

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(A)

O.A. No. 2672/90
T.A. No.

199

DATE OF DECISION 24.9.1991

Shri T.R. Sharma

Petitioner Applicant

Shri T.V. Ratnam

Advocate for the Petitioner(s) Applicant

Versus

Employees State Insurance

Respondent

Corporation & Another

Shri D.P. Malhotra

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? / No
4. Whether it needs to be circulated to other Benches of the Tribunal? / No

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The short point arising for consideration is whether in respect of a non-gazetted Officer against whom disciplinary proceedings have been initiated by the competent authority, an officer of the Central Vigilance Commission can be appointed as the Inquiry Officer.

2. The applicant before us has retired from the Employees State Insurance Corporation (ESIC) on attaining the age of superannuation on 31.7.1989. At the time of his retirement, he was holding the post of Insurance

A

.....2...

Inspector in a substantive capacity, which is a non-gazetted post. He was, however, officiating as Assistant Regional Director at that time.

3. After his retirement from service, the respondents initiated disciplinary proceedings against him by serving on him a memorandum dated 11.10.1989. The memorandum refers to certain allegations of misconduct committed by him during 1984-87 relating to incorrect assessment of contributions made by him in relation to an employer/firm.

4. On 21.9.1990, the respondents appointed Shri J.D. Verma, Commissioner of Departmental Inquiries, Central Vigilance Commission, as the Inquiry Officer.

5. The applicant has argued that C.V.C. handles investigations and inquiry only if the charged person is a Board level appointee in a public sector undertaking. According to him, the C.V.C. does not have jurisdiction to conduct the inquiry in question as the applicant was holding the substantive rank of Insurance Inspector which is a non-gazetted post.

6. The respondents have stated in their counter-affidavit that the jurisdiction of the C.V.C. extends to the employees of the E.S.I.C. who are in receipt of basic pay of Rs. 2825/- per month and above. At the time of his retirement, the

Q

....5...

applicant was drawing a basic pay of Rs.3125/- per month in the pay-scale of Rs.2000-3500.

7. We have carefully gone through the records of the case and have considered the rival contentions. The learned counsel for the applicant relied upon the provisions of Regulation 3 of ESIC (Staff and Conditions of Service) Regulations, 1959, according to which, whenever the disciplinary authority is of the opinion that there are grounds for enquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into, or appoint an authority to enquire into the truth thereof. According to him, the authority to enquire into the truth should belong to the very same department where the delinquent Government servant had worked. In other words, it should not be an outsider.

8. We do not see any merit in the aforesaid contention. In M/s Dalmia Dadri Cement Limited Vs. Murari Lal Bikanaria 1970 (3) S.C.C. 259 at 266, the Supreme Court has observed that there is nothing unfair in appointing an outside authority in conducting a domestic enquiry. In that case, the main contention of the employee was that the appointment of an outsider as an Inquiry Officer was legally impermissible. The Supreme Court rejected the above contention and stated that the appointment of an

0

(1)

outsider as an Inquiry Officer would not be unfair.

9. The applicant has denied the charge brought against him in the Memorandum dated 11.10.1989 and has argued that the applicant was innocent and that if at all any inquiry was to be held, it should be against the then Regional Director, who was his superior authority. No inquiry had been initiated against the Regional Director.

10. We do not express any opinion on the merits of the case, one way or the other. The applicant will be free to urge all his contentions before the Inquiry Officer, the disciplinary authority and the Appellate Authority. The law should be allowed to take its own course and we do not see any reason or justification to interfere with the conduct of the inquiry at this stage.

11. In the light of the above, we see no merit in the present application and the same is dismissed.

B.N. Dholiwal
(B.N. Dholiwal) 24.9.91
Administrative Member

Parvez
24.9.91
(P.K. Kartha)
Vice-Chairman (Judl.)