

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 12/1987

Date of decision: 09.09.1993

Shri S.K. Bhatti

...Petitioner

Versus

Director General, Employees State Insurance
Corporation

...Respondent

For the Petitioner

...Shri T.V. Ratnam, Counsel

For the Respondents

...Shri D.P. Malhotra, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

JUDGMENT (ORAL)
(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

The controversy centres round the date of confirmation of the petitioner.

2. On 10.10.1967, the petitioner, an Upper Division Clerk in the office of the Executive Engineer, Central Public Works Department, New Delhi, was appointed as an Insurance Inspector in the Employees' State Insurance Corporation (hereinafter referred to as the Corporation). The appointment letter contained a number of conditions. Condition No.(v) is relevant and the same is being extracted:-

"If Shri S.K. Bhatti is not permanently absorbed in the Employees' State Insurance Corporation within a period of 2 years from the date of his appointment viz. 26.08.1967, he will immediately on expiry of the said period of 2 years in case he desires to continue in the Corporation on a temporary basis resign from Government service or revert to his parent department".

3. A counter-affidavit has been filed on behalf of the respondents. A rejoinder-affidavit too has been filed. Counsel

for the parties have been heard. After the exchange of the affidavits, the position emerges that on 26.08.1967 the petitioner was appointed on probation for a period for 2 years on a temporary post. On 1.1.1971 the post was made permanent. A series of Departmental Promotion Committees met between 1972 and 1.1.1985 to consider the case of the petitioner for confirmation. Finally on 1.1.1985 a decision was taken to confirm him with effect from 1.1.1981.

4. The matter is governed by the Employees' State Insurance Corporation (Staff and Conditions of service) Regulations, 1959 (hereinafter referred to as the Regulations). Regulation 5(4), inter alia, provides that "an employee shall be confirmed in the post on satisfactory completion of probation in the post against which he is appointed is permanent and substantively vacant; otherwise he will be deemed to have completed the period of probation satisfactorily and will thereafter continue in a temporary capacity until he is confirmed in a permanent post". Sub-regulation (5), inter alia, provides that "the decision on the question whether an employee should be confirmed or whether he should be deemed to have completed the period of probation satisfactorily or whether his probation should be extended shall ordinarily be taken within a period of two months after the expiry of the period of probation and communicated to the employee together with the reasons in case of extension. An employee who does not make satisfactory progress or shows himself to be inadequate for the post in any way, shall be informed of his short-comings sufficiently before the expiry of the initial period of probation to enable him to make special efforts for improvement". A combined reading of sub-regulations (4) and (5) makes it amply clear that an order of confirmation is required to be passed. An employee cannot claim to have been confirmed merely because he ^{has} completed the period of probation. Even the petitioner's case is that the order of confirmation had not been passed.

5. Having shown that the post on which the petitioner was working was made a substantive post on 1.1.1971, the confirmation of petitioner arose only after 1.1.1971. In the counter-affidavit it has been shown that in the year 1972 a Departmental Promotion Committee met to consider the case of the petitioner for confirmation but it did not recommend his case for confirmation. Thereafter, two other Committees met and both of them did not find it possible to recommend the case of the petitioner for confirmation. Finally, in 1985, the Committee recommended petitioner's confirmation, as already stated.

6. The first contention is that the petitioner should have been confirmed with effect from 1.1.1971. We have already indicated that the theory of automatic confirmation would not apply to the case of the petitioner. We have already indicated that an order of confirmation is required to be passed. For that purpose, some procedure had to be adopted. The respondents, in our opinion, adopted a fair method in handling the case of the petitioner.

Naturally sometime had to be consumed for a DPC to consider the case of confirmation of petitioner and, therefore, it cannot be said, on the material on record, that there was any inordinate delay in holding a DPC in 1972.

7. The second contention is that no information had been sent to the petitioner of the fact that his previous record was bad. It is no doubt true that sub-regulation (5) enjoins that such an information should be communicated to the employee together with reasons. The petitioner has pointed out in paragraph 12 of the rejoinder that in cases of some other candidates information had been sent. Be that as it may, the mere failure on the part of the respondents to give necessary information will not invalidate the procedure of DPC held in 1972. We do not find any force in the contention of the petitioner that the failure to give the necessary information constituted an implied admission that the record of the petitioner was good.

8. The next contention is that since the petitioner's case was considered for confirmation on 1.1.1971, his record upto that date alone should have been taken into account whenever his case was to be considered for confirmation. No rule has been cited in support of this contention. No instruction too has been cited. On the contrary, we find that way back on 15.04.1959 in OM No.44/1/59-Estt.-A it was emphasised that the Departmental Promotion Committee will take into account the record of service as placed before them and give due weight to the adverse entries appearing in the confidential records on the date the case of officers are considered by the DPC.

9. The petitioner was given an officiating appointment as Section Officer. He was thereafter reverted to the post of Insurance Inspector. At that stage, and before the order of reversion could be implemented, the petitioner came to this Tribunal. This Tribunal passed an interim order staying the order of reversion of the petitioner. After seeing the record, the Tribunal vacated the interim order. The result was that the order of reversion was given effect to and the petitioner was reverted to the post of Insurance Inspector. During the pendency of this O.A. and 20 days before the retirement of the petitioner, he (the petitioner) was again given a chance to officiate as a Section Officer. It is urged that the original order of reversion of the petitioner from the post of officiating Section Officer was a mala fide one. It is pointed out by the 1d. counsel for the respondents that the petitioner continued to officiate on the basis of the interim order but was reverted after the interim order was vacated. Later on, he was again given a chance to officiate as Section Officer. We are unable to appreciate the submission of the petitioner. On the contrary, the respondents dealt fairly with the petitioner. No other point has been placed before us.

10. The application is dismissed. No costs.

B.N. DHOONIYAL
(B.N. DHOONIYAL)
MEMBER (A)
09.09.1993

S.K. DHAON
(S.K. DHAON)
VICE CHAIRMAN
09.09.1993