

Reserved

**Central Administrative Tribunal
Allahabad Bench, Allahabad**

Original Application No. 1369 of 2000

Allahabad, this the 29th day of May, 2009

Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

Sri Ram Shanker Singh
3-G/S, Shivpuri,
Allahabad.

Applicant

By Advocate: Sri S.S. Sharma

Vs.

1. Union of India through Employees Staff Insurance Corporation through its Chairman, Standing Committee, Shram Shankti Bhawan, New Delhi.
2. Director General, Employee Staff Insurance Corporation, Panchdeep Bhawan, Kotla Road, New Delhi.
3. Deputy Director Vigilance (E.S.I.) Corporation, Panchdeep Bhawan, Kotla Road, New Delhi.
4. Additional Commissioner (P.N.A.) Employee Staff Insurance Corporation, Panch Deep Bhawan, Kotla Road, New Delhi.
5. Regional Director, Employee Staff Insurance Corporation, U.P. Region, Sarvadaya Nagar, Kanpur.
6. Mr. Jose Cherian, Inquiry Officer/Joint Director (DE) NZ) E.S.I. Corporation, U.P. Region, Sarvodaya Nagar, Kanpur.

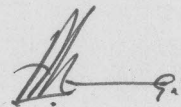
Respondents

By Advocate: Sri P.K. Pandey

ORDER

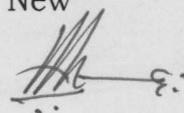
By Ashok S. Karamadi, Member (J)

The present O.A. has been filed by the applicant challenging the enquiry report dated 14.08.1996, submitted by respondent No. 6; the order of compulsory retirement dated 04.12.1996 passed by respondent No.5/Disciplinary Authority; the order of rejection of Appeal of the applicant dated 20.05.1998 passed by respondent No.



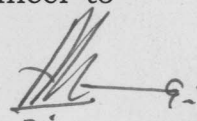
4; and the communication letter/order dated 22.06.2000 whereby rejection of revision of the applicant by Director General (Vigilance)/ Respondent No. 3 has been informed to the applicant, consequently affirming the impugned order of compulsory retirement of the applicant.

2. The short facts giving rise to filing of present O.A. are that the applicant was appointed as Lower Division Clerk in Employees' State Insurance Corporation, Bombay, by the Director General/respondent No. 2 on 02.03.1965. In due course, the applicant was given promotions. Lastly the applicant was promoted as Manager Grade III in the Office of department at Raebareli. It is stated by the applicant that under his authority, who was working as Manager of Mini Local Office, Raebareli, a vigilance inspection/investigation was conducted from 18.05.1987 to 21.05.1987, and on 28.05.1987 the Vigilance Committee submitted its report to the respondent No. 5. The report simply pointed out non-completion of records while making payment to insured persons on 18.05.1987. Consequently, memorandum of charges for major penalty were served on the applicant by the Regional Director, ESIC Kanpur/Disciplinary Authority on the basis of Vigilance Report dated 28.05.1987, after a period of about 4 years. The Disciplinary Authority, with malafide intention, enlarged the charges framing a separate charge on every paper formality which could not be completed due to seizer of records by the vigilance department on 18.05.1987 during disbursement of payment to insured persons. On 07.07.1992, Respondent No. 5, appointed respondent No. 6 as Enquiry Officer in the case, after a period of 17 months. Charges were to be proved by 120 documents and no list of prosecution witness was attached with the charge sheet (annexure-1). The Enquiry Officer/respondent No. 6 submitted its report to respondent No. 5/Disciplinary Authority on 14.08.1996 after a period of 5 years and 6 months. The applicant submitted his reply, disputing correctness and genuineness of findings as based on no evidence and in violation of principles of natural justice. On 04.12.1996, the Disciplinary Authority imposed penalty of 'Compulsory Retirement on the applicant, retiring him before 8 years and 10 months of his retirement i.e. on 31.10.2005. Aggrieved with the order of Disciplinary Authority, the applicant made an Appeal on 16.12.1996 to the respondent No. 2/Director General, ESIC, New



Delhi. Though the applicant made appeal to the respondent No. 2 but it was illegally rejected by respondent No. 4 on 20.05.1998, after a period of one year and five months without considering any of the facts and grounds in appeal. On 20.11.1998, the applicant made a Revision Petition to respondent No. 1/Chairman, Standing Committee, ESIC, New Delhi. The applicant was informed by the Deputy Director Vigilance, New Delhi vide letter dated 03.01.2000 that he has wrongly made Revision Petition to the respondent No. 1, and accordingly applicant made his Revision Petition to the Director General, as advised to him. By the letter-dated 22.06.2000, the applicant was informed by the Deputy Director Vigilance, ESIC, New Delhi that his case was placed before the Director General, who has rejected the same as time barred. Aggrieved by the aforesaid orders passed by different respondents' authorities, the applicant has filed the present O.A. seeking to quash the aforesaid orders.

3. On notice, the respondents have filed the counter affidavit. It is stated in the C.A. that the Disciplinary Authority passed the orders of compulsory retirement of the applicant on 04.12.1996, and the appeal preferred against the said order was rejected/denied by the Appellate Authority vide order dated 20.05.1998. Hence respondents have a case that the present O.A., which was filed in the year 2000, is time barred, and deserves to be dismissed. It is stated by the respondents that as a matter of fact Sri T.N. Sharma, the Assistant Regional Director (Vigilance), North Region, Employees State Insurance Corporation, New Delhi made a surprise visit to the E.S.I. Local Office at Rai Bareilly on 18.05.1997 to 21.05.1997 and found several serious irregularities on the part of the applicant. As such, he seized some documents i.e. payment vouchers and other records, and submitted the same to the Regional Director, Employees State Insurance Corporation, Regional Office, Kanpur along with his investigation report/observations dated 28.05.1997 and report dated 03.07.1987. Thereafter the investigation report and other documents were examined at Regional Office and it was found that the applicant has committed grave misconduct for which a major penalty charge sheet was served on him vide charge memo dated 06.02.1991. As a matter of facts on very first day, on 12.08.1992, when preliminary hearing was held, the applicant was advised by the Inquiry Officer to

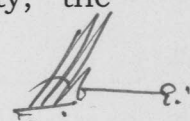


submit the list of additional documents and the list of witnesses latest by 20.08.1992 to refute the charges leveled against him which is evident from order sheet dated 12.08.1992, but the applicant failed to do so. The inquiry has been conducted in accordance with law for the charges leveled against the applicant wherein all the 8 charges have been held proved by Inquiry Officer on the basis of evidence adduced by the prosecution and records available which is evident from inquiry report dated 14.08.1996. The disciplinary authority, while deciding the case, has gone through the charge sheet, inquiry report submitted by the Investigating Officer, representation submitted by the applicant and all the relevant case papers carefully and found that all the charges leveled against the applicant are proved which is evident from the order dated 04.12.1996. It is further stated by the respondents that before passing order, the Disciplinary Authority had provided the copy of inquiry report to the applicant with advice to submit his representation, if any, on which the applicant had submitted reply vide his letter dated 03.09.1996. The Appellate Authority has rejected the appeal of the applicant vide order dated 20.05.1998. In view of these facts, the respondents have sought for dismissal of the O.A.

4. We have heard the learned counsel for the parties and perused the pleadings and materials on record.

5. The learned counsel for the applicant argued that the penalty order is not passed by the competent authority; the disciplinary proceedings are not conducted by the competent authority and the charges framed against the applicant do not constitute misconduct under law. No opportunity to cross-examine the prosecuting witnesses was given, and abnormal delay vitiates the disciplinary proceedings. The case is one of no evidence, direct interference of vigilance department, and the punishment imposed is disproportionate to the gravity of the charges leveled against the applicant. The learned counsel for the respondents denying all the contentions of the applicant prays for dismissal of the O.A.

6. As contended by the learned counsel for the applicant that the penalty order is not passed by the competent authority, the



respondents have stated in the counter affidavit dated 20.10.2003 that the appointing authority or the disciplinary authority can be specified by general or special orders of the Director General. The document annexure CA-2 to the counter affidavit reveals that the Regional Director has been empowered to impose minor/major penalty in respect of all the remaining Group 'C' and 'D' staff. Further it is stated that the applicant admittedly is a Group 'C' staff so the Regional Director has rightly imposed the punishment of compulsory retirement, which is within his jurisdiction/competency. This is further clear from the statement made by the respondents in para-11 of the counter affidavit, in which it is stated that as per the Regulation No. 4 of Employees State Insurance Corporation (Staff and Conditions of Services) Regulation, 1959, as amended, the said Regulation made by E.S.I. Corporation with the approval of Central Government, Director General is the appointing authority but it has also been provided there that the Standing Committee of the Director General may, by general or special order delegate to any other authority or officer of the Corporation powers to make appointment to any post or class of the post other than post in class I and class II by virtue of 5th Schedule of the Regulation, the Regional Director is the appointing authority in this case, and as such the contention of the applicant cannot be accepted. With regard to other contentions of the applicant particularly that the applicant has not committed any misconduct, on perusal of the inquiry report para-5.7, which reads as follows: -

"5.7 At this juncture it is worthwhile to extract the relevant portion of the deposition of PW Sh. T.N. Sharma on whose testimony the prosecution case on this Investigation Report dt. 3.7.87, marked Ex.s. 50 wherein he has interalia stated as follows "The Manager Sh. R.S. Singh Manager Gr. III was asked to let us know as to how many payment had so far been made to the IPs. He called for the dockets from the claim clerk and by counting them he told that about 20 payments have been made, The manager was asked as to who is making the payment. He told that the claim clerk has been given the cash by the manager i.e. by him and he is preparing the claims and making the payment. The manager was asked as to how much amount he has passed for disbursement of benefits to Sh. I.V. Singh LDC. To this he reiterated that he had not counted the amount but given the same to the LDC. The dockets were perused. It was found that on the dockets there were no pay orders of the manager and on some dockets no particulars have been filed excepting the name of the I.P. and the Insurance No. and the initials of the claim clerk and the signature of the I.P. obtained.



The manager was told that the dockets for the payment made may be kept with him and the payment should continue. The payment in the local office continued up to 5.00 p.m. and the claim clerk was doing all the activities of preparation of claim and making from prepage: -

Payment to the IPs. No schedule sheet was being prepared by the claim clerk. When the payments had been disbursed the manager was asked to reconcile the cash with the book balance vis-à-vis the amount lying in the chest with reference to the payments made on the day. It was found that there was a shortage of Rs.50/-. The claim clerk Sh. I.V. Singh asked the manager to make good the arrange of Rs.50/-. The manager told that he has no amount in his pocket today and he will do it tomorrow.

The dockets were seized in no. 49 with the enclosures for the payment made. Details of these dockets were noted by the manager on a sheet of paper.

From the dockets placed below from voucher No. 1 to 49 alongwith the letter from the manager at Annexure a the following position comes out: -

- a) For Voucher 1 to 21 enclosed with annexure a the manager has made confession that the dockets were prepared by the claim clerk signatures of the IPs obtained entries made also in the ledger but his pay order thereon is not contained (except in case of V-oucher no. 20) nor in the ledger sheet of the IPs he has passed the claims.
- b) For vouchers running from no. 22 to 49 the manager has confessed in his letter at annexure a that the dockets indicate only the insurance no./name of the I.P. and his initials with date without entries in the ledger. No details of no. of days and the amount which has been paid in contained on these vouchers.
- c) The schedule sheet will be prepared when all the entries of the dockets in the ledger have been made.

The above position would indicate a very serious irregularity rather misconduct on the part of the manager in the discharge of his duties in view of the fact that the manager Gr. III is himself responsible to check and pass the claims kept the cash with him and disburses the payment of benefit to the IPs himself.

From prepage: -

The manager was very much perplexed and disturbed and lost when the dockets were seize and I alongwith I.I. left the L.O. at about 7.00 p.m. We waited about hundred yards from the L.O. to see whether the manager leaves the office immediately or not. It was found that he left the office after 10 minutes we left the L.O. premises. It so appears that the manager did not take any pains to complete the cash book prepare the schedule sheet and the DCR report. Further, Sh. T.N. Sharma PW also confirmed the genuineness of Ex. S. 51 which is a D.O. letter addressed by him to the then R.D. Kanpur elucidating the various irregularities detected by him during his inspection of Mini L.O. Rai Bareilli of which the C.O. was the manager. In Ex.S. 51 it is stated 'I have been on vigilance

inspection/investigation duties at Raibereilli from 18.5.87 to 21.5.87. During the course of inspection of Mini-local office functioning under the charge of Sh. R.S. Singh Manager it was a surprise to me that the Lower Division Clerk Sh. I.V. Singh was having the cash in his drawer for disbursement of benefit to the Insured persons also preparing the claim and making the payments to the Insured persons against their signatures without the pay order of the manager. Such dockets have been seized by me. The manager was questioned as to how much amount of cash he has passed on to the lower Division Clerk he could not reply over this and I saw he has no account.

I have also seized some other dockets where only insured persons signatures and the initials of the lower Division clerk find placed without any details incorporated on the docket and such dockets also do not bear the pay orders of the manager and also further such dockets have not been entered in the relevant ledger sheets of the IPs.

The above situation I could find on 18.5.87 alongwith I.I. (V) who was also with me during the course of inspection. No schedule sheet, no daily accounts, no cash book accounts no. 2 appears to have been written by the manager before the under signed and the I.I. (V) till we left the local office premises at about 7.00 p.m.

From prepage: -

The manager Sh. R.S. Singh also has confessed the above situation in his letter of 18.5.87 which is in my custody.

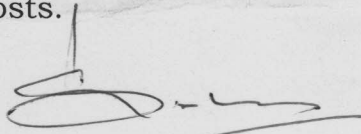
To my mind and in my approach the manager is avoiding the discharge of his duties in the right earnest showing lack of devotion to duties together acting in a manager unbecoming of a public servant."

From the above it is clear that the contention of the applicant is not acceptable and further sufficient opportunity was given to the applicant to cross-examine, as he has failed in each and every hearing either he or his Defence Assistant remained absent on one pretext or the other. In view of the detailed report, and also as observed by the Appellate Authority, with regard to the contentions taken by the applicant, the appellate authority has applied its mind with regard to the contentions taken by the applicant, has come to the conclusion that the inquiry report submitted does not suffers from any illegality or irregularity and accepted the same by the competent authority, and passed the order based on the same, the Appellate Authority after reconsideration of case affirmed the said order. On perusal of the inquiry report and Appellate Authority's order, we are of the considered view that all the contentions taken by the applicant are considered by the Appellate Authority and as such the contentions of the applicant are not sustainable in law, and

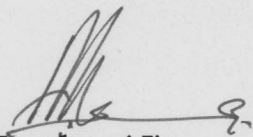


devoid of merits. The charges framed against the applicant, are proved on the basis of materials adduced in support of the charges framed, and on the basis of documents in the full fledged inquiry held against the applicant. As the findings recorded and the reasons given by the Appellate Authority in its order in the instant case, we do not find any perversity in the order, and therefore, the contentions of the applicant cannot be accepted. The learned counsel for the applicant has placed reliance on the decisions pertaining to misconduct, natural justice, the scope of judicial review with regard to departmental inquiry, and inquiry procedure. All the Judgments relied upon by the learned counsel for the applicant, we have no grievance so far as the proportion of law laid down, keeping in view the proportion of law laid down, we are of the considered opinion that the facts and circumstances of the decisions relied upon by the applicant are not applicable to the facts of the present case and, as such, the impugned orders passed by the respondents do not call for any interference.

7. In view of the foregoing reasons, this O.A. is dismissed. No order as to costs.



Member (A)



Member (J)

/M.M/