

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 22nd DAY OF NOV, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

Original Application No.916 of 2003
(U/s 19, Administrative Tribunal Act, 1985)

S. K. Awasthi
S/o Sri V.N. Awasthi,
R/o Astik Nagar
(Behind Bombay Dharam Kanta),
Rathpur Road, Raibareilly,
Peon (Adeshpal),
Employees State Insurance Corporation
Local Office – Shahibabad,
Ghaziabad.

..... *Applicant*

Present for Applicants : *Shri B. C. Naik, Advocate*

Versus

1. Union of India, through its Secretary, Ministry of Labour,
Central Secretariat,
New Delhi.
2. Employees State Insurance Corporation
Panchdeep Bhawan, Kotala Road,
New Delhi.
3. Addl. Commissioner (P & A)
Employees State Insurance Corporation
Panchdeep Bhawan, Kotala Road,
New Delhi.
4. Regional Director,
Employees State Insurance Corporation
Sarvodaya Nagar, Kanpur.

..... *Respondents*

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

O R D E R

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

The facts of the case as per the applicant are as under:-

(a) The applicant was appointed in the Employees State Insurance Corporation on 11.6.1982 as a peon. When the applicant was

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posted at Sandila a charge sheet dated 16.7.1998 was served requiring him to submit his written explanation (Annexure No. 3).

The charge sheet reads as under:-

अनुच्छेद - 1

यह कि कथित श्री सुशील कुमार अवस्थी ने स्थानीय कार्यालय कर्मचारी राज्य बीमा निगम, सिकन्दरा बाद में दिनांक 6.7.1992 से 8.7.96 तक पत्रान्वेषक के पद पर कार्य करते हुये दिनांक 16.2.96 को श्री सतपाल वर्मा, तत्कालीन प्रबंधक, स्थानीय कार्यालय के से दुरभिसम्भि करके रूपये 600/- की धनराशि चेक संख्या ए/489-623912 द्वारा बैंक से प्राप्त करके हडपली एवं स्वयं को बचाने के उद्देश्य से तत्कालीन प्रबंधक श्री वर्मा के विरुद्ध एक शिकायत तत्कालीन निदेशक (सतर्कता) कर्मचारी राज्य बीमा निगम, नई दिल्ली को प्रेषित की ।

इस प्रकार कथित श्री एस०के०अवस्थी के उपर्युक्त कृत्य सत्यनिष्ठा की कमी को दर्शाते हैं तथा निगम के कर्मचारी के आचरण के विपरीत हैं । साथ ही कर्मचारी राज्य बीमा निगम, (कर्मचारी बृन्द एवं सेवा की शर्त) विनियम 1959 यथा संशोधित के विनियम 23 के साथ पठित केन्द्रीय सिविल सेवा (आचरण) नियमावली, 1964 के नियम 3(1) (पप) व 3(1) (पपप) का उल्लंघन है ।

अनुच्छेद - 2

यह कि कथित श्री सुशील कुमार अवस्थी ने स्थानीय कार्यालय कर्मचारी राज्य बीमा निगम, सिकन्दरा बाद में उक्त अवधि में पत्रान्वेषक के पद पर कार्य करते हुए एक गम्भीर कदाचार यह किया है कि दिनांक 19.2.96, 20.2.96, 22.2.96 व 23.2.96 को अनाधिकृत रूप से अनुपस्थित रहे तथा कार्य कर उपस्थित होने पर उक्त तिथियों से कास (ग) पर हस्ताक्षर किये ।

इस प्रकार कथित श्री सुशील कुमार अवस्थी के उपर्युक्त कृत्य सत्यनिष्ठा की कमी दर्शाते हैं । तथा निगम के कर्मचारी के आचरण के विरुद्ध हैं । साथ ही कर्मचारी राज्य बीमा निगम (कर्मचारी बृन्द एवं सेवा की शर्त) विनियम, 1959 यथा संशोधित के विनियम 23 के साथ पठित केन्द्रीय सिविल सेवा (आचरण) नियमावली, 1964 के नियम 3(1) (पप) व 3(1) (पपप) का उल्लंघन है ।

अनुच्छेद - 3

यह कि कथित श्री सुशील कुमार अवस्थी ने पर्वोक्त स्थानीय कार्यालय में पर्वोक्त पद पर कार्य करने के दौरान बीमित व्यविधियों का अनुपस्थित सत्यापन कराने हेतु अनाधिकृत रूप से फार्म - 28 भरकर नियोजकों को भेजे ।

(b) The applicant has denied each and every charge. During enquiry two witnesses were examined and nine documents were cited by the management. The applicant in his defence cited four documents and examined two witnesses. However, as the date

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fixed for enquiry on 23.1.2001 and 9.2.2001 could not be communicated and intimated to the applicant, he could not attend the proceeding and the enquiry officer completed the enquiry proceedings *ex-parte* closed the defense and ultimately submitted his report to the respondent no. 4 after holding the charges proved against the applicant. The findings are:-

Charge - 1, I hold that Shri S.K.Awasthi, the C.O. has misappropriated Rs. 600/- on 16.2.1996 by encasing cheque No. A/489 623912 by misguiding Sh. Satpal Verma the then Local Office Manager and sent a complaint to the then Director (Vig) E.S.I. Corporation, New Delhi against Shri Verma to save himself and thus exhibited lack of integrity and committed an act unbecoming of a Corporation employee thereby violated Rule 3(1) (i) and 3(1) (ii) of CCS (Conduct) Rules.

Charge - 2 and -3 : Proved (Annexure No. 4).

- (c) The applicant made a detailed representation. The respondent No. 4, on the basis of the finding of the enquiry officer imposed the punishment of compulsory retirement on 18.1.2002 (Annexure No. 5). Service of the applicant was terminated vide order dated 21.1.2002 (Annexure No. 6).
- (d) The applicant filed department appeal before the Director Administration (Annexure No - 7). Respondent No. 3 was in agreement with the grounds mentioned by the applicant in the appeal and after holding that reasonable opportunity of hearing was not given to the applicant and the order of punishment is in violation of principle of natural justice set aside the order of punishment and reinstated the applicant

and the service of the Corporation and directed him to join his duty within 7 days (Annexure No. 8).

(e) The applicant was reinstated and was posted in the local office of the Corporation at Mohan Nagar vide order dated 14.8.2002. However, the Disciplinary authority again passed the order of compulsory retirement against the applicant only after a week time i.e. 26.8.2002 (Annexure No. 11). After the order dated 7.8.2002 neither any enquiry was held nor any opportunity of hearing given to the applicant nor any explanation has been called from him.

(f) Applicant preferred a departmental appeal to the respondent No. 3 on 10.9.2002 (Annexure No. 12). As no decision was taken on, he made a representation on 6.1.2003 (Annexure No. 13). The respondent No.3 ignoring his own order and finding dated 7.8.2002 dismissed the appeal filed by the applicant and confirmed the order of punishment dated 26.8.2002.

2. In this O.A. the applicant has claimed that the impugned orders dated 26.08.2002 passed by respondent No. 4 and order dated 05.04.2003 passed by respondent No. 3 may be quashed and the applicant may be deemed to be in continuous service with all benefits.

3. The respondents contest the O.A. Most of the facts have not been disputed. However, in so far as non intimation of hearing on two dates, i.e. 23-01-2001 and 09-02-2001, vide para 4.5 of the OA, they have denied the same. The disciplinary authority had passed the order impugned herein vide Annexure Annexure 1 was, according to them, in accordance with the directions given by the

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appellate authority, vide his order dated 07-08-2002 (Annexure 8, wherein he had directed, "I also direct the Regional Director, Kanpur to pass de-novo final order without taking into account the previous penalty."

4. The applicant had filed a supplementary affidavit, with various annexures most of which are part of the relied upon documents in the inquiry proceedings. He has also analyzed such evidences and depositions to substantiate that the inquiry was not properly conducted.

5. Arguments were advanced by the counsel for the parties and the same were heard. The counsel for the applicant argued that the disciplinary authority had pre-determined the penalty and to gain support he had referred to the previous penalty and it was precisely for that reason that the appellate authority had remanded the matter back to the disciplinary authority but the disciplinary authority again imposed the same penalty of compulsory retirement, which is illegal.

6. Counsel for the respondents submitted that there is absolutely no legal lacuna in the procedure followed in this case either by the inquiry officer or the disciplinary authority or the appellate authority and hence, the OA is liable to be dismissed.

7. Arguments were heard and documents perused. The applicant had been charge sheeted with three charges, one with reference to the alleged embezzlement of Rs 600/-, the other signing the attendance register on those days also when the applicant did not attend the office and the third related to unauthorized filling of form No. 28 in regard to the 'absentee of

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the insured person'. The charges having been denied, regular inquiry was conducted and the applicant participated. When after the closure of the prosecution evidence, notice was given to the applicant, the acknowledgment of which was also obtained and sent to inquiry authority, the inquiry officer proceeded further and the inquiry report reveals that there is full length discussion in respect of the depositions made, including those of the defence witnesses. The applicant had not attended the inquiry on the last two dates of hearing and hence the proceedings were conducted ex parte. The disciplinary authority passed a comprehensive order imposing the penalty of compulsory retirement, vide Annexure A-5, and the same was appealed, when the appellate authority finding that reference to earlier penalty was made in the said Annexure A-5, remanded the matter back to the disciplinary authority for issue of de novo final order. Meanwhile the applicant was reinstated. It is after the same, that the disciplinary authority without any reference to the past conduct, imposed the same penalty. The appellate authority also had analyzed the entire matter and his order is also equally comprehensive.

8. There has been no legal lacuna in the conduct of the proceedings. The decision making process has been found to be strictly in accordance with the prescribed procedure. The absence of the applicant, despite due notice by the inquiry officer, disabled the inquiry authority to ask the applicant the mandatory questions on the closure of the prosecution evidence. Two such opportunities were granted, which the applicant chose not to utilize. Thus, no legal flaw could be discerned in the procedure adopted by the I.O. Again, in so far as the disciplinary authority's

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order is concerned, even in the earlier order which had been set aside, the Disciplinary authority had not considered the past conduct in proving the charges. It is at the time when the question of imposition of penalty for the proved charge was under consideration that the disciplinary authority had taken into consideration the past penalty and imposed compulsory retirement. Though the appellate authority vide Annexur A-7 took the above as legally not correct, strictly speaking the disciplinary authority could well take into account such past conduct for the limited purpose of arriving at a decision on the quantum of penalty. The Apex court had occasion to consider the issue in a very recent case of *Union of India v. Bishamber Das Dogra*, (2009) 13 SCC 102, and considered a good number of decisions and arrived at the conclusion that the disciplinary authority could well take into consideration the past conduct while deciding quantum of penalty to be imposed on a delinquent employee in the wake of a proved charge.: The Apex Court has held in that case as under:-

28. In Govt. of A.P. v. Mohd. Taher Ali-his Court rejected the contention that unless the past conduct is a part of charge-sheet, it cannot be taken into consideration while imposing the punishment observing that:

“5. ... there can be no hard-and-fast rule that merely because the earlier misconduct has not been mentioned in the charge-sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often [necessary] only to reinforce the opinion of the said authority.” (emphasis supplied)

In fact in Taher Ali case the argument had been advanced that if the disciplinary authority wanted to consider the past service record of the employee, it should be a part of the charge-sheet.

Though in K. Manche Gowda this Court said that it should be so

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indicated in the second show-cause notice only for the purpose of imposing punishment. Thus it is not necessary that it should be a part of the charge-sheet.

29. In Colour-Chem Ltd. v. A.L. Alaspurkar this Court considered the statutory rules which itself provided as what can be taken into consideration while imposing the punishment and it also referred to the consideration of the past record of the employee.

30. In view of the above, it is evident that it is desirable that the delinquent employee may be informed by the disciplinary authority that his past conduct would be taken into consideration while imposing the punishment. But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require.

9. The order of the appellate authority vide Annexure A-2 is also comprehensive and met all the substantial and relevant points raised in the appeal. There appears no legal flaw at all in the conduct of inquiry. The Apex Court has held that the extent of judicial review in a disciplinary proceeding is confined to the decision making process and not decision. Of course, it is only when the penalty imposed is shockingly disproportionate that the Tribunal could well consider the same and here again for deciding the quantum of penalty, the case has to be referred to the administrative authorities except in very rare cases where it could impose appropriate penalty. It is appropriate to refer to one of the latest decisions of the Apex court in the case of **UT of Dadra & Nagar Haveli v. Gulabhai M. Lad,** (2010) 5 SCC 775, : wherein the Apex Court has

held as under:-

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11. In *United Commercial Bank v. P.C. Kakkar*, this Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarised the legal position in the following words:

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

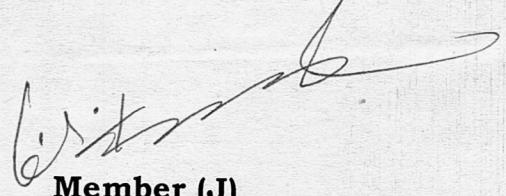
12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording 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.

10. In the instant case, the appellate authority mentioned that the applicant deserves a graver punishment but on leniency being shown, punishment of compulsorily retirement was imposed.

11. In view of the above, we do not find any merit in the OA and hence, the OA is dismissed. No costs.



Member (A)



Member (J)

/Shashi/