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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

No. 506/2001

New Delhi, this 13 the day of January, 2004

Hon'ble Shri S.K. Naik, Member(A)

R.C. Gupta —
10, ESIC Colony —
Sector 56, NOIDA —

.. Applicant

(Shri S.M.Garg, Advocate)

versus

Union of India, through

1. Chairman
Standing Committee & Secretary
Ministry of Labour, New Delhi
2. Director General
Employees State Insurance Corporation
Panchdeep Bhavan, otla Road, New Delhi
3. Medical Superintendent
ESI Hospital, Basai Darapur, N.Delhi.. Respondents

(Shri Yakkesh Anand, Advocate)

ORDER

Through the present OA filed on 26.2.2001, applicant has sought the following reliefs:

- (i) To direct the respondents decide his representations dated 26.8.1999 and 8.10.1999 by reasoned orders;
- (ii) To quash letter dated 7.7.1998 cautioning the applicant against taking leave without prior sanction from the competent authority;
- (iii) To quash the order dated 4.8.1999 warning the applicant to be more careful in future;
- (iv) To quash memo dated 30.9.1999 warning the applicant; and
- (v) To refer the grievance of the applicant made in his representations dated 26.8.1999 and 8.10.999 to Central Vigilance Commission for an independent enquiry.

2. The main grievance of the applicant, who claims to be working as Deputy Director(Admn.) under Respondent No.3, is that he is being harassed by the respondents on one or the other pretext by issuing various letters of

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caution/warning impugned herein for no fault of his even though he has been performing his duties sincerely and diligently.

3. Respondents have contested the application, firstly on the point of limitation and secondly that the applicant has sought plural remedies which is not maintainable under Rule 10 of the CAT (Procedure) Rules, 1985. They have furnished detailed reply justifying the issue the aforesaid warning/memos etc., the details of which are briefly stated hereunder. As regards letter dated 7.7.1998, the same was issued as the applicant was in the habit of proceeding on leave ignoring administrative exigency, without intimation and prior sanction. In so far as warning letter dated 4.8.1999 is concerned, they have submitted that in the matter of hiring of accommodation for the L.O. Hanuman Garh, Rajasthan, the Manager, Local office handed over to the applicant on 18.3.1999 quotations obtained from private parties. One of the quotations was for Rs.1500/- as rent per month. These quotations were not at all handed over by the applicant to the Regional Office and no report was submitted by him in the matter. Due to this omission, the building concerned was hired on a monthly rent of Rs.1900/-. Thus, the ESIC has to incur a loss of Rs.400/- per month. Had the applicant submitted the quotations mentioning the lower rate, the loss would have been prevented. Therefore, he was rightly warned on 4.8.1999.

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4. Regarding memo dated 30.9.1999, respondents have stated that investigation by departmental vigilance revealed irregularities in the award of contract for cycle stand in the ESI Hospital, Basaidarapur. After examination of the vigilance report, a communication dated 6.8.99 was sent by ESI Qrs. Vigilance to the ESI Hospital, Basaidarapur. This was unauthorisedly received by the dealing Assistant whose explanation was inter alia called for who then handed over the same to the applicant. Thus there was an attempt to suppress the communication by the applicant. and his conduct was not blame-free. Therefore, he was rightly warned by this memo.

5. It has been stated by the respondents that as per the guidelines contained Ministry of Home Affairs OM dated 13.12.56, warnings or caution memos are issued to adversely comment on the work of an official. For issuing these, the elaborate procedure prescribed for imposing formal penalty need not be followed. Even then, warning dated 4.8.99 was issued to the applicant after calling for his explanation in the matter. That apart, all these memos have been issued after consideration of the matter by various functionaries.

6. In so far as his representations are concerned, it is contended by the respondents that as per Rule 18 of ESIC (Staff & Conditions of Service) Regulations, 1959, no appeal lies against the administrative action of issuing warning. Therefore, his representation was not entertained as an appeal.

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7. I have heard the learned counsel for the parties at length and carefully perused the material available on record including the instructions issued by the Government of India/ESIC from time to time on the subject of issue of warning memos to the officials working in ESIC. Perusal of the same reveals that the action of the respondents cannot be termed as unjustified or illegal as alleged by the applicant. Even otherwise, the applicant has approached this Tribunal against the memos issued to him after a long lapse of time. In fact all these memos have been in the nature of calling upon him to improve his performance in the interest of smooth functioning of the organisation as the respondents have detected various deficiencies in the style of functioning of the applicant including that of unauthorised absence without any prior intimation or proper sanction of the next higher authority. I find that the applicant has been posted as Deputy Director(Admn.) to ~~assist~~ⁱⁿ the Medical Superintendent of ESI Hospital, Basaidarapur. In that capacity, it was expected of him to assist the Medical Superintendent in the smooth running of the Hospital in so far as its administrative aspects are concerned. However, from the records, it is noticed that rather than putting in efforts in the discharge of his duties, the applicant has been resorting to absenting himself from his duties and at times without prior sanction. He has also been pleading of medical problems to justify his absence and at the same time seeking leave for availing LTC. Obviously, the applicant has not been committed to task

the duties and responsibilities assigned to him. Therefore, the competent authority had been forced to issue him memos and warnings of advisory nature and these are not in the nature of formal punishment. Applicant ought to have taken them in his stride and should have improved his performance. But unfortunately the applicant has taken it otherwise. Thus no interference is called for by this Tribunal in the matter.

8. In the result, I find no merit in the present OA and the same is accordingly dismissed. No costs.

Naik
(S.K. Naik)
Member(A)

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