

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 370/87

199

T.A. NO: --

DATE OF DECISION 5-11-1992

K.K. Murlidharan Nair, Jt. Secretary,
E.S.I.C. Employees Union,
Maharashtra Region

Petitioner

Mr. K.D. Naik

Advocate for the Petitioners

Versus
Union of India and two ors.
~~xxxxxxBhatkarxxxxxxMr.M.I.Sethna~~

Respondent

Mr. A.I. Bhatkar for Mr. M.I. Sethna

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

The Hon'ble ~~Mr.~~ Ms. Usha Savara, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

MD

mbm*

Su
(S.K. DHAON)
VC

(9)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.370/87

K.K.Murlidharan Nair,
Joint Secretary,
Employees State Insurance
Corporation Employees Union,
Maharashtra Region,
ESIC Bhavan, Lower Parel,
Bombay - 400 013.

.. Applicants

-versus-

1. The Union of India
through
Secretary,
(Ministry of Labour &
Employment)
Shramshakti Bhavan,
New Delhi.
2. The Director General,
Employees State Insurance
Corporation,
Kotla Road,
New Delhi.
3. The Regional Director,
Employees State Insurance
Corporation, ESIC Bhavan,
Lower Parel, Bombay-400013. .. Respondents

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Ms.Usha Savara, Member(A)

Appearances:

1. Mr.K.D.Naik
Advocate for the
Applicants.
2. Mr.A.I.Bhatkar
for Mr.M.I.Sethna
Counsel for the
Respondents.

ORAL JUDGMENT:
(Per S.K.Dhaon, Vice-Chairman)

Date: 5-11-1992

The memorandum dt.15-10-1985 issued
by the Director General of Employees State Insu-
rance Corporation, whereby it purported to convey
the decision that the benefit of past service for
the purpose of fixation of pay under FR 26(a) &
FR 22 would be withdrawn is being impugned in the

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present application.

2. A reply has been filed on behalf of the respondents. Counsels for the parties have been heard.

3. The admitted position appears to be that on 1-11-1977 a decision was taken by the Employees State Insurance Corporation in the case of one Shri V.D.Amin that for the purpose of fixing his pay in accordance with the FR 26 the past services rendered by him on ad-hoc basis would be taken into account. On 20-5-1978 the Accounts Officer of the Corporation issued a communication to the Dy.Chief Accounts Officer stating therein that, as in the case of Shri V.D.Amin, benefit of increments for the qualifying period worked during appointments on ad-hoc/purely temporary basis for the purpose of FR 26 shall be given to all without any exception. Learned counsel for the respondents had made a statement ~~at~~ ^{therefore,} the Bar that the benefit was extended to all. It is clear that the benefit was extended to the members of the Employees State Insurance Corporation Union, the applicant before us.

4. We may revert to the impugned memorandum again. According to it, the benefit was wrongly given and the matter may be reviewed and regularised and pay refixed accordingly. It also states that the amount of overpayments made to the individuals may be worked out. The number of such cases along with amount of overpayments may be intimated to

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Headquarters so that the question regarding waiver of overpayments/recovery may be examined. Counsel for the respondents states that the matter was re-examined and the alleged overpayments were regularised in the sense that a decision was taken that no steps would^{be} taken to realise the over paid amount. The learned counsel also stated that the impugned memorandum is being given a purely prospective operation.

5. The argument advanced in the forefront for assailing the impugned memorandum is that the same was issued without affording an opportunity of hearing to any of the members of the applicant union. This fact has not been controverted in the reply filed on behalf of the respondents even though such an assertion has been specifically made in the body of the application. To justify the action taken by the Director of the Corporation, the argument advanced is that the ad-hoc employees to whom the benefits was given had not been regularly appointed and, therefore, the Director was justified in withdrawing the benefit. Be that it may, the fact of the matter is that certain benefits had been given to the members of the applicant union and the same had been withdrawn. The impugned memorandum, therefore, visited the members of the applicant union with civil consequences. In any view of the matter, the members of the applicant union were deprived of the ~~the~~ legitimate expectation ~~that~~ ~~development~~ ~~on the~~ benefit ~~being~~ given to them ~~would~~ be continued to be given.

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They were, ~~therefore~~, entitled to the obser-
vance of the minimum requirement of ^{the} principle
of natural justice. ~~Therefore~~, they should
have been afforded an opportunity of hearing
before the decision, as conveyed in the
impugned order, was taken. This infirmity,
in our opinion, is enough to vitiate the same.
We, however, make it clear that it will be
open to the authorities concerned to pass
a fresh order on merits in accordance with
law, if it is so advised.

6. The application succeeds and
is allowed. The order dt. 15-10-1985 is
quashed.

7. There will be no order as
to costs.

Usha Savara
(USHA SAVARA) 5.11.92
Member(A)

S.K. Dhaon
(S.K.DHAON)
Vice-Chairman

MD