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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 1st March of 1995.

ORIGINAL APPLICATION NO. 551 OF 1987.

D.C. Jha, S/o Sri B.P. Jha,
R/o E-193 Patel Nagar-II,
Ghaziabad.

..... Applicant.

By Advocate Sri Arvind Kumar.

Versus

1. Secretary,

Department of Labour and Chairman,
Standing Committee, Employee's State Insurance
Corporation, Shram Shakti Bhawan, Rafi Marg,
New Delhi.

2. Director General,

Employee's State Insurance Corporation,
E.S.I.C. Building, Kotla Road,
New Delhi-110001.

3. Regional Director,

Employee's State Insurance Corporation,
E.S.I.C. Bhawan, Sarvodaya Bhawan,
Kanpur.

By Advocate Sri B.N. Asthana. Respondents.

WITH

ORIGINAL APPLICATION NO. 451 OF 1987.

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H.P. Asthana, Manager Gr. III,

S/o Sri D.N. Asthana,

Local Office, E.S.I. Corporation,

Churk, District-Mirzapur.

By Advocate Sri Arvind Kumar. Applicant.

Versus

1. Secretary,

Department of Labour and Chairman,

Standing Committee, Employee's State Insurance

Corporation, Shram Shakti Bhawan, Rafi Marg,

New Delhi.

2. Director General,

Employee's State Insurance Corporation,

E.S.I.C. Building, Kotla Road,

New Delhi-110002.

3. Regional Director,

Employee's State Insurance Corporation,

E.S.I.C. Bhawan, Sarvodaya Bhawan,

Kanpur.

By Advocate Sri B.N. Asthana.

..... Respondents.

CORAM: Hon'ble Mr. T.L. Verma, MEMBER (J)

Hon'ble Mr. K. Muthukumar, MEMBER (A)

ORDER (RESERVED)

By Hon'ble Mr. K. Muthukumar, MEMBER (A)

1. The facts and the reliefs claimed and the points of law being the same in both the above applications which were heard together, we dispose of the above applications by this common judgment.

2. The applicant is U.O.C in the Modi Nagar Office of the Regional Director, Employee's State Insurance Corporation (E.S.I.C.). On the basis of the chargesheet issued against him, (Annexure-I to the application) for the alleged loss caused to the Corporation by the wrong payment made by the applicant in three cases and misappropriation of funds by payment of less money to the insured persons and not having made payment exceeding Rs250/- in the presence of the Local Office Manager as provided in the office manual and on the basis of the inquiry / the above charges which held the charges as having been proved , the applicant was imposed the punishment of withholding of his next 3 increments in pay without cumulative effect by the order of the Disciplinary Authority annexed as Annexure-4 to the application. The 1st Appellate Authority namely the Director General of E.S.I.C. modified the punishment of the Appellate Authority to that of "Censure". The Chairman of the E.S.I.C. Standing Committee to whom the applicant had made a Second Appeal rejected his appeal by the order dated 15.2.1987 (Annexure-9, to the application) Aggrieved by this, the applicant has approached this Tribunal with a prayer for quashing the order passed by the Appellate Authorities namely the Director General of E.S.I.C and the Chairman of the E.S.I.C Standing Committee and to grant him all the consequential benefits, including the confirmation which was delayed because of the imposition of the penalty and promotion on the basis of such confirmation.

3. The grounds adduced by the applicant for quashing the appellate orders are that the alleged misappropriation was proved during the inquiry to be a blatant lie and that penalty imposed was arbitrary and capricious and was imposed without application of mind and also that penalty imposed was discriminatory as employees with similar lapses were let off with warning whereas he was imposed the penalty of "Censure".

4. The respondents in their averments brought out the following contentions. The main allegation was that the provision of para 3.46 of the Local Office Manual was completely overlooked by the applicant with a malafide intention, as it was mandatory under the above Manual Provision that amount of single payment exceeding Rs 250/- was to be made in the presence of Local Office Manager under remarks "paid in my presence." The respondents have further averred that the Local Office Manager was also chargesheeted for the same misconduct.

5. The respondents in their counter reply have particularly referred to the averments made in para 6(12) of the application, wherein the applicant had pleaded that the payment of above Rs 250/- was not necessarily to be made before the Local Office Manager which led to the conclusion that it was not made before the Local Office Manager. They have also averred

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that had the payment been made before the Manager and the remark could have been omitted by the Manager, the Cashier would have certainly insisted upon him to note this remark.

6. We have heard the learned counsel for the parties and perused the record.

7. The counsel for the applicant strenuously argued that in accordance with the provisions of 3.46 of the Manual, the requirement was that the payment "could" (emphasis added) be made in the presence of the Local Office Manager. The learned counsel argued that the word "could" gives the option for making such payment in the presence of the Local Office Manager, whereas it is a responsibility of the Local Office Manager to write on the payment docket "paid in my presence" under his dated signature and, therefore, the requirement as far as the applicant is concerned, is not mandatory. The para 3.46 of the Office Manual is reproduced below:-

"p.3.46, In all cases where the amount of benefit on a single payment exceed Rs 250/- the payment could be made in the presence of Local Office Manager, so that the Manager may be fully satisfied about the correct identity of the payee. The Local Office Manager should in that case write on the payment docket "paid in my presence" under his dated signature. In case of payment at Pay Office, the cashier may make the payment exceeding an amount of Rs 250/- in the presence of Factory Labour Officer or other managerial office who may record the words on the payment docket "paid in my presence" over his signatures and designation.

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8. We are unable to appreciate the contention of the learned counsel. The above provisions of this Manual is intended to serve the purpose of making payment to the bonafide beneficiary after proper identification. Where such payment is made in his presence, Manager has to satisfy himself about the correct identity of the payee. Therefore, the payment has necessarily to be made in the presence of the Office Manager, who also has to endorse the payment in the manner provided in this paragraph. It is not as though the person makes such payment and it is for the Manager to make such endorsement on his own. By harmonious reading of this provision, it is clear that the payment has necessarily to be made in the presence of the Local Manager and the person who makes the payment can not simply take advantage that he could make the payment and it is for the Office Manager to make an endorsement. By using the word "could" for making the payment followed by the obligation of the Local Office Manager that he "should" endorse the payment, this provision does not purport to provide for an enabling provision even without the Local Manager endorsing the payment in the manner provided. It is inherent in this provision that there is a joint responsibility for the person making the payment and the Local Office Manager in whose presence the payment is made.

It is not as though, a person could make payment on his own and leave it to the Office Manager to make an endorsement. Therefore, the contention of the learned counsel is not tenable. The learned counsel for the applicant then argued on the question of the delayed confirmation and denial of promotion based on such confirmation and he relied on the decision in *Shiv Kumar Sharma Versus Hariyana State Electricity Board Chandigarh and others* (1988) 8 ATC 792. In the case covered by the above decision, the Appellant had satisfactorily completed his period of probation and yet he was placed below his juniors in the seniority list without any rhyme or reason and there was no material on record to show when the posts had fallen vacant. It was, therefore, held that the Board did not care to take up the question of confirmation for the reasons best known to it and had acted arbitrarily by making the Appellant junior to the respondents who were admittedly juniors to the Appellant. It was also held that the Appellant should have been confirmed on the date he had completed and two years of his probationary period; it was not extended and there was no guideline for confirmation. In the present case, however, it is seen from the averments made by the respondents, that no D.P.C was held in 1984 for confirmation and in the D.P.C held in October 1983, which examined the pending case of the applicant, and sealed cover of the

D.P.C proceedings dated 19.10.1981 and D.P.C rejected the case of the confirmation of the applicant from 1977 in the grade of U.D.C on account of the imposition of the penalty of "withholding of 3 increments" imposed on him by the Disciplinary Authority's Order dated 15.9.1983 on which ground his case for confirmation was kept pending in the D.P.C meeting held on 19.10.1981.

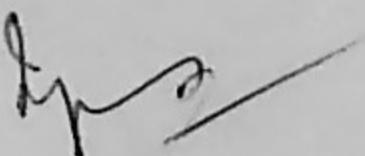
The respondents ~~have~~ further averred that in terms of Ministry of Home Affairs Instructions in the O . M. dated 16.2.1979, the case of concerned employees against whom the departmental proceedings ended with imposition of the minor penalty, the recommendation of the D.P.C in favour of employee kept in the sealed cover will not be given effect to and his promotion / confirmation may be considered by the next D.P.C which meets after the conclusion of the departmental proceedings.

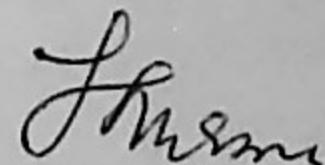
9. In view of this matter, we find that the facts and the decision cited by the learned counsel for the applicant are not quite relevant, as in that case there were no guide lines for confirmation and there was no material on record to show why the confirmation was delayed, whereas in the instant case, the procedure followed was on the basis of the recommendation of the D.P.C and also in the light of the provisions of the O.M. of the Ministry of Home Affairs. These averments have also not been denied by the applicant in the Rejoinder Affidavit. In Disciplinary matters the Tribunal does not sit as a Court of Appeal and we find that the Disciplinary Proceedings were not vitiated in any manner and, therefore, there is no

ground to interfere with the orders of the Disciplinary Authority and the Appellate Authority.

10. The learned counsel referred to another decision contained in U.S. Pandey Versus Chairman E.S.I.C. decided in O.A. no. 507 of 1988 by the Allahabad Bench of the Tribunal. In that case, the Tribunal quashed the punishment and, therefore, in view of that fact, it was directed that the applicant should be confirmed in accordance with the recommendation of the D.P.C. This case is also not relevant here, as in ~~this~~ ^{present} case, the D.P.C has specifically rejected the case of confirmation of the applicant in the grade of U.D.C and we have not interfered with the order of punishment imposed by the Disciplinary Authority.

11. In the light of the above discussions, we find that the applications have no merit and are accordingly dismissed. No order as to costs.


MEMBER (A)


MEMBER (J)

ALLAHABAD: DATED: 1-3-1995
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