

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 20th day of May 2011

Original Application No. 1321 of 2002

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Mohd. Muzaffar, S/o late Mohd. Jafar, R/o C4 N.S.I. Colony,
Survodaya Nagar, Kanpur Nagar.

. . . Applicant

By Adv: Sri S. Narain

V E R S U S

1. The Employees State Insurance Corporation Panchadeep Bhawan Kotla Road, New Delhi, through its Director General.
2. The Director General, Employees State Insurance Corporation Panchadeep Bhawan Kotla Road, New Delhi.
3. The Additional Commissioner (P&A), Employees State Insurance Corporation Panchadeep Bhawan Kotla Road, New Delhi.
4. The Regional Director, Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, Sarvodayanagar, Kanpur.

. . . Respondents

By Adv: Sri P.K. Pandey

ORDER

By Hon'ble Dr. K.B.S. Rajan, Member (J)

The applicant, initially appointed as Lower Division Clerk in 1968, later on, promoted to the post of Assistant, happens to be an active member of employees Union of ESIC. Earlier, in 1978 as well as 1988, the applicant was visited with certain penalties. On 06.11.1992 a charge sheet was issued against the applicant (Annexure A-4). The article of charges is as under: -

"STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI MOHAMMAD MUZAFFAR, U.D.C. E.S.I.C. U.P. REGION.

ARTICLE:- 1

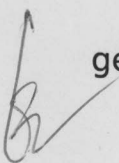
That the said Shri Mohammad Muzaffar, while functioning as U.D.C. failed to maintain devotion to duty as committed unbecoming acts in that he actively participated in a violent mob which was unauthorisedly pressuring the Regional Director in the afternoon 29-5-92 to withdraw the suspension order against Shri S.N. Tiwari, the then Manager Grade-II Local Officer, Govind Nagar, Kanpur and in order to secure the object of the mob, the said Shri Mohd. Muzaffar indulged in violence.

Thus, by his aforesaid acts, the said Shri Mohd. Muzaffar violated items (ii) and (iii) of Rule 3 of the CCS (Conduct) Rules, 1964 which are applicable to the employees of the corporation by virtue of regulation 23 of the ESIC (Staff and Conditions of Service) Regulations, 1959.

ARTICLE II:-

That the said Shri Mohd. Muzaffar had been awarded penalties earlier and the repeated acts of delinquency/misconduct on the part of Shri Mohd. Muzaffar show that he is incorrigible indisciplined and therefore unsuitable for service in the ESI Corporation."

2. The applicant responded to the same and inquiry was conducted. The inquiry officer had furnished his inquiry report dated 17.09.2001 which was sent to the applicant for making representations. By this inquiry report the inquiry officer has held that the charges remained proved. The applicant has submitted his representation against the same. However, the Disciplinary Authority by his order dated 16.01.2002 imposed the penalty of compulsory retirement with immediate effect and has also ordered that the applicant shall be granted pension and gratuity 2/3 as admissible to him at the date of compulsory retirement (Annexure A-1 refers). Appeal filed by the applicant was rejected vide Annexure A-2 order dated 27.09.2002. However, instead of 2/3 pension of gratuity sanctioned by the Disciplinary Authority it was directed that the applicant should get full pension and gratuity as admissible to him.



3. The applicant has preferred this OA challenging the aforesaid orders on the grounds which are in nutshell here under:-

- a. The report of the inquiry officer is perverse and misconceived.
- b. The Penalty Order as well as Appellate Order are illegal and contrary to the rules.
- c. Appointment of Sri S.S. Abron to act as Disciplinary Authority itself is illegal as respondent No. 2 had no authority to appoint the said Sri Abron.
- d. The authority which passed the impugned order (Regional Director) was not appointed as Disciplinary Authority, penalty order is non-est.
- e. The powers to appoint the Disciplinary Authority is vested upon the standing committee as per regulation and the same has not been followed in this case.

4. The applicant has prayed for the following reliefs:-

- i. To set aside the order dated 16.1.2002 passed by respondent No. 4 (Annexure A-1) to comp. I.*
- ii. to set aside the order dated 27.9.2002 (Annexure A-2 to Comp 'I' passed by respondent no. 3).*
- iii. to issue a mandamus commanding the respondents not to give effect to the impugned orders (Annexure A1 and A2 to Comp 'I').*
- iv. to issue a mandamus commanding the respondents to ignore the orders and to give all consequential benefits attached thereto."*

5. Respondents have contested the OA. It has been stated that misconduct of the applicant was by way of misbehavior with

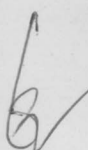


the controlling officer i.e. Regional Director, Kanpur. Thus the Regional Director, Kanpur being interested party was not made Disciplinary Authority to ensure natural justice. It was for this reason that the Regional Director, Chandigarh Sri Abrol was appointed as Disciplinary Authority for this purpose. It has been held by the Apex Court in the case of ESI Vs. T. Abdul Razak that the Regional Director or any officer who has been delegated the powers by Director General to act as Disciplinary Authority could institute the disciplinary action and what has taken place in the instant case is precisely the same. As regards the penalty order passed by Sri T.K. Bhattacharya, Regional Director, Kanpur, he being appointing authority by virtue of the 5th Schedule of the Employees State Insurance Corporation, was fully competent to act as Disciplinary Authority and accordingly he had imposed penalty upon the applicant. As regards the orders of the Appellate Authority, the respondents have maintained that the same are legal and valid.

6. The applicant has filed his rejoinder affidavit in which he has reiterated earlier contentions.

7. Certain amendments were permitted to the main application. Counter affidavit to the amended application was filed by the respondents.

8. Learned counsel for the applicant has argued that the proceedings were not conducted in accordance with the procedure laid down. The appointment of disciplinary authority itself is not legally valid nor had the authority which imposed the



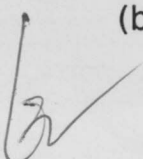
penalty was competent to pass the penalty order. The appeal has also not been considered in accordance with law and as such, the entire proceedings have been vitiated.

9. Learned counsel for the respondents has argued that there is absolutely no legal lacuna in the proceedings conducted. The reason for having appointed the ad hoc disciplinary authority is on account of the fact that the applicant had misbehaved with very authority who is his disciplinary authority and as such in order to ensure that justice is rendered to the applicant, the ad hoc disciplinary authority had been appointed. Similarly the appointing authority had passed the penalty order, which is equally legal. There is no lacuna in the order of the appellate authority and hence, the OA is liable to be dismissed.

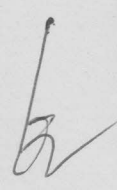
10. Arguments were heard and documents perused. It is trite that disciplinary proceedings could be subject to judicial review only within a narrow scope of ascertaining whether there is any legal lacuna in the decision making process. The following are the salient features in respect of conducting the disciplinary proceedings:-

(a) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities. (State of Uttaranchal vs Kharak Singh (2008) 8 SCC 236) Inquiry to be strictly in accordance with rules, charges should be specific and definite giving details of the incident which formed the basis of charges – has to be conducted fairly, objectively and not subjectively - Union of India and Others vs Gyan Chand Chattar – (2009) 12 SCC 78

(b) Ample opportunities have been given in order to enable to effectively participate in the proceedings; Failure to avail the opportunity by



the charged officer would not mean that principles of natural justice have been violated. - Union of India and others vs G. Annadurai CA 2829 of 2009 decided on April 27, 2009.

- (c) An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772 :
- (d) And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? (Kashinath Dikshita vs Union of India (1986) 3 SCC 229) It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same. (Union of India vs S.K. Kapoor, CA No. 5341 of 2006 decided on 16-03-2011)
- (e) a document not confronted to the delinquent cannot be relied upon for establishing the fact that the delinquent is guilty of a misconduct (see Nicks (India) Tool vs Ram Surat, (2004) 8 SCC 222 at page 227.)
- (f) summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is not for the Railway Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi-judicial authority. He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice. Union of India v. Prakash Kumar Tandon, (2009) 2 SCC 541 :
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- (g) The mandatory requirement of the inquiry officer asking the questions on the circumstances appearing against the charged officer after the prosecution closes its evidence when the charged officer himself does not enter the witness box, vide Rule 14(18) of the CCS (CC&A) rules, 1965 and corresponding provisions in the Railway Servants (Department and Appeal) Rules, has to be properly fulfilled to in strict sense. (Moni Shankar v. Union of India,(2008) 3 SCC 484, wherein the Apex Court has held -
- (h) Principles of natural justice cannot be put into a straitjacket formula and its observance would depend upon the fact situation of each case. Therefore, the application of the principles of natural justice has to be understood with reference to the relevant facts and circumstances of a particular case. Union of India v. Bishamber Das Dogra,(2009) 13 SCC 102
- (i) Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. The enquiry officer cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot enquire into the allegations with which the delinquent officer had not been charged with. (M.V. Bijlani vs Union of India (2006) 5 SCC 88)
- (j) Inquiry Report to be sent to the delinquent beforehand (ECIL v. B. Karunakar, (1993) 4 SCC 727)
- (k) The Disciplinary authority shall record reasons while passing an order adversely affecting an individual: (G. Vallikumari v. Andhra Education Society,(2010) 2 SCC 497) :
- (l) The appellate authority shall apply his mind to the entire case and ascertain to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same. Ram Chander v. Union of India, (1986) 3 SCC 103 , Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713 Apparel Export Promotion Council v. A.K. Chopra.

- (m) Judicial review is a review of the manner in which the decision is made. to ensure that the individual receives fair treatment. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case (B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749)

11. In Union of India v. G. Ganayutham, (1997) 7 SCC 463 the Apex court has held as under:-

"To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

Judicial intervention on the quantum of penalty imposed is minimum. unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed. (Union of India v. K.G. Soni, (2006) 6 SCC 794)"

12. When the above rule position is telescoped upon the facts of the case, no deficiency could be found in following the procedure. Again, in so far as the appointment of disciplinary authority, the same is perfectly legal and so is the case in respect of the authority which has imposed the penalty.

Principles of natural justice have been fully complied with by the appointment of ad hoc disciplinary authority.

13. The order of penalty imposed as well as appellate order are very comprehensive and elaborate and meets all the points required under the rules and procedure.

14. Hence, we do not discern any legal lacuna in the impugned orders. Hence, the OA is dismissed. No cost.

Member (A)

Member (J)

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