

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.156 OF 2000
Cuttack, this the 23rd day of December, 2005

Shri Rama Chandra SinhaApplicant
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(K.N.K.KARTHIAYANI)
MEMBER(ADMN.)


(B.PANIGRAHI)
CHAIRMAN

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CUTTACK BENCH, CUTTACK**

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CORAM:

**HON'BLE SHRI JUSTICE B.PANIGRAHI, CHAIRMAN
AND**

HON'BLE SMT. K.N.K.KARTHIAYANI, MEMBER(ADMN.)

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Shri Rama Chandra Sinha, aged about 62 years, son of late Jagannath Sinha, At Canal Road, P.O. Samanta Sahi, Cuttack-1, Dist.Cuttack...

.....Applicant

Advocates for applicant - M/s.B.S.Mishra-2, R.Mishra, N.Chakravorty, A.P.Dhirasamant, A.R.Mishra.

Vrs.

1. Union of India, represented through its Secretary, Ministry of Labour, Central Secretariat, New Delhi.
2. E.S.I.Corporation, represented through its Director General, Panchadeep Bhawan, Kotla Road, New Delhi-110002.
3. Regional Director, Employees State Insurance Corporation, Panchadeep Bhawan, Janpath, Bhubaneswar 7, Dist. Khurda.

.....Respondents

Advocate for respondents - Mr.P.Ray

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ORDER

HON'BLE SHRI JUSTICE B.PANIGRAHI, CHAIRMAN

1. In this case, the applicant has challenged the legality, validity and propriety of the order of punishment, whereby and whereunder 10% cut in the pension

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permanently was imposed in a disciplinary proceeding initiated against him just few months before his retirement.

2. The skeletal feature of the applicant's case as portrayed in the petition is as follows:

The petitioner was originally appointed as a Lower Division Clerk on 24.12.1959 in Employees' State Insurance Corporation, Orissa Region, Cuttack . In course of his service, he was promoted to the post of U.D.C. on 19.7.1965, whereafter he was subsequently promoted to the post of Head Clerk on 3.3.1972. Just before retirement he held the post of Manager, Grade II, since 19.6.1989 and retired on superannuation on 31.8.1996. While the applicant was working as Manager, Grade II of the Local Office of E.S.I., Corporation, Choudwar, on 1.10.1993, he received a certificate (First Medical Certificate dated 29.9.1993) from the Insurance Medical Officer of E.S.I. Dispensary, Bhagatpur, certifying that one Shri Balaram Behera, having Insurance No.425289, had sustained injury on his right knee on 29.9.1993. On 4.10.1993, he once again received another certificate

from the same Medical Officer, who certified that Shri Behera had sustained injury on his right knee from 29.9.1993. The applicant further received an accident report dated 28.9.1993 from the employer that the injured Shri Behera had sustained injury on both the knees on 28.9.1993 while performing his duties. After being satisfied that Shri Behera had sustained injury in course of his employment and since there was no major discrepancy in the report submitted by the employer as well as the certificates issued by the medical officers about the injuries purported to have been sustained by Shri Behera, the applicant treated the case as "employment injury case" on 4.10.1993. But unfortunately, the Respondent-authorities, without any rhyme or reason, initiated a departmental proceeding, describing the matter as Article of Charge No.1, which of course they have accepted a case relating to injury while on employment. The injured Shri Behera was given the benefit to the tune of Rs.4490/- by treating the same as temporary disablement.


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Shri Behera was under treatment of E.S.I. Dispensary, Bhagatpur. He was admitted to ESI Hospital, Choudwar, as an indoor patient on 17.11.1993, after he was referred by ESI dispensary, Bhagatpur. Unfortunately, he died on 26.12.1993 while he was an indoor patient in the said E.S.I. Hospital, Chudwar and the certificate to that effect is claimed to have been received by the applicant on 8.12.1993. The applicant has claimed to have made a descriptive inquiry in the said hospital and discussed the respective physicians and was satisfied that the death of Shri Behera occurred in the hospital while he was under treatment. It appears that the attending physicians of Shri Behera had not agreed to give in writing that such death was an outcome of the injury purported to have been sustained in course of employment. It had further transpired from the surrounded circumstances to infer, according to the applicant, that the patient had succumbed to the injury during treatment and therefore, he was satisfied that the death of Shri Behera occurred due to the injury that he had sustained in course of his employment. It appears that the attending Doctor

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subsequently issued a certificate that the death was on account of injury sustained by Shri Behera in course of his employment. The dependants of late Behera claimed benefit arising out of the death of said Behera in the prescribed form, which the applicant forwarded to the Head Office with necessary records on 23.5.1994.

In the aforesaid factual backdrop, the Respondent-authorities have drawn up a disciplinary proceedings against the applicant and the Articles of Charges were communicated to him on 4.6.1996. The Respondent-authorities have alleged that the applicant had failed to conduct an inquiry whatsoever as regards the death of Shri Behera. They were further of the view that the documents submitted by the applicant must have been manipulated so as to lay a fictitious claim by his dependants for compensation. The charge sheet was issued at a time while the applicant was on the verge of retirement and had only two months time for his superannuation. From the sequel of the disciplinary proceedings, it has further appeared that an Inquiry Officer was appointed, who submitted his report by



making the applicant liable for Articles II and III of the Charge. But, however, he did not find any sufficient proof with regard to disbursement of T.D.B. amount to the tune of Rs.4490/-pertaining to Article I of the charge. The report of the Inquiry Officer was finally accepted by the disciplinary authority, who imposed 10% cut in the pension with a proportionate deduction in the dearness relief, the propriety of which has been questioned in this case. The applicant's grievance is that the disciplinary authority has not followed the doctrine of natural justice and failed to provide reasonable opportunity to defend himself. It has also been stated that the articles of charge have been communicated by a person, who was not competent to take up the disciplinary proceeding and therefore, the entire proceeding was vitiated and thus became unsustainable. Since the final order of punishment was passed by the appellate authority, he, therefore, could not get an opportunity to prefer an appeal before the appellate authority and thus filed this case straight before the Tribunal.

2. Respondent Nos.2 and 3 have filed their reply in this case wherein they have alleged that the applicant, during his tenure as Manager, had admitted a case of employment injury without proper investigation. The cause of death of the injured Behera was not on account of direct injury alleged to have been sustained in course of employment, but such death had occurred due to other complexion in course of treatment. The applicant, therefore, should have been circumspect while recommending the case for giving appropriate compensation to the dependants of the injured employee. The competent authority, after due consideration of the disciplinary case of the applicant finally, was justified in imposing 10% cut in the basic pension along with proportionate reduction in the dearness allowance permanently. It is also stated that sub-regulation (4) of Regulation 19 of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959, authorizes the aggrieved party to prefer an appeal to the Chairman of the Standing Committee against an order passed by the Director General in a disciplinary

proceeding. In this case the Director General Being the competent authority, it can, by no stretch of imagination, be argued that the penalty was imposed by an authority below the appointing authority. A major discrepancy was noticed between the accident report and regulation certificate and the applicant had not duly examined the case. The applicant, therefore, indirectly helped the dependants of the deceased employee to receive death compensation amount to which they were not legally entitled. It is true that the Article I of the charge was found by the Inquiry Officer as not proved. But since the other two articles of charge, i.e., Articles II and III, having stood proved, the applicant could have no escape than to undergo the aforesaid punishment. With these submissions, the Respondents have prayed for dismissal of this O.A. being devoid of merit.

3. Mr.B.S.Mishra, the learned counsel appearing for the applicant has argued with strong intensity of conviction that in this case the Respondents have signally failed to bring home the charge against the delinquent applicant. It has been submitted that Articles II and III of the charge are

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inextricably intertwined with article of Article I of charge and particularly, the Inquiry Officer has exonerated the applicant of Article I of the charge. Therefore, the applicant ought to have been held not guilty of the other articles of charge too. It is further submitted that although the proportionality of the punishment need not been looked into by the Tribunal, but here it is a glaring instance where the punishment is so disproportionate to the delinquency alleged to have been committed by the applicant, which shocks the conscience of the Court. In such background, the Court cannot remain as a silent spectator without mitigating the rigor of punishment imposed against the applicant. It has been stated that no opportunity was afforded to the applicant in course of hearing to examine the Doctor of the Hospital where Shri took treatment (which of course has not been taken up as a ground in the reply to the inquiry report) and therefore, there was serious violation of the principles of natural justice.

4. Shri P.Ray, the learned counsel appearing for the Respondent-authorities, has submitted that it is true that



the applicant has been exonerated of Article I of the charge, but that by itself would not raise a presumption that the applicant was innocent in so far as the other articles of charge are concerned. In this case, Rs.4490/- was paid to the injured on the ground that he had sustained injury in course of employment on the basis of the employer's certificate along with the medical report. Therefore, the applicant could not be found guilty for payment of such amount. But the matter did not end at that stage. The injured subsequently died in the hospital. The applicant along with other persons conspired to bolster up a case in order to grant undue benefit to the deceased's dependants, for which there were charges framed against him.

5. Another limb of Mr. Ray's submission is that the applicant, without exhausting all the remedies available to him under the E.S.I. Regulations, hastily approached the Tribunal and claimed for quashing of the articles of charge.

6. We have carefully gone into the contentions raised by Shri Ray. It is true that there has been a provision of

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appeal made in the Regulations against an order of reduction in pension. But the question is that if the matter is again sent back to the disciplinary authority for filing appeal by the applicant, it would further entail unreasonable delay resulting in unnecessary hardship to the applicant. He, therefore, pointed out that in the fitness of things, he had forgone the right of appeal before the statutory appellate authority and the matter be decided on merits. Accordingly, we hold that merely right of appeal, even if provided under the Regulations, does not preclude the aggrieved party to question the propriety of the punishment imposed against him, particularly when he has abandoned the right of appeal, which by itself can be assumed that the punishment order was confirmed by the appellate authority.

7. In this case, on a careful reading of the inquiry report, which was accepted by the disciplinary authority, it is found that apart from the applicant, there were other persons responsible for inflating the claim laid by the dependants of the deceased. There is nothing turned out from the records as to whether same course of action has

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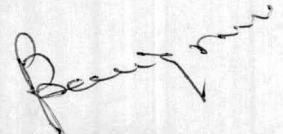
been taken against them. It is true that merely because the disciplinary authority failed to take appropriate action against other persons, who might have been responsible for such act of omission, that by itself will not provide a clean chit to the applicant that he too shall be exonerated of the charges. We hereby record another striking feature in the present case that the claim has been laid by the dependants of the deceased. True it is, it should have been examined not only by the applicant, but also by other staff responsible so to do. The sums claimed by the dependants were not paid to them. The proportionality of punishment ordinarily need not be gone into by Courts/Tribunals. But in particular cases where such punishment shocks the conscience of the Courts/Tribunals, then they are not precluded to examine the same. The applicant is a retired employee. He was charged merely for negligence in properly scrutinizing the documents placed before him whereby the dependants of the deceased claimed certain benefits, for which the reduction of 10% of pension with usual dearness allowance permanently appears to be unduly harsh and

unreasonable. Accordingly, we hereby direct that stoppage of 10% cut in pension along with usual dearness allowance should be for a period of 5 (five) years from the date of punishment. Save and except the modification of punishment, we do not notice any other major point in favour of the applicant so that the immunity in question can be gone into. Accordingly, we dismiss this case except with the modification of punishment that there shall be a 10% cut in the pension along with usual dearness allowance for a period of five years from the date of punishment.

There shall, however, be no order as to costs.



(K.N.K.KARTHIAYANI)
MEMBER(ADMINISTRATIVE)



(B.PANIGRAHI)
CHAIRMAN