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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A. NO.889/94

New Delhi this the 11th August 1994

Hon'ble Shri J.P. Sharma, Member(J)

Shri Raj Kumar Kapoor,
s/o Shri S.K. Kapoor,
r/o 56-C/PD,
Pitampura,
Delhi.

(Presently employed in the
office of the Chief Labour
Commissioner(Central),
Ministry of Labour, New Delhi)

... Applicant

(Applicant in Person)

Vs.

1. Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan,
Kotla Road,
New Delhi.

2. Union of India,
Through
Secretary,
Department of Statistics,
Ministry of Planning,
Sardar Patel Bhawan,
Parliament Street,
New Delhi.

... Respondents

(Shri G.R. Nayyar, Advocate)

O R D E R (ORAL)

Hon'ble Shri J.P. Sharma, Member(J)

The applicant was working as Superintendent in National Sample Survey Organisation and he came on deputation on prescribed terms and conditions in Employees State Insurance Corporation(ESIC) on 3.12.1987 According to the terms deputation was initially for 2 years. It appears that the applicant continued either on the expressed order of the respondents or with the connivance of the

Administrative staff of the respondents. He was ultimately repatriated to the Parent department by the order dated 27.12.91. The applicant got chance of getting encroached in last 4 of the Indian Statistical Service and was promoted to the post of Assistant Director in the office of Chief Labour Commissioner(Central). The applicant is working there.

2. In this application filed in April 1994 the applicant had Prayed that the respondents ESIC be directed to release his Last Pay Certificate and also that the salary for the month he had worked till 27.12.91 be ordered to be Paid and also the respondents be directed to make contribution towards leave salary and Pension while he worked in Foreign Service in ESIC. His another grievance is with his own department that he should be Paid salary for the month of February 1992 and that he may also be Paid arrears of salary from 1.10.90 to 30.4.93. Notice was issued to the respondents. Shri G.R. Nayyar appeared for Respondent No.1 and Shri S. Chandrasekharan, Proxy for Shri M.M. Sudan also appeared. No reply has been filed, though opportunities have been afforded earlier. However, the learned counsel for the respondents have argued the matter. Since certain legal issues are involved, there is no necessity for calling any written reply from the respondents and the application can be disposed of without the wait of any reply as regards the relief Prayed for by the applicant is concerned. In the application, the applicant had made certain averments which are not relevant for the issues he had Prayed for the decision of the orders.

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3. Having given a careful consideration the non issue of L.P.C. by the respondents does not appear Prima facie reasonable. It is said that the applicant during his deputation period has taken scooter advance which had yet to be reimbursed alongwith the stipulated interest rate. Some amount appears to have been adjusted towards the salary due and Payable to the applicant for the month of December.

4. The L.P.C. should not ordinarily be denied to a Person either on Permanent rolls or on deputation. It only projects and picturised the emoluments Paid and the dues outstanding against the outgoing employee. The Respondent No.1 is free to show in the LPG the dues Paid to the applicant as Part of the salary and outstanding dues against the applicant on the date of his repatriation i.e. 27.12.91. That certain amount of arrears have been recovered by Respondent No.1 during the period when the application is being heard. That recovery be also shown in the L.P.C.

5. As regards non Payment of salary till 27th December 1991 from the applicant has virtually consented that, that may be adjusted towards the scooter advance. The applicant has however, mentioned that the said salary has been adjusted towards the tax on income due on the applicant for the assessment year 1991-92. The respondents to check up the matter and in any case the applicant be informed about the exact position.

6. When the person goes on deputation the foreign employer undertakes to pay the pay drawn by the deputed employee as was paid by the Parent department in addition to

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the deputation allowance or the such an employee is paid the salary for the post for which he has been drawn on deputation. Besides this the foreign employer has also to make contribution towards leave salary and pension contribution and obviously because the deputed employee was not in active service in the Parent department during this period. The Department where he works has to make the contribution as ultimately on retirement deputed employee has to be paid the pension and leave encashment according to the rules. Respondent No.2 should not show unwillingness particularly in view of the fact that EXIC is also a Central Govt. organisation. Controversy raised by the learned counsel for ESIC is that the initial period of deputation was 2 years and the applicant on his own continued till the date of repatriation i.e. 27.12.91. This contention of the counsel to my mind does not carry any weight if the respondents ESIC has taken work from the applicant and paid him the salary for the work he has done regularly when it fell due, it is not open to them to say that the applicant forced himself to work with them to the unliking of the ESIC. Thus, ESIC is bound to pay contribution of leave salary and pension for the period from 3.12.87 to 27.12.91 proportionately for the period the applicant has worked.

7. The relief claimed by the applicant for salary for February 1992 and for other pay and allowances from October 1990 to April 1993 as arrears cannot be considered in the present application. If we take this relief seriously then all the reliefs claimed by the applicant cannot be decided in the same application as given out under Rule 10 of Administrative Procedure Rules 1987. In view of this fact the reliefs sought for in Para 8(iv) will not be considered. It is observed that the applicant

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should make a representation to the authorities concerned regarding non payment of Pay for the month of February 1992 and arrears of Pay as alleged by the applicant for the period from 1.10.90 to 30.4.93 and thereafter. if he is still aggrieved we may assail the same if so advised according to law.

8. The application is disposed of at the admission stage with the following directions.

- i) Relief Prayed for in Para 8(iv)^{of} the application is not dealt with as observed in the body of the judgement with liberty to the applicant as said above.
- ii) Relief Prayed for in Para 8(ii) is allowed to the extent that the ESIC shall issue L.P.C. to the applicant showing the amount paid to him during his last posting and also ^{the} amount due against him and the recovery effected till the date of communication of this order.
- iii) Relief prayed for in sub Para III of Para 8 is allowed with the direction to the ESIC to pay the amount of contribution to leave salary and Pension contribution of the applicant for the period from 3.12.87 to 27.12.91.

Parties are left to bear their own costs.

J. P. Sharma

(J.P. SHARMA)
Member(J)

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