THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH- ALLAHABAD.

O.A. No. 160 of 1987.

Hanu Man Prasad Nigam..... Applicant.

Versus

Union of India & others..... Respondents.

AND

O.A. NO. 161 of 1987.

V.N.Awasthi..... Applicant..

Versus

Union of India & others..... Respondents.

AND

O.A. NO. 436 of 1987. case file

K.K. Srivastava..... Applicant.

Versus

Union of India & others..... Respondents.

Hon'ble Mr. Justice U.C.Srivastava-V.C.
Hon'ble Mr. K. Obayya - A.M.

(By Hon'ble Mr.Justice U.C.Srivastava-V.C.)

Against the order dated 27.4.84 passed by the Director General ESIC retiring the applicants compulsorily from service as a result of disciplinary proceedings and the order dated 22.10.86 passed by the Chairman of E.S.I.C. dismissing the applicant's appeal, they approached this Tribunal.

2. The applicants who were x employees of State Insurance Corporation were served with a charge-sheet xxxx on 21.9.81 by the Regional Director of ESIC on complaint of one Kali Shanker who was working in Kanpur in Textile Mill. Complaint was made against two other persons. According to the complainant the amount of Insurance was not received by him and it appears that documents were forged.

3. Against all these three persons the Director General decided to hold an inquiry and appointed the Regional Director ad Disciplinary Authority. The applicants also filed xxx statements before the disciplinary authority refuting the charges levelled against them. The Commissioner of the Enquiry Sri K.C. Dubey

was appointed as Enquiry Officer. Before the Enquiry Officer the said complainant Kali Shanker and Ram Prasad were not examined, even though summons were issued to them, but they opted not to appear before the Enquiry Officer. After taking into consideration the evidence and circumstances the Enquiry Officer came to the conclusion that charges levelled against all the accused are not proved. The Director General who otherwise would have been an appellate authority acted as disciplinary authority and he dis-agreed with the findings given by the Enquiry Officer. and a show cause notice was issued to the applicants, who filed representation against the same. It was thereafter theDirector General recorded more findings and came to the conclusion that the charges levelled against the applicants were proved. The applicant also filed departmental appeal against the same and the appellate authority dismissed the appeal assigning certain reasons.

4. In the case hearing take place, the learned counsel moved an application for amendment amending the pleas at this time for taking a ground that the initiation of the disciplinary proceedings by the Regional Director ESIC by issuing a memorandum of charge which is illegal and without jurisdiction and hence all subsequent proceedings were also illegal and void and in this connection placed reliance on the judgment delivered by the Banglore Bench of Central Administrative Tribunal in T. Abdul Raziq (2) P.K. Philip Versus Director General ESIC, New Delhi and others 1988 7ATC P. 14, in which it has been held that rule 16 (2) of the Regulation 12 (2) & 13 (1) and all subsidary orders purporting to sub delegate x disciplinary powers by the Director General are invalid and consequently the proceedings were invalid. As we are sending the matter to the disciplinary authority and this plea was not taken earlier, we have rejected the amendment application.

5. From the findings recorded by the Director General, we find that it has been recorded by the disciplinary authority

holding the applicant not to be dismissed and not to be touched by the Director General and disciplinary aythority also did not consider the pleas raised by the applicant. for example ~~xxxxxx~~ director General himself admitted ~~xxxxx~~ that statement of Kali Shanker was some-what conclusive and Kali Shanker did not offer himself for cross-examination and his statement before the officer was taken into account without giving an oppertunity to cross-examine ation, the same could not have been made a base of the finding.

6. We would not like to make a observations on merit, but let say that the matter be sent to the appellate authority which should take into consideration each and every ground taken by the applicant and the legal presumption against him side-by-side with the burden of proof in respect of certain matters.. It is for the applicant t amend the grounds ~~xxxxxxxxxx~~, in case the applicant raises the plea of jurisdiction ~~xxxxxxxxxx~~ , it will be open for the appellate authority to consider the said plea of jurisdiction. With these observations we quash the appellate order and direct the appellate authority to decide the appeal within a period of three months after giving the personal hearing to the applicants. As the pleas ~~xxxx~~ which have been taken by the other two applicants are identical, these applications are also allowed with the direction that their appeal shall also be heard and disposed of by the appellate authority within a period of three months after giving personal hearing to these applicants who will desire to take an additional ground regarding jurisdiction of the Regional Director to initiate proceedings the same will be considered by the appellate authority. No order as to the costs.

Sd-
Member (A)

Sd-
Vice Chairman.

Dt: Nov. 2, 1992.
(DPS)

pronounced
16/11/92