

Reserved on 20.03.2013
**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 997 of 2007

Allahabad this the, 4th day of April, 2013

Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD
Hon'ble Ms. Jayati Chandra, Member (A)

Navneet Ranjan Verma, S/o Shri J.K. Verma, R/o 16/1, Shivkuti, Teliarganj, Allahabad. Presently working as Upper Division Clerk (UDC) in Branch Office of Employees State Insurance Corporation, Daud Nagar, Allahabad.

Applicant

By Advocate: Sri S.K. Om

Versus

1. Union of India through Commissioner, Employees State Insurance Corporation, Panchdeep Bhavan, CIG Marg, New Delhi.
2. Additional Commissioner (P&A) Head Quarters Office, Employees State Insurance Corporation, Panchdeep Bhavan, CIG Marg, New Delhi.
3. Regional Director, Employees State Insurance Corporation, Panchdeep Bhavan, Sarvoday Nagar, Kanpur.
4. Manager, Employees State Insurance Corporation Branch Office, Allahabad Branch, Daud Nagar, Allahabad.

Respondents

By Advocate: Sri P.K. Pandey

O R D E R

By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD

The applicant has prayed for the following relief(s): -

(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 14.12.2005 and 23.2.2007 passed by the respondent No. 3 and 2 (Annexure 10 & 12) to this Original Application.

- (ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to promote the applicant as Upper Division Clerk with effect from 14.11.2002 and assign him the seniority and arrears of salary & other consequential benefits.
- (iii) to issue a further writ, order or direction in the nature of mandamus commanding the respondents to restore applicant's salary as if the impugned orders dated 14.12.2005 and 23.02.2007 have not been passed.
- (iv) to issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (v) to award the cost of the Original Application in favour of the applicant.

2. The facts of the case, in brief, are as follows: -

That the applicant was initially appointed as Lower Division Clerk (LDC) in August, 1981 under the respondents. In the year 1996, the applicant was promoted as Upper Division Clerk (UDC) on ad hoc basis, which was to be regularized on the basis of his seniority in the year 2002. But, the applicant was deprived of his promotion on the post of UDC, and his juniors-Shri Ramesh Kumar Srivastava and Shri Pradeep Kumar Sinha have been promoted as UDC w.e.f. 14.11.2002. On inquiry, made by the applicant, for not promoting him on the post of UDC, he was told that since departmental inquiry was contemplated against him, he was not being promoted to the post of UDC. A charge sheet on flimsy

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and frivolous grounds was issued against the applicant on 21.11.2002, before that date, there was no departmental inquiry against him, and even then his promotion was not considered by the respondents. In the charge sheet, submitted against him, it was mentioned that while working as Claims Clerk in the local office of Allahabad, during the period from 08.08.1996 to 12.07.2000, the applicant demanded and received ₹80/- from one insured person namely Shri Man Singh, and he manipulated things to get applications from the insured person Shri Man Singh dated 01.05.1997 and 02.05.1997, and in pursuance thereof split up his claim and prepared a docket for ₹373/- and arranged no payment to the said insured person and thereby misappropriated the said amount in collusion with the Local Office Manager and UDC Cashier. No charge sheet was ever issued against the Manager or the UDC Cashier in the aforesaid matter. The claim of complainant – Shri Man Singh was split up in two parts on his own request in writing as he was in urgent need of money. Hence, the claim amount was not paid through account payee cheque. The application to split up the amount moved by the insured person was allowed by the Local Office Manager, who had instructed the applicant to make payment accordingly in cash.

3. The Inquiry Officer without considering the true facts, available on record, submitted a false inquiry report against the applicant, and the Disciplinary Authority without application of mind held the applicant guilty of one of the charges levelled against him though exempted him on two charges. The applicant preferred an Appeal against the punishment awarded to him and the Appellate Authority rejected the Appeal as regards the third charge and approved the punishment imposed upon the applicant. Hence, the present O.A. has been filed for the aforesaid relief(s) mainly on the grounds that the applicant was due for promotion w.e.f. 14.11.2002, but without any disciplinary proceeding pending against him, he was deprived of that promotion. The charge sheet was issued on 21.11.2002 and prior to it no disciplinary proceeding was pending against him. The charges mentioned in the charge sheet, were false and frivolous and not supported by any evidence documentary or oral whatsoever. The Inquiry Officer proved the charges against the applicant only on the basis of conjectures and surmises. The complainant - Man Singh has categorically denied to have made any complaint against the applicant. He has also submitted that he received full amount of the claim, and had no grievance against the applicant. The penalty has been imposed on the applicant for a charge which is

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without any evidence on record. No punishment whatsoever has been awarded to the Local Office Manager and the UDC Cashier, who were more responsible for payment of the claim account to the complainant and only the applicant has been made an escape goat. The Inquiry Officer submitted the charge sheet only under the pressure of the Vigilance department.

4. The respondents have filed the Counter Affidavit partly denying the allegations made in the O.A. mainly alleging that the impugned order dated 14.12.2005 has been passed in accordance with the procedure after departmental inquiry. The appellate order has also been passed after considering the entire facts and circumstances and the evidence available on record. The O.A. is barred by limitation as the cause of action arose on 14.12.2005, and the O.A. has been filed much after prescribed period of limitation. Sufficient opportunity has been given to the applicant during the inquiry proceedings and considering all the facts and circumstances, first two charges framed against the applicant, were not found proved, and only the third charge was found proved which shows that the impugned order is reasoned and speaking one. The DPC was held on 14.11.2002 for considering promotion to the post of UDC wherein the applicant was

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not found fit as disciplinary proceeding was contemplated against him, and subsequently a charge sheet was served upon him on 21.11.2002. The applicant did not raise any objection against his non-promotion at that time. At the time of investigation, the request of insured person was not available in the local office, which shows that it is subsequent creation of the applicant who manipulated to get, from the insured person, applications dated 01.05.1997 and 02.05.1997, requesting to split up the claim and cash payment thereof and to prepare the docket. Even if the insured person requested for cash payment, there was no need to split up the claim, which shows that the manipulation was done by the applicant to create evidence in his favour in connivance with the insured person. The Inquiry Officer, in his inquiry report, has clearly mentioned that there is no direct evidence, documentary as well as oral, to prove the charges against the applicant but there are circumstances from which inference of guilt has been drawn, which are duly proved by oral and documentary evidence on record. In departmental proceedings, preponderance of probability is taken into account to prove the guilt. O.A. has got no substance, and it deserves to be dismissed.

5. Rejoinder Reply has been filed by the applicant, mainly reiterating the facts, mentioned in the O.A., alleging that up to 14.11.2002 no disciplinary proceeding was pending against the applicant when the D.P.C. considered the matter for promotion, and there was no hurdle before the D.P.C. to consider the promotion of the applicant on 14.11.2002 as the charge sheet was issued on 21.11.2002.

6. The applicant has placed reliance on documentary evidence, which are annexure A-1 to annexure A-14 on record, and further he has filed two annexures relating to seniority of the employees.

7. The respondents have not filed any paper by way of documentary evidence.

8. We have heard the learned counsel for the parties and perused the documents on record.

9. As regards the plea of limitation raised by respondents, it is apparent from the record that the Appeal preferred by the applicant before the Appellate Authority was decided on 23.02.2007 and this O.A. has been filed on 10.05.2007. Thus, there is no delay in filing this O.A.

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10. A perusal of the records shows that initially three charges were levelled against the applicant in the charge sheet dated 21.11.2002, which are as follows: -

"(1) He demanded and received a bribe of ₹80/- from Shri Man Singh-insured person (insurance No. 21-6245919) on 01.05.1997;

(2) He then prepared a docket for ₹373/- on 02.05.1997, he arranged no payment to the said insured person but misappropriating the said amount in collusion with the Local Office Manager and the UDC Cashier;

(3) He manipulated to get the applications dated 01.05.1997 and 02.05.1997 from the said insured person to the effect that the payment be made in cash to justify splitting up of the said payment."

11. Admittedly, the Regional Director/Disciplinary Authority did not find substance in the inquiry report as against the charge No. 1 and charge No. 2, and accordingly he concluded that first two charges (1 and 2) are not proved. As regards third charge, he concluded that from the concatenation of circumstantial evidence it is clear that the charged official manipulated to get, from the insured person, applications dated 01.05.1997 and 02.05.1997 requesting to split up the claim and of the cash payment thereof and prepared the docket, and paid to the insured person on two consecutive dates, thus, deliberately violating the existing instructions of the

Headquarters' Office whereby it was directed that each and every payment exceeding ₹1000/- should be paid to the insured person only by cheque. The circumstances, brought out by the charged official, were just routine in nature and did not deserve any rare treatment. It is also to be mentioned here that standard of a proof in the departmental proceeding is only preponderance of probability and not proved beyond reasonable doubt. Taking this principle into consideration, he agreed with the findings of the Inquiry Officer to the extent that the charged official manipulated to get applications dated 01.05.1997 and 02.05.1997 requesting to split up of the claim and cash payment thereof deliberately, thereby violating the existing instructions of the Headquarters' Office that each and every payment exceeding ₹1000/- should be paid to the insured person only by cheque, and accordingly held that the charge No. 3 has been proved.

12. A perusal of the aforesaid observation of the Disciplinary Authority shows that he has proceeded on the principle of preponderance of probability in proving the third charge against the applicant. In order to decide this fact as to whether even the third charge levelled against the applicant is proved on record, the following points may be formulated: -

"(I) Whether there was any existing departmental instruction that a payment of claim amount above ₹1000/- should be paid only by account payee cheque?

(II) Whether there is any evidence to prove that the applicant manipulated to get two applications dated 01.05.1997 and 02.05.1997 from the complainant - Shri Man Singh for splitting up of his claim amount?

(III) Whether from the material on record, there is connecting and link evidence to the effect that the applications were procured by the applicant from complainant to enable the Inquiry Officer or the Disciplinary Authority to conclude that on the principle of preponderance of probability case is made out against the applicant as regards the third charge?

13. As regards the first point, it is clear that the respondents have not filed any such instructions in writing from the department to prove that there was any such written instruction to the effect that the payment of claim amount exceeding ₹1000/- has to be made only by account payee cheque. It is admitted by the parties that there was a practice in the office to this effect but no such written instruction has been filed on record nor it is proved by the respondents that any such written instruction was ever circulated amongst the employees to comply the same while making payment of claim amount.

14. As regards second point, the applicant has specifically denied that he ever contacted the complainant

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to move two separate applications dated 01.05.1997 and 02.05.1997 to split up the claim amount and to prepare the documents accordingly. The respondents have not produced any evidence whatsoever in this regard. On the other hand, it is clear from the record that the complainant -Shri Man Singh is the person to whom the claim amount was due for payment. He has specifically denied to have moved any complaint against the applicant or any other employee of the office in this regard. On the other hand, he has admitted this fact that at his own accord he moved both the above applications to facilitate payment in cash to him as he was in need of money in cash. On what basis, the Inquiry Officer concluded that these two applications were manipulated is not proved from the record. Mere allegation of the Inquiry Officer that these two applications were not available in the office earlier during the inquiry is not enough. He has not obtained anything in writing from the office that such applications were not already available in the office or they were received in the office subsequently. The best evidence to prove this fact would have been the statement of the complainant-Shri Man Singh who does not support the story of Inquiry Officer, and the second evidence would have been the office record or the statement of Local Office Manager or the UDC Cashier to prove that such

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applications were managed subsequently. The conclusion drawn by the Inquiry Officer in this regard appears to be based on the circumstance which has got no evidence to support it. Merely on the basis of speculation, surmises and conjectures, a charge cannot be proved particularly when it is going to affect the career of an employee. There must have been some corroborating evidence, may not be direct evidence to support this fact. In view of the above discussion, it can be concluded that the third point also does not support the departmental story as there is no link evidence in this regard. It is true that in departmental proceedings, evidence of the prosecution is not expected to be beyond reasonable doubt and it may proceed on the principle of preponderance of probability but that too should be based on some reasonable connecting and link evidence. In this case, neither the complainant supports the respondents' case nor the Local Branch Manager supports the respondents' case who has specifically stated in his statement that the aforesaid applications were moved by the complainant and he had allowed those applications accordingly for splitting up the payment. It is also a strong circumstance in favour of the applicant that the Manager and UDC Cashier have been set free though their connivance is also said to be in this transaction. In the light of these observations, it is

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concluded that be that as it may, but for want of any connecting and link evidence even the third charge levelled against the applicant is not proved by any cogent and reliable circumstance or evidence.

15. It is also contended by learned counsel for the applicant that on 14.11.2002 the D.P.C. considered the matter of promotion of the employees for the post of U.D.C. The applicant, admittedly, was senior to two persons who were considered for promotion and actually they were promoted on the post of U.D.C. and the name of applicant was dropped merely because an inquiry was under contemplation against him. It is also an admitted fact that the charge sheet was issued against the applicant on 21.11.2002, a week later to the meeting of D.P.C. The applicant's counsel has placed reliance on the observation made by the Hon'ble Apex Court in the case of

Union of India etc. etc. vs. K.V. Jankiraman etc. etc.

AIR 1991 SC 2010, in which the Hon'ble Apex Court has observed as follows: -

" It is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be restored to only after the charge memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover

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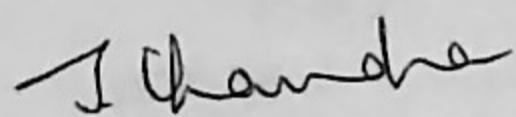
procedure. The pleas that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc., would not be tenable. The preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits to resort to the sealed cover procedure. The authorities thus are not without a remedy.

The promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee."

In the light of above observations of the Hon'ble Apex Court, it is apparently clear that the promotion of any employee cannot be withheld merely because some disciplinary or criminal proceeding is under contemplation. That must be at the relevant time pending at the stage when charge memo or charge sheet has already been issued to the employee. The respondents could not show any case law on the point that even if

some inquiry proceeding is in contemplation against an employee, he can be deprived of his promotion which is otherwise due to him.

15. In the light of above observations, we are of the considered view that this O.A. has got substance and it deserves to be allowed. Accordingly, O.A. is allowed. The impugned orders dated 14.12.2005 and 23.02.2007 are hereby quashed and the respondents are directed to consider the case of the applicant for promotion to the post of U.D.C. from the date his juniors were considered for promotion if otherwise he is found fit within a period of three months from the date of receipt of certified copy of this Order. No order as to cost.



(Ms. Jayati Chandra)
Member - A



{Justice S.S. Tiwari}
Sr. Member-J/H.O.D.

/M.M/