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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.229/2002

This the 10th day of September, 2002.

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

K.C.Arya, Section Officer (Retd.),
E.S.I. Corporation,
Headquarters Office,
New Delhi.

... Applicant

(By Shri Badridas Sharma, Advocate)

-versus-

1. Chairman, Standing Committee,
Employees State Insurance Corporation,
Shrama Shakti Bhawan,
New Delhi-110001.
2. Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan, Kotla Road,
New Delhi-110002.
3. Secretary (Labour),
Government of India,
Shrama Shakti Bhawan,
New Delhi-110001.

... Respondents

(By Shri Yakesh Anand with Ms. Pushpa P.Jhuraney, Adv.)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant has challenged punishment of reduction of pay by two stages up to the date of his retirement (31.7.2001). The charge levelled against him was that while functioning as Insurance Inspector, Bahadurgarh (Haryana Region) during the period 6.6.1986 to 12.5.1989 he deliberately did not conduct survey of M/s Krishna Fire Works, Gohana Road, Rohtak for the purpose of its coverage under Employees State Insurance Act. It is alleged that the factory had been in existence under the name of M/s Murari Fire Works since 1969. It changed its

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name to M/s Krishna Fire Works w.e.f. 24.11.1989. A fire accident took place in that factory on 24.5.1995 in which 26 workers died on the spot and 10 were injured. This factory was situated adjacent to M/s Haryana Coach Builders, Gohana Road, Rohtak which was inspected by applicant on four occasions during the period he was posted in Bahadurgarh Inspection Division. However, applicant did not conduct any survey of this unit during that period.

2. The learned counsel of applicant took exception to the punishment awarded to applicant on the following grounds :

(1) M/s Krishna Fire Works was covered on the basis of records of Employees Provident Fund Organisation only on 21.7.1995 as per letter dated 18/21.7.1995 (Annexure-5). The coverage was made effective from 9.10.1991. The learned counsel stated that as the unit was not existing during the time the applicant was in charge in that area, he could not have been blamed for non-coverage or non-survey of the concerned factory.

(2) It is imperative under Government of India's instructions dated 7.4.200^h (page 65) to obtain advice of the Central Vigilance Commission (CVC) regarding vigilance cases against officials drawing a salary of Rs.8700/- per month. Respondents did not refer applicant's case to the CVC although his basic salary as on 1.8.1989 was Rs.8700/- per

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month. The learned counsel pleaded that this irregularity has vitiated the proceedings.

- (3) Applicant was deprived of reasonable opportunity in violation of principles of natural justice denying him two vital documents, i.e., (i) Regional Office letter vide which applicant was advised for survey of records, and (ii) documents relating to functioning of the factory in question since 1969, i.e., rent deed, building ownership, SSI registration etc.
- (4) The evidence of one witness relating to existence of M/s Murari Fire Works has not been corroborated by any other evidence and as such, the finding of the enquiry officer to hold the charge as proved is wrong.
- (5) Although several other colleagues of applicant had served in Bahadurgarh Division during the period 1967 onwards, no chargesheet was served to personnel who served in Bahadurgarh Division prior to 1986 and chargesheets were issued only to two persons out of six Insurance Inspectors who were posted in Bahadurgarh Division from June, 1989 to August, 1995. Two of them, namely, Shri Prakash Chander and Shri R.K.Bhasin were let off with a lighter punishment of stoppage of one increment without cumulative effect. In this manner, applicant has been discriminated against.

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3. The learned counsel of applicant stated that the cumulative effect of the flaws pointed out by him in the disciplinary proceedings against applicant should lead to setting aside of the impugned punishment with consequential benefits.

4. The learned counsel of respondents, on the other hand, stated in respect of applicant's plea of non-existence of the concerned unit during the period June, 1986 to May, 1989 that the concerned unit has been existing since 1969, although under different names at different times. According to respondents, this has been established by the police investigations as also the records of the Provident Fund authorities. In this backdrop, according to respondents, non-conduct of any survey by applicant during the period he was posted in that area and had been inspecting units located in the vicinity is a serious default.

5. As regards the point that respondents had not obtained the advice of CVC, the learned counsel of respondents submitted that chargesheet in the case was issued to applicant on 18.11.1998 when his basic pay was Rs.8500/-. His basic pay increased to the level of Rs.8700/- on 1.8.1999 only and as such, as per the instructions of CVC, it was not necessary to forward the case to CVC to obtain their advice in the disciplinary matter against applicant. In any case, it is an established law that non-consultation with UPSC or CVC for that matter, would not vitiate the disciplinary proceedings against the delinquent.

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6. As respects non-supply of vital documents, respondents have stated that the additional records demanded by applicant were not available. In such an eventuality when the records were not available, what has to be seen is whether non-supply of such documents has caused any prejudice to the defence of the delinquent. In the present case, such prejudice does not appear to be noticable.

7. In regard to non-corroboration of the evidence adduced by one witness by others, in the disagreement note of the disciplinary authority, it has been pointed out that in a departmental enquiry the charges can be proved even by a single witness and corroboration is not necessary and as such, the findings of the enquiry officer cannot be wrong. It may be stated herein that Court is not a fact finding body and so long as there is a preponderance of probabilities even on the basis of one witness, Court cannot interfere. As a matter of fact, the Court has to exercise restraint even in the matter of quantum of punishment. In this regard, reliance on **N.Rajarithnam v. State of Tamil Nadu & Ors.**, 1997 (1) SLJ 10 is placed.

8. Applicant has also stated that he has been discriminated against as other colleagues of his who were posted in Bahadurgarh Division were either not issued any chargesheets or were let off lightly. Respondents have explained the differential in treatment meted out to certain colleagues of applicant on the ground that either

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they were posted in Bahadurgarh Division for a very short period or the facts in their cases were distinguishable. One such colleague was not issued the chargesheet as he had expired. The explanation rendered by respondents with regard to different treatment to some colleagues of applicant is considered to be plausible.

8. Having regard to the reasons stated above and the totality of facts and circumstances of this case, we do not find any fault with the action of respondents against applicant in the disciplinary proceedings against him and in the penalty imposed upon him. As such, the O.A. is dismissed. No costs.

V. K. Majotra

(V. K. Majotra)
Member (A)

V. S. Aggarwal

(V. S. Aggarwal)
Chairman

/as/