

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1638/89

New Delhi this 12th Day of April 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. S.R. Adige, Member (A)

Shri Vinod Kumar,  
S/o Shri A.B. Chandra,  
Upper Division Clerk,  
ESI Corporation,  
Regional Office,  
DDA Office-cum-Commercial Complex,  
Rajindra Place,  
New Delhi.

.. Applicant

(Shri N. Amresh, proxy counsel  
for Shri E.X. Joseph)

Versus

1. The Director General,  
ESI Corporation,  
Panchdeep Bhavan,  
Kotla Road, New Delhi.

2. The Regional Director,  
ESI Corporation,  
DDA Shopping Complex,  
Rajinder Place,  
New Delhi.

3. Shri B.K. Gupta,  
Regional Director,  
ESI Corporation,  
ESIC Bhavan,  
Lower Parel,  
Bombay.

4. Deputy Regional Director,  
ESI Corporation,  
46 Defence Colony,  
Porvari, Goa.

.. Respondents

(By Advocate : Shri G.N. Nair)

O R D E R (Oral)

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

The applicant joined in Punjab Region of  
ESI Corporation as Lower Division Clerk on 4.3.1976.

In the normal course the applicant was promoted to the  
post of Upper Division Clerk. He was appointed as  
Insurance Inspector on the basis of a competitive

test and was proposed for probation for a period of two years. His place of posting during this period was at Bombay and subsequently at Goa. The applicant, however, could not pull his <sup>weight</sup> ~~way~~ and according to the respondents he could not do better performance in the period of trial in spite of the fact that the probation period was extended for six months more. The Director General, ESI Corporation examined the ACRs of the applicant and his performance during the probation period and thereafter passed the impugned order dated 29.3.1988 reverting the applicant to the post of Upper Division Clerk of Delhi Region of ESIC.

2. A notice was issued to the respondents who contested the application and stated that the applicant was on probation for two years initially and that period was further extended by six months and in spite of the repeated memos served on the applicant he did not improve his work and as such he was not confirmed in his appointment to the post of Insurance Inspector and reverted to the post of Upper Division Clerk. Shri N. Amrishi, appeared for the applicant. Shri G.N. Nair appeared in the pre-lunch session and made certain submissions. He could not be available after lunch because of his indisposed<sup>ition</sup>. However, we have heard the applicant's counsel as well as gone through the submissions of Mr. Nair made earlier and to the counter filed by the respondents. The first contention of the learned counsel is that the applicant was appointed in the year 1985 as Insurance Inspector and he continued beyond three years, so the order of reversion of the applicant could not be passed. It is further argued that the respondents should have given further extension to the applicant as they have given earlier for six months. It is also argued that the applicant

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was not given any opportunity to show cause against any of the faults found against him. We have considered this aspect and we find that the applicant himself filed memo dated 13.8.1986 wherein the Assistant Regional Director has informed the applicant that the progress during the probation period of 18 months is not satisfactory as he has not given better performance and he could not show the required qualities of a Local Office Manager. Again in February 1987, the applicant was informed to show improvement on the basis of the adverse remarks recorded in his probation progress report on completion of 24 months period and he was informed that he lacks initiative and has to be reminded even for routine items of works. Again by the memo dated 16.5.1987 the Administrative Officer conveyed to him the remarks recorded by the Reviewing Officer in his ACR for the year 1986 and wherein he has observed that the applicant does not take interest/initiative in his work and avoid responsibility and frequently remains absent from duty. He was also advised to improve his work and conduct. From his behaviour the Reviewing Officer has judged him as a drug addict. He is not <sup>yet</sup> fit to complete the period of probation. Again in May 1987 the period of probation of the applicant was extended to 6.7.1987. Ultimately the impugned order was passed. Firstly the probation period is a period of trial and is normally called a critical period. The applicant has been issued a number of memos to improve himself. Not only this in the first year the applicant was not on duty for 95 days and in the second year of probation he was not on duty for 112 days. The contention of the applicant that he was on medical leave was duly considered by the

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authorities while extending his period of probation for six months. The contention of the applicant's counsel that why ten months period was passed to pass the impugned order is immediately explained by the fact that the respondents were judging the behaviour, efficiency and performance of the applicant in the discharge of his duties as Head of the Office as Inspector/Manager at the place of posting. In view of these it cannot be said that the impugned order is in any way arbitrary or based on malafidies. The learned counsel for the applicant also preferred to the rejoinder where <sup>from</sup> Page 3 he read out the averments that the remarks were given to the applicants by the Reviewing Officer and not the Reporting Officer. ACR is a complete whole where the remarks of Reporting, Reviewing and Accepting Officer are accorded. If the Reviewing Officer has given a particular remark that will not loose its value if the Reporting Officer has not written about the same. This contention of the learned counsel, therefore, is unacceptable. Further in view of this fact that memos have been conveyed to the applicant besides the adverse remarks in the ACRs by the Additional Regional Director as well as by the Administrative Officer. The learned counsel for the applicant again also referred to the Regulation 15 of the ESIC (Condition Services) Regulations 1959 where maximum period of probation is four years and the learned counsel placed an argument that after two years period an extension was granted for six months and the respondents could have granted further extension as the applicant was on medical leave during certain probationary period. Firstly, extension of time cannot be as a

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matter of right. The respondents have already sympathetically considered the applicant for one time extension of six months. Moreover, during this period there is an adverse remarks in the year 1986 and two memos were issued to the applicant in the year 1987 which also comment on the progress achieved by the applicant at the end of 18 months and 24 months. Moreover, Administrative order has been passed by the authorities who were supervising the work, conduct and behaviour of the applicant. This Tribunal cannot be a substitute of that Administrative Authority to judge the applicant for a period when he was judged administratively.

3. In view of the above facts and circumstances, we find no merit in the application. The same is dismissed and the parties to bear their own costs.

*S.R. Adige*  
(S.R. Adige)  
Member(A)

*J.P. Sharma*  
(J.P. Sharma)  
Member(J)

\*Mittal\*