordered on 3.4.2017, no reply statement is seen filed by the respondents despite availing adequate time. The learned counsel for the official respondents has been repeatedly seeking adjournments for filing a reply statement which has not been filed so far. On 17.1.2018 it was clearly ordered by the Tribunal that if no reply statement is filed by the next posting date, the Tribunal will be constrained to proceed with the disposal of this case based on documents available.

9. On 14.2.2018, the learned counsel for the respondents represented through a junior counsel and sought time. This Tribunal ordered that it was not inclined to grant any further time and posted the matter for final disposal on 1.3.2018 on which date the O.A. has been reserved for orders.

10. Heard Shri P.V. Mohanan learned counsel appearing for the applicant and Shri Sandesh Raja learned Standing Counsel who appeared on behalf of the respondents. We have perused the documents and records made available by the applicant.

11. We have no facts available with us which controvert the contentions of the applicant. The applicant has stated that her service as per

Annexure A3, is borne on Kerala Cadre of Specialists and she is not bound to be moved outside Kerala. Pleading her case for retention at her present station, she has submitted that other incumbents with longer service are continuing at her present station itself. On an appreciation of facts available to us we conclude that the O.A. has merit on its side. Hence it succeeds. Impugned order dated 30.03.2017 (Annexure A1) *qua* applicant is set aside. The reliefs sought in the O.A. are allowed. No costs.

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

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

sj/*

List of Annexures by Applicants

Annexure A-1	-	True copy of the proceeding No. A-22/13/1/2009-Med.IV dated 30.03.2017.
Annexure A-2	-	True copy of the Medical Certificate
Annexure A-3	-	True copy of the proceeding No. A-12/13/09/Kerala/2011.Med.IVSpI.Recrt. dated 21.09.2011.
Annexure A-4	-	True copy of the proceeding File No. 544/A/22/14/EHP/11-Admin dated 21.02.2012.
Annexure A-5	-	True copy of the list dated 30.09.2015.
Annexure A-6	-	True copy of the representation dated 03.03.2017.
Annexure A-7	-	True extract of the Seniority list in r/o Specialists Gr. II (Jr. Scale) in the pay scale of PB-3 and Grade Pay 6600/- as on 30.04.2014.
Annexure A-8	-	True copy of the Circular No. A-12/13/1/2017-Med.VI dated 13.02.2018

