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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2758/1991.

DATE OF DECISION: 13-3-1992.

S.C. Mighlani

....

Applicant.

V/s.

Employee's State Insurance
Corporation

....

Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

Shri R.K. Kamal, counsel for the applicant.
Shri D.P. Malhotra, counsel for the respondents.

JUDGMENT

(delivered by Hon'ble Mr. P.C. Jain, Member)

The applicant, who is an Upper Division Clerk in E.S.I. Corporation, Rajendra Place, New Delhi, has filed this O.A. for quashing the impugned order dated 15.11.91 (Annexure A-1) by which the following penalty has been imposed on him in pursuance of disciplinary proceedings held against him: -

- (1) Reduction to the rank of IDC for a period of five years from the date of issue of order;
- (2) On such reduction, he shall be placed at the stage of Rs.278/- (pre-revised) in the pay scale of Rs.260 - 400 (pre-revised);
- (3) During the period of penalty, he shall not earn any increment in the scale of IDC;
- (4) After the penalty period is over, he shall be restored to the original post of UDC, but shall not regain his original seniority in the cadre of UDC; and
- (5) his date of next increment shall be one year from the date of such restoration subject to the fulfilment of necessary conditions.

He has also prayed for a direction to the respondents to deem him on duty and in service in all respects as Upper Division Clerk for the entire period from 15-11-91 onwards

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and in continuation of the previous service. The interim reliefs prayed for by him in regard to the suspension of the impugned order etc., were declined by an order of the Tribunal passed on 22.11.91.

2. On notice on admission issued to the respondents, they filed a reply opposing admission as well as the reliefs claimed for by the applicant, primarily on the ground that the applicant has not availed of the departmental remedies under the relevant rules of filing the first appeal to the Director General and revision petition to the Chairman of the Standing Committee of the E.S.I. Corporation and, as such, the O.A. was premature in terms of the provisions of Section 20 of the Administrative Tribunals Act.

3. We have perused the material on record and also heard the learned counsel for the parties with a view to finally disposing of the O.A. at the admission stage itself.

4. In para 3 of their reply, the respondents have stated that the Director General of the E.S.I. Corporation, who is the first appellate authority, has suo-moto revised and set aside impugned punishment order dated 15-11-91 passed by the disciplinary authority under the revisionary powers vested in her under Regulation 22 of the ESIC (Staff and Conditions of Service) Regulations. They have also stated that she has appointed another officer, who has never dealt with the case in the past, as the new disciplinary authority under Regulation 12(2) of the aforesaid Regulations to pass appropriate orders in the case from the stage of supply of the inquiry report to the applicant. A copy of the order passed by the Director General on 19-2-92 has been filed as annexure-R. A perusal of this order also shows that while setting aside the impugned order of punishment, the appellate authority had remitted the case for processing de-novo from the stage of supply of inquiry report. Learned counsel for the applicant, therefore, rightly and fairly

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conceded that the first relief prayed for by the applicant for quashing the impugned punishment order no more survives. He, however, urged that in view of the setting aside of the impugned order, the applicant should be deemed to have been put back as U.D.C. with effect from 15.11.1991 when the order reverting him etc. to the post of LDC came into effect.

5. No rejoinder has been filed by the applicant to the reply filed by the respondents. However, since the applicant was not under suspension when the impugned order dated 15.11.91 had been passed, the impugned order having been set aside by the appellate authority suo-moto for taking fresh action from the stage of supply of inquiry report as per her order dated 19-2-92, it has to be held that the applicant has to be put back as U.D.C. with effect from 19-2-92, e.g., the date on which the impugned order of punishment has been set aside. In respect of the period from 15.11.91 to 18.2.92, the reliefs admissible to the applicant in regard to pay etc., as U.D.C., will depend on the result of the inquiry, which is to continue from the stage of supply of inquiry report and the orders passed thereon by the disciplinary authority, who has now been appointed vide order dated 19-2-92.

6. In the light of the foregoing discussion, we hold that the applicant is entitled to be put back to the post of U.D.C. with effect from 19-2-92 and draw the pay and allowances of that post from that date. As regards his claim for pay and allowances in the post of U.D.C. for the period from 15.11.91 to 18.2.92, it will depend on the orders passed by the disciplinary authority in the inquiry, which is still not concluded. Needless to say that if the applicant is aggrieved by the orders ^{to be} passed as above, he would be free to approach this Tribunal in accordance with law, if so advised.

No costs.

J.P. Sharma
(J.P. SHARMA) 13.3.92
MEMBER (J)

Cecilia 13/3/92
(P.C. JAIN)
MEMBER (A)