

In the Central Administrative Tribunal  
Calcutta Bench

OA No.1224/96

Present : Hon'ble Mr.S. Biswas, Member(A)  
Hon'ble Mr.N. Prusty, Member(J)

Gostō Behari Mondal, S/o Late B.B. Mondal, Working as Upper Division Clerk under Regional Director, Employees State Insurance Corporation, 5/1, Grant Lane, Calcutta-12, residing at Ramchandrapur, P.O. Mecheda, Dist.Midnapore

...Applicant

-Vs-

- 1) Regional Director, Employees' State Insurance Corporation, Panchdeep Bhawan, 5/1, Grant Lane, Calcutta-12
- 2) D.G. Employees State Insurance Corp., Ketia Road, New Delhi
- 3) Employees State Insurance Corp., Ketala Road, New Delhi
- 4) Union of India, service through the Director General, Employees State Insurance Corp., Ketia Road New Delhi

...Respondents

For the applicant : Mr.Samir Ghosh, Counsel

For the respondents : Mr.T.K. Chatterjee, Counsel

Date of Order :

1ST 12/ 03

ORDER

Mr.S.Biswas, Member(A)

By this OA the applicant has challenged the speaking order dated 4-9-96 (Annexure F) passed by the respondent authority rejecting the representation of the applicant dated 10-6-96 - submitted by him to the said respondent authority in response to the order in OA 369/90 dated 9-5-96. The applicant has sought quashment of this speaking order dated 4-9-96. Further, he has sought that the punishment order of reduction from UDC to LDC dated 4-12-84, in the the disciplinary case which was initiated against him earlier - be declared as of non-cumulative effect and thereby after expiry of the period of punishment of reduction - i.e. 5 years period it be further declared and directed upon the respondents to restore the service

5

benefit such as, salary seniority and promotion with retrospective effects and any other appropriate direction.

2. Heard both sides and went through the written submissions and records. Both sides were given further liberty to file written briefs by 8-12-03 if any. As no more briefs have been filed. We proceed to decide the case.

3. The applicant has tried to make out his case that the punishment order dated 4-12-84 which was awarded of reduction from UDC to L.D. on conclusion of the disciplinary case was in effect a non-cumulative order and it should be treated as such. According to the learned counsel, the effect of a non-cumulative punishment order would imply that on completion of the prescribed period of sufferance of the punishment order, in this case reduction from UDC to LDC post for 5 years, the officer would be eligible to get back all the salary increments and due promotion if any not given during the period of punishment, should be given with due date when his juniors got the same during the interregnum of punishment. In other words, these 5 years punishment period in case of non-cumulative order would be as if it was kept suspended to be restored after the punishment period to be over. In other words the incidence of punishment should not accumulate after the punishment period is over. Consequently the lost seniority and salary increments should be restored from the day the period of punishment is over. With this interpretation and intention of understanding the learned Counsel for the applicant Mr.S.Ghosh seeks direction to declare the said order as non-cumulative. The precise text of the order is however reproduced below :

" Now therefore I, G.R. Nayar, Joint Insurance Commissioner, Headquarters Office hereby impose on the said Shri G.B. Mondal, UDC-Cashier the penalty of reduction to the lower post of LDC in the time scale of pay of Rs260-400 for a period of 5 years until he is found fit for promotion by the competent authority after expiry of the said period".

4. The learned counsel for the applicant has further cited the decision of Hon'ble Supreme Court in Mohd. Habibul Haque V. Union of India and Others (1995 ATC (29) 672), wherein

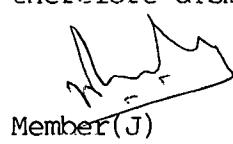
it is held that punishment of reduction of pay scale for one year with cumulative effect does not have the effect of reducing of seniority of the employee.

5. The respondent authorities have opposed the application by filing reply. The learned counsel for the respondents Mr.Chatterjee has contended that this is the third round of litigation which started by opposing the disciplinary proceeding against the applicant in OA 561/1986. The same was however decided on 27-4-87 by upholding the said penalty order dated 4-12-84. The applicant filed another OA 369/90 challenging the said order dated 4-12-84 from the angle of loss of seniority to Private Respondent 4 and 5 in the OA. They got promotions on 23-3-90 with placement at S.No.8 and 6 respectively but they were before the Punishment Order juniors to him as UDC. In deciding the dispute by order dated 9-5-96 it was already held by the Tribunal that "although period of 5 years was mentioned in this order there is no stipulation made as regards restoration of the applicant to the grade or post from which he was reduced and also no direction was given about the seniority and pay on such restoration to that grade or post".

6. Though the order is aptly clear and left no scope of doubt and the said order spelt no stipulation regarding restoration of lost salary or seniority consequent upon sufferance of 5 years reduction in a lower post, and the implications of the order reached a finality, Hon'ble Tribunal however gave a further order regarding disposal of a pending representation of the applicant. In the order however direction was given to file a fresh representation to be disposed of within 3 months. The respondents passed a speaking order on 4-9-96 which has been impugned in the present OA and the learned counsel for the applicant has further added that the punishment order dated 4-12-84 be declared as non-cumulative.

S. A

7. We have carefully considered the claim. As far as the speaking order is concerned, it has made abundantly clear that the said punishment order has two clauses namely (i) 5 years period of reduction to the lower post and (ii) the applicant would suffer the minimum reduction upto 5 years and further he would get no further promotion "until he is found fit for promotion by the competent authority after expiry of the said period". In our view the second clause made in the order abundantly clear that automatic restoration was ruled out in the punishment order. In other words the disciplinary authority did not extend any non-cumulative benefit or in other words the scope for retrieving the lost benefits during the punishment period was negated. Hence the above citation of the learned counsel for the applicant is factually and legally out of context. He could get back the post of UDC only if is found fit thereafter (after 5 years) for promotion by competent authority. That could be only after the DPC was held and the applicant was found fit. After the applicant was reverted to LDC on 4-12-84, he became junior to all his juniors in the grade of UDC who remained UDC w.e.f. 4-12-84 even though they could have been juniors to the applicant. This is the categorical incidence of the punishment order - as explained in the speaking order which we find is legally and factually correct - calling for no interference. The OA is therefore dismissed. No costs.



Member (J)



Member (A)