

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.752 of 1996

Allahabad, this the 23rd day of March, 2004.

Hon'ble Mr. Justice S.R. Singh, V.C.
Hon'ble Mr. D. R. Tiwari, A.M.

P.K. Aich,
a/a 42 years,
Son of Sri H.N. Aich,
presently working as
Lower Division Clerk,
Employees State Insurance
Corporation, Sarvodaya Nagar
Kanpur.

.....Applicant.

Counsel for Applicant : Shri Sudhir Agarwal.

Versus

1. Employees State Insurance Corporation
Panchdeep Bhawan Kotla Road, New Delhi
through its Director General.

2. The Regional Director,
Employees State Insurance Corporation,
Panchdeep Bhawan, Sarvodayanagar Kanpur.

3. The Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan Kotla Road, New Delhi.

4. Union of India through the Secretary,
Ministry of Labour Shram Shakti Bhawan,
New Delhi.

.....Respondents.

Counsel for Respondents : Shri P.K. Pandey.

O R D E R

By Hon'ble Mr. D.R. Tiwari, A.M. :

By this O.A. filed under Section 19 of A.T. Act, 1985,
the applicant has prayed for the following reliefs :-

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"(i) to set aside the order dated 10.11.1994 (Annexure-A-2 to Comp 'I') passed by respondent No.3 exercising suo-moto revisional power and enhancing minor penalty to major penalty and consequential order dated 30.11.1994 (Annexure-A-3 to Comp 'I') passed by respondent No.2

(ii) to quash the order dated 16.7.1993 (Annexure-A-1 to Comp 'I') "

2. The applicant, at the relevant time, was Upper Division Clerk (U.D.C.) in E.S.I. Corporation, U.P. Region. Disciplinary Proceeding was initiated against him by issue of Charge Memo dated 29.4.1993 under Regulation 14 and Para 3 of the Third Schedule of E.S.I. Corporation (Staff and Conditions of Service) Regulation, 1959 as amended from time to time. The Article of charges is as under :-

(i) Sri Aich submitted four forms of application in Form -97 with wrong/inflated claims with the intention of cheating/defrauding the E.S.I. Corporation and

(ii) He made tempering unauthorised alterations in the relevant cash memos and form Rules 105.

(iii) By this aforesaid act, he exhibited lack of integrity and conduct unbecoming of Corporation employee thereby violating the provisions Rule 3 (I) & (III) of C.C.S. (Conduct) Rules 1964 read with Regulation 23 of the E.S.I. Corporation (Staff and Conditions of Service) Regulation 1959.

3. The Enquiry Officer conducted the oral enquiry and completed it on the same date as the applicant has admitted his guilt. He submitted the report to the Disciplinary Authority who imposed the minor penalty of withholding of next one increment of his pay without cumulative effect with a strict warning (Annexure-A-1). The Reviewing Authority, suo-moto, called for papers relating to disciplinary proceedings and after issuing him show cause notice for major penalty *and after receiving*

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the reply to the show cause notice, the Reviewing Authority enhanced the penalty and reduced him to lower post of L.D.C. permanently. Aggrieved by these orders, the instant O.A. has been instituted.

4. The applicant has challenged the impugned orders on various grounds. He has pleaded that his admission of ~~guilt~~ is partial and the conduct of enquiry in one day and imposition of penalty on the ~~same~~ is bad in law. He replied to the show cause notice by letter dated 7.4.94 and the order dated 10.11.94 by which the penalty was enhanced, was received by him on 30.4.996 after almost 1½ years. He further asserted that power exercised by the Reviewing Authority was without jurisdiction and the said provision has been found to be ultravires by a Division Bench of Tribunal at Bangalore and the said judgment was followed by a Division Bench of this Tribunal at Allahabad. It has also been contended that the impugned order dated 10.11.94 is barred by limitation and is against Regulation 22.

5. The Respondents, on the other hand, have opposed the arguments by filing their counter affidavit. They have stated that the admission of guilt is total which is clear from the letter of applicant dated 28.6.93 (Annexure A-1(a)). That letter clearly shows that he not only admitted the guilt but has also assured that he would refrain from repetition of such acts in future. The respondents have further submitted that the plea of non-receipt of order enhancing the penalty is misleading as efforts were made to deliver the impugned order by Deputy Director sent by the registered post* which was refused by him. Hence the letter was received back undelivered the proof of which is Annexure-5 of the counter affidavit. The respondents have controverted the plea of lack of jurisdiction and the Regulation being declared ultravires by Bangalore Bench of the Tribunal. In para 20 of the counter affidavit, it has been stated that

*which was

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the judgment of the CAT, Bangalore has been set aside by the Hon'ble Supreme Court by its judgment dated 8.7.96 (Annexure A-3).

6. We have carefully heard the rival contentions of the parties and perused the pleadings.

7. During the course of hearing, the counsel for the applicant raised two issues. The first issue relates to limitation as provided in Regulation 22 of E.S.I.C. (Staff and Conditions of Service) Regulations, 1939. He asserted that Regulation 22 stated supra provides that revising order must have been passed within six months of the date of order proposed to be revised. He is of the view that order dated 16.7.93 has been revised much after six months i.e. on 10.11.94. It is clear from the Regulation 22 that the records of any enquiry are to be called within a period of six months. It provides for initiation of review proceedings and not the completion. As a matter of fact, the case papers for review of order dated 16.7.93 were called by the competent authority by a letter dated 26.7.93 (Annexure A-4 of the letter to review the order was received by the applicant counter affidavit). Copy of the letter of intention on 24.11.93 (Annexure A-5 of the CA). In view of this, his contention cannot be countenanced.

8. The next crucial point raised by the counsel for applicant is that proper procedures were not followed by the Disciplinary and Reviewing Authorities. He strenuously tried to demonstrate before us that the admission of guilt was not total. In any case, he has not received anything in cash and no loss has been caused to the corporation. It may be stated that he was never chargesheeted for unlawful gain. He was chargesheeted for claiming false reimbursement and tampering of cash memos and forms. It is another thing that he could not succeed in getting cash amount. He has given in writing accepting his responsibility. Once the guilt has been admitted, there is no need for holding any detailed

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enquiry and the Disciplinary Authority imposed upon him the minor penalty. The Reviewing Authority, after indicating his intention to revise the order of Disciplinary Authority, issued a show cause notice. The notice also indicated that the penalty proposed was removal from service. The applicant sent a representation in reply to show cause notice. The Reviewing Authority adverted to each and every point raised in the representation. This being his first mistake, the Reviewing Authority took a very lenient view and imposed upon him the penalty of reduction to lower rank. In view of this, we are constrained to disagree with the contention of the applicant's counsel.

9. In view of the facts and discussions held in preceding paras, we find no merit in the O.A. and the same is accordingly dismissed.

No order as to costs.

Asthanam -
A.M.

R.G.J
V.C.

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