

GAHC010163592024



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/4110/2024**

EMPLOYEES STATE INSURANCE CORPORATION AND 5 ORS  
REP. BY ITS CHAIRMAN , PANCHDEEP BHAVAN, CIG MARG, NEW DELHI-  
110002

2: THE DIRECTOR GENERAL  
PANCHDEEP BHAVAN  
CIG MARG  
NEW DELHI-110002

3: THE MEDICAL COMMISSIONER  
EMPLOYEES STATE INSURANCE CORPORATION  
PANCHDEEP BHAVAN  
CIG MARG  
NEW DELHI-110002

4: THE DEPUTY DIRECTOR (E-II)  
EMPLOYEES STATE INSURANCE CORPORATION  
PANCHDEEP BHAVAN  
CIG MARG  
NEW DELHI-110002

5: THE DEPUTY DIRECTOR N  
EMPLOYEES STATE INSURANCE CORPORATION  
N.E REGION  
REGIONAL OFFICE- GUWAHATI PANCHDEEP BHAVAN  
BAMUNIMAIDAM  
GUWAHATI-21

6: THE TRANSFER GRIEVANCE REDRESSAL COMMITTEE  
REP. BY ITS CHAIRMAN CUM FINNCIAL COMMISSIONER  
ESIC  
PANCHADEEP BHAWAN  
CIG MARG  
NEW DELHI-0

VERSUS

PRAKASH SARMA AND ANR  
S/O- LATE RAMLAL SARMA,  
ADDRESS- ESIC QUARTER NO-4, BAMUNIMAIDAM, GUWAHATI-21,  
ASSAM

2:THE UNION OF INDIA  
REP. BY THE SECRETARY  
MINISTRY OF LABOUR AND EMPLOYMENT  
GOVT. OF INDIA  
SHRAM SHAKTI BHAWAN  
RAFI MARG  
NEW DELHI-0

**Advocate for the Petitioner** : A NEOG, MS. M DAS

**Advocate for the Respondent** : MR N K SARMA(r-1), MR H K DAS (r-1)

**BEFORE**  
**HONOURABLE THE CHIEF JUSTICE**  
**HONOURABLE MR. JUSTICE KARDAK ETE**

**ORDER**

**Date : 20.08.2024.**

**(Vijay Bishnoi, CJ)**

This Writ Petition is filed by the petitioners being aggrieved with the order dated 28.06.2024, passed by the Central Administrative Tribunal, Guwahati Bench (here-in-after referred to be as 'the Tribunal'), whereby the Tribunal has stayed the order dated 06.03.2024, by which the Respondent No.1 has been transferred from the Regional Office, Guwahati to the Regional Office, Kolkata. The Tribunal has also stayed the effected operation of the orders dated 14.06.2024, whereby the Respondent No.1 was relieved from the post of the Regional Office, Guwahati for joining at Regional Office, Kolkata

2) The Respondent No.1 is working as Personal Assistant with the petitioners and was posted at the Regional Office, Guwahati. Pursuant to the Transfer Policy, issued by the petitioners, the respondent was transferred from the Regional Office, Guwahati to the Regional Office, Kolkata, vide transfer order dated 06.03.2024. Being aggrieved with the same, the Respondent No.1 has filed the Original Application (O.A.) No.150/2024, before the Tribunal. However, the said O.A. was disposed of on 21.06.2024, at the admission stage itself. The operative portion of the order dated 21.06.2024, passed by the Tribunal is reproduced here-in-after:

*“4. Heard the parties and perused the records.*

*5. Ms. A. Neog, Learned Counsel for the respondents/ESIC has no objection to reconsider the prayer of the applicant as per rules.*

*6. In view of the above, we direct the Respondent no.3, i.e., The Director General, Employees State Insurance Corporation, Panchadeep Bhawan, CIG Marg, New Delhi, to reconsider the case of the applicant by treating this O.A. as part of his representation and communicate his decision by way of a reasoned and speaking order within a period of 4 weeks from the date of receipt of copy of this order.*

*7. In the interim, respondents are directed not to take any adverse action against the applicant till the communication of their decision.*

*8. Applicant is directed to serve copy of the O.A. along with copy of this order to the Respondent No.3 within a week.*

*9. Accordingly, the O.A. stands disposed of at the admission stage itself with no order as to costs.”*

3) Immediately thereafter, the Respondent No.1 has filed a Review Application before the Tribunal on the ground that the Transfer Policy in

consideration has been stayed by the Central Administrative Tribunal, Mumbai Bench on 15.04.2024 and considering the same, the Calcutta High Court has also passed an interim order dated 21.06.2024, in WP (CT) No.167/2024. Taking into consideration the said facts, the Tribunal vide order dated 26.06.2024, has reviewed its order dated 21.06.2024 and restored the O.A. filed by the respondent No.1, to its original number with further direction to list the same for admission on 28.06.2024. On 28.06.2024, the Tribunal after hearing the counsel for the parties, was pleased to admit the O.A., filed on behalf of the Respondent No.1 and has also stayed the operation of the order dated 06.03.2024 and 14.06.2024 and fixed the next date in the matter as 13.08.2024.

4) Learned counsel for the petitioners has argued that as a matter fact, the Central Administrative Tribunal, Mumbai Bench has stayed the transfer policy in relation to a different category of employees and not in relation to the Personal Assistant. It is submitted that the policy relating to the transfer of Personal Assistant is altogether different. It is submitted that the Calcutta High Court has taken into consideration this aspect of the matter and has passed the stay order on 21.06.2024, staying the transfer orders of the employees' concerned. It is further stated by the learned counsel for the appellant that the order passed by the Calcutta High Court on 21.06.2024, in WP (CT) No.167/2024, has already been stayed by the Hon'ble Supreme Court in Special Leave Petition No.1671/2024, on 09.08.2024. Learned counsel for the petitioners has, therefore, submitted that the Tribunal has passed the impugned order dated 28.06.2024, only on the premise of the stay order passed by the Calcutta High Court. However, when the order passed by the Calcutta High Court has already been stayed by the Hon'ble Supreme Court, the order impugned dated

28.06.2024, passed by the Tribunal is liable to be stayed.

5) Per contra, learned counsel for the Respondent No.1 has vehemently opposed the Writ Petition and has argued that though the Calcutta High Court's order has been stayed by the Hon'ble Supreme Court, the order passed by the Central Administrative Tribunal, Mumbai Bench is still in operation. It is further argued that though the transfer policy which is under challenge before the Central Administrative Tribunal, Mumbai Bench is different from the transfer policy of the Personal Assistants, but the provisions of the said transfer policy are verbatim to the policy in question and therefore, in such circumstances, the Tribunal is not erred in passing the impugned order and no interference is called for. It is further argued by the learned counsel for the Respondent No.1 that on merit also, the transfer of the petitioner is without any justification and administrative exigency and therefore, the Tribunal has not committed any illegality in staying the same. The learned counsel for the Respondent No.1 has tried to impress upon us that the representation filed by the Respondent No.1 is way back in November, 2023, when the options were asked to submit, has not been taken into consideration by the respondents.

6) Heard the learned counsel for the parties and perused the materials available on record.

7) The Respondent No.1 was transferred vide order dated 06.03.2024, from the Regional Office, Guwahati to the Regional Office, Kolkata. It is revealed that before transferring, the petitioner under the transfer policy, options were invited from the employees and pursuant to that, the Respondent No.1 has submitted his option and in that, the first choice was Guwahati, whereas the second option was Kolkata. It is also to be noticed that the Respondent No.1 was transferred

under a Transfer Policy titled as the Transfer/ posting policy in the cadre of Personal Assistant having all India Service liability.

8) Admittedly, before the Central Administrative Tribunal, Mumbai Bench, the said transfer policy was not under consideration and a transfer policy in relation to the Non-Medical Staff within the Region upto the cadre of Manager Grade-I (Assistant Director) of ESI Corporation, is under challenge.

9) Be that as it may, at the first instance, the Tribunal has disposed of the O.A., filed on behalf of the Respondent No.1, vide order dated 21.06.2024, whereby it has refused to interfere with the transfer order. However, granted the liberty to the Respondent No.1 to move a representation with further direction the petitioners to reconsider the case of the applicant, by treating the O.A. filed by him as part of his representation and communicate the decision by way of reasoned and speaking order, within a period of four (4) weeks.

10) However, the Tribunal has reviewed the initial order on the ground that the Central Administrative Tribunal, Mumbai Bench has stayed the transfer policy in relation to the other set of employees and on the basis of the same, the Calcutta High Court has passed an interim order, in favour of the employees of the ESI.

11) We are of the opinion that once the Hon'ble Supreme Court has stayed the order of the Calcutta High Court, which is the basis of the impugned order passed by the Tribunal, we have no option except to stay the operation of the order dated 28.06.2024, passed by the Tribunal in O.A. No.150/2024. Hence, the effect and operation of the impugned order dated 28.06.2024, is hereby stayed. However, the petitioners are not precluded from taking into

consideration, any representation filed by the petitioner for re-consideration of his transfer order. Opportunity is granted to the Respondent No.1 to move representation within a period of ten (10) days from today.

12) It is expected that if any such representation is filed by the Respondent No.1, the petitioners shall consider the same objectively and pass a reasoned and speaking order, within a period of ten (10) days thereafter.

13) However, in the meantime, if the petitioner joins at Kolkata Regional Office, during the pendency of his representation, the petitioners are directed to release the salary of the Respondent No.1, for the months of July and August, 2024.

14) List this matter after four (4) weeks.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**