

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH  
ALLAHABAD

DATED THE 29<sup>th</sup> DAY OF MAY 1997

CORAM : HON'BLE DR. R.K.SAKENA, J.M.  
HON'BLE MR. D.S.BAWEJA, A.M.

TRANSFER APPLICATION NO. 14 OF 1988

B.N.Singh S/o late Shri Shiv Chandra  
Singh, R/o 477/6, Shastri Nagar, Kanpur.  
.... Applicant

C/A Applicant in person.

Versus

1. The Regional Director, Employees State  
Insurance Corporation, E.S.I.Bhawan,  
Sarvodaya Nagar, Kanpur.
2. The Director General, Employees State  
Insurance Corporation, E.S.I. Building,  
Kotla Road, New Delhi.  
.... Respondents

C/R Shri B.N.Asthana, Advocate.

And

ORIGINAL APPLICATION NO.965 OF 1989

B.N.Singh son of late Shiv Chand Singh  
age 54 years, R/o 477/6, Shastri Nagar,  
Kanpur. Employed in Employees' State  
Insurance Corporation, Regional Office,  
Kanpur. ... Applicant

Versus

Employees' State Insurance Corporation  
through its Regional Director, Regional  
Office, Panchdeep Bhawan, Sarvodaya Nagar,  
Kanpur. ... Respondents

C/R Shri B.N.Asthana, Advocate.

JUDGMENT

BY HON'BLE DR. R.K. SAXENA, J.M.-

These two cases have been instituted by the applicant Shri B.N. Singh challenging the order of penalty imposed on him and inaction of the respondents for having ~~not~~<sup>not</sup> given promotion and seniority after the period of penalty was over.

2. The facts giving rise to these cases are that the applicant was working under the respondent no. 1 Regional Director, Employees State Insurance Corporation, Sarvoday Nagar, Kannur in 1979 and 1980. It is stated that during the period starting from 29th October 1979 to November 1979, the applicant though posted at Gumti No. 5 Local Office, visited Ashok Nagar office on 29.10.1979, 30.10.1979, 8.11.1979, 11.11.1979 15.11.1979 and 18.11.1979 unauthorisedly and attended the work pertaining to said local office of Ashok Nagar, Employees State Insurance Corporation for which he was not at all authorised. Not only this, he also prepared the insurance claims of several persons in whom he was interested. The list of such persons and the amount of benefit claimed by those persons, is given in the annexure-2 attached with the memorandum of charges. It appears that the applicant was issued a memo to explain as to why he had gone to Ashok Nagar office and did work there unauthorisedly but no explanation was given. Therefore, he was served with the charge-sheet annexure-3. The applicant

appears to have denied the allegations and therefore proceeded the enquiry. The applicant contends that the copies of the documents which were relied upon by the department, were demanded and inspection thereof was also sought but it was not allowed. He also challenged the appointment of Shri P.S. Sharma as Enquiry Officer but it was rejected. He preferred an appeal against rejection of the prayer of the enquiry officer but that remained pending. It is averred by the applicant that the enquiry officer proceeded ex parte and on conclusion of the enquiry, the report was submitted to the Regional Director who gave the punishment of ~~censure~~. The Director General was not satisfied with this punishment and, therefore, a notice was issued to the applicant to show cause as to why the penalty should not be enhanced and the applicant should not be reverted to the lower grade for a period of five years. In the meantime, the Union had espoused a case before the Conciliation Officer and on failure of talk, the matter was referred to the Government of India which in its turn referred the case to the Industrial Tribunal. The case remained pending but neither the applicant nor the union took any step in the matter and, therefore, the case was dismissed without any award. It appears that the applicant did not submit any reply to the notice about the enhancement of the punishment and accordingly, the Director General passed the order on 12.3.1983 whereby the applicant was reduced to the post of Lower Division Clerk in the time-scale of pay of Rs.260 - 400 for a period of 5 years, and for such time until he was found fit by the competent authority

after the period of 5 years. It was further ordered that he would be restored to the higher post of Upper Division Clerk without regaining the original seniority in the cadre of Upper Division Clerk. Feeling aggrieved by the said order, he approached the High Court in Civil Misc. Writ Petition No. 6639 of 1983. The prayer made in the writ petition was that the respondents be commanded to bring ~~an~~ record of the <sup>2</sup> case relating to the orders dated 8.1.1982 and 12.3.1983. It was also prayed that those orders be quashed and the petitioner be allowed to draw the same salary which he was drawing prior to the orders of punishment were passed. It appears that the matter remained pending before the High Court and pleadings were exchanged but after the Tribunal came into existence, this matter was transferred and was received here in the year 1988. It was allotted T.A.No.14 of 1988. This matter was dismissed for default on 20th July 1990 but was restored vide order dated 19.8.1992. The respondents have filed another counter-affidavit here on 29.11.1996. The applicant did not file any rejoinder to the said counter affidavit.

3. The applicant also filed Original Application No. 965 of 1989 with the prayer that the directions be given to the respondents for restoring the applicant on the post of cashier with effect from 12.3.1988 and to restore the salary and seniority from the said date of 12.3.1988. The respondents contended that the applicant was not entitled to the relief because he was to get salary only after he was found fit by the competent authority. It is averred that the

Departmental Promotion Committee recommended the case of the applicant for promotion on 29.8.1988 and, therefore, he was given promotion and accordingly was fixed the salary with effect from that date which was subsequently changed to 12.3.1988. The applicant filed rejoinder reiterating the facts of the Original Application and dealing mainly with the grounds of attack about the penalty imposed on the applicant.

4. It may be mentioned that the applicant or his counsel had appeared last on 9.4.1996. Since then the adjournment was sought on some dates and the applicant appeared in person on 29.11.1996. Thereafter the applicant and the counsel both failed to appear. The notice was ordered to be given to the applicant on 23.12.1996 and it was sent to the applicant on 27.12.1996 but he failed to appear on 25.2.1997, 19.3.1997 and 23.4.1997.

5. The pleadings do disclose that the applicant was found working in a different office unauthorisedly and for that reason he was issued charge-sheet. The learned counsel for the respondents has also stated that regulation 13 empowers the Director-General to authorise any authority under him to serve a charge-sheet and to hold enquiry. Such an authority is further authorised to award a penalty as well. This fact has not been disputed on behalf of the applicant. Thus the ground taken by the applicant that Regional-Director was not competent to issue charge-sheet to initiate disciplinary proceedings and award minor penalty, is not substantiated.

5. The applicant has come forward in the petition that he had demanded the copies of certain documents and inspection thereof but the same was denied. The counter-reply which has been filed on behalf of the respondents clearly points out that the applicant was given an opportunity to inspect the documents but he did not avail of ~~that~~. The applicant did not file any rejoinder to controvert the said contention of the respondents. Besides, it has not been pointed out as to what those documents were and if the applicant was really prejudiced for having not inspected them on his own accord. Unless it is established that those documents were the basis of the disciplinary enquiry and basic in nature, the prejudice cannot be presumed. It may be mentioned that the applications which were moved by the applicant <sup>for</sup> having copies of those documents and about inspecting the same, have not been brought on record on the ground that they were not necessary. If the applicant finds that those applications were not necessary to be brought on record and to be considered by the Tribunal or the Court, it would be difficult to deduce any inference about prejudice to the applicant. Thus the ground taken of non-supply of copies of the documents and their inspection, is of no avail.

6. The applicant has further contended that he wanted the change <sup>of</sup> the inquiry officer and he had given any right but the same was rejected and the appeal was not considered. We are not convinced that this plea for the simple reason that a change in

enquiry officer, cannot be ordered if it is based on whims of the delinquent employee. There must be solid grounds to indicate unfailingly that the enquiry officer had prejudices against the delinquent employee; and justice cannot be presumed at his hands. No such assertion has been made against the said enquiry officer. Thus the mere contention that the enquiry officer was not changed, is not sufficient to conclude that fair enquiry was not done.

7. It appears from the pleadings of the applicant himself as well as taken in the counter-affidavit that several opportunities were given to the applicant to appear in the enquiry but he did not participate and that too for <sup>2</sup> no valid reason. The applicant himself admitted in para 16 of the petition that he had written to the enquiry officer that he would not be appearing in the proceedings pending decision of the Director-General on his appeal about the change of enquiry officer. We have already considered the ground about the change of enquiry officer and we did not find any substance therein. If the applicant was so obstinate as not to appear before the enquiry officer, it was his own choosing. We do not find any illegality if the enquiry officer proceeded ex parte against the applicant because his non-appearance was deliberate. He did not cooperate with the enquiry officer by <sup>not</sup> appearing before him and for this action of the applicant no blame can be thrown either on the enquiry officer or <sup>or</sup> the disciplinary authority. Thus we do not find any merit in this ground also.

8. There is no averment if any illegality or violation of principles of natural justice, was found in the ~~procedure~~ <sup>process</sup> of the enquiry and of the order of punishment. Thus the holding of enquiry and the award of punishment did not suffer from any procedural defect or illegality. It has been, no doubt, averred in the petition that the Regional Director was not competent and the punishment could not be awarded by him. This aspect has been considered by us and decided. Even if it is assumed for the sake of argument that Regional Director had no authority of awarding the punishment, we find in this case that the punishment which is existing was actually passed by the Director General. The applicant could nowhere challenge the competency of the Director General to pass the order of punishment. In this connection, it is also mentioned that previously ~~only~~ <sup>only</sup> ~~one~~ <sup>one</sup> penalty was imposed but subsequently the Director-General reverted him to the lower grade of Lower Division Clerk for a period of 5 years. The authority of the Director General cannot be challenged. Shri B.N.Asthana, learned counsel for the respondents has vehemently contended that the Director-General has got all the powers to award any punishment. Thus we do not find any defect or illegality in the punishment of lowering the applicant to the post of Lower Division Clerk for a period of 5 years, being awarded. In any case, the T.A. No. 14 of 1988 <sup>2</sup> lacks merits.

9. Now we take up Original Application No. 965 of 1989 in which the relief sought is that after the punishment period was over, the applicant should have

been restored to the same post, salary and seniority. In order to decide these points, it is necessary to go through the order which was actually passed. We may quote the operative para of the order which reads as under:-

" I Harmender Singh, Director General, Employees State Insurance Corporation, New Delhi, therefore, hereby impose on the said Shri B.N.Singh, Upper Division Clerk (Cashier) Employees State Insurance Corporation, U.P. Region, Kanpur the penalty of reduction to the lower post of Lower Division Clerk in the Time Scale of Pay of Rs.260 - 400 for a period 5 years until he is found fit by the competent authority after the period of five years - from the date of the order, to be restored to the higher post of Upper Division Clerk without regarding the original seniority in the cadre of Upper Division Clerk."

(J)

The perusal of the order indicates that restoration of post and salary was not automatic after the period of 5 years. It was mentioned that the competent authority should find the applicant fit and only then the higher post of Upper Division Clerk shall be restored. Despite the restoration of higher post of Upper Division Clerk, he shall not get seniority because its indication was clearly given.

10. We find from the counter affidavit filed on behalf of the respondents that after the period of punishment was over, the matter was considered by the Departmental Promotion Committee and his name was

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recommended for promotion. Keeping in view the order of punishment, he was given promotional post with effect from 12.3.1988. The salary of the applicant was accordingly fixed. Thus we do not find any ground to interfere with the order which is passed in the matter.

11. Having considered the facts and circumstances of the ~~case of the~~ two cases, we come to the conclusion that there is no merit in either of them. They, therefore, stand dismissed. No order as to cost.

D. B. Hegde  
MEMBER (A)

Surbhi  
MEMBER (J)

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