**CENTRAL ADMINISTRATIVE TRIBUNAL**
**HYDERABAD BENCH**

**OA/021/00321/2015**

HYDERABAD, this the 30th day of March, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member**
**Hon'ble Mr. B.V. Sudhakar, Admn. Member**

M.A.A.Baig,
S/o. Sri Mirza Yousuf Baig,
Deputy Director, Regional Office,
ESI Corporation, 5-9-23,
Hill Fort Road, Hyderabad - 500 463. ...Applicant

(By Advocate: Mr. Koka Satyanarayana)

Vs.

1.The Regional Director,
Employees State Insurance Corporation,
Regional Office, 5-9-23, Hill Fort Road,
Hyderabad-500 463.

2.The Insurance Commissioner,
ESI Corporation, CIG Marg,
New Delhi -110 002.

3.The Director General,
Employees State Insurance Corporation,
Headquarters Office, CIG Marg,
New Delhi – 110 002.

4. The Chairman, Standing Committee,
E.S.I. Corporation, Hqrs Office,
CIG Marg, New Delhi-110 002.

5. The Regional Director,
ESI Corporation, 100 Ft Road,
Ansari Road, Opp. RTA Office,
Pondicherry - 605 004.

....Respondents

(By Advocate: Mr. B. N. Sharma, SC for ESIC)

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**ORAL ORDER**
**(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)**

***Through Video Conferencing:***

2. The applicant filed the OA challenging the impugned order dt. 10.05.2012 issued by the 3rd respondent treating the period of suspension from 13.05.2000 to 12.03.2003 as NON DUTY for all purposes, as confirmed by the appellate authority vide order dt. 15.09.2014.

3. Brief facts of the case are that a Criminal Case 20/2000 was registered by the CBI against the applicant under the Prevention of Corruption Act based on the allegation of taking bribe while working as Inspector for the respondents organisation. Applicant was suspended on 13.5.2000 and charge memo was issued by the respondents on 9.1.2001. Thereafter, applicant was acquitted in the criminal case on 10.7.2002 and on filing OA 865 of 2002, the suspension was revoked on 12.3.2003 as per the directions of the Tribunal dated 10.2.2003. Consequently, applicant joined duty on 13.3.2003. Another charge memo dated 8.9.2005 was issued when the applicant was working at Pondicherry and when the applicant challenged said charge memo as well as the earlier charge memo dated 09.01.2001 through OA 808/2005 before the Hon'ble Madras Bench of this Tribunal, the charge memo dated 9.1.2001 was quashed on the ground of delay in holding the inquiry and it was directed to finalise the charge memo dated 8.9.2005 within a period

of four months, vide order dated 17.04.2006. The decision of the Tribunal when challenged in the Hon'ble Madras High Court in WP No.27953 of 2007, it was dismissed on 05.04.2011. In compliance, respondents concluded the proceedings qua the charge memo dt. 08.09.2005 and imposed the penalty of reduction of pay by one stage with cumulative effect on 1.2.2007. Appeal preferred was rejected on 15.5.2008. Thereafter, applicant was transferred to Hyderabad on 13.06.2008 and was promoted up to the level of Dy. Director on 29.12.2011. Applicant represented for regularisation of the suspension period on 8.7.2011 and in response, a show notice was issued on 20.1.2012 to explain to why the suspension period from 13.5.2000 to 12.3.2003 could not be treated as dies-non and on receipt of the reply, the said period was treated as non duty for all purposes on 10.5.2012. Appeal preferred was rejected on 15.9.2014. Based on treating the suspension period as non-duty, applicant was not granted the 3rd MACP.

4. The contentions of the applicant are that the denial of MACP is double penalty and is violative of Articles 14 & 16 of the Constitution. Applicant was acquitted in the criminal case on merits. Suspension was to be reviewed as per Tribunal order dated 10.2.2003 in OA 865 of 2002. Hon'ble Chennai Bench has quashed the charge memo dated 9.1.2001 and therefore, the inquiry done under charge memo dated 8.9.2005 has no relevance to the suspension imposed earlier. Treating the suspension period as non duty is double jeopardy.

5. Respondents in the reply statement state that the applicant was suspended for the alleged criminal offence of demanding bribe of Rs.5000 and a charge memo dated 9.1.2001 was issued. Applicant was suspended which was later revoked on 12.3.2003. Another charge memo dated 8.9.2005 was issued for keeping the employer file unauthorizedly at applicant's residence for issuing no due certificate. Both the charge sheets were challenged in Hon'ble Chennai Bench of this Tribunal in OA 808/2005 and vide Tribunal order dated 17.4.2006 the charge memo dated 9.1.2001 was quashed for the delay in conducting the inquiry and directed to complete the inquiry in respect of charge memo dated 8.9.2005 within 4 months, which was complied with by imposing the penalty of reduction of pay from Rs.8900 to Rs.8700 in the pay scale of Rs.6500-10500 for a period of one year with cumulative effect on 01.02.2007. The WP No.27953 of 2007 filed before the Hon'ble High Court at Madras was dismissed as *infructuous* since the Tribunal order was implemented. Further, on appeal, the penalty imposed by the disciplinary authority was confirmed by the appellate authority on 15.5.2008 and thereafter show cause notice was issued for treating the suspension period as non duty under FR 54, 54 (a), 54 (b) and limit the payment to subsistence allowance. On receipt of reply, the suspension period was treated as non duty and the appeal against the said order was rejected on 15.9.2014. In the criminal case, the applicant was acquitted based on benefit of doubt as the complainant turned hostile. 3rd MACP was not granted in view of his misconduct.

6. Heard both the counsel and perused the pleadings on record.

7. I. The issue is about treating the suspension period as non duty and for not granting the 3rd MACP. Applicant was prosecuted in a criminal case No.20/2000 for alleged demand of illegal gratification of Rs.5000 while working as Inspector in the respondents organization. In the criminal case, he was acquitted on the basis on benefit of doubt as the complainant turned hostile. The applicant was kept under suspension for the period from 13.5.2000 to 12.3.2003. Two charge memos dated 9.1.2001 & 8.9.2005 were issued by the respondents organization. On challenging them in the Hon'ble Chennai Bench of this Tribunal in OA 808/2005, the earlier one was quashed for delay and the later one was directed to be completed within 4 months, which was complied on 1.2.2007 by imposing the penalty of reduction of pay from Rs.8900 to Rs.8700 in the pay scale of Rs.6500- 10,500 for a period of one year with cumulative effect. The period of suspension was treated as non duty by invoking the FR 54 provisions which are extracted hereunder:

> *"FR 54-B(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order —*
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> *(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and*
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> *(b) whether or not the said period shall be treated as a period spent on duty."*

II. It is thus the discretion of the competent authority as to how to treat the suspension period as provided for in the Fundamental Rules. The competent authority decided to treat the period as non-duty after issuing show cause notice. The applicant claiming that treating the suspension is double penalty is incorrect since the action of the respondents was as per the Fundamental Rules and the applicant was paid subsistence allowance during the suspension period. The Hon'ble Chennai Bench of this Tribunal has quashed the charge memo dated 9.1.2001 and did not state anything about the suspension period. The order of the Chennai bench is extracted here under:

> *"4. We have considered the matter carefully. The imputation of charge (Annexure A2) are practically the same as set out in the criminal case that was filed against the applicant. The applicant was acquitted of the criminal charges i.e. the grounds on which he has been charged in the disciplinary case. There is no guarantee that the respondents may be able to completely ignore the factum of the applicant earning acquittal in the criminal proceedings while proceeding in the disciplinary case. Though the submissions made by the learned counsel for the respondents seek to treat the delay as something which is inherent in the administrative set up, we are unable to accept the same as such. If there had been change of only one enquiry officer in the last five years, we could have accepted the ground of administrative exigencies. Two enquiry officers successively getting changed on grounds of superannuation, promotion etc., are not acceptable reasons for condoning the delay. The respondents must have been aware that the enquiry officer was about to retire, and therefore, this factor should have been kept in mind if at the time of posting him as enquiry officer. The respondents also cannot take the ground of ignorance that they were not aware of the fact as to when the second enquiry officer was about to get promotion and therefore, would move out as a consequence. Having regard to all these facts and circumstances of the case, we feel that the prayer of the applicant to quash the charge memo at Annexure A2 on the grounds of delay in holding the enquiry is justified and accordingly, the said charge memo is set aside.*
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> *5. However, we do not accept the contention of the learned counsel for the applicant that the respondents have no power to issue the charge memo at Annexure A2. He has not also pointed out any case law or statutory rule or Government instructions in favour of his submissions. On the other hand, the respondents department's power to issue fresh charge memo including additional charge memos has been well recognized. The learned counsel for the applicant also*

*takes the ground that the charge memo issued in September 2005 depends substantially on the same set of departmental witnesses who were listed as such in the proceedings of 2001. This ground again is not acceptable because only those who have knowledge of various facts imputed in the charge memo can be called to testify as witnesses. There is no bar to include the same set of witnesses with or without addition. Considering the fact that the charge memo has been issued actually in September, 2005, the question of delay is not required to be gone into now. It is open to the charged official to take the plea of delay also while making his submissions during the course of enquiry. We have no hesitation in view of the above facts and circumstances of the case, to reject the prayer, of the applicant for quashing the Charge Memo at Annexure A21. The respondents are, however, to note that it is their duty and responsibility to see that the disciplinary proceedings are concluded as early as possible. It is needless for us to reiterate the various Government instructions which have been issued from time to time in this matter. We accordingly direct the respondents to conduct the enquiry on a day to day basis, as practicably as possible, and complete the same within a period of four months from the date of receipt of a copy of this order, duly providing a copy of the enquiry report of the disciplinary authority to the applicant. The disciplinary authority, after due consideration of the submissions of the charged officer, pass a reasoned, speaking order taking into account the various contentions likely to be made by the charged officer for which purpose, he will be allowed a time limit of 10 weeks from the date of receipt of a copy of the applicant's response/ defence to the enquiry report. It is further directed that if there is any failure on the part of the respondents to complete the proceedings within the time as stipulated above, the officials who are personally responsible for the delay namely the Enquiry Officers and the Disciplinary Authority will be required to pay the cost for such delay out of their personal pockets to be determined by this Tribunal. Should the applicable for some reason delay the proceedings, that would form a fresh case for the respondents to proceed against him for such dilatory tactics.*

*6. The OA is partly allowed with the above directions. No costs."*

III. MACP is granted after review of the performance of the applicant and with the penalty imposed for the misconduct, the applicant would obviously not be eligible for 3rd MACP. Besides, treating the period of suspension as non-duty would not count for the length of service. The acquittal in the criminal case was on benefit of doubt. The basis for grant of MACP and the imposition of penalty consequent to a disciplinary proceedings are different, and hence, the question of double penalty would not arise as claimed by the applicant for not granting the 3rd MACP.

IV. In view of the above, we find that the OA is devoid of merit and hence, is dismissed with no order as to costs.

**(B.V.SUDHAKAR)**
**ADMINISTRATIVE MEMBER**

**(ASHISH KALIA)**
**JUDICIAL MEMBER**

*evr*