

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.1577 of 2018

This the 24th day of September 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

1. All India ESIC Employees Federation
Through its Secretary General,
Sh. S. Ramakrishnan,
S/o late Sh. V.S. Manian
R/o Flat No. 10, White House Apartment,
Sector-13, Rohini, Delhi-110085
Office at-ESIC, Panchdeep Bhawan,
CIG Road, New Delhi-110002
Aged about 54 years
2. Vivek Vashisht
S/o Late Sh. Brij Mohan Sharma
R/o 33, Baldev Park, Parwana Road,
Delhi-110051
Office at - ESIC, Headquarters
Panchdeep Bhawan,
CIG Road, New Delhi-110002
Aged about 40 years (Group 'C')
(Federation of various ESIC Ministerial Employees
Unions)

.... Applicants

(By Advocate : Shri Ajesh Luthra)

VERSUS

1. Employees State Insurance Corporation
Through its Director General
Panchdeep Bhawan, CIG Road, New Delhi-110002
2. Employees State Insurance Corporation
Through its Joint Director,
Panchdeep Bhawan, CIG Road, New Delhi-110002
3. Union of India
Through its Secretary,
Ministry of Labour and Employment
Govt. of India, Shram Shakti Bhawan,
Rafi Marg, New Delhi-110001

..... Respondents

(By Advocate : Shri Amit Chawla)

O R D E R (Oral)

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

- (a) Quash and set aside the impugned orders dated 24/01/2018 (Annexure A/1) and 21/03/2018 (Annexure A/2) respectively and
- (b) Accord all consequential benefits
- (c) Award costs of the proceedings; and
- (d) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice in favour of the applicants.

3. Brief facts of the case are that the 1st applicant is an All India ESIC Employees Federation and the 2nd applicant is one of its Members and also working as an Assistant under the respondents. Applicants averred that all the ESIC employees were allowed to avail the medical facilities in ESIC dispensaries/hospitals/medical institutions till 01.04.2016, as free of charge, however, in terms of the orders passed thereafter, the applicants started paying the required subscription for availing the said benefits. However, all of a sudden the respondents by virtue of passing of the impugned orders, ordered recovery of the amount equivalent to the prevailing subscription rates as per CGHS rates w.e.f. 31.03.2013 to 31.03.2016 from the applicants. The

objections raised by the applicants and others were rejected by the respondents.

4. Although the respondents do not dispute the fact as stated by the applicant, however, their only contention is that as per the Standing Committee (the executive body of ESI Corporation) in its 209th meeting held on 28.11.2017 directed on the agenda “Recommendation of the General Purpose Medical Care Sub-Committee for recovery from ESIC employees for taking treatment from ESIC Institutions during 2009-13” to recover the subscription from these employees for the period beyond 31.03.2013 and upto 31.03.2016 also at prevailing subscription rates in not more than six installments, and the orders for recovery were accordingly passed.

5. The aforesaid order of recovery from ESIC employees for availing the medical facilities from ESIC medical institutions without contribution has been passed with retrospective effect, i.e., for a period from 31.3.2013 to 31.3.2016 by a resolution which has been passed in the Standing Committee meeting held on 28.11.2017 especially on the basis of audit report of CAG. The said recovery at this stage of the subscription amount from the period from 31.3.2013 to 31.3.2016 is violative of the principles of natural justice as it seeks to impose a financial burden on the applicants for a facility given to them by the respondents

themselves. The applicants have not played any role in non-payment of any subscription towards availing medical facilities from ESIC institution as the same were provided to them under the rules prevalent at that time and hence, no order of recovery for non-payment of subscription can be directed against the applicants for a period before the said rule was implemented. Moreover, it is well settled that any order in the nature of policy decision which has adverse financial effects on the employees, it cannot be given retrospective effect and such decision can only be implemented prospectively from the date of passing of the Resolution in the Standing Committee (Executive Body of the ESIC Corporation) in its 209th meeting held on 28.11.2017.

6. Hence, retrospective nature of decision based on the 209th meeting of the Standing Committee of the respondent's organization held on 28.11.2017 is set aside and any order of recovery passed as a consequence thereof for a period from 31.03.2013 to 31.03.2016 is also set aside.

7. In the result, the instant OA is allowed and the impugned orders dated 24.1.2018 and 21.3.2018 are set aside and any recovery, if any, made from the applicants must be refunded by the respondents. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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