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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.496 of 2009
Cuttack, this the 31st day of January, 2012

Shri Mahesh Prasad Patnaik Applicant
Vs
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

(C.R.MOHAPATRA)
Member (Admn.)

(A.K.PATNAIK)
Member (Judl.)

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CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (Admn.)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (Judl.)

Mahesh Prasad Patnaik, aged about 51 years, Son of Late Kelu Charan Patnaik, At-Plot No. 391, Sahid Nagar, Bhubaneswar, Dist. Khurda.

....Applicant

By legal practitioner: M/s.N.K.Sahu, B.Swain, N.K.Das,
Counsel.

Versus

1. Union of India .represented through the Director General, Employees State Insurance Corporation, Head quarter office, Panchdeep Bhawan, C.G.Road, New Delhi.
2. Additional Commissioner, Headquarter Office, ESIC, Panchadeep Bhawan, CIG Road, New Delhi.
3. Regional Director, Employees State Insurance Corporation, Panchdeep Bhawan, Unit-IX, Bhubaneswar, Dist. Khurda.

.....Respondents

By legal practitioner: M/s.P.P.Ray, D.P.Ray and T.R.Jena, Counsel.

ORDER

Per- A.K.PATNAIK, MEMBER(JUDL.):

The Applicant who is an UDC Cashier in ESI Corporation has filed this Original Application U/s.19 of the A.T. Act, 1985 challenging the order under Annexure-A/7 dated 15.03.2007 of the Disciplinary Authority imposing the punishment of reduction of pay by one stage from Rs.5700.00 to Rs.5600.00 in the time scale of pay of Rs.4000-100-6000/- for a period of one year without cumulative effect which would run concurrently with the penalty order already in force in another disciplinary case vide Regional Office, Bhubaneswar Order No. 44-C-14/13/2001-Admn.I dated 21.12.2005 and the order under

Annexure-A/8 of the Appellate Authority rejecting the appeal of the applicant on various grounds which would be discussed herein below.

2. Respondents, by filing counter, contested the case of the applicant. According to Respondents this OA is not maintainable as the applicant has approached this Tribunal without exhausting the remedy by way of making Revision, against the order of the Appellate authority as provided under Regulation 22 of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959. As regards merit of the matter, it has been stated by the Respondents that the proceedings were conducted in accordance with Rules in which the applicant was provided all reasonable opportunity to defend his case and that the Disciplinary Authority, after considering materials available on record including the defence submitted by the Applicant imposed the punishment in a well reasoned order which was subsequently upheld by the Appellate Authority. As such, according to the Respondents, there is hardly *of* any scope left for this Tribunal to interfere in the matter. Hence, they have prayed for dismissal of this Original Application.

3. Heard the rival submissions of the parties and perused the materials placed on record. Mr. N.K.Sahoo, Learned Counsel appearing for the Applicant, at the outset has drawn our attention to the Statement of defence submitted by the Applicant denying the charges framed against him. Mr.Sahoo during the course of argument stated that the sum and substance of the charge under Article II was short payment made to the IP for pecuniary gain whereas the IO in his report has held that the Applicant failed to maintain absolute integrity, devotion to duty and conducted himself in a manner unbecoming of a Corporation employee

and thereby violated Rule 3 (1) (i),(ii) & (iii) of Central Civil Services (Conduct) Rules, 1964 which are applicable to Corporation employee by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959, as amended. Hence it was contended by him that the above finding has no relationship with the charge framed under Article II of the Memorandum of Article of Charges and as such, this finding cannot be accepted in the eyes of law. Similarly, by taking us through the other articles of charge, the statement of defence submitted by the applicant, the report of the IO, the reply submitted by him to the report of the IO and the order of the DA as well as AA it was contended by Mr. Sahoo that the IO, DA as well as AA reached the conclusion without due application of mind and, therefore, he is entitled to the relief as claimed in his OA. This was strongly opposed by Mr.P.P.Ray the Learned Counsel appearing for the Respondents. But after going through arguments and materials placed in support thereof we are satisfied that there has been complete miscarriage of justice caused to the Applicant in the decision making process of the matter inasmuch as, the orders of the DA as well as AA do not appear to be in accordance with rules; in other words are without any discussions on the points raised by the Applicant in his defence. Both the DA as well as AA while coming to conclusion are bound to consider the points raised by the Applicant. The word 'consider' implies 'due application of mind'. In view of the above, we quash the orders of the Disciplinary so also Appellate Authority and remit the matter back to the Respondents to meet all the points raised by the Applicant in his defence with reference to the materials/Rules and pass order in accordance with Rules.

V. A. S. I.

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4. In the result, with the aforesaid observation and direction
this OA stands allowed to the extent stated above. There shall be no
order as to costs.


(C.R.MOHAPATRA)
Member (Admn.)


(A.K.PATNAIK)
Member(Judl.)

