

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 203 of 2006

Order Reserved on 11.3.2014

Order Pronounced on 24-03-2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Hanuman Prasad Nigam, aged about 72 years, son of Late D. S. Nigam,
Resident of C-2/2008 Sector-F, Jankipuram, Lucknow.

Applicant

By Advocate: Sri Suredndran P.

Versus

1. Employees State Insurance Corporation, through Director General, Kotla Road, New Delhi.
2. The Director General, Employees State Insurance Corporation, Kotla Road, New Delhi.
3. Regional Director, E. S. I. Corporation Sarvodaya Nagar, Kanpur.

Respondents

By Advocate: Sri S. P. Singh holding brief for Sri Mayanker Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (i) *This Hon'ble Tribunal may kindly be pleased to quash the order contained in Annexure No. 1 and a direction be issued to return back the amount of 5% deducted from the pension of the applicant and promote him as Manager Grade-II w.e.f. 30.5.1989.*
- (ii) *This Hon'ble Tribunal may kindly be further pleased to issue a direction to the respondents pay the interest on the delayed payment of gratuity and commutation with effect from 1.5.1990 at the rate of 18%*
- (iii) *Issue any other order or direction which this Hon'ble Tribunal deems just and proper in the circumstances of the case."*

2. The learned counsel for the applicant has pointed out that the applicant was initially appointed in the respondents organization and during the service, he was charge sheeted in the year 1983. The said proceedings could not be completed and the applicant superannuated on 30th April, 1990, he preferred an O.A. 391/96 which was decided vide

order dated 27th May, 2004 and while deciding the O.A., the Tribunal directed to complete the disciplinary proceedings within a period of three months from the date of receipt of the copy of the order. Subsequently, the inquiry got completed and the applicant was awarded punishment of reduction of his pension of 5% is ordered for a period of one year from the date of the order. The punishment order was passed on 23.6.2005. The applicant has also prayed that respondents be directed to pay interest on delayed payment of gratuity and commutation w.e.f. 1.5.1990 @ 18 % per annum. When nothing was done, the applicant has preferred, the present O.A. challenged the order of punishment dated 23.6.2005 and also prayed for payment of interest on the delayed payment.

3. The learned counsel, appearing on behalf of the respondents filed their reply and through reply, it was indicated by the respondents that the applicant has committed misconduct as he has made payments of bogus claims of Rs. 238/-, 240/- and Rs. 487/- in the names of Shri Mahadue, Hansraj, and Raja Ram without properly ascertaining the identities of the claimants. As such, the disciplinary proceedings were initiated against the applicant. Apart from this, it is also indicated by the respondents that despite number of opportunities given to the applicant, he fail to participate in the inquiry as such, the respondents were having no other option left except to proceed ex-parte against the applicant, and after taking lenient view, the competent authority has imposed a penalty of reduction in his payable pension by 5% for a period of one year. Not only this, the notices sent to the applicant were returned back with remark "left home" and the same notice were received back "undelivered". As such, there is no illegality in conducting the inquiry and imposing the punishment and same does not require any interference by this Tribunal.

4. The learned counsel for the applicant has filed rejoinder and through rejoinder mostly the averments made in the O.A. are reiterated.

5. Heard the learned counsel for the parties and perused the record.

6. Admittedly, the applicant was initially appointed with the respondents organization and served with a charge sheet dated 29th September, 1983. The applicant also preferred a Writ Petition No. 160 (SB) of 2000 before the Hon'ble High Court and the said Writ Petition was dismissed by the Hon'ble High Court vide order dated 3.2.2000 and it was observed that the Tribunal shall considering the O.A. which is pending. Thereafter, the Tribunal passed an order directing the respondent to complete the disciplinary proceeding within a period of three months and also observed that the applicant shall also cooperate and in failure to complete the inquiry within the stipulated period, the same shall abate, it is also observed by the Tribunal, that the retiral benefits shall be released in accordance with rules. The bare perusal of the inquiry officers report, also shows that the applicant was given notice, to participate in the inquiry, but he did not attend the same as such, it is observed by the inquiry officer that reasonable opportunity has been given to the applicant to attend the inquiry and defend himself but the charged officer did not turned up and the inquiry officer was left no other option except to conduct the inquiry ex-parte. After detailed observations, the inquiry officer given his finding that the charges levelled against the applicant stands proved and submitted the same to the Disciplinary Authority. The Disciplinary Authority in his order dated 23.6.2005 has categorically mentioned this fact that after the completion of departmental proceedings, the report was submitted on 5.4.2001, the applicant did not participated in the inquiry proceedings and a copy of inquiry report was sent to the applicant vide letter dated 23.4.2001 with the advised to submit his representation if any. The applicant in reply thereto, given number of letters and asked for supplying of copies of various documents and detailed orders which were also supplied vide order dated 2.8.2001 and subsequently, he made again certain correspondence and in reply to this correspondence, he requested to submit his representation to the inquiry report within a period of 7 days but the applicant fail to submit any representation after the receipt

of the inquiry report. It is also indicated by the Disciplinary Authority that the leave encashment was paid to the applicant in 1996 and finally came to the conclusion that in the event of failure to participate in the inquiry by the charged officer, the inquiry proceedings were held ex parte. Apart from this, the applicant has also fail to respond to the inquiry report supplied to him. As such, the inquiry officer found that the charges leveled against the applicant stands proved, but after taking a lenient view the disciplinary authority imposed a penalty of reduction in his payable pension by 5% for a period of one year from the date of order. It is absolutely clear that the applicant was given full opportunity to participate in the inquiry but when he fail to participate in the inquiry, the disciplinary authority has passed the order.

7. As observed by the Hon'ble Apex Court in the case of **Union of India and Others Vs. G. Annadurai reported in 2010 1 SCC L&S 278** that the employee given chance to appear in the disciplinary proceeding and failure to participate in enquiry despite sufficient opportunities being given to him by sending notices at this home address by registered post is not entitled to agitate. It is further observed as under:-

"Thereafter, in course of the enquiry, statements of four witnesses were recorded and several documents were proved. Copies of the statements of the witnesses examined and documents exhibited were sent to the respondent by registered post asking him to submit his written statement for defence or appear before the enquiry officer. This was done on 6.3.1998. Again there was no compliance with the order. Enquiry was concluded and it was held that the charges were proved."

8. As observed by the Apex Court in regard to the judicial interference in the disciplinary proceedings is very clear. In the case of **B.C. Chaturvedi v. U.O.I. & ors. reported in 1995(6) SCC 749** again has been pleased to observe that **"the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence."**

9. In another case the Hon'ble Apex Court in the case of **Union of India v. Upendra Singh reported in 1994(3)SCC 357** has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited.

10. Considering the submissions made by the learned counsel for the parties as well as the observations made by the Hon'ble Apex Court, we do not find any justified reasons to interfere in the present O.A.

11. Accordingly, the O.A. is dismissed. No order as to costs.

J. Chandra

(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

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