

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Original Application NO. 1230 of 2001

ALLAHABAD THIS THE 11 DAY OF June 2008.

Hon'ble Mr. Justice Khem Karan, Vice Chairman.

A.K Nigam aged about 61 years son of late Shri M.P. Nigam resident of 107/223, Nehru Nagar, Kanpur.

.....Applicant

(By Advocate: Shri R.K. Nigam)

1. Chairman, Standing Committee, Employees' State Insurance Corporation, Punchdeep Bhawan, Kotla Road, New Delhi.  
2. Director General, Employees' State Insurance Corporation, Punchdeep Bhawan, Kotla Road, New Delhi.

.....Respondents

(By Advocate: Shri P.K. Pandey)

O R D E R

Applicant A.K. Nigam has filed this O.A. for quashing order dated 15.4.2000 (Annexure 1), 23.4.2001 (Annexure 2) and 14.8.2001 (Annexure A-3) and has further prayed for commanding the respondents to restore his pension and to refund the amount which they have deducted or cut from the pension pursuant to the order dated 15.4.2000.

2. While being posted as Head Clerk in a Local Office of Employees' State Insurance Corporation (hereinafter referred to as Corporation), at Shakti Nagar in Kanpur in the year 1992, the applicant was served with a chargesheet-dated 10.3.1992. The charges against him were as under:-

**"ARTICLE OF CHARGE I;**

(i) *Did not ensure payment of Temporary Disablement Benefit to Sh. Jangan Nath, Ins. No. 21-088232 for the period from 21.6.84 to 15.8.84 for Rs. 1176/- and, with an intention to make payment by cash and avoiding the payment by cheque, allowed the payment for a shorter period from 21.6.84 to 6.8.84 for Rs.987/- and*  
(ii) *Did not prevent, despite clear tell-tale evidence, payments made purportedly to the said insured person, of Rs.862/- on 13.11.84 and Rs.357/- on 28.11.84 on the basis of bogus and forged medical certificates.*

**ARTICLE OF CHARGE II**

(i) *Did not take notice of the fact that the certificates dated 30.6.84 and 26.7.84 relating to the payment docket No.223/77 dated 31.10.84 for Rs.987/- had been submitted belatedly and also did not take appropriate order from the Manager of the said Local Office on the application for condonation of delay.*  
(ii) *Without any valid authority, recorded certificates to the effect "Paid in my presence" on the dockets bearing No.223/77 dated*

31.10.84 for Rs.987/-, 233/60 dated 13.11.84 for Rs.862/- and 269/92 dated 28.11.84 for rs.357/-

- (iii) Did not ensure that the payments vide the three dockets mentioned above, were actually made to the right and genuine beneficiary, namely Sh. Jagan Nath, Ins. NO. 21-088232; and
- (iv) Misappropriated the amounts relating to the three payments mentioned above, in collusion with the other employees of the said Local Office.

#### ARTICLE OF CHARGE III

- (1) The said Sh. A.K. Nigam obtained a statement dated 11.10.89 from Sh. Jagan Nath, Ins. No. 21-008232, deceitfully and illegally to the effect that the payment relating to docket no. 269/92 dated 28.11.84 for Rs.357/- was actually received by him (Insured Person) and that in case the said payment was not due to him, he was prepared to return the said amount".

#### ARTICLES OF CHARGE IV

- (I) The said Sh. A.K. Nigam, deceitfully and after applying intimidation, made Sh. Raja Ram, Ins. No. 21-1050003 to sign an incorrect affidavit on 21.11.97 with the malafide intention of nullifying the wrong-doings of Sh. N.K. Shukla, the then Cashier of the said Local Officer and others and to frustrate the impartial, fair and independent investigation"

He denied the charges. Shri Y.S. Rathi was appointed as Inquiry Officer. While the inquiry was still going on, applicant superannuated on 31.7.1997. The enquiry was continued and concluded under Rule 9 of CCS (Pension) Rules 1972 (hereinafter the Rules of 1972). Inquiry Officer found charge NO.1 proved, charge NO. 2 partly proved and charges NO. 3 and 4 as not proved. Not agreeing with the Inquiry Officer, disciplinary Authority recorded a dissent note (see A-3). In his opinion all the charges were proved. Applicant was issued a show cause notice, asking him to meet the conclusions so reached. After taking into consideration the entire material, the Director General of the Corporation passed the impugned order dated 15.4.2000 (Annexure A-1), imposing <sup>3</sup> cut in pension for ever. Aggrieved of it, applicant preferred an appeal to the Chairman, which he dismissed vide order-dated 23.4.2001 (Annexure A-2). Then he preferred review petition, which too was rejected vide order dated 14.8.2001. Aggrieved of all these three orders, <sup>he</sup> has come to this Tribunal.

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3. The main grounds of challenge are that:-

- (a) the conclusion as regards the guilt of the applicant is not based on any legal evidence and is rather perverse.
- (b) other employees involved in the matter were let off with no or little punishment.

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- (c) CCS (Conduct) Rules do not apply to the retired servants of the Corporation.
- (d) cut in pension is possible only on proof of the fact that employee caused any peculiar loss to the Government.
- (e) no such orders as one passed by the Director General, could have been passed without consulting the Union Public Service Commission and
- (a) In view of Rule 9 of Rules of 1972, only the President of India could have passed such orders and no the Director General.

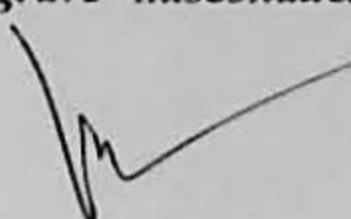
5. The respondents have contested the claim. They say pending proceedings were validly continued under Rule 9 of CCS (Pension) Rules 1972 (for short the Rules of 1972) after superannuation of the applicant, as those Rules of 1972 were made applicable to the employees of the Corporation. They say is not correct to say that Director General was not competent to pass an order under Rule 9 of the Rules of 1972. According to them, Consultation with Union Public Service Commission was not necessary. They say the conclusion reached by the Director General as regards the guilt of the applicant is perfectly correct and is based on legal evidence and there is no good ground for saying that the same is perverse.

6. Parties counsel have placed on record their written arguments. Shri R.K. Nigam, learned counsel for the applicant has placed his amended/updated written arguments on 1.4.2008. I have gone through the entire material on record including the written submissions and the judicial pronouncements, cited in support thereof.

7. In his initial written arguments, Shri R.K. Nigam <sup>had</sup> ~~had~~ much stress on the point that Rules of 1972 were not applicable to the applicant, but he gave up that in his subsequent written arguments dated 7.4.2008. So, there is no point in entering into the discussion whether or not, the Rules of 1972 were applicable in the case. Otherwise also the positions stands well explained in order dated 23.4.2001.

8. Rule 9 of the Rules of 1972 reads as under:-

9. **RIGHT OF PRESIDENT TO WITHHOLD OR WITHDRAW PENSION.**  
 (1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or



*negligence during the period of service, including service rendered upon re-employment after retirement:*

*Provided that the Union Public Service Commission shall be consulted before any final orders are passed.*

*Provided further that where a part of pension is withheld or withdrawn, the amount of such pensioner shall not be reduced below the amount of rupees three hundred and seventy five (Rupees One thousand nine hundred and thirteen from 1.4.2004-see GID below Rule 49) per mensem]*

(2) (a) *The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this Rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:*

*Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.*

(b) *The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-*

- (i) *shall not be instituted save with the sanction of the President,*
- (ii) *shall not be in respect of any event which took place more than four years before such institution, and*
- (iii) *shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.*

(3) *Deleted*

(4) *In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.*

(5) *Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.*

(6) *For the purpose of this Rule,-*

- (a) *departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and*
- (b) *Judicial proceedings shall be deemed to be instituted.*
- (i) *in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and*
- (ii) *in the case of civil proceedings, on the date the plaint is presented in the Court".*

Clause (a) of sub-Rule (2) of Rule 9 above, leaves no doubt that there was nothing wrong in continuing and concluding the pending proceedings.

9. Shri R.K. Nigam, has next argued, that a plain reading of Rule 9, makes it clear that withholding or withdrawing the pension, can be ordered only by the President of India and none else 'Again'. The argument is totally misplaced. We should not forget that Rules of 1972, were framed for dealing with the pensioners of the Central Government. The Corporation is the body that has been created by Employees State Insurance Corporation Act, 1948. The Corporation has framed ESIC (Staff and Conditions of Service) Regulations 1959 (for short <sup>15</sup> Regulation of 1959) and those provide for applications of the Rules of 1972, subject to such modifications as the Director General may provide. Annexure-1 to the written argument of Sr. Pandey, is the copy of resolution dated 28.5.1979 of the Standing Committee of the Corporation. It provides that powers of the President under Rule-9 of the Rules of 1972, which vest in the Standing Committee by virtue of Regulation 24-A of the Regulations of 1959, shall also be exercisable by Director General of the Corporation. Shri R.K. Nigam does not challenge the vires of <sup>the</sup> Regulation 24-A or the said regulation. So, the argument that cut in pension of the applicant, could have been <sup>ordered</sup> only by the President of India and not by the Director General, cannot be accepted.

10. Argument of Shri R.K. Nigam that Union Public Service Commission should have been consulted as provided in 1<sup>st</sup> proviso to Sub Rule (1) of Rule 9 of the Rules of 1972 also does not appears to be one, which can be accepted. Consultation with the Commission is necessary, only if, order is to be passed by the President of India under Sub-Rule (1) of Rule 9 and not in a case where order is to be passed by the Director General of the Corporation. Shri R.K. Nigam has not been able to cite any judicial pronouncement in support of his arguments that Consultation with the Commission was necessary in the case in hand. (see <sup>15</sup> O.P. Gupta Vs. Delhi Vidut Board 2001 (1) SLJ 229 (Delhi H.C.)

11. The argument that CCS (Conduct) Rules, 1964, do not apply to the employees or retired employees of the Corporation, does not appear to be relevant, in the context of Rule 9 of the Rules of 1972.

12. Shri R.K. Nigam has vehemently argued that in absence of examination of Jagan Nath, <sup>referred</sup> during the course of formal proceedings <sup>of the amount in question</sup> and in view of

*[Handwritten signature]*

the fact that Dr. M.M. Sahai did not offer himself for cross examination, there was no acceptable material to reach a conclusion that the applicant committed any misconduct mentioned in the charges. Learned counsel goes on to argue that the Inquiry Officer as well as the Disciplinary Authority and Director General all fell in error, by recording their conclusion, on the basis of previous statement of Jagan Nath or uncrossed examined testimony of Dr. M.M. Sahai. Learned counsel has taken the Tribunal through all the relevant documents such as report of the Inquiry Officer, disagreement note and order of Director General, so as to convince that finding against the applicant is not based on any acceptable material or legal evidence and is perverse.

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13. Learned counsel for the respondents has tried to support the finding so recorded by the Authority concerned. Let us see whether conclusion reached by the Director General is based on legal evidence or is perverse and deserves to be interfered with. I am conscious of the legal position that in exercise of power of judicial review, this Tribunal cannot reassess or reevaluate the material so as to test whether the finding of guilt is correct or incorrect. In other words, this Tribunal is not supposed to sit in appeal, so as to reach a different conclusion by reevaluating the evidence on record. This Tribunal will interfere with the finding of guilt, only if it is based on no evidence or is otherwise perverse, in the sense that no reasonable person, could have reached that conclusion on the materials so available. This much is well settled that Evidence Act as such, is not applicable to the proceedings under the Disciplinary Rules or under Rule 9 of the Rules of 1972. The Director General has clearly stated in para-3 on page 3 of his order dated 15.4.2000 that neither Shri Jagan Nath nor Shri Raja Ram, insured persons, appeared before the Inquiry Officer. It is also not denied that Dr. M.M. Sahai though appeared for examination in chief, did not appear for cross-examination. A close perusal of order dated 15.4.2000 of the Director General reveals that inspite of the fact that Jagan Nath did not appear in the witness box, during the course of formal proceedings, he based his conclusion on documents marked D-1 and D-2 prepared by Shri B.R. Yadav during the course of preliminary investigation. He says that Shri B.R. Yadav, who prepared these reports interrogated the insured persons and others to find out the truth and therefore, findings recorded by him during the course of

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investigation, constitute a good material and can be read in evidence. As regards the evidence of Dr. M.M. Sahai, Director General says in para-3 (on page 7) of order dated 15.4.2000 that it was, owing to the fault of the defence that he could not be cross-examined on the date exame-in-chief took place and so his uncross-examined evidence was good one. When the Inquiry officer thought it proper to defer cross-examination of Dr. M.M. Sahai, it was the duty of Dr. Sahai to have appeared and offered himself for cross-examination. I have not been able to understand as to how uncross-examined testimony of Dr. Sahai could have been read in evidence.

14. What I want to say is that the Authority concerned has taken into consideration irrelevant and inadmissible material for reaching the conclusion that the charges were proved. Any previous statement of insured persons, recorded during the course of investigation was of no evidentiary value unless they were examined during the course of formal enquiry. None of them came forward to say he did not receive the amount. Dr. Sahai did not appear for cross-examination so as to say that the certificates did not bear his signature as stated in the charge. The contention of Shri Nigam that the conclusion as regards the guilt of the applicant is based on no legal evidence, appears to be well-founded. In absence of evidence of insured persons no conclusion could have been reached that they did not receive the amount and in absence of cross-examined of Dr. Sahai, no conclusion could have been reached that medical certificates did not bear his signature or were fake. So the findings recorded against the applicant, are not sustainable in law. These are not based on legal evidence and deserve to be interfered with.

15. The next submission of Shri Nigam is that the Manager was let off with "displeasure", cashier with "withholding of one increment" and U.D.C with "withholding of two increments" and the applicant has been visited with such a heavy punishment of 1/3 cut in the pension for ever. There appears to be substance in the contention of Shri R.K. Nigam. When the rest of the persons were let off with little or no punishment, the same treatment should have been meted out to the applicant. In other words, if found guilty, cut in pension could have been restricted to certain period and should not have been made for ever. Without a pension for ever

16. Relying on *H.V. Bhat Vs. Union of India and Others, 1988 (4) (CAT) 647, K.V. Subramaniam Vs. Assistant Director (Estt.) Post Master General's Office, Madras and two others, 1987 (3) (CAT) page 125*, Shri Nigam has argued that action under Sub Rule (1) of Rule 9 of Rules of 1972 is possible only if the retired person is found to have caused any pecuniary loss to the Government or to the employer. He says, it has clearly been averred in para-4 of Supplementary Affidavit filed in 2008 that financial loss was quantified to Rs. 735 and the same was recovered from him but subsequently when loss could not be established, the amount was refunded to him. Learned counsel for the applicant says that there is no denial of this fact from the side of the respondents. He wants to say that there is no financial loss to the Corporation, so action under sub Rule (1) of Rule 9 was not legally justified.

16. Learned counsel for the respondents has said that a plain reading of sub Rule (1) of Rule 9 makes it clear that action under that Rule is possible on proof of grave misconduct or negligence during the period of service. He says scope of action under the said Rule is not restricted to pecuniary loss only but extends to cases of grave misconduct or negligence.

17. In view of conclusion reached above in para-14 there appears no need to enter into the controversy, whether causing of pecuniary loss to the Corporation or Government, as the case may be, is a condition precedent for action under Sub Rule (1) of Rule 9 of Rules of 1972.

18. In the result, the O.A is to be allowed and the impugned orders to be quashed. Accordingly, the O.A. is allowed and three impugned orders mentioned above are hereby quashed with a direction to the respondent NO. 1 to pay back the amount, which they have cut from the pension of the applicant pursuant to the orders dated 15.4.2000, within a period of three months from the date, a certified copy of this order is produced before him. No costs.

Justice Khem Karan  
Vice-Chairman

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*1. June 2008  
Ou. 6.08*