

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.460/91

New Delhi this the 17th Day of July, 1995.

Hon'ble Mr. J.P. Sharma, Member(J)
Hon'ble Mr. B.K. Singh, Member(A)

Shri P.P. Khanna,
S/o Sh. Jai Gopal Khanna,
R/o H.No.102, Mirza Jaan Inside,
Sihani Gate, Ghaziabad, U.P. Applicant

(through Sh. S.K. Sinha, proxy counsel for
Sh. Jog Singh, advocate)

versus

1. Regional Director,
E.S.I. Corporation,
Sarvodya Nagar,
Kanpur(UP).
2. Director General,
E.S.I. Corporation,
E.S.I.C. Building,
Kotla Road, New Delhi.
3. E.S.I. Corporation,
through Chairman, Standing Committee/
Addl. Secretary, Ministry of Labour,
Sharam Shakti Bhawan, New Delhi.
4. Union of India,
through Secretary,
Ministry of Labour,
Sharam Shakti Bhawan,
New Delhi.

Respondents

(through Sh. G.R. Nayyar, advocate)

ORDER(ORAL)

delivered by Hon'ble Sh. J.P. Sharma, Member(J)

The applicant is an employee in Employees' State Insurance Corporation was served with a memo of chargesheet on 16.3.1985 showing the misconduct that as Manager Gr. III, Mini Local Office, Noida E.S.I. Corporation, U.P. Region for the period from 11.8.1982 to 16.8.1984 issued no dues certificates to the following Garment Exporting Units to enable them to obtain their manufactured exporters

quota from the Authority:-

- i) / M/s Charu Apparel Manufacturing Co. Private Ltd., A-26, Sector-II, Noida.
- ii) M/s Best Choice Enterprises, A-6, Sector-II, Noida.
- iii) M/s Boutique International, Shed No.86, Sector-II, Noida.
- iv) M/s Emm Libbas Private Ltd., Noida.

It is stated that the applicant transgressed his jurisdiction by issuing 'No Dues' certificates and as such his act exhibited conduct unbecoming of a Corporation employee on his part thereby violating Rule 3 of Central Civil Services (Conduct) Rules, 1964 read with Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended. The Regional Director Sh. Bhagwati Prasad, the Disciplinary Authority, by the order dated 14.6.1985 imposed the penalty of censure. This penalty of censure was suo moto reviewed by the Director General, Employees' State Insurance Corporation invoking the provisions of Regulation 22 of the Employees' State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959 set aside the order dated 14.6.1985, referred to above, being

bad in law and further directing that a proper departmental disciplinary enquiry be held against the applicant after issuing a proper charge sheet under Regulation 14 and para-3 of the Third Schedule to the Employees' State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959 under major penalty proceedings.

As a result of this, a memo was issued again on 28.2.1986 with Article of Charge No.1 which is as follows:-

"That the said Shri P.P. Khanna while functioning as Manager Grade-III, Mini Local Office, Noida, E.S.I. Corporation, U.P. Region for the period from 11.8.82 to 16.8.84 committed a gross misconduct in as much as that he transgressed his authority with ulterior motive by issuing 'No dues' certificates to the employers which was neither his duties nor he was required to do so.;

Thus the said Shri P.P.Khanna by his above act exhibited lack of integrity, lack of devotion to duty and conduct unbecoming of a Corporation employee on his part thereby violating Rule 3 of C.C.S. (Conduct) Rules, 1964 read with Regulation, 23 of E.S.I. Corporation (Staff and Conditions of Service) Regulations, 1959 as amended."

Alongwith Article of charge, Annexure-2 and Annexure-4 were served on the delinquent applicant showing the imputation of misconduct, list of documents to be relied for establishing the aforesaid Article of Charge and the witnesses to be produced against him Sh. R.K. Mehta, Shri M.S. Rekhi and the Manager, Emm Libbas(P) Ltd. 76, Sunder Nagar, New Delhi.

↓

The applicant replied to the said memo of charges and the Enquiry Officer entered into an enquiry and gave the report on 30.4.87 holding that Article of Charge given holding that the applicant transgressed his authority by issuing no dues certificates to the employers is established but the charge No.2 of ulterior motive has not been established. The Disciplinary Authority, therefore, accepting the finding of the Enquiry Officer imposed the punishment of withholding of one increment of pay of the applicant for a period of two years without cumulative effect. An appeal against the same was rejected by Smt. Kusum Prasad, Director General by the order dated 9.3.1989 and the review against the same was again rejected by Sh. K.C. Sharma, Additional Secretary, Ministry of Labour & Chairman of Standing Committee, E.S.I. Corporation by the order dated 31.1.1990. The applicant filed this Original Application in February, 1991 and he has prayed that the impugned orders of punishment, aforesaid, be quashed even including the earlier penalty of censure imposed on 14.6.85, as orders are totally illegal and arbitrary.

On notice the respondents contested this application by filing a reply highlighting the fact that the applicant was only U.D.C. was working as Manager Grade-III and that he did not have the power to issue certificates to the employers so as to be read as 'No due' certificate and that power could have been exercised under Section 45 of the E.S.I. Act. The applicant was not even a Head Clerk.

Merely because he has been designated as Grade-III does not confer him any power as his duties are only to get the amount of contribution deposited and also to pay to the beneficiary who could have claimed under the E.S.I. Act.

The applicant has not filed any rejoinder to the above replies of the respondents.

We have heard the learned proxy counsel for the applicant and Sh. G.R. Nayyar, learned counsel for the respondents.

The learned counsel for the applicant pointed out that the misconduct alleged against the applicant does not come within the definition of the Conduct Rules, 1964 read with Regulation 23 of the E.S.I. Corporation. Unbecoming of a Government servant is an act which has been done either in ignorance of the powers conferred on a particular person discharging particular duties of an office can make him liable if such exercise has resulted in a benefit of the beneficiary of the exercise of that power. The issue of these letters to the various exporters named in the imputation of misconduct is not denied. The learned counsel argued that if a query is made from the office of the applicant where he was discharging the duty as Grade-III of the Mini Local Office, Noida, he had to reply for that query put up by the exporter. In fact, reply to a correspondence may be meaningful addressed in a manner which may be commensurate to the power exercised. It is not

expected that the Government department should not reply though it may be headed by Grade-III but it is expected by Manager Grade-III that he should take the region in confidence before making an positive statement of fact which may be utilised by the addressee to the advantage. The learned counsel for the respondents pointed out that no such record is available in the Mini Local Office, Noida regarding the damages to be recovered from such exporters or any arrear of contribution of earlier period is outstanding against them. The applicant may very-well certify the contribution at that relevant time but that does not mean that such a person is free from any arrears of contribution or any liability imposed on him by the Region. There appears to be some substance in this contention. Moreover, we have to see that the Manager can exercise that power or not. The learned counsel for the applicant could not show that this power would have been exercised and it is argued that what statement of fact was issued by the applicant was not 'No due certificate'. The words can be interpreted in a particular manner but ultimate meaning of those words have to be inferred. This point is widely considered in the review by the Addl. Secretary in the letter dated 31.1.90. It is observed in para-2 of the order filed by the applicant as Annexure P.6 of the application that the simple certificate issued by the applicant that the employer had deposited all dues upto the month of February, 1983. This is playing with the words as the local office Manager has no means to find out whether any dues beyond what

has been deposited have been determined by the regional office and whether any claims or recovery proceedings against him are pending. Therefore, this certificate amounts to giving a clearance from liability and therefore is in the nature of no dues certificate. We do not find that this observation by the Addl. Secretary is in any way faulty. The contention of the learned counsel for the applicant is that there is no misconduct or that the statement of fact issued under signature of the applicant cannot be accepted.

The learned counsel has further argued that earlier proceedings ended in censure entry imposed by the Disciplinary Authority, the Regional Director (UP). He contends that it shall be double jeopardy for the same misconduct the applicant put to the ordeal of another enquiry after issue of another chargesheet. This contention also fails in view of Regulation 23 of the E.S.I. Corporation which gives the power to review. In all service rules an authority has the power to review which may be exercised either on the petition of an aggrieved person or suo moto in cases where the Director General or the Reviewing Authority takes a decision that the order passed by the subordinate authorities either is bad in law or illegal, irregular or is not justified in the particular case so the Director has exercised his power and quashed the entry of censure. This contention also has no force.

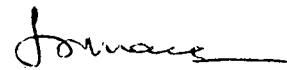
The learned counsel for the applicant has also contended that as a Manager of the Mini Local Office, Noida, the applicant by issuing a certificate did not cause any pecuniary loss to the Government or to the E.S.I. Corporation or to anybody. Taking the common view of the matter that the certificate showing that the contribution has been deposited up to date, the authority who has to act may treat the certificate as 'No due' certificate and normal consequences will follow after going through such a certificate and may be in favour of the certificate holder. This contention of the applicant also has no basis.

In view of the above facts, we find that the present application has no merit. The application is, therefore, dismissed as devoid of merit.

The parties to bear their own costs.


(B.K. Singh)

Member(A)


(J.P. Sharma)

Member(J)

/vv/