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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

OA No. 2386 of 1989

Date of decision 22nd August, 1991

Shri Inder Parkash Sethi

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Applicant

versus

1. Shri K.C. Sharma,
Chairman, Standing Committee of the
ESI Corporation,
E.S.I.C. Building, Kotla Road,
New Delhi.

2. Smt. Kusum Prasad,
Director General,
Employees' State Insurance Corporation,
ESIC Building, New Delhi.

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Respondents.

Coram: Hon'ble Mr. B.S. Sekhon, Vice Chairman.
Hon'ble Mr. I.K. Rasgotra, Administrative Member.

For the applicant - In person.
For the respondents - Mr. D.P. Malhotra, Advocate.

B.S. SEKHON, VC:

Departmental enquiry under Regulation 14 and para 3 of
Third Schedule to the Employees' State Insurance Corporation (Staff &
Conditions of Service) Regulations, 1959 (as amended), (for short
'the Regulations') was conducted against the applicant, who has
since retired, in respect of the following articles of charge:-

" That Shri I.P. Sethi, while functioning as Manager,
Local Office, Najafgarh during the period from 9.1.79
to 30.6.79 passed the payment of Maternity Benefit
amounting to Rs. 330/- on 23.1.79 for the period from
10.1.79 to 20.1.79 in respect of Smt. Kamlesh Seth
Insurance No. 11-908153 on the basis of the documents
which were forged and confirmed the disbursement of
the payment to the Insured Woman by recording a false
certificate on the payment docket dated 23.1.79 that
the payment was made in his presence. Thus the said
Shri I.P. Sethi passed and certified to have disbursed

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the payment of Rs. 330/- in connivance with Shri Subhash Chander Mighlani, the then UDC-Cashier/Teller with ulterior motive. The above act of Shri I.P.Sethi has caused pecuniary loss to the Corporation to the amount of Rs. 330/-

Thus the aforesaid Shri I.P.Sethi has failed to maintain absolute integrity, devotion to duty and exhibited conduct un-becoming of a Corporation employee, thereby violating Rule 3 of the Central Civil Services (Conduct) Rules, 1964 read with Regulation 23 of the Employees' State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959 (As amended)."

The Inquiry Officer found that the charge of lack of integrity as also of lack of devotion to duty had not been substantiated. The Director General, Employees' State Insurance Corporation (for brevity's sake called the 'Corporation')- respondent No.2 acting as the disciplinary authority, however, disagreeing with the findings of the Inquiry Officer held the applicant guilty of the charge of lack of devotion to duty. The disciplinary authority vide his order dated 14th July, 1988 (Annexure A-9) imposed the penalty of withholding of increment of pay of Rs. 100/- falling due in April, 1989 till the date of superannuation of the applicant which was 30th Sept., 1989 (AN). Applicant's appeal dated 10.8.88 (Annexure A-10) resulted in modification of the penalty awarded by the disciplinary authority to the penalty of stoppage of applicant's increment of Rs. 100/- falling due in April, 1989 for a period of three months without cumulative effect.

2. On the material date viz. 23rd January, 1979, applicant was posted as Local Office Manager, Grade-II in the Kirtinagar Local Office. A sum of Rs. 330/- was paid to one Smt. Kamlesh Seth to whom the provisions of ESIC were applicable. Applicant recorded the following certificate on the docket:-

"paid in my presence."

Prior to this payment, two earlier payments of Rs. 1710 and 480/-

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had been made to Smt. Kamlesh Seth on 29-12-78 and 9.1.79 respectively. Shri Ramesh Chander, another employee of the ESIC and Smt. Kamlesh Seth were prosecuted and tried for the offences punishable under Section 120-B read with Section 420, 420, 467, 468, 471 IPC. The learned Metropolitan Magistrate, New Delhi held Shri Ramesh Chander guilty of the offences punishable under Section 420, IPC as also for the offences punishable under section 471 read with Section 468 of the Indian Penal Code. The aforesaid findings were recorded by the learned Magistrate in respect of the payments of Rs. 480/- and 330/- and the forging and using as genuine the forged documents in regard to the payment of the aforesaid sums. Smt. Kamlesh Seth was, however, acquitted.

3. Applicant's representations to the Chairman ended in vain. Applicant has impugned the orders made by the disciplinary authority, Annexure A-9 and the appellate authority, Annexure A-11. The salient grounds which were also urged by the applicant during the course of arguments, on which the impugned orders have been challenged are:-

- (i) It was a very old case and the delay is entirely on the part of the respondents.
- (ii) The incident took place on 23rd January, 1979, the enquiry commenced in 1986 and the disciplinary authority passed the order after inordinate delay on 14-7-89.
- (iii) He was quite innocent and the real culprit was Shri R.C. Sahdev, who has also been found guilty by the learned Metropolitan Magistrate, New Delhi vide judgement dated 12-3-85 (Annexure A-1).
- (iv) Due to prolonged agony, he has suffered a stroke of paralysis and the penalty imposed is harsh.
- (v) Withholding of increment and denial of promotion when his juniors have been promoted is tantamount to double jeopardy which is violative of Articles 14 and 16 of the Constitution.

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4. Respondents' defence as disclosed in the counter is that the disciplinary authority and the appellate authority have held the applicant negligent in the performance of his duties which led to a fraudulent payment of Rs. 330/- in the local office. The disciplinary authority is not bound by the findings of the Inquiry Officer and ^{he} is required to take independent decision after going through the proceedings of the enquiry and relevant records. The decision taken by the disciplinary authority is unassailable in law. The penalty imposed by the disciplinary authority as also by the appellate authority is not harsh, a more reasonable and sympathetic decision was not possible. The Tribunal cannot interfere with the quantum of punishment, it is not a case of infraction of Articles 14 and 16 as also of double jeopardy.

5. We have heard the arguments addressed by the applicant and by the learned counsel for the respondents and have also perused the pleadings and the documents on record.

6. The applicant commenced his arguments by submitting that he has already suffered enormously, so much so, that he had suffered a paralytic stroke also due to the agony which he underwent as a result of long drawn out proceedings. Applicant added that he has also suffered a loss in retiral benefits; he was not granted promotion even though his junior Shri R.S.Wahi who had been awarded a major penalty of withholding of one increment from July 1988 to December, 1988, was promoted with effect from 6th Feb., 1989. On the aforesaid premise, applicant submitted that it is a case of triple penalty. Applicant's suffering a paralytic stroke, no doubt, evokes sympathy. This ^{is} however, scarcely a ground germane to the validity or otherwise of the impugned orders. The submission of the applicant that it is a case of imposition of triple penalty is devoid of merit. In this connection it would be pertinent to point out that the reduction in the retiral benefits is the

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order.
natural consequence of the operation of the penalty/ The promotion of Shri Wahi also cannot improve the case of the applicant in any wise as the applicant was to earn promotion on his own merit. The aforesaid submission is, therefore, held to be meritless.

7. It was next urged by the applicant that even the modified penalty imposed by the appellate authority is much too harsh and disproportionate to the alleged act of delinquency. In this connection, applicant also pressed into service the reduction in the quantum of retiral benefits including the pension as also the factum of his non-promotion. Suffice it to point out in this connection that as per the dictum of the Supreme Court in 'Union of India v. Parma Nanda'¹, the Tribunal has ordinarily no power to interfere with the quantum of punishment awarded by the competent authority on the ground of penalty being excessive or disproportionate if the penalty is based on evidence and is not mala fide, arbitrary or perverse. In the facts and circumstances of the case, it is ^{also} difficult to take the view that the penalty imposed by the disciplinary authority or the modified penalty is arbitrary, mala fide or perverse.

8. It was next submitted by the applicant that the order made by the disciplinary authority is vitiated for the reason that the order was passed by the disciplinary authority without giving any opportunity of hearing or serving a show cause notice, even though the disciplinary authority disagreed with the findings of the Inquiry Officer. In support of the aforesaid submission, reliance was placed by the applicant on 'Kavindra Prasad Pandeya vs. Union of India and others'². The learned counsel for the respondents countered by stating that Kavindra Prasad Pandeya (supra) is not applicable as that case is distinguishable. Relying upon several other decisions, the Patna Bench in Kavindra Prasad Pandeya (supra) held that

1. 1989 LAB.I.C. 1338

2. (1991) 16 ATC 702

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as the disciplinary authority chose to disagree with the reasoning and findings of the Inquiry Officer, it should have been done after affording an opportunity to the applicant and that since a copy of the report of the Inquiry Officer has been furnished to the applicant only alongwith the copy of the order of disciplinary authority after issuing the same, there has been denial of reasonable opportunity as envisaged under clause (2) of Article 311 of the Constitution. The case considered by the Patna Bench was a case of imposition of penalty of reduction to the lower grade and the principal finding was that there has been denial of reasonable opportunity in that case as envisaged under clause (2) of the Article 311 of the Constitution.

Kavindra Prasad Pandaya (supra), therefore, is distinguishable from the case before us. In the present case the applicant was charge-sheeted under Regulation 14 and paragraph 3 of the Third Schedule of the ESIC (Staff and Conditions of Service) Regulations 1959, as amended for major penalty. In pursuance of the chargesheet an enquiry was held in which Shri Sethi had participated. The Enquiry Officer in his report held that "the charges framed against Shri I.P. Sethi have not been proved." The disciplinary authority vide order No. Vig. 15(161)/80 dated 14.7.1988 while agreeing with the findings of the Enquiry Officer that charge of lack of integrity has not been proved, disagreed with him (E.O.) in so far as the charge of lack of devotion to duty was concerned, for the reasons recorded in the order. Accordingly, the disciplinary authority imposed upon the applicant the penalty of withholding of his increment of Rs. 100/- falling due in April, 1989 in the pay scale of Rs. 2000-3500 till his retirement on superannuation falling on 30.9.1989. Thus the penalty imposed viz. withholding of his increment of pay for a period of 6 months, constitutes only a minor penalty. The disciplinary authority also sent a copy of the Enquiry Officer's report along with his order to the applicant. The applicant appealed to the Chairman, Standing Committee, E.S.I. Corporation, Shram Shakti Bhawan, New Delhi on 10.8.1988, seeking review of the punishment imposed by the disciplinary authority. The appellate authority, after considering the appeal and the entire case record, modified the punishment to "stoppage of his increment of pay of Rs. 100/- falling due in April, 1989 in the scale of Rs. 2000-3500 for a period of three months without cumulative effect." Vide order dated 18.11.1988. The applicant

further represented to the Chairman, Standing Committee, ESI Corporation vide representations dated 14.12.1988, 13.1.1989 and 17.1.1989. He was however, advised vide letter dated 30.4.1989 that no new material has been brought on record in the representations and therefore decision already communicated vide order dated 18.11.1988 holds good.

It was argued that in accordance with the principles of natural justice a copy of the enquiry report should have been supplied to the applicant before the disciplinary authority decided to impose the penalty, particularly, when the disciplinary authority was disagreeing with the findings of the enquiry officer. This argument is not sustainable as no prejudice was caused to the applicant by the non-furnishing of the copy of the enquiry report. The enquiry officer had not held the applicant as guilty of the charges framed against him. Further this was not an ex-parte enquiry, the outcome of which was not known to the applicant. Even if the copy of the enquiry report was supplied to him before imposition of the minor penalty there was no ground on which the applicant could have submitted a representation to the disciplinary authority when he had been exonerated in the enquiry. After the minor penalty was imposed for withholding of increment for 6 months the applicant appealed against the order to the appellate authority and the appellate authority keeping all factors in mind modified the punishment to withholding of increments only for a period of three months, i.e. from 1st April, 1989 to 30th June, 1989. This also resulted in mitigating the financial hardship to the applicant which he would have otherwise suffered by way of loss in gratuity, leave encashment etc. Under the circumstances we are not impressed by the argument that non-furnishing of the copy of the enquiry report caused violation of the principles of natural justice.

In the State of U.P. Vs. Om Prakash Gupta AIR 1970 SC 679 their Lordships in the Hon'ble Supreme Court while on principles of natural justice observed that:-

"All that the courts have to see is whether the non-observance of these principles in a judicial case is likely to have resulted in deflecting the Course of Justice."

Further the ratio of the judgement of the Full Bench dated 6.11.1987 in the case of Prem Nath K. Sharma V. UOI in TA 2/86 and as confirmed by the Hon'ble Supreme Court in UOI & Ors. V. Mohd. Ramzan Khan JT 1990(4) SC 456 also is not applicable to the case.

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In view of the discussions as above, we do not find any justification for interfering with the orders dated 14.07.1988 and 18.11.1988. We order accordingly and dismiss the application with no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
Member(A) 22/8/91

B.S. Sekhon
(B.S. SEKHON)
Vice-Chairman

Pronounced by me in the open Court today.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)
22.8.91.