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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 673 OF 1999
Cuttack, this the 27th day of October, 2000

Tirthananda Samal

....Applicant

Vrs.

Director General,
Employees State Insurance
Corporation and others....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not *No.*

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN

27.10.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 673 OF 1999
Cuttack, this the 27th day of October, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Tirthananda Samal,
son of late Prabhakar Samal,
at present Head Clerk,
103(A) Branch, Regional Office,
Employees State Insurance Corporation,
At-Janpath, Unit-IX, Bhubaneswar-7,
PO-Bhubaneswar, District-Khurda.... Applicant

Advocates for applicant - M/s J.K.Das
S.K.Das

Vrs.

1. Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan,
At-Kotha Road,
New Delhi-110 002.
2. Regional Director,
Employees State Insurance Corporation,
ESIC Bhawan, At-Unit-IX, Janpath,
P.O-Bhubaneswar, Dist.Khurda.
3. Ranjan Kumar Sinha, at present Manager Grade II
Local Office, Employees State Insurance Corporation,
Ranipatana Chhak, Balasore-756 001.
4. Pradipta Kumar Das, at present Manager Grade-II, Local
Office, Employees State Insurance Corporation,
At/PO-Kujang, Dist.Jagatsinghpur.
5. Sankarshan Ojha, at present Manager Grade-II, Local
Office, Employees State Insurance Corporation,
At/PO-Jeypore, New Street, 4th Line, District-Koraput
..... Respondents

Advocates for respondents - M/s
B.S.Tripathy
M.K.Rath

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has
prayed for quashing the memorandum dated 1.2.1995 at

Annexure-2 calling for his explanation and the order dated 14.5.1998 at Annexure-10 issuing chargesheet against him. The second prayer is for a direction to the Director General, ESI Corporation (respondent no.1) and Regional Director, ESI Corporation, Bhubaneswar (respondent no.2) to give promotional benefit to the applicant in the rank of Manager Grade II/Insurance Inspector from the date his junior got promotion. The third prayer is for a direction to respondent nos. 1 and 2 to maintain his seniority in the promotional post above private respondent nos. 3,4 and 5.

2. Respondent nos. 1 and 2 have filed counter opposing the prayers of the applicant, and the applicant has filed rejoinder. Private respondent nos. 3,4 and 5 were issued with notices, but they didnot appear or file counter. For the purpose of considering this petition, it is not necessary to go into too many facts of this case.

3. We have heard Shri J.K.Das, the learned counsel for the petitioner and Shri B.S.Tripathy, the learned special counsel for departmental respondents and have also perused the records.

4. The case of the applicant is that he joined Employees State Insurance Corporation in 1975 and was promoted to the rank of Head Clerk in 1989. As Head Clerk he was in charge of various forms. He was transferred ^a to/different seat and on 28.9.1994 he handed over forms in his custody through a detailed list to his reliever. This charge list is at Annexure-1. Five months thereafter, in the impugned order dated 1.2.1995 (Annexure-2) he was informed that there has been huge excess and shortage in different types of forms numbering 33 items and he was

asked to submit his explanation within fifteen days. The applicant in his explanation at Annexure-3 stated that he had handed over detailed charge of the forms on 28.9.1994 as per the charge list. He was again informed in letter dated 22.2.1995 at Annexure-4 to submit his explanation and the applicant mentioned in his letter dated 13.3.1995 (Annexure-5) that he has already handed over charge on 28.9.1994 and his reliever has duly taken over the charge of the forms. Thereafter in memo dated 14.3.1996 (Annexure-6) certain adverse entries for the period from 1.4.1994 to 30.9.1994 were communicated to him. These adverse entries mainly related to his work of maintenance and storage of forms. The applicant represented against the adverse entries praying for expunction in his letter dated 12.4.1996 and again sent reminder on 22.4.1997, but no order was passed on his representation. The applicant submitted a further representation on 4.5.1998 (Annexure-9) stating that two posts in the cadre of Manager Grade-II have fallen vacant, but only one person has been promoted. He therefore prayed that he should be promoted against the second post. Thereafter in memo dated 14.5.1998 (Annexure-10) departmental proceedings were initiated against him and this is based on the same issue of excess and shortage of 24 items of forms out of 33 items mentioned in the memo dated 1.2.1995 at Annexure-2. The applicant wrote a letter to respondent no.1 on 22.5.1998 (Annexure-11) praying that the charges against him should be dropped on various grounds which were mentioned by him in this OA. The applicant's grievance is that the departmental proceedings initiated in Annexure-10 have been kept pending without any further development and in

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the meantime on three occasions his juniors have been promoted to the next higher rank ignoring his case. In the context of the above, the applicant has come up with the prayers referred to earlier.

5. The departmental respondents in their counter have opposed the prayers of the applicant. It is not necessary to refer to the averments made by them in the counter because these will be referred to while considering the submissions made by the learned counsel for both sides.

6. The first contention of the learned counsel for the petitioner is that even if it is accepted for the sake of argument, though not conceding, that he is responsible for the shortage or excess of forms the matter has already been settled by recording adverse entries in his CR communicated to him at Annexure-6 and again on the same ground departmental proceedings should not have been initiated against him. This contention is without any merit because in the memo at Annexure-2 the applicant has been asked to submit his explanation in respect of large scale shortage and excess in respect of 33 items out of 163 items of forms mentioned at Annexure-1. We have already referred to the explanation submitted by the applicant. But giving ~~✓~~ adverse entries in the CR does not preclude the departmental authorities from initiating departmental proceedings against the applicant. So far as adverse entries are concerned, the applicant has already represented and the representation is pending. In view of this, we hold that this ground taken by the applicant for quashing the departmental proceedings at Annexure-10 is without any merit.

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6. As regards his prayer for quashing the memo at Annexure-2 calling for his explanation the applicant has stated that as he has handed over charge to his reliever he is no way responsible for excess and shortage of forms and therefore issuing of memo to him is misconceived and is due to non-application of mind and on that ground he has prayed for quashing the memo. On a careful reading of the charge-list at Annexure-1 we find that in this list it has not been mentioned that the stocks of 163 items of forms handed over by the applicant and taken over by his reliever are the stocks as per the stock register. In other words, from the charge report it does not appear that the applicant has handed over the forms at Annexure-1 as per Book Balance. The learned counsel for the petitioner has referred to Rule 108 of General Financial Rules which lays down that every departmental officer is bound to take over charge of departmental stores from the person who was lately in charge. We have gone through this rule. This rule also provides that the officer-in-charge of stores shall see that stores in his custody are made over correctly to his successor and proper receipt is obtained from him. The charge list does not show that the number of forms handed over by the applicant and taken over by his reliever is correct number of forms as per the book balance. The respondents, on the other hand, have stated that physical verification was done and large scale excess and shortage of stocks in respect of thirty-three items of forms were noticed. The applicant has stated that such physical verification was done three months after he handed over charge of the forms and he was also not present at the time of physical verification. These are matters which have

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to be agitated by the applicant in the departmental enquiry initiated against him. As *prima facie* it has been found that there has been large scale shortage and excess of forms and as it is also clear from Annexure-1 that in the charge list it has not been mentioned that the applicant has handed over forms as per book balance, the departmental authorities are within their rights to initiate departmental proceedings against the applicant. Thus, the prayer of the applicant to quash Annexures 2 and 10 is held to be without any merit and is rejected.

7. The learned counsel for the petitioner has submitted that the departmental proceedings have been initiated more than three years after the memo at Annexure-2 was issued and even though the departmental proceeding was initiated in May 1998, no action was taken in the departmental enquiry and the matter was intentionally delayed thereby depriving the applicant of his rightful promotion. The learned counsel for the petitioner has pointed out that in response to his representation for dropping the disciplinary proceeding, the office of respondent no.1 intimated the applicant in letter dated 7.9.1999 (Annexure-17) that Joint Director (DE), Eastern Zone has been instructed to complete the enquiry against the applicant expeditiously and therefore the disciplinary case cannot be dropped. The learned counsel for the petitioner has pointed out that even though in letter dated 7.9.1999 it has been mentioned by the office of respondent no.1 that the Joint Director (DE), Eastern Zone has been asked to complete the enquiry expeditiously, the concerned Joint Director (DE) in his

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letter dated 15.9.1999 (Annexure-18) has reported that the departmental proceedings against the applicant have not been registered in his office. It has been further submitted by the learned counsel for the petitioner that the Union of which the applicant is a member had also brought to the notice of respondent no.1 about delay in the proceedings and non-appointment of inquiring officer and it is only thereafter that in order dated 24.9.1999 the Joint Director (DE) was appointed as inquiring officer. The applicant again represented on 15.10.1999 for appointing a presenting officer and thereafter in order dated 21.10.1999 at Annexure-23 the presenting officer was appointed. From the above recital of facts it is absolutely clear that the departmental authorities have delayed the departmental proceedings unnecessarily in the matter of appointing inquiring officer and presenting officer even after the prayer of the applicant for dropping the proceedings has been rejected. In the process, the applicant has been denied his promotional benefits. The respondents in their counter have submitted that because of pending proceedings on each of the three occasions when his juniors were promoted, sealed cover procedure has been adopted and the case of the applicant has been kept in sealed cover. In consideration of the above, we feel that in this case the ends of justice would be met if an appropriate direction is given to the respondents to complete the disciplinary enquiry within a specified period. From the recital of facts it is clear that the charges against the applicant are simple in nature and are mostly based on documentary evidence. In our order dated 10.2.2000 we have noted that

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the inquiring officer had fixed 25.2.2000 as the first date of holding the enquiry. During hearing of this matter it was submitted by the learned counsel for the petitioner that so far only two of the four witnesses have been examined. In consideration of all the above, we direct the departmental authorities to get the enquiry completed within a period of sixty days from the date of receipt of copy of this order. We also direct the applicant to co-operate with the inquiring officer in completing the enquiry. But in view of fixing of the time limit of sixty days we direct that in case the applicant does not co-operate in the enquiry without sufficient reason, then the enquiry should be completed ex parte within the period fixed by us. Final order on the report of enquiry should be passed within thirty days thereafter.

8. The last prayer of the applicant for giving him promotion from the date of his juniors have been promoted is disposed of with the direction that in case the applicant stands exonerated in the departmental proceedings, then the departmental authorities should open the sealed cover and take action in accordance with the recommendation of the DPC as kept in the sealed cover.

9. In the result, therefore, the Original Application is disposed of in terms of the observations and directions above. No costs.

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(G.NARASIMHAM)
MEMBER(JUDICIAL)

October 27, 2000/AN/P/S

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27/10/2000