

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 26 DAY OF 2 2010)

**Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)**

Original Application No.367 of 2000

(U/S 19, Administrative Tribunal Act, 1985)

Indra Vijay Singh a/a 45 years, Son of Sri Badri Singh Resident of Krishna Behari Nagar Nai Basti, Verma Chauraha, Fatehpur.

..... *Applicant*

Present for Applicant : **Shri Shayamal Narain**

Versus

1. Union of India through Employee State Insurance Corporation New Delhi, through its Director General.
2. The Director General, Employees State Insurance Corporation, Panchdeep Bhavan Kotla Road, New Delhi-2.
3. The Addl. Commissioner (P&A) Employees State Insurance Corporation, Panchdeep Bhavan Kotla Road, New Delhi.
4. The Regional Director, Employees State Insurance Corporation, Sarvodayanagar Kanpur.

..... *Respondents*

Present for Respondents: **Shri P.K. Pandey**

O R D E R

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

Through this O.A., the applicant has claimed following main relief/s:-

- (a) to issue certiorari quashing the impugned orders dated 23.04.1999 (Annexure A-1 to Compilation-I) and the order dated 14.09.1999 as communicated vide letter dated 14.10.1999 (Annexure A-2 to Compilation-I).

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(b) *to issue mandamus directing the respondents to give all consequential benefits to the applicant.*

2. The brief facts of the case are that the applicant was initially appointed on the post of Lower Division Clerk in Employees State Insurance Corporation, Regional Office, Kanpur and subsequently he was posted at different places and his last posting was at Fatehpur and is holding the said post till date. It is submitted by the learned counsel for the applicant that when the applicant was posted in Rae-bareli, a Vigilance Inquiry was conducted by one Sri T.N. Sharma, A.R.T. Vigilance on 03.07.1987, in which it is alleged that the applicant while posted as Lower Division Clerk in the Local Office, Rae-Bareli, violated the instructions and procedure and in pursuance thereof statement of the applicant was taken on 08.02.1988, wherein the applicant gave his explanation demonstrating the circumstances that at the relevant time there was lock out and strike in one of the Textile Mill and there were only three officials including the applicant in the office of respondents. The Manager of the said local Office was seriously ill. The applicant and the peon of the said Office handled the whole situation, wherein more than 2500 employees came with medical certificates for obtaining benefit payments from the aforesaid office. The applicant faced with the situation, had to perform double duties inasmuch as besides being Claim Clerk he was forced to do the work of payment, which was not contemplated in his duty, which mistake resulted in some deviation from the instructions and working procedure (Annexure A-3). On 06.02.1991 the Regional Director, Respondent No.4 acting as

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Disciplinary authority served a chargesheet upon the applicant, wherein six charges were levelled against the applicant and it was specifically stated therein that the applicant has committed misconduct which exhibited lack of integrity and lack of devotion to duty and conduct unbecoming of an employee of the Corporation. Vide letter dated 20.02.1991 the applicant after receipt of the chargesheet dated 06.02.1991 filed his reply refuting all the charges as alleged in the chargesheet. After receipt of the reply submitted by the applicant to the chargesheet, the respondent no.4 vide its letter dated 23.10.1991 ordered for regular departmental inquiry into the charges leveled against the applicant. In pursuance of the letter dated 23.10.1991 Sri R.K. Shukla, D.R.D. Kanpur was appointed as Enquiry Officer and Sri T.C. Khurana was appointed as Presenting Officer, who held the aforesaid charge till 30.11.1994. Subsequently, on 24.11.1994 Sri T.C. Khurana was replaced and in his place Sri R.K. Srivastava was appointed as presenting officer and on 07.07.1992 Sri Josecherian was appointed as a new Enquiry Officer, who conducted the whole inquiry. Vide letter dated 09.09.1992 the applicant demanded some documents from the Enquiry Officer but no heed was paid on the request of the applicant by the Enquiry Officer and started inquiry proceeding.

3. Learned counsel for the applicant also submitted that enquiry/hearing commenced on 12.08.1992 and was concluded on 10.01.1996. The applicant at every point of time requested the Enquiry Officer to supply him necessary documents which were necessary for

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facing inquiry and he repeatedly asked the Enquiry Officer as well as Presenting Officer to produce Sri T.N. Sharma, Prosecution witness 'T' and Sri Dhani Ram Gupta, Prosecution witness 'II' but they were neither called for examination in presence of applicant nor the applicant was afforded reasonable opportunity to cross examine them. On 21.12.1994 the statement of Sri T.N. Sharma and Sri Dhani Ram Gupta was recorded. However, it is pertinent to mention here that on 21.12.1994 the applicant as well as his defence Assistant were absent and the Enquiry Officer without considering the said fact that Examination-in-Chief of the above two prosecution witnesses was being taken in absence of the applicant which was totally impermissible. Further at no point of time besides the request of the applicant by means of various documents for cross examination of Sri T.N. Sharma as well as Sri Dhani Ram Gupta, they were not produced before the applicant and hence the applicant was denied opportunity to cross examine them (Annexure A-8), the statement of applicant was also recorded on 10.01.1996 (Annexure A-9).

4. It is submitted by the learned counsel for the applicant that the inquiry concluded on 10.01.1996 without cross examination of PW 'T', Sri T.N. Sharma and Sri Dhani Ram Gupta and subsequently on 05.02.1996 written brief was filed by the Presenting Officer. The applicant vide his letter dated 27.02.1996 submitted his written defence, wherein he categorically stated that in spite of his repeated requests before the Enquiry Officer neither Sri T.N. Sharma nor Sri

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Dhani Ram Gupta, were called for cross examination and hence in these circumstances admittedly the evidence adduced by the said two Prosecution witnesses are totally inadmissible in law. The applicant also pointed out that various discrepancies were committed by the Enquiry Officer in the inquiry proceeding, which in fact resulted in violation of principles of natural justice. Learned counsel for the applicant submitted that the Enquiry Officer vide its inquiry report dated 14.08.1996 illegally approved all the six charges levelled against the applicant and recorded a finding that the charges in respect of lack of devotion of duty is proved, whereas charge of lack of integrity is not proved. However, the Enquiry Officer did not deal with all the said six charges specifically, but recorded his finding by clubbing all the charges. The applicant after receipt of the inquiry report dated 04.08.1996, submitted his reply on 07.10.1996, pointing out the discrepancies and the facts that the whole inquiry proceeding were vitiated in view of the fact that neither adequate opportunity of hearing was given to the applicant nor PWs were allowed to be cross examined and in fact there was no case of any misconduct against the applicant and none of the charges levelled against the applicant were established. It is also submitted that respondent no.4 without considering the case of the applicant and in a most arbitrary manner passed punishment order dated 23.04.1999 (Annexure A-1) wherein the applicant's pay was reduced by five stages from 3875 to 3500/- in time scale of pay of 3050-75-3950-80-4590/- for a period of five years and ten months w.e.f. 01.05.1999.

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5. Being aggrieved by the order of punishment dated 23.04.1999, the applicant preferred an appeal before the Director (Administration) Employees State Insurance Corporation, New Delhi. The said appeal was ultimately rejected by respondent no.3 vide his order dated 14.09.1999, which was communicated to the applicant on 14.10.1999.

6. By filing Counter Reply respondents has submitted that Vigilance Officer ARD(Vig.) Hqrs. Office, ESI Corporation, New Delhi, paid a surprise to local office ESI Corporation, Rai Bareilly along with Sri D.R. Gupta Insurance Inspector (vig.) on 18.05.1987 and made inquiry about functioning of local office and submitted his report dated 03.07.1987 wherein applicant submitted his clarification to the observations made by the Vigilance Officer. It is submitted by the learned counsel for the respondents that inquiry has been conducted in consistence with the Rules and in accordance with the principles of natural justice allowing reasonable opportunity to the applicant to defend himself. As a matter of fact the applicant himself did not avail the opportunity to cross examine the Prosecution Witnesses, Sri T.N. Sharma ARD (vig.) and Sri D.R. Gupta, Insurance Inspector (vig.) Hqrs. Office, New Delhi on 12.02.1993, 16.03.1994, 01.09.1994, 21.12.1994 and 14.09.1995 as is evident from inquiry proceedings, but the applicant and his defence assistant did not attend the inquiry, either alone or together with. The prosecution witnesses Sri T.N. Sharma and Sri D.R. Gupta were examined by P.O. wherein they confirmed the contents of the report dated 03.07.1987 and signature on

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it. They also confirmed the seizure of all the listed documents. In fact, the applicant has been avoiding to face inquiry on one pretext or the other and on 21.12.1994 also the applicant as well as his Defence Assistant was absent even without any intimation to inquiry officer. Learned counsel for the respondent submitted that after perusal of Inquiry Report and relevant documents, the Regional Director/Disciplinary Authority decided the case and imposed the penalty on the applicant vide order dated 23.04.1999.

7. Learned counsel for the applicant has filed Rejoinder Reply and submitted that the enquiry was held as an empty formality as no reasonable opportunity was provided to the applicant and his defence assistant by withholding the latter's TA payments specially when he was a retired person and not entitled to any TA advance. The applicant was deprived of availing the assistance of his defence assistant and was unable to attend the inquiry at Delhi.

8. We have heard Sri Shayamal Narain, learned counsel for the applicant and Sri P.K. Pandey, learned counsel for the respondents and perused the pleadings and documents annexed therewith.

9. Learned counsel for the applicant submitted that Enquiry Officer vide its inquiry report dated 14.08.1996 illegally approved all the six charges levelled against the applicant and recorded a finding that the charges in respect of lack of devotion of duty is proved, whereas charge

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of lack of integrity is not proved. However, the enquiry officer did not deal with all the said six charges specifically, but recorded his finding by clubbing all the charges. It is also submitted that whole inquiry proceedings were initiated in view of the fact that neither adequate opportunity of hearing was given to the applicant nor PWs were allowed to be cross examined and in fact there was no case of any misconduct against the applicant and none of the charges levelled against the applicant were established. Learned counsel for the applicant vehemently urged that conclusion arrived at by the Enquiry Officer as well as the Disciplinary Authority and Appellate Authority are illegal contrary to law, perverse and by no stretch of imagination the applicant can be punished on the basis of conclusion arrived by the disciplinary authority as well as by the Enquiry Officer and charge nos.1,2 and 3 will clearly show that they are more or less similar in nature inasmuch as the disciplinary authority has levelled the charge/allegation that the applicant has violated the instructions and the rules and in this way he disbursed the benefit of pension to the insured persons without obtaining their acquaintance on the blank benefit payment documents and did not fill up the relevant column of benefit column dockets and in proving these charges the disciplinary authority took evidence of one Sri T.N. Sharma, Asst. Regional Director (Vigilance) and allowed that the applicant has violated Rule-3 of CCS (Conduct) Rules, 1964 read with Regulation 283 of ESI Regulations 1959 and exhibited lack of integrity, lack of devotion to duty and conduct of unbecoming of the Corporation employee. The applicant

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vide letter dated 27.02.1996 had requested the Enquiry Officer to call for Mr. T.N. Sharma (PW-I) and Sri D.R. Gupta (PW-II) on whose statements the above charges were alleged to have been proved, but no heed was paid on the said request of the applicant. Neither PW-I nor PW-2 were called for cross examination and the Enquiry Officer without considering the said legal aspect of the matter, ignored the claim of the applicant and gave his finding in Para 5.4 and 5.6 which are quoted below:-

"5.4- Though the CO was given sufficient opportunity to cross examine Sri T.N. Sharma, but he did not avail the same. In fact in each and every hearing either he or his Defence Asstt. Remained absence on one pretext or the other sometimes taking the plea that Sri T.N. Sharma ought to be summoned to Kanpur Sri T.N. Sharma was sick and was incapable of taking journey to Kanpur, is clear from the facts that he expired soon thereafter.

5.6.- In the present case the Prosecution witness Sri TN. Sharma is dis-interested witness inasmuch as he has no interest in the matter nor has he any interest adverse to the CO, in the sense that he does not stand to gain something or suffer any loss on account of his deposition. That apart the CO has not availed the opportunity given to him to cross examine him although he was given sufficient opportunity, moreover the aforesaid PW by no stretch of reasoning can be considered to have enimically disposed towards him or harboured any malic or was acting at the behest of any one tendering evidence against the CO so his evidence cannot be brust aside."

10. Learned counsel for the applicant submitted that PW-1 and PW-2 remained absent without any justification on 08.11.1995, 07.11.1995 and 10.01.1996 and in spite of categorical request of the applicant to call the aforesaid PWs for cross examination, the Presenting Officer on 10.06.1996 requested the Enquiry Officer to grant him last opportunity to ensure presence of the Presenting Officer but the Enquiry Officer rejected the request of the Presenting Officer as well as the applicant

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and concluded the Enquiry Proceeding on the same day. It is apparent that the Enquiry Officer was conducting the inquiry with pre-determined notions and he was interested in getting the applicant to be punished for no fault on his part. It is submitted by the learned counsel for the applicant that Charge No.1, 2 and 3 does not constitute any misconduct, warranting disciplinary proceeding culminated into punishment, inasmuch as the applicant who was a Claim Clerk in the aforesaid Office was arbitrarily deputed to perform double duty in view of the fact that the local Manager Sri R.S. Singh was in fact ill and was on leave on that date and vide its letter dated 18.05.1997 he ordered the applicant to discharge double duties i.e. to perform the work of Claim Clerk as well as to disburse payment to the ensured persons and for this application cannot be punished for the alleged violation of departmental instructions as well as procedure. Enquiry Officer has in fact in para 5.13 categorically recorded a finding which reproduced as under:-

"Lastly although substance of charge no.1 to 6 have held to be proved yet undeniable facts remained that the CO has adopted short cut method at the behest of LOM and in accordance with the written instructions of LMO he had no option but to toe the line least he incurred displeasure of the LOM and so evidently he cannot be foisted with the charges of lack of integrity although he could be saddled with the charge of unbecoming conduct since when the Manager compelled him to do illegal act, he was the duty bound to bring it to the notice of R.O."

11. On the other hand, learned counsel for the respondents submitted that along with other evidences the Disciplinary Authority took into account the oral evidence of Sri T.N. Sharma, the ther

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Assistant Director (vig.) and Sri D.K. Gupta, Insurance Inspector (Vig.), who made the surprise visit of local office Rai Bareilly on 18.05.1987 to enquire about the functioning of local office in proving the charges levelled against the applicant and deciding the case which was in accordance with the principle of natural justice. For summoning the PWs, respondents have submitted that applicant himself did not avail the opportunity to cross examine Sri T.N. Sharma and Sri D.R. Gupta on one pretext or the other on several occasions during the inquiry. After the close of proceedings on 10.01.1996 such request, if made, by the applicant was not justified as normally the Disciplinary Authority is not to interfere with the findings of inquiry officer. It is pertinent to mention here that Sri T.N. Sharma ARD (Vigilance) had also passed away by that time during the proceeding period. Learned counsel for the respondents submitted that PW-1 (Sri T.N. Sharma) and PW-2 (Sri D.R. Gupta) did not appear for cross examination on 08.11.1995 onward even after repeated notices issued by Inquiry Officer because Sri T.N. Sharma (PW-1) had expired on 28.04.1995 and Sri D.R. Gupta Insurance Inspector (vig.) could not appear due to his own problem and on 10.01.1996 the Inquiry Officer closed the inquiry as the P.O. and C.O. (Applicant) were already given reasonable opportunity to examine and cross examine the witnesses.

12. After carefully perusing the record, it is found that on 21.12.1994 the statement of Sri T.N. Sharma (PW-I) and Sri Dhani Ram Gupta (PW-II) was recorded but on this date the applicant as well as were

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absent and in the absence of the applicant the cross examination was conducted by the Enquiry Officer, which was totally inadmissible in law. We have also noticed that in spite of several requests the Enquiry Officer did not summon the Sri T.N. Sharma (PW-I) and Sri Dhani Ram Gupta (PW-II) for their cross examination. Learned counsel for the applicant has rightly contended that the applicant was denied opportunity of cross examination and the request made by the applicant was not exceeded to by the Enquiry Officer. The finding recorded by the Enquiry Officer clearly indicates that the findings adduced by the respondents are wholly inadmissible and not trustworthy.

13. We have carefully seen the decision of Hon'ble Supreme Court reported in **1999 (8) SCC 582 Haridwari Lal Branch Manager Vs. State of U.P. and Others** and **1971 (2) SCC 617 Bareilly Electric Supply Company Vs. Workmen** in which Hon'ble Supreme Court has held that ***Charges cannot be proved in the event failure to examine material witness***. In the decision reported in **AIR 1998 SC 853 Ministry of Finance Vs. S.B. Ramesh** in which Hon'ble Supreme Court has clearly observed that ***unless and until the author of the document which are to be proved against the applicant are examined by him the same cannot be said to be admissible in evidence and they are liable to be ignored.***

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14. In our considered opinion the entire prosecution proceedings have been conducted in flagrant violation of principles of natural justice and fair play and the conclusion thus recorded by the Enquiry Officer as well as the disciplinary authority are contrary to the material on record and perverse, inasmuch as, instead of summoning Baiju and seeking his clarification as to whether he had receipt payment or not, the Enquiry Officer has completely ignored this fact and with a pre-determined has sought to prove the charges against the applicant. There is ample evidence to show that the request of the applicant for production of relevant documents has not been considered by the Enquiry Officer and enquiry was proceeded without furnishing documents. The applicant was denied adequate opportunity of defence and hence entire proceedings are conducted in violation of principle of natural justice.

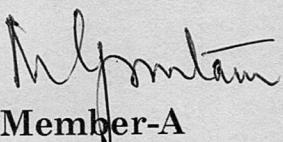
15. We have given our anxious thought to the pleas advanced by the parties counsel and we have also considered the plea of the respondents counsel that when enquiry is faulty; full defence could not be granted, the case be remitted from the stage of fault detected, in support of this contention reliance has been placed on the decision reported in ***JT 1996 (5) SC 403 State of Punjab & Ors. Vs. Dr. Harbhajan Singh Greasy.***

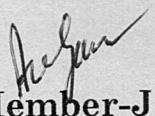
16. Having considered the argument advanced by the learned counsel for the respondents, we are of the opinion that as the matter

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relates to the year 1987, it would be an exercise in futility to remit the matter to the Enquiry Officer after a lapse of more than two decades. We accordingly, allow the Original application, quash and set aside the order dated 23.04.1999 (Annexure A-1 to Compilation-I) and the order dated 14.09.1999 as communicated vide letter dated 14.10.1999 (Annexure A-2 to Compilation-I) with consequential benefits.

17. Parties are directed to bear their own costs.


Member-A


Member-J

Sushil