REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex,(BDA)
Indiranagar,
Bangalore-560 038.

Application No.1653/86(T)
(WP.No. 11714/85)

Dated 3.2.87

Applicant

S.K. Srinivasan

Respondents

The Director General, ESIC &Ors

To

1. S.K. Srinivasan.
No.12, Siddanthi Block, III Block,
Kodandaramapuram
Malleswaram, Bangalore-560 003.

2. The Director General,
Employees State Insurance Corporation, (ESIC)
E.S.I.C. Building Kotla Road,
New Delhi-110 002.

3. The Chairman, Standing Committee of E.S.I.C.and
The Additional Secretary, Deptt. of Labour,
M/o. Labour, Shram Shakthi Bhavan, Rafi Marg,
New Delhi- 110 001.

4. The Regional Director,
E.S.I.Corporation,
No.10, Binnyfields, Binnypet,
Bangalore-560 023.

Received the copy of the order (Page 1 to 48.) Anjanappa 4/2/87 (T. Anjanappa) Supdt.

5. Shri M. Papanna, Advocate for Respondents,
99, Magadi Chard Road, (Near State Bank Of Mysore)
Vijayanagar,
Bangalore-560 040.

Issued 4/2/87.

Subject: SENDING COPIES OF THE ORDER PASSED BY THE BENCH IN APPLICATION NO.1653/86(T)

....

Please find enclosed herewith the copy of the Order passed by this Tribunal in the above said application on 30-01-1987.

Encl; As above.

B.V. Venkatesh
Dy. Registrar
~~SECTION OFFICER~~
JUDICAL

Please issue O/C to all.
4/2/87.

Received the Copy of the Order (Pages No 1 to 48)
S. Srinivasan (S.K. SRINIVASAN)
3.2.1987. Applicant. 3.2.1987

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE THIRTIETH JANUARY, 1987

Present: Hon'ble Shri Justice K.S.Puttaswamy-Vice Chairman

Hon'ble Shri L.H.A. Rego - Member(A)

APPLICATION NO. 1653 OF 1986(T)
(W.P. NO. 1174 OF 1985)

S.K.Srinivasan,
s/o S.Krishnaswamy Iyer,
Aged about 50 years,
Residing at No. 12,
Siddanthi Block, III Block,
Kodandaramapuram,
Malleswaram,
Bangalore-560 003. .... Applicant

Vs

1. The Director General,
Employees State Insurance Corporation,
E.S.I.C. Building, Kotla Road,
New Delhi-110 002.

2. The Chairman,
Standing Committee of the
E.S.I.C. and the Additional
Secretary, Department of Labour,
Ministry of Labour,
Shram Shakthi Bhavan,
Rafi Marg,
New Delhi-110 001.

3. The Regional Director,
E.S.I. Corporation,
No. 10, Binnyfields, Binnypet,
Bangalore 560 023. .... Respondents

(Shri R.Gururajan .... Advocate)

This application has come up for hearing before Court. Member(A) made the following:-

ORDER

In this application transferred to this Bench under Section 29 of the Administrative Tribunals Act, 1975, the applicant in challenging the order dated 16.4.1982(Annexure D), passed by the first respondent, as the Disciplinary Authority(DA for short), imposing on him the penalty of compulsory retirement from

...2/-

service, in the Employees State Insurance Corporation (ESIC for short), and the order dated 4.6.1985 (Annexure G) passed by the second respondent confirming the said penalty, has sought for a direction to the respondents to reinstate him as Manager Grade II in ESIC with effect from 10.5.1982, with consequential benefits.

2. The factual background leading to this application, is briefly as follows. At the material time, the applicant was working as Manager Grade II, Local Office ESIC, Seshadripuram, Bangalore (Manager for short). On 23.12.1977, the third respondent informed the applicant through a Memorandum, that a departmental enquiry was proposed to be held against him, under Regulation 14 and para 3 of the Third Schedule of the ESIC(Staff and Conditions of Service) Regulations 1959 (as amended) (Regulations for short), for gross misconduct and failure to maintain absolute integrity and devotion to duty. The article of charge proposed to be framed against him in respect of the same was, that as Manager, he demanded and accepted illegal gratificatior of Rs. 100/- from one Shri A.Shankaran, Insured (bearing No.53-753468) Nehrupuram, Bangalore, on 8.8.1977 as a motive or consideration, for expediting payment of compensation due to him, under the Employees' State Insurance Act, 1948 (Act, for short) by way of Permanent Disablement Benefit (PDB for short)/commutation amount, in contravention of Rule 3 of the Central Civil Services (Conduct) Rules 1964, as made applicable to the employees of the ESIC. The above article of charge was substantiated by a statement of imputation. A list of

....3/-

each of the documents and witnesses, on the basis of which the above articles of charge was proposed to be substantiated was furnished to the applicant, who was directed to submit within 15 days of receipt of the above Memorandum, his written statement of defence and also to state whether he desired to be heard in person.

3. The above article of charge was proposed to be framed on the applicant, as a result of the trap laid by the Central Bureau of Investigation(CBI) on 8.8.1977, (on an earlier complaint dt. 1.8.1977 addressed by the above Insured Person, Shri Shankaran (PWI) to the third respondent), which materialised. The applicant denied the charge. Shri.S.Subramanian, Dy. Regional Director, ESIC Bangalore was appointed as the Inquiry Officer(I.O. for short) to hold the Departmental Enquiry (DE for short) which was initiated on 26.4.1979 and concluded on 30.6.1980. In the course of the DE, in all 7 witnesses were examined on behalf of the department, in addition to 11 exhibits and 3 material objects. The particulars of the 7 witnesses are as follows

PW No. (1)	Name (2)	Post held/Role (3)
1	Shri A.Shankaran	Insured Person (the complainant and decoy in the CBI trap)
2	Shri N.K.Jaigopal	Computer, National Tuberculosis Institute, Bangalore (panch for mahazar witness)
3	Shri S.R.Ramachandran	Junior Regional Director, ESIC Bangalore.
4	Shri N.G.Chellappan	Dy.Regional Director, Benefit Branch (Ins.Br.II) ESIC Bangalore.
5	Shri B.K.Ramachandra Rao	Dy.Regional Director, ESIC, Bangalore.
6	Shri B.R.Nana Rao	Dy.Supdt. of Police, CBI/SPE, Bangalore.(the officer who laid the trap)
7	Shri Aswatharamiah	Police Inspector, CBI/SPE, Bangalore(the officer who

Carried out the Preliminary CBI investigations.

4. The applicant examined 3 defence witnesses, in addition to producing 12 exhibits to substantiate his case. He also submitted a written brief. The relevant particulars of these 3 defence witnesses are as below:

DW No. (1)	Name (2)	Post held/occupation (3)
1	Shri G.Subramanyam	Manager, M/S Sunrise Industries, Bangalore.
2	Shri G.Krishnamurthy	Head Clerk to the applicant
3	Shri K.Shankar	A Science Graduate employed in M/s Bharat Electronics, Bangalore.

5. On conclusion of the proceedings, the I.O. gave the applicant the benefit of doubt and held that the charge was not proved beyond reasonable doubt against him. (Annexure B). The first respondent viz., the DA, however, after examining the DE proceedings and the report of the I.O., disagreed with the findings of the I.O. and for the reasons recorded by him in writing, held, that the applicant was guilty of the charge levelled against him. He also provisionally came to the conclusion, that the applicant was not fit to be retained in the service of ESIC, his integrity being suspect. He therefore, by his order dated 16.4.1982 (Annexure D), imposed on him the penalty of compulsory retirement from service (with effect from the date of receipt of that order), after duly giving him a show cause notice and considering his reply thereto. The applicant preferred an appeal thereon on 14.6.1982 (Annexure H), to the second respondent who by his order dated 18.2.1983, rejected the appeal and confirmed the penalty of compulsory retirement imposed by the first respondent. Aggrieved, the applicant filed a Writ Petition No. 5166 of 1983 in the High Court of Judicature Karnataka, which by its order dated 25.3.1985

(Annexure E), partly allowed the writ petition, holding that the order dt. 18.2.1983 of the second respondent viz the AA, was not a speaking one and therefore, directed the AA, that a speaking order be issued and that other contentions raised in the writ petition be considered on merits.

6. In compliance with the above directive of the High Court, the second respondent revised his earlier order dated 4.6.1985 (Annexure G) recording reasons in writing, rejected the appeal of the applicant and confirmed the penalty of compulsory retirement imposed by the first respondent. Still aggrieved, the applicant filed another Writ Petition bearing No. 11714 of 1985 in the High Court, which has since been transferred to this Bench as mentioned at the outset and is now the subject matter before us.

7. We have heard both sides at length, for as long as 6 days on 16.12.1986, 19.12.1986, 22.12.1986, 23.12.1986, 2.1.1987 and 3.1.1987 and have examined carefully the voluminous record and other material placed before us. The applicant argued in person, preferring not to avail of the benefit of a legal counsel. The main grounds of his contention were: that he was denied reasonable opportunity to engage a lawyer in violation of Article 21 of the Constitution of India; that though PWs 6 and 7 were examined at the DE, he was not furnished a copy of the Preliminary Inquiry Report (PIR) and was thus denied reasonable opportunity to cross-examine these witnesses effectively; that a copy of the statement of PW7, who was

....6/-

the CBI Investigating Officer in his case and was the author of the PIR, was not furnished to him, even though PW was examined in the DE; that relevant documents vital to his defence were either not made available or allowed to be seen, though requested by the applicant; that the crucial document viz. the PDB Register considered relevant by the DA and allowed to be seen by the defence, was not produced at the time of the DE, for the benefit of the applicant, despite repeated requests; that a copy of the recovery mahazar (ExP-3) was not furnished to him, soon after it was drawn up; that the Director of Forensic Science Laboratory, Bangalore, on whose technical report the DA had relied, had not been examined at the DE; that the "demonstration solution" prepared by the CBI, was not produced at the DE; that the currency notes and the table-top relating to the trap incident, were not tested for trace of phenolphthalein powder; that the 2 panch (mahazar) witnesses, were "interested witnesses" and "disinterested witnesses" though readily available near the trap scene, were not availed of; that the currency notes in question, were not got examined by fingerprint experts; that the mahazar (Ex P-3) was tampered with, to falsely implicate the applicant; that the show cause notice (Annexure C) issued to him, has taken into account the erroneous deposition of PW-2, to the prejudice of the applicant; that the I.O. had ~~requested~~ regarded Shri A.Shankaran (PW-1) as an unreliable witness, on account of his adverse antecedents and yet the DA relied on his sole and uncorroborated testimony; that various other possibilities for the colour change of sodium carbonate solution, as enumerated by the I.O, were not taken into account and the DA came to a conclusion on this aspect, merely on surmise and assumption; that the DA has not duly considered

the evidence tendered by the defence witnesses, in spite of the report of the I.O. and his order dated 16.4.1982 (Annexure D), imposing on the applicant, the penalty of compulsory retirement, is not a speaking one; that the third respondent was biased against him and therefore the proceedings initiated by him are void; that the I.O. acquitted him for "no evidence" and yet, the DA arbitrarily held him guilty; that the appellate order dt. 4.6.1985 too (Annexure G), is a non-speaking one and the additional grounds adduced by the applicant on 11.4.1985 (Annexure F), have not been taken into account and that this order is not actually signed by the appellate authority and therefore it is void; that the charges framed against him are not specific and are vague; and that finally, the third respondent had no authority to hold the DE against him.

8. Before we examine the several contentions urged, we consider it necessary to ascertain the nature and extent of powers of the Tribunals constituted under the Act, to adjudicate service matters in general and disciplinary proceedings in particular.

9. The Tribunals constituted under the Act by the Parliament, by virtue of the powers conferred by Article 323A of the Constitution, have substituted the High Courts and other Civil Courts, which were earlier exercising ordinary and extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution (Vide S.P.SAMPATH KUMAR AND OTHERS)(1987 (1) SCC 124). The jurisdiction conferred on the Tribunals, is exclusive and is only subject to the original and appellate jurisdiction of the Supreme Court under Articles 32 and 136 of the Constitution.

10. Section 29 of the Act, provides for statutory transfer of all pending service matters, as on the appointed day, to a Tribunal constituted under the Act. But, that or any other Section, does not expressly define or indicate the nature and extent of powers to be exercised by the Tribunals under the Act.

11. Chapter III of the Act deals with the jurisdiction, powers and authority of the Tribunals constituted under the Act. Section 14 of the Act deals with the powers of the Central Administrative Tribunal constituted under the Act, over the service matters of Central Government employees and the All India Services, local and other agencies, to be authorised by Central Government thereto under subsection (2) of that Section. Sections 15 and 16 of the Act, which deal with the jurisdiction of the State and Joint Administrative Tribunals, are not very material for our purpose. Section 17 of the Act confers power on the Tribunals to punish for contempt. Section 18 deals with the distribution of cases among the Benches.

12. Section 19 of the Act provides for making an application before a Tribunal, constituted under the Act, over 'service matters', which term is exhaustively defined in Section 3(q) of the Act. Section 20 deals with remedies to be exhausted before an application is admitted. Section 21 deals with the period of limitation for making applications under the Act. All these provisions or any other provision of the Act, do not spell out the true nature and extent of the powers, conferred on the Tribunals under the Act. The Act also does not contain a provision similar to Section 107 of the Code of Civil Procedure, which enumerates the powers of an appellate Court.

...9/-

13. In Sampath Kumar's case, a Constitution Bench of the Supreme Court, examining the validity of the Act has substantially upheld the same, subject to the directions contained therein. In upholding the Act, the Court repelled the contention, that the Tribunals constituted under the Act as an 'alternative mechanism' to High Courts, abrogate "judicial review", which is one of the basic and essential features of our Constitution. In dealing with that question Ranganatha Misra,J. who spoke for the majority had expressed thus:

> "16. Exclusion of the jurisdiction of the High Courts in service matters and its propriety, as also validity, have thus to be examined in the background indicated above. We have already seen that judicial review by this Court, is left wholly unaffected and thus there is a forum, where matters of importance and grave injustice can be brought for determination or rectification. Thus exclusion of the jurisdiction of the High Court, does not totally bar judicial review. This Court in Minerva Mills' case, did point out that (SCC p. 678, para 87)"effective alternative institutional mechanisms or arrangements for judicial review" can be made by Parliament. Thus it is possible, to set up an alternative institution in place of the High Court, for providing judicial review. The debates and deliberations spread over almost two decades, for exploring ways and means for relieving the High Courts of the load of backlog of cases and for assuring quick settlement of service disputes, in the interest of the public servants, as also the country, cannot be lost sight of, while considering this aspect. It has not been disputed before us - and perhaps could not have been - that the Tribunal under the scheme of the Act, would take over a part of the existing backlog and a share of the normal load of the High Courts. The Tribunal has been contemplated as a substitute and not as supplemental to the High Court, in the scheme of administration of justice. To provide the Tribunal as an additional forum from where parties could go to the High Court would certainly have been a retrograde step considering the situation and circumstances to meet which the innovation has been brought about. Thus barring of the jurisdiction of the High Court can indeed not be a valid ground of attack.
>
> 17. What, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court - not only in form and de jure but in content and de facto. As was pointed out in Minerva Mills, the alternative arrangement has to be effective and efficient, as also capable of upholding the constitutional limitations. Article 16 of the Constitution guarantees equality of opportunity in matters of public employment. Article 15, bars discrimination on grounds of religion, race, caste, sex or place of birth. The

> touchstone of equality enshrined in Article 14 is the greatest of guarantees for the citizen. Centring around these articles in the Constitution, a service jurisprudence has already grown in this country. Under Sections 14 and 15 of the Act, all the powers of the courts except those of this Court in regard to matters specified therein, vest in the Tribunal - either Central or State. Thus the Tribunal is the substitute of the High Court and is entitled to exercise the powers thereof."

On the same question, Bhagwati, CJ, concurring with the majority opinion expressed thus:

> "The basic and essential feature of judicial review, cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution, so as to substitute in place of the High Court, another alternative institutional mechanism or arrangement for judicial review, provided it is no less efficacious than the High Court. Then, instead of the High Court, it would be another institutional mechanism or authority, which would be exercising the power of judicial review, with a view to enforcing the constitutional limitations and maintaining the Rule of Law. Therefore, if any constitutional amendment made by Parliament, takes away from the High Court, the power of judicial review, in any particular area and vests it in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine, so long as the essential condition is fulfilled, namely, that the alternative institutional mechanism or authority set up by the parliamentary amendment, is no less effective than the High Court."
>
> xx xx xx
>
> "Consequently, the impugned Act excluding the jurisdiction of the High Court under Articles 226 and 227, in respect of service matters and vesting such jurisdiction in the Administrative Tribunal, can pass the test of constitutionality as being within the ambit and coverage of clause (2)(d) of Article 323-A, only if it can be shown that the Administrative Tribunal set up under the impugned Act, is equally efficacious as the High Court, so far as the power of judicial review over service matters is concerned. We must, therefore, address ourselves to the question whether the Administrative Tribunal established under the impugned Act can be regarded as equally effective and efficacious, in exercising the power of judicial review as the High Court acting under Articles 226 and 227 of the Constitution."

.....11/-

On a conspectus of all the provisions of the Act and the ruling of the Supreme Court, in Sampath Kumar's case, we are of the view, that the power conferred on the Tribunals constituted under the Act is one of judicial review, over the decisions of Government and other authorities. The nature of power conferred on the Tribunals under the Act, is not ordinary appellate jurisdiction over the decisions of Government or other authorities on service matters, but, is that of judicial review.

14. The distinction between judicial review and an appeal, has been eloquently spelt out in the classic treatise on 'Administrative Law' by its learned author, Wade (5th Edition) under the caption, 'Review and Appeal Contrasted' in the following words:

> "The system of judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of the decision under appeal. When subjecting some administrative act or order to judicial review, the court is concerned with its legality. On an appeal the question is 'right or wrong?'. On review the question is 'lawful or unlawful?'.
>
> Rights of appeal are always statutory. Judicial review, on the other hand, is the exercise of the court's inherent power to determine whether action is lawful or not and to award suitable relief. For this no statutory authority is necessary: the court is simply performing its ordinary functions in order to uphold the rule of law. The basis of judicial review, therefore, is common law. This is none the less true because nearly all cases in administrative law arise under some Act of Parliament. Where the court quashes an order made by a minister under some Act, it typically uses its common law power todeclare that the Act did not entitle the minister to do what he did.
>
> Where the proceeding is an appeal, some superior court or authority will reconsider the decision of some lower court or authority on its merits. Sometimes any aspect of the lower decision is open to appeal, but sometimes statute will allow only an appeal on a point of law, as opposed to a question of fact. Rights of appeal exist only where conferred by statute: in modern law there is no inherent appellate jurisdiction in the courts. Thus appeals from the High Court to the Court of Appeal now lie under the Supreme Court Act 1981, and appeals to the House of Lords lie under the

Appellate Jurisdiction Act 1876 and the Administration of Justice Act 1969. Statutes have created many special appeal tribunals, such as the Social Security Commissioners, the Lands Tribunal and Supplementary Benefit Appeal Tribunals. There are also many statutory rights of appeal from one administrative authority to another, for example from a local planning authority to the Secretary of State for the Environment and from a police disciplinary authority to the Home Secretary. The complex system of statutory tribunals, explained later, has its own network of appeals. There is no automatic right of appeal from them to any court, but the policy of recent legislation has been to allow any question of law to be taken to the High Court on appeal, save in a few exceptional cases.

Judicial review is a fundamentally different operation. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, the court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not. If the Home Secretary revokes a television licence unlawfully, the court may simply declare that the revocation is null and void. Should the case be one involving breach of duty rather than excess of power, the question will be whether the public authority should be ordered to make good a default. Refusal to issue a television licence to someone entitled to have one would be remedied by an order of the court requiring the issue of the licence. Action unauthorised by law and inaction contrary to law are equally subject to the court's control. In the case of unauthorised action the court's principal weapon is the doctrine of ultra vires, which as will be seen is the foundation of a large part of administrative law. If administrative action is in excess of power (ultra vires), the court has only to quash it or declare it unlawful (these are in effect the same thing) and then no one need pay any attention to it.

It is an inevitable consequence of our concept of the separation of powers, and of our lack of administrative courts, that there is a sharp distinction between appeal and review. It means that fine points of law, alleged to 'go to jurisdiction', are sometimes put forward in support of what is a thinly disguised appeal on the merits. But the court's duty is to confine itself strictly to the question of legality. If the administrative authority has acted within its powers and according to law, it is no business of the court to interfere. The law draws the boundaries within which the administration is a free agent.

Judicial control, therefore, primarily means review, and is based on a fundamental principle, inherent throughout the legal system, that powers can be validly exercised only within their true limits. The doctrines by which those limits are ascertained and enforced form the very marrow of administrative law. Rights of appeal, on the other hand, have no such central place. They may or may not exist in any given case, and although it is often highly desirable that they should exist, this is a question of policy which can be reserved for the chapter on Statutory Tribunals."

We are of the view that this passage correctly sums up the legal position.

14. When once we find that the power conferred on this Tribunal is that of judicial review, over the decisions of Government or other authorities, we must necessarily bear that distinction in mind, while examining the contentions, particularly those touching on the appreciation of evidence. A finding based on 'no evidence' which is considered as an error of law, comprehends in itself, a finding, in which no reasonable man would ever reach that conclusion, on the evidence on record. (See Wade's "Administrative Law" on the topic 'Findings, Evidence and Jurisdiction', pages 287-288). But, one thing that is crystal clear is, that this Tribunal cannot reappreciate the evidence, if there is evidence, as a Court of appeal and reach a different conclusion from the one reached by the final fact-finding authority under the Rules. With this brief analysis, we now pass on to examine the contentions urged before us.

15. We shall now examine each of the contentions raised by the applicant in the order enumerated in para 6 supra and shall to begin with, deal with the first contention, that he was denied the benefit of a legal counsel and thus a reasonable opportunity of defending his case, in violation of Article 21 of the Constitution of India. In order to buttress his case, the applicant relied on a spate of rulings, rules and other authorities which are reproduced below:

S.No. (1)	Reference (2)
1	AIR 1983 SC 109 - The Board of Trustees of Bombay Port Trust Vs. Dilip Kumar Raghavendrarao Nadkarni & others.
2	AIR 1972 SC 2178 - C.L.Subramanian Vs. Collector of Customs, Cochin.
3	1969 LAB IC 1149 - Ram Harekh Tiwari Vs. Union of India.

.....14/-

(1)	(2)
4.	1983 LAB IC 624(CAL) - Anandram Vs. Union of India
5	Extracts from Swamy's Compilation of CCS(CCA) Rules, 1965 - 13th Edition Pages 91 to 93
6	-do- - 15th Edition Pages 94 to 96
7	-do- - 15th Edition Pages 75 to 77
8	Copy of Govt. of India Instructions O.M. No. 11012/7/83/Estt dated 23.7.1984.
9	AIR 1986 SC 180 - Olga Tellis & others Vs. Bombay Municipal Corporation.
10	1986(1)LLJ 124 HC - Union of India Vs. Karunakaran Nair (Extract)

16. The essence of the above Supreme Court and Labour Case rulings and of the rules and other authorities is as below:

(i) The nature and complexity of the DE involving intricate legal propositions should be taken into account and the delinquent should not be handicapped for want of legal assistance as compared to the Enquiry or Investigating Officer as this could amount to denial of adequate opportunity to him to defend himself.

(ii) Govt. servants by and large have no legal training. Moreover when a Govt. servant is charged with grave consequences, he is not likely to be in a position to present his case as best as possible, for which a specific rule is provided for his representation, either by another Govt. servant or in appropriate cases, by a legal practitioner, in the absence of which, reasonable opportunity of defence would be denied to him.

(iii) When on behalf of the DA, the case is presented by a Prosecuting Officer of the CBI or a Govt. Law Officer, the DA has good and sufficient circumstances to exercise his discretion, to allow the delinquent to be represented by a legal practitioner and that anything to the

...15/-

contrary, is likely to be held by the Court as arbitrary and prejudicial to the defence of the delinquent.

(iv) The prime purpose of the rule of law notion is, the protection of the individual against arbitrary exercise of power wherever it is found.

(v) Non-observance of natural justice is itself prejudicial to the delinquent and proof of prejudice independently of proof of natural justice is unnecessary.

17. The counsel for the respondents brings to our notice, that the applicant is a Post-Graduate in Arts and has had the necessary legal training and background and is also a qualified Law Graduate from the University of Karnataka. He is conversant with the intricacies of law and in the course of his service in the ESIC, he had occasions to deal with legal claims of insured persons. Earlier, he had held the post of Inspector under the Act and therefore was familiar with procedural formalities relating to inspection and pursuance of cases in the court of law.

18. Counsel for the respondents invited our attention to a ruling in this regard, of a Division Bench of the High Court of Karnataka comprising M.N.Venkatachaliah J and one of us namely K.S. Puttaswamy J (as he then was) in WRIT APPEAL No. 112 of 1980 - U.O.I Vs. B.RAMAKRISHNA RAO with which order, the Hon'ble Supreme Court did not interfere, wherein it was held in a case of the like, that the ratio in AIR 1972 SC 2178 C.L. SUBRAMANIAM VS. COLLECTOR OF CUSTOMS COCHIN (which is one of the cases cited by the applicant in support - vide paras 15 and 16 supra) did not lay down, that legal representation was one of the basic components of natural justice and that its very denial, without more, is per se violative of the principles of

natural justice and vitiate the DE. Referring to the classic treatise on 'Jurisprudence' by its erudite author Roscoe Pound and on "Justice According to Law" or "Fair Play in Action" by Lord Morris of Borthy Gist in WISEMAN V.BORNEMAN(2), it was expatiated in the judgment in the above writ appeal, that the right to be represented by a legal counsel cannot be claimed as a matter of right, except before regular courts or where the relevant law itself permitted the same. It was also held that a "fair hearing" in a proceeding, did not necessarily depend on legal representation and that by allowing legal representation, "fair hearing" is not ensured ipso facto. It was further amplified in that judgment, that a "fair hearing" is not necessarily denied, solely on the ground that the DA or the I.O. did not permit the respondents to be represented by a counsel. The Judges also pointedly observed, "that natural justice was not a mere dogma, ritual or magic incantation or only a form but was more of substance evolved by courts, for securing justice and that without any doubt, the principles of "fair hearing" in a proceeding by whatever name it is called, is more important than the principle of legal representation."

19. In this context, we cannot be oblivious of the educational and legal background and experience of the applicant. As pointed out earlier, he is a Post-Graduate in Arts and a qualified Law Graduate, of the University of Karnataka and had ample opportunity to acquaint himself with legal procedure and formalities in the course of discharge of his duty, in relevant posts in the ESIC. We also cannot fail to notice, that on his own he has chosen to plead the instant case before us, in a much higher forum like the Administrative Tribunal, by himself, without the assistance of a legal practitioner. We noticed that, in

the course of the 6 days, he presented his case and pleaded his defence before us, with singular ease and felicity taking us through over 50 citations and authorities, without in the least, giving us a semblance of an impression, that he was handicapped for want of a legal practitioner to assist him, pitted though he was, against a seasoned and experienced advocate on behalf of the respondents.

20. The applicant was however not denied the benefit of engaging a colleague of his, from the ESIC, to aid him in his defence. We are informed, that the Presenting Officer in this case was not a trained advocate. ~~Besides, the Presenting Officer of the ESIC was not an advocate.~~ According to para 3(7), of the Third Schedule to the Regulations, it is only in extraordinary circumstances and in the discretion of the DA, that legal assistance can be provided to the delinquent. Viewed against the above background, it is apparent, that the applicant is merely making a fetish of the so called denial of reasonable opportunity by the respondents, to engage a legal practitioner to defend his case. We, therefore, reject this contention of the applicant as devoid of merit.

21. The next contention of the applicant was that though PWs 6 and 7 were examined at the DE, he was not furnished a copy of the FIR, which did not afford reasonable opportunity to him, to cross-examine these witnesses effectively. He also alleged, that a copy of the statement of PW 7, who was the CBI Investigating Officer in the case and was the author of FIR, was not furnished to him, even though PW7 was examined in the DE. He further complained, that relevant documents which were vital to his defence, such as PDB Watch Register, maintained at the local as well as regional offices, at Sheshadripuram, Bangalore, (which were not produced at the DE, though considered

....18/-

relevant by the DA), Case and Personal Diaries of the investigating officers, and relevant noting files, were not furnished to him, as also a copy of the recovery mahazar, as soon as it was drawn up, all of which, resulted in denial of reasonable opportunity to him. He sought to brace his case by relying on the following rulings and authorities in this regard:

S.No. (1)	Reference (2)
1.	AIR 1961 SC 1623 - State of My VS. Chintaman Sadashiv Vaishampayan
2.	KAR LJ 1983(2) 62 - Bhargava P. Vs. Superintendent of Police, Mangalore.
3.	Mys LJ 1967(2)632 - Bindurao Jivaji Kulkarni Vs. State of Mysore.
4.	Extracts of pages 137 & 138 from 'Services under the State' by Shri M.Rama Jois
5.	AIR 1968 (Punjab)312-Shamlal Vs. Director of Military Farms(Extracts)
6.	Kashinath Dikshit Vs. State of U.P. Supreme Court Judgement Dated 15.6.1986(Extract)

22. The following is a gist of these rulings and authorities:

(i) If copies of documents to which a public servant is entitled, are not furnished to him and if he is denied opportunity to cross-examine witnesses who depose against him, principles of natural justice are violated and Article 311(2) of the Constitution of India is contravened.

(ii) Where the Inspector of Police, who drew up the FIR was examined, as a witness and his evidence was relied upon, to prove the charge against the delinquent, effective cross-examination of the Inspector would not be possible, unless the delinquent is furnished a copy of the FIR. If it is not furnished on request by the delinquent, the DE is vitiated, as it amounts to denial of reasonable opportunity to the delinquent to defend himself.

....19/-

If however, the author of the FIR is not examined as a witness or the FIR is not relied upon in the DE, denial of a copy of the FIR does not vitiate the DE.

Even though the FIR is not relied upon by the prosecution but it is still required for effective cross-examination by the delinquent, it must be furnished.

(iii) Denial of copies of documents relied on by the prosecution in the charge memo and which are required for effective cross-examination of the witnesses examined in the case, amounts to denial of reasonable opportunity to defend.

(iv) Findings recorded in a preliminary enquiry and statements and such other documents, connected with the preliminary enquiry, against a civil servant, are all documents, which may be necessary for a civil servant to cross-examine the witnesses effectively. The mere fact, that the prosecution would not rely on those documents, cannot be a reason to deny them to a civil servant, if he needs the same for cross-examination. The findings recorded in a preliminary enquiry and such other connected documents, cannot be regarded as confidential and denied on that score to the delinquent. This would otherwise militate against the principles of natural justice and amount to denial of reasonable opportunity to defend, as contemplated in Article 311(2) of the Constitution. Similarly, failure to furnish a copy of the complaint or report, on the basis of which a DE is initiated and which is required for cross-examination by the delinquent, amounts to denial of reasonable opportunity to defend himself.

(v) Failure to furnish copies of the statement of witnesses, recorded at the preliminary stage of the

....20/-

enquiry against the delinquent, violated principles of natural justice, as the delinquent could not effectively cross-examine these witnesses.

23. Counsel for the respondents contended, that the FIR was not the exclusive document relied upon, to prove the guilt of the applicant and that the DE proceedings reveal that the applicant has examined the witnesses effectively and therefore no injustice has been caused to the applicant, on account of a copy of the FIR not having been furnished to him. Besides, according to the counsel for the respondents, KAR LJ 1983(2) 62 P.B.HARSHA VS. SUPERINTENDENT OF POLICE, MANGALORE relied upon by the applicant to support his contention is distinguishable on facts and does not come to his rescue. We have minutely scrutinised the proceedings in the DE and have noticed, that the applicant examined the concerned witnesses at great length and was not denied reasonable opportunity to cross-examine them effectively, to substantiate his defence. The applicant was not really handicapped in substantiating his defence, on account of copies of certain documents not having been furnished to him as alleged. The various rulings and authorities cited by him - vide paras 21 and 22 supra are not really relevant to the facts of the case. We therefore reject the contention of the applicant spelt out in para 21 above, as untenable.

24. We now advert to the contentions of the applicant, that the Director of the Forensic Science Laboratory Bangalore, on whose technical report the DA had relied upon, had not been examined at the DE, that the "demonstration solution" prepared by the CBI was not produced at the DE and that the currency notes and the applicant's table-top were not tested for trace of phenolphthalein powder in connection with the trap incident.

.....21/-

25. The applicant sought to derive support for his above contentions from the following rulings:

(i) AIR 1963 MP 76 GOVINDA SHANKAR VS. STATE OF M.P.

(ii) AIR 1986 SC 995 SAWAI SINGH VS. STATE OF RAJASTHAN.

(iii) AIR 1986 ALLAHABAD 126 SATISH MOHAN BINDAL VS. THE STATE OF U.P.

26. The core of these rulings is as under:

(i) In not examining the expert witness whose evidence was relied upon in the DE, the applicant was denied the opportunity to cross-examine him and was thus not given reasonable opportunity to substantiate his defence.

(ii) If the handwriting expert was not available for cross-examination on account of his demise and the evidence of such expert was necessary to prove the guilt of the delinquent, then another handwriting expert ought to have been called by the prosecution, to adduce evidence to corroborate the charge.

(iii) A document which is not a public document or is not admitted, cannot be exhibited and looked into, unless it is proved by oral evidence or otherwise.

27. In rebutting the contention of the applicant that Shri Inamdar, the Director of the Forensic Science Laboratory, Bangalore, on whose technical report the DA had relied upon, was not examined at the DE, counsel for the respondents submitted, that it was not necessary for the respondents to examine the above expert, as the exhibit relating to his technical report was marked as an exhibit in the DE, at the instance of the applicant and not of the respondents and therefore, it was for the applicant to summon, this expert as a witness and examine him at the DE.

.....22/-

In support, counsel for the respondents relied on the ruling in AIR 1975 SC 905 PHOOL KUMAR VS. DELHI ADMINISTRATION the ratio of which is as follows:

> "The report of the fingerprint expert was used as evidence by the prosecution without examining him in court. Neither the court thought it fit nor the prosecution or the accused, filed any application to summon and examine the expert as to the subject-matter of his report. The court was bound to summon the expert, if the accused would have filed any such application for his examination. That not having been done, the grievance of the accused, apropos the report of the expert being used without his examination in court, had no substance."

28. The above ruling of the Supreme Court is pertinent to the case before us, as the applicant by his own default, failed to summon the expert and examine him as a witness at the DE, particularly when the technical report of the expert was marked as an exhibit, at the instance of the applicant and not of the respondents. There is force in the argument of the counsel for the respondents on this aspect with which we agree and therefore reject the contention of the applicant, in so far as it relates to this aspect.

29. The other contentions of the applicant in regard to the "demonstration solution" (prepared by the CBI) not having been produced at the time of the DE and that the currency notes and the applicant's table-top, were not tested for trace of phenolphthalein powder, pale away into insignificance, in the context of the other evidence viewed in its totality, which unravels clearly, the guilt of the applicant, which aspect will be dwelt upon a little later. This also refers to the other contention of the applicant, that the impugned currency notes were not got examined through an expert for fingerprints, to establish contact of the applicant with these notes.

...23/-

30. The applicant has next alleged that the 2 panch witnesses were "interested witnesses" and the respondents did not associate "disinterested witnesses", when they were readily available near the scene of the trap. Enlarging thereon, the applicant sought to establish, that the two witnesses namely Shri N.K. Jaigopal (PW 2) and Shri Radhakrishna, who were Computers in the neighbouring National Institute of Tuberculosis, Bangalore, were instructed by the Director of that Institute, to assist the CBI in its investigation, in his case and they were "obliging witnesses", as they could not dare disobey or displease their Director. The applicant vaguely referred to a Delhi High Court ruling in support, wherein he said, it was observed that ministerial and such other staff should not be called as panch witnesses, as they tend to be less truthful in recording facts as they are easily amenable to the police. The applicant however could not pin-point this ruling.

31. Counsel for the respondents, referred us to AIR 1985 SC 1384 STATE OF UP VS. BALLABH DAS AND ORS to refute this contention. The Supreme Court has observed as follows, in this case:

> "There is no law which says that in the absence of any independent witnesses, the evidence of interested witnesses should be thrown out at the behest or should not be relied upon for convicting an accused. What the law requires is, that where the witnesses are interested, the Court should approach their evidence with care and caution, in order to exclude the possibility of false implication. We might also mention that the evidence of interested witnesses is not like that of an approver, which is presumed to be tainted and requires corroboration, but the said evidence is as good as any other evidence."

...24/-

> "The dominant question to be considered in the instant case is, whether the witnesses despite being interested, have spoken the truth and are credit-worthy. Once it is found by the Court, on the analysis of the evidence of an interested witness that there is no reason to disbelieve him, then the mere fact that the witness is interested, cannot pursuade the Court to reject the prosecution case on that ground alone."

32. The above observation of the Supreme Court applies squarely to the case before us, as there is no evidence to show that the aforementioned two panch witnesses, were prejudiced against the applicant and were not trustworthy. This contention of the applicant is therefore far-fetched and make-believe. We have, therefore, no hesitation in rejecting the same.

33. The applicant next alleged that the mahazar (Ex.P-3) was tampered with with an intent to implicate him falsely in the trap incident. He submitted that a copy of this mahazar, was not furnished to him no sooner than it was drawn up. As a result, the CBI could tamper with it and interpolate therein in the penultimate sentence in para 2 on page 3 the words:"telling that he would count it afterwards". He averred, that there was no mention in the mahazar, that PW-1 had actually seen the applicant through the gap in the curtain of his office chamber, counting the currency notes. The applicant also pointed out, that the words,"or both hands" were similarly interpolated in the concluding para of the mahazar, in the fifth sentence, on page 4, to implicate him, as having accepted graft money and this interpolation was not attested by PW-1. As a copy of the mahazar was not furnished to him as soon as drawn up, the applicant contended that he was denied the opportunity of questioning effectively the above interpolation in the mahazar (Ex. P-3) and that this vitiated the DE.

.....25/-

34. We have examined carefully the mahazar (Ex P - 3) to ascertain the veracity of the allegation of the applicant, in regard to manipulation of entries therein, with a motive to implicate him falsely in the trap incident. The applicant has not adduced concrete evidence to prove that Ex.P-3 was tampered with subsequently, in order to implicate him falsely, as having accepted illegal gratification. His inference seems to be a mere conjecture, on the premise, that a copy of Ex.P-3 was not given to him no sooner than it was drawn up. A copy of this exhibit was given to the applicant in course of time. It is nowhere laid down statuterily, that the same should have been given to the applicant, no sooner than it was drawn up. The entry of the words "telling that he would count it afterwards" said to have been interpolated in Ex.P-3, as alleged by the applicant, is seen to have been attested and dated 8.8.1977 (i.e. the date of drawing up the mahazar) by more than one witness, while the other entry viz "of both hands" also alleged by the applicant, as to have been interpolated does not bear such attestation. In the absence of any concrete evidence to prove that these entries were interpolated subsequently, the natural inference is, that these entries were made on the day and at the time of drawing up the mahazar, to rectify a bona fide omission and were not interpolated subsequently, with an ulterior motive, as alleged by the applicant. The sequence of events that took place from the time PW-1 met the applicant on 8.8.1977 in his chamber, in the course of the trap incident, as is seen from the evidence on record, does not go to prove, that these interpolations in Ex P-3

...26/-

were carried out with an ulterior motive. In the course of his elaborate cross-examination of PW-1, for reasons best known to him, the applicant evaded eliciting from PW-1, the facts regarding the alleged interpolation of entries in the mahazar. The contention of the applicant that Encl.3 was tampered with, to implicate him falsely, is therefore ill-founded and we reject the same.

35. The next contention of the applicant was, that the show cause notice (Annexure C) issued to him, does not take into account the error in the deposition of PW-2(Shri K.K.Jaigopal), which was inimical to his defence, as the first respondent, arrived on this basis, at a wrong decision, holding the applicant guilty. The applicant submitted, that the show cause notice was thus vitiated and that the finding of the DA was perverse and based on no evidence. He sought to buttress his case relying on the following rulings and authorities:

S.No.	Reference
(1)	(2)
1.	AIR 1964 SC 364 -UNION OF INDIA VS.H.C.GOEL
2.	1974 LAB IC 99 -UNION OF INDIA VS.B.K.DUTT (EXTRACT)
3.	AIR 1956 CAL 662-R.C.VERMA VS.R.D.VERMA (EXTRACT)
4.	1983 LAB IC 1489(CAL)-B.C.BASAK VS.IDBI (EXTRACT)
5.	AIR 1986 SC 1184 - DHANWANTI VS.D.D.GUPTA
6.	AIR 1986 ORISSA 196 - UMAKANTH DAS VS.PRADEEP KUMAR RAY
7.	SUPREME COURT JUDGEMENT DATED 10.6.1985(EXTRACT)
8.	EXTRACT OF PAGE 103 OF SWAMY'S CCS(CCA) RULES 1965

36. The pith of these rulings and authorities is summarised below:

(i) High Court can enquire whether the order of dismissal is based on no evidence. Mala fide exercise of powers need not be shown to prove that the order is based on no evidence.

(ii) The Court cannot sit in judgment over findings arrived at in the DE but if they are based on no evidence and no inference can be drawn therefrom, that the officer is guilty and at the most there is a lurking suspicion based on

...27/-

legal data, the Court will be justified in holding, that the charge against the officer is not substantiated and he was wrongly punished.

(iii) The impugned order of removal from service is vitiated, on account of failure on the part of the DA, to consider the explanation of the officer and to give reasons in support of his conclusions. The order is also vitiated, as the conclusions arrived at by the IO and accepted by the DA are not supported by evidence.

(iv) A writ of certiorari, can issue not only on the ground of jurisdiction but also on the ground of manifest error in law. If ex facie, it is apparent, that the Trial Court has come to a decision on no evidence, it will be a manifest error of law, amenable to a writ of certiorari by the Court. If perusal of the order reveals that reliance has been placed on evidence, which cannot be regarded as evidence establishing the charge, it is open to the Court to set aside the order on the ground of manifest error of law.

(v) If no prudent mind can draw inference and/or arrive at a finding in a DE, on the basis of the material on record or the material is absolutely irrelevant or extraneous, the Court may proceed on the basis, that in such circumstances, there was no evidence to sustain a finding and that the finding of the DA was perverse and of no consequence.

(vi) The entire approach of the statutory authorities is vitiated by gross misconstruction of facts and circumstances of the case, by ignoring the material evidence on record and by drawing inferences which were unreasonable and illegal.

(vii) A court of fact is no doubt competent to dis-

....28/-

believe a witness on appraising his evidence but not entering into the realm of conjecture. If the lower appellate court records a finding not on appreciation of documentary evidence but on surmise and conjecture, then that finding must be held as not based on evidence and therefore can be interfered with by the High Court in second appeal.

(viii) In a case in which evidence is of a circumstantial nature, the facts and circumstances from which conclusion of guilt is sought to be established, must be fully proved beyond all reasonable doubt. Mere suspicion however cannot take the place of proof.

37. Shri Jaigopal (PW-2) was a panch or mahazar witness. The applicant submits, that the reasons given by the DA in para 4 (i) of the show cause notice dated 3.2.1982 (Annexure C), for disagreeing with the findings of the IO, are based on mere conjecture and assumption. He refers particularly to the statement of the DA in the portion towards the end of para 4(i) ibid, ~~that~~ "it is in the evidence of A. Shankaran and the panch witness Jaigopal, that a sum of Rs. 100/- was accepted by the charged officer from Shankaran". The applicant states, that this does not accord with facts, as PW-2 has nowhere stated that he saw PW-1 handing over the currency notes to the applicant and the applicant having accepted the same. He further submits, that PW-2 was not present at the scene at the time but was standing far away from the office premises of the applicant, on the road, along with PW-6, Shri Nana Rao, Dy.SP, CBI. The above show cause notice was issued by the DA, nearly after 5 years of the incident of the trap and though the statement of the DA in para 4(i) ibid as expressed by him, tends to reveal a seeming contrariety, in the light of the above

.....29/-

facts in so far as the deposition of PW-2 is concerned, a holistic view of the evidence, both circumstantial and documentary needs to be taken and the evidence properly sifted, to help unravel the truth. Otherwise, if the evidence is merely nitpicked and is not appreciated in its totality as the applicant seeks to do in this case, the result would be like "missing the woods for the trees", leading to travesty of justice. It is not on the above statement in para 4(i) ibid alone, that the DA has inferred the guilt of the applicant, but, he has taken duly into account, all other material evidence both circumstantial and documentary, before concluding that the applicant was not innocent of the charge. We cannot therefore uphold the contention of the applicant, that erroneous statement of facts by the DA in the show cause notice (Annexure C) has led to a wrong and perverse decision on his part, in holding the applicant guilty of the charge. The various rulings and authorities cited by ~~him~~ to applicant - vide paras 35 and 36 supra, scarcely come to his aid, as those cases are clearly discernible from the case of the applicant, both in regard to facts and circumstances.

38. The other contention of the applicant was, that Shri A.Shankaran (PW-1), was regarded by the I.O. as an untrustworthy person and had therefore remarked, that his deposition was not worthy of credence. Yet, the DA relied on his sole and uncorroborated testimony and held the applicant guilty of the charge.

39. The IO has explained the reasons in his Inquiry Report (Annexure B), while analysing the deposition of PW-1, as to why he considers him as an unreliable witness. The various reasons advanced by him in this regard, are that there are glaring contradictions in his examination-in-chief, as also in his cross-examination, that he had given a false

....30/-

declaration to ESIC, that he had no proof of age while in all probability, he had the same, as he had studied upto the IXth Standard at Kancheepuram and that he had indicated the names of his parents and his relationship with them differently at different times, in the declaration form and elsewhere. The IO therefore has observed in his Inquiry Report, that Shri A.Shankaran is of a poor moral fibre with adverse antecedents, implying that his evidence is not reliable. The applicant reiterated the same while pleading his case before us and therefore submitted, that the evidence of PW-1 should not have been relied upon, specially when it was a lone and uncorroborated testimony, in regard to the alleged acceptance of the currency notes, by the applicant as illegal gratification, to fortify which, he cited the following Supreme Court rulings:

(i) AIR 1973 SC 498 RAM PRAKASH ARORA VS. THE STATE OF PUNJAB.
(ii) AIR 1986 SC 313 STATE Of UP VS. SATISH CHANDRA & ORS

40. The principles adumbrated by the Supreme Court in these rulings are <u>seriatim</u> as under:

(i) Evidence of interested and partisan witnesses who are concerned in the success of the trap, must be tested in the same way, as that of any other interested witness. In a proper case, the Court may look for independent corroboration before convicting the accused person.

(ii) It is not necessary in law, that more than one witness should be examined to prove a fact but unless the witness is very reliable the Court would ordinarily look for corroboration.

41. Counsel for the respondents refuted the contention of the applicant, that the deposition of PW-1 was unreliable as the guilt of the applicant was coherently and cogently

....31/-

established, stage by stage from that motive, demand and final acceptance of illegal gratification, in the form of currency notes, the clinching evidence being phenolphthalein test. According to him, the applicant was making a vain attempt, to malign the applicant with a view to dub him as an unreliable witness. In fact, in RAM SARUP VS. THE STATE (AIR 1967 DELHI 26) , the Supreme Court has observed, that the testimony of a person cannot be rejected on the ground, that certain criminal proceedings were pending against him and that he had shady or doubtful characteristics.

42. Viewing the case in its entirety, we are of the view that there is no concrete evidence to show that PW-1 has falsely implicated the applicant in this case and that the testimony of PW-1 is unreliable. The Supreme Court rulings cited by the applicant vide paras 39 and 40 above - do not come to his rescue, as the facts and circumstances in those cases are not identical with the case of the applicant. We therefore find no merit in the contention of the applicant that the evidence of PW-1 was not reliable.

43. The applicant then narrated various other possibilities for change of colour of sodium carbonate solution in contact with phenolphthalein. He invited our attention to the detailed account given by the IO in this respect on pages 41 to 44 of his Inquiry Report (Annexure B), but stated that the DA had ignored the evidence adduced by the IO and arrived at conclusion based on no evidence and on conjecture, holding the applicant guilty of the charge. The applicant sought to rely on the self-same rulings and authorities vide in para 35 supra, for his defence, in regard to this contention as well. We have already extracted the gist of these rulings in para 36 above.

44. The rather prolix narration of the IO on pages 41 to 44 of his Inquiry Report (Annexure B), on the question of various

.....32/-

other probabilities of the sodium carbonate solution turning pink, on contact with phenolphthalein powder, virtually reads like a defence statement of the applicant! These details are seen to have been culled from the written brief given by the applicant to the IO in the conclusion of the DE.

45. The applicant seeks shelter behind the same but neither he nor the IO have with reference to this laboured hypothesis, ~~have~~ explained the following crucial points. The applicant stated that his fingers were heavily stained by rubber stamp ink, as in the course of his duty, he was required to handle repeatedly, rubber stamp and the rubber stamp pad, in affixing the rubber stamp on many papers and in obtaining thumb impressions of the Insured Persons on various documents. He referred to Ex D-5, as the papers he was dealing with in the above manner, immediately prior to the trap incident. The mahazar (P-3) reveals, that when the applicant was asked to immerse his fingers of both hands in the two glass tumblers containing sodium carbonate solution on 8.6.77 i.e. the day of the trap, he refused to do so in the absence of his superiors. When Shri B.K.Ramachandra Rao, Dy. Regional Director ESIC Bangalore (PW-5), his superior, arrived on the scene, as requested by the applicant, the applicant strange enough, did not complain to him that his fingers were heavily stained with stamp pad ink but immersed his fingers in the tumblers without demur. He did not complain about the same earlier, even to Dy.SP CBI (PW-6). Besides, the colour of stamp pad ink is dark purple, which is quite distinct from pink colour, resulting from the reaction of phenolphthalein powder with sodium carbonate solution. Counsel for the respondents pointed out, that apart from the questionable credibility of Shri K.Shankar (DW-3) as an expert in the field, the applicant in the course of his fairly long

....33/-

examination of the defence witness, conspicuously remained silent, on questioning him about the chemical effect of stamp pad ink & on contact with sodium carbonate solution. Strange enough, when his statement was first recorded on 30.9.1977, the applicant did not take the plea of his fingers having been stained with stamp pad ink. It is thus apparent, that the plea of defence of the applicant, in regard to the possibility of colouration, due to stamp pad ink stain is far-fetched and clearly an after-thought. The applicant has not satisfactorily explained as to how sodium carbonate solution turned pink in both the tumblers, when he immersed his fingers of both hands on the day of the trap incident.

46. The contention of the applicant that the DA held him guilty of the charge, without evidence but on surmise and conjecture, in regard to the colour change of the sodium carbonate solution (on the applicant immersing his fingers therein) does not accord with facts. The DA had analysed the evidence, in regard to this aspect in fair detail, in the show cause notice issued to the applicant by him on 3.2.1982 (Annexure C). The rulings and the authorities relied upon by the applicant in this respect-vide paras 35 and 36 supra do not come to his succour. It has been held in JAIPRAKASH VS. STATE OF HARYANA 1980 Gr. L.J. 538 (P&H) and in CHANAN RAM VS STATE OF PUNJAB (1976) 80 Pun.L.R.245 (P&H) that the fact is well known that, phenolphthalein powder, in a solution of sodium carbonate, would turn the colour of the solution to pink and for that reason, judicial notice can be taken of it, without any specific reference to any book of science. We, therefore, reject this contention of the applicant as without basis.

47. The applicant further contended, that the DA had not duly considered the evidence of the defence witnesses in spite of the report of the IO and his order dated 18.4.1982 (Annexure D) imposing on the applicant the penalty of compulsory

....34/-

retirement was not a speaking one. In support he relied on the following rulings and authorities:

S.No. (1)	Reference (2)
1.	AIR 1958 SC 300 STATE OF GUJARAT VS.RAOJEBHAI MOTIBAI PATEL AIR 1961 GUJ 130
1A.	COPY OF PAGE 144(EXTRACT) FROM
2.	MYS LJ 1967(2) 360-T.RAMACHANDRAPPA VS.STATE OF MYSORE
3.	AIR 1963 SC 395 - BACHITTA SINGH VS. STATE OF PUNJAB
4.	EXTRACT OF 13 CASES (PAGE 323 OF "SERVICES UNDER THE STATE" BY SHRI M. RAMA JOIS)
5.	EXTRACT OF 4 CASES ON PAGE 724 OF BOOK BY R.D.SRIVASTAV
6.	1986(1)LLJ.101(SC) ANIL KUMAR VS PRESIDING OFFICER
7.	1977(2) KARLJ 321 TO 326 NARASIMHAN VS. STATE OF MYSORE

48. The gist of the principles enunciated therein, is as follows:-

(i) In answer to a second show cause under Article 311 (2) of the Constitution a Government servant is entitled to make his representation both on merits as well as on the quantum of punishment so that he has reasonable opportunity to defend himself. Where the dismissing authority did not consider the reply of the Govt. servant to the show cause notice on merits but applied his mind to the question of punishment, the dismissal order was held as well contravening the above Articles.

(ii) Departmental proceedings are not divisible. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges against the Government servant are established or not and the second is reached only if it is found they are so established. That stage deals with the action to be taken against the Government servant. Both the stages are judicial in nature. Consequently, any action

....35/-

decided to be taken against a Government servant found guilty of misconduct is a judicial order and as such it cannot be varied at the will of the authority who is empowered to impose the punishment.

(iii) In a case where the DA is not the IO, it is the duty of the DA to consider the record of the IO and record its finding on each charge. The rule requires independent consideration by the DA, on the basis of the evidence on record. Imposition of penalty without considering the representation of the officer which is mandatory is unsupportable.

(iv) The show cause notice must disclose material information i.e. specify the charges and disclose the reasons for arriving at a conclusion. The final order in a DE must disclose the application of mind of the DA, to the reply of the delinquent to the show cause notice.

49. The applicant had preferred an appeal on 14.6.1982 (Annexure H) to the second respondent (AA), on the order passed by the DA on 16.4.1982 (Annexure D). The order passed by the AA on 15.2.1983, came to be challenged by the applicant in WP No. 5166 of 1983 in the High Court of Karnataka. By its order dated 20.3.85 (Annexure E), the High Court partly allowed the writ petition, holding that the order dated 18.2.1983 passed by the AA was not a speaking one and therefore quashed the same, directing the AA to dispose of the matter in accordance with law. Accordingly the AA passed a revised speaking order on 4.6.1985 (Annexure G), rejecting the appeal of the applicant, confirming the penalty of compulsory retirement imposed by the first respondent.. It is pertinent to recall here, the observation in 1958 SC 1057 = AIR 1958

.....36/-

SC 868, COMMISSIONER OF INCOME TAX BOMBAY VS AMRIT LAL BHOGILAL which reads as follows:

> "If an appeal is provided against an order passed by a tribunal, the decision of the AA is the operative decision in law, irrespective of whether it confirms, modifies or reverses the decision of the tribunal".

The order of the DA has thus merged with that of the AA, who has taken into account, all the contentions urged by the applicant and passed a speaking order, in accordance with law as directed by the High Court. The applicant therefore cannot make a grievance now, about the order passed by the DA earlier and the rulings and the authorities cited by him - vide paras 47 and 48 supra - in support scarcely come to his avail.

50. The contention of the applicant that the third respondent was biased against him, is far too belated and ill-founded, as it was not raised at the earliest opportunity and the mere act of transmission of the written complaint (Ex P-1) by the third respondent to the CBI, for the purpose of investigation can by no means be regarded as motivated by bias or mala fides as alleged by the applicant and in fact it was the legitimate duty of the third respondent to do so on the directions of his immediate superior viz PW-3. The ruling in AIR 1986 SC 872 EXPRESS NEWSPAPER VS. UNION OF INDIA cited by the applicant, is not relevant to the facts and circumstances of his case. We, therefore, reject this contention of the applicant as without merit.

51. The applicant raised the contention of the article of charge framed against him being vague and not specific. He referred to the disparities between the article of charge and the statement of imputations. While in the article of charges the reference was to expediting payment of compensation, in the statement of imputations he said, the expression used was "illegal gratification is demanded". He also pointed out

....37/-

certain discrepancies in Annexures I and II relating to the statement of imputations and submitted, that the IO had brought out these discrepancies in his Inquiry Report. (Annexure B). The applicant relied on the following Supreme Court rulings to substantiate his contention:

(i) AIR SC 752 SHRAT CHANDRA CHAKRAVART VS. STATE OF WEST BENGAL.
(ii) AIR 1985 SC 84 NEPAL SINGH VS. STATE OF UP.
(iii) AIR 1986 SC 995 SAWAI SINGH VS. STATE OF RAJASTHAN

52. The principles enunciated in these rulings are as under:

(i) Charges framed against a civil servant should not be vague and indefinite but must be capable of being understood. Framing of charge in a vague and indefinite manner contravenes Articles 311(2) of the Constitution.

(ii) Where the charges framed against the delinquent were vague and no allegations regarding it have been made by him before the IO or before the High Court, the fact that he has participated in the enquiry would not exonerate the Department to bring home the charges. The enquiry based on such charges would stand vitiated/not being fair.

(iii) Order based on mere allegations and on unspecific and vague grounds is liable to be quashed.

53. We have perused the article of charge and the statement of imputations of misconduct. We do not find that the charge framed against the applicant was so vague and indefinite as could not be understood by him. In fact the elaborate manner in which the applicant examined the various witnesses and particularly PW-1, the principal prosecution witness, whom he grilled through a marathon cross-examination, clearly proves that the applicant more than understood the charge. The

.....38/-

applicant did not urge this contention at the time of the DE or before the DA and the AA, before they passed the orders and even in the writ petition he filed before the High Court of Karnataka but has now come up far too belatedly on 11.4.1985(Annexure F) with this additional ground. We find that the applicant is merely exaggerating trivia, with a vain attempt to shield his guilt. We find no substance in this contention of the applicant and therefore reject the same.

54. The applicant also raised an additional ground, viz the point of jurisdiction, contending that the third respondent was not competent to initiate disciplinary proceedings against him. In support he cited the rulings in KARNATAKA HIGH COURT PLR 1982(44) 100 ESIC VS. SHOBA ENGINEERING BANGALORE & OTHERS and in the Karnataka High Court Judgment in WP No. 8806 of 1985. In the former case, the Learned Judges held a part of the Resolution of the ESIC which authorised the Director General to sub-delegate powers passed by the ESIC on 28.2.1976 was void, in the eye of law and did not authorise legally, the Director General to delegate powers contemplated under Section 85B(1) of the ESIC Act to his subordinates. In the second case, the learned Judge held, that he was satisfied from the material on record that there was no delegation of powers by the first respondent to the second respondent for instituting DE against the petitioner.

55. The counsel for the respondents submits that this is a belated additional ground advanced by the applicant and that in the earlier writ petition filed in the High Court of Karnataka viz WP No. 5166 of 1983, the plea of the applicant regarding the power of the authority to initiate disciplinary proceedings was duly considered by the High Court and that it is not open for the applicant to urge the same grounds anew.

...39/-

The counsel for the respondents affirmed, that the contention of the applicant that the third respondent was not competent to initiate the DE and that there was no valid delegation of power in favour of this respondent to initiate DE was untrue. He submitted that the Standing Committee of the ESIC had accorded approval to the issue of general orders authorising the Director General, to delegate any of his powers and that in terms of this delegation, the third respondent was empowered to initiate disciplinary proceedings against the applicant, involving both minor as well as major penalties. According to the counsel, this matter has already been concluded by the High Court in the above writ petition and this order not having been challenged was binding on the parties.

56. As regards W.P.No. 8806 of 1985, the counsel pointed out that the same is pending decision in the High Court of Karnataka, which has directed that the matter be heard afresh.

57. In view of the foregoing, we find that this contention of the applicant is without merit and therefore reject the same.

58. And finally, the main thrust of defence of the applicant was that he was held guilty of the charge, by the respondents, even when there was no evidence in the case. According to him, the IO had held, that there was no proof against the applicant to substantiate the vital links or motive, and demand of bribe and its acceptance in this entire episode. He relied on the following decisions of the Supreme Court and other rules for support:

S.No. (1)	Reference (2)
1.	AIR 1964 SC 364 UNION OF INDIA VS. H.C. GOEL
2.	AIR 1983 LAB IC 1589 PURANCHAND VS. SUPERINTENDENT OF POLICE
3.	EXTRACT OF MADRAS DIVISION BENCH JUDGEMENT DATED 29.4.85 IN I.G. OF POLICE, PONDICHERRY VS. MASILAMANI

.....40/-

(1)	(2)
4.	AIR 1986 SC 307 SALIM KHAN SADAR KHAN VS. STATE OF GUJARAT
5.	AIR 1985 SC 79 KHILLI RAM VS. STATE OF RAJASTHAN
6.	AIR 1985 SC 84 NEPAL SINGH VS. STATE OF UP
7.	1986 CRI LJ 1922 R.S. NAYAK VS. A.R. ANTULAY

59. The ratio of these rulings is as follows:

(i) High Court can enquire whether the order of dismissal is based on no evidence. Mala fide exercise of powers need not be shown to prove that the order is based on no evidence.

(ii) The constable could not be said to have connived at the officer of acceptance of illegal gratification, in the absence of evidence, that he was aware that the amount was handed over as bribe.

(iii) Placing the cover enclosing the currency notes on the table, during the absence of the accused and the Sub-Inspector of Police (SI) opening it and finding the money, could not be said to have accepted illegal gratification. The complainant himself had deposed, that he did not see the SI when he placed the cover. Even the Enquiry Officer had said that there was no evidence to show that the SI had demanded the payment.

(iv) The High Court obviously lost sight of the fact that the applicant may have lost his agility and in the peculiar circumstances, the notes could be seen inserted without the appellant knowing it. There was also evidence, that the accused's fingers when dipped in the mixture did not turn rosy. This evidence probabilities the defence plea, that the currency notes had not been received by the appellant in his left hand and therefore, insertion of the notes into the pocket of the applicant by some other person was more probable.

....41/-

(v) There is discrepancy in many material aspects. The prosecution story is opposed to ordinary human conduct. The discrepancies go to the root of the matter and if properly noticed would lead any court to discard the prosecution version. Without powder treatment, for the absence of which no explanation has been advanced the prosecution story becomes liable to be rejected. An overall assessment of the matter indicates that the story advanced by the prosecution is not true and the defence version seems to be more probable.

(vi) Order based on mere allegation and on unspecific and vague grounds is liable to be quashed. The reputation for corrupt behaviour must be based on something more than a mere allegation.

(vii) What Section 161 of the Penal Code envisages is, that any gratification other than legal remuneration, should have been accepted or obtained or agreed to be accepted or attempted to be obtained by the accused for himself or for any other person, as a motive or reward for doing or forbearing to do, any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person. It is therefore necessary to establish, that taking of gratification must be connected with any specific official action favour or service, by way of motive or reward.

60. On the face of it, the ratio of the rulings at para 59(iv) and (v) is not relevant to the case of the applicant, the facts and circumstances being clearly different. Counsel for the respondents endeavoured to re-enact the entire scenario, traversing the stages of motive for, demand and acceptance of illegal gratification by the applicant in 1976/77 and for that

....42/-

purpose, gave us the following chronology of events as the background, to prove, that the guilt of the applicant had a close nexus with each of these stages and that he was not implicated on no evidence as alleged by the applicant.

Date (1)	Event (2)
20.8.1976	Shri A.Shankaran (PW-1) the Insured Person met with an accident.
23.8.1976	A report of this accident was received by the ther Manager ESIC Sheshadripuram, Bangalore from the local office.
6.9.1976	The nature of the accident and the injury caused was investigated into by the Upper DivisionClerk of the office of the Manager, ESIC.
21.9.1976	A report was sent by the then Manager ESIC tothe Regional Director, ESICBangalore (Regional Director for short).
5.10.1976	The report was accepted by the Head Office and the Regional Director communicated the same to the then Manager ESIC the same day (ExP-8).
11.10.1976	The applicant Shri S.K.Srinivasan resumed charge as ManagerLocalOffice ESIC Sheshadripur,Bangalore.
30.3.1977	PW-1 gave his application to Shri Srinivasan in person for Permanent Disablement Benefit (PDB) when the latter told, that he should see him in the evening after the meeting of the Medical Board (i.e. on 5.7.1977)
21.4.1977	Shri Srinivasan forwarded the application in the prescribed form, to the Regional Director for reference to the Medical Board and the same was received by the latter on 23.4.1977.
20.6.1977	The Regional Director addressed a communication in the matter direct to PW-1, a copy of which was endorsed to Shri Srinivasan and the same was received by Shri Srinivasan on 27.6.1977.
5.7.1977	PW-1 appeared before the Medical Board. He met Shri Srinivasan the same day, when the latter demanded Rs.400/- from him and immediate payment of Rs. 100/- to settle the PDB claim.
19.7.1977	The Medical Board recommended PDB for PW-1. The report was sent to the Head office, which transmitted the same to the Regional Office.
1.8.1977	PW-1 called on Shri Srinivasan in his office when the latter renewed his demand of Rs.400/-as illegal gratification. PW-1 submitted a written complaint the same day to PW-5.
8.8.1977	The CBI laid a trap for Shri Srinivasan.

61. In order to prove that the applicant had sufficient acquaintance and contact with PW-1, counsel for the respondents pointed out, that Temporary Disablement Benefit (TDB) for an Insured Person, who meets with an accident is to be granted by the Local Manager of the ESIC, according to rules, after he satisfies himself that the Insured Person qualifies for the same

.....43/-

and payment is to be made by the Manager himself. TDB was granted to PW-1 by the applicant upto 6.1.1977 and prior to that, TDB was paid in instalments to the applicant, on as many as 14 occasions. The applicant had referred him to the medical referee for TDB, on as many as 5 occasions. With this acquaintance and familiarity, it seems unlikely that the applicant should have demanded, identity Card from PW-1, on the date of the trap namely 8.8.1977, on which the applicant seeks to capitalise, for having unwittingly come in contact with phenolphthalein powder.

62. The applicant explained, that the application for PDB tendered by PW-1 on 30.3.1977, was promptly forwarded by him with necessary remarks to the Regional Director on 21.4.1977. He submitted, that he was not in a position to favour PW-1 and therefore, PW-1 could have no motive to pay him illegal gratification and the only motive he could have had was to implicate him falsely, through having been engaged as a ploy by some of his colleagues out of rivalry, to get him into trouble. Counsel for the respondents remarked, that this statement was a figment of imagination on the part of the applicant, who had yet a role to play in favouring PW-1 in terms of the duties and responsibilities, he was required to discharge in regard to the PDB according to Chapter V of the ESIC Local Office Manual. In particular, he drew our attention to the provisions of para L-5-22 of that Chapter in regard to first payment of PDB. This along with the sequence of events chronicled in para 54 above, according to the counsel, clearly revealed the nexus of motive for and demand of illegal gratification by the applicant.

63. The applicant sought to plead alibi, in respect of the crucial date viz 1.8.77 when the applicant is said to have demanded illegal gratification from PW-1. He submitted that at

.....44/-

the time PW-1 is said to have visited him on 1.8.1977, he was not in his chamber but had visited a factory viz M/s SUNRISE INDUSTRIES, Bangalore, in the course of his official duty. As evidence of his having visited this factory on that date, he stated, that he had initialled entries in various registers in the factory. The applicant is seen to have chosen the Manager of this factory (DW-1), as one of his three defence witnesses. Counsel for the respondents submitted, that the applicant could easily manipulate entries in the factory register to cover up the alibi. It was striking, he said, that the applicant did not furnish names of DW1 and DW-2, at the beginning but did so, at a late stage when prosecution witnesses were examined in the DE, apparently with a motive to manipulate alibi. Counsel drew our attention to the following portion of the cross-examination of PW-1, by the applicant (Pages 42-43), which he said bewrayed, that the applicant was very much in his office chamber, when PW-1 visited him on 1.8.1977. Besides, the applicant conspicuously refrained from confronting PW-1 in the course of his cross-examination, that he was away at the time on a visit to the above factory. Further, according to para 4.81 of Chapter IV of the ESIC Local Office Manual, the Local Office Manager is ~~requested~~ required to perform a long list of duties in the course of his visit to a factory, to ensure proper remedial measures in regard to TDB. The applicant has not shown to us, as to whether a memorandum of instructions was issued to the factory in the light of para 4.81 ibid, pursuant to his visit and whether his immediate superior was apprised of the same. Viewing the above facts and circumstances as a whole, it appears to us that the applicant has concocted the plea of alibi, to circumvent the implication of motive for and demand of illegal gratification.

.....45/-

64. This nexus, with the terminal link of acceptance of bribe has been dealt with by us exhaustively in paras 43 to 46 above.

65. Counsel for the ~~applicant~~ respondents, placed reliance on the following Supreme Court and other rulings, to substantiate that the applicant was held guilty of the charge, on the basis of positive evidence, both documentary as well as circumstantial and to refute the contention of the applicant, that the disciplinary and the appellate authorities, held him guilty on no evidence and that the IO had held him innocent, the charge not having been proved beyond reasonable doubt.

S.No.	Reference
(1)	(2)
(i)	AIR 1981 SC 738 RAMANAND VS. STATE OF M.P.
(ii)	AIR 1978 SC 1091 INDER SINGH & ANOTHER VS. STATE (DELHI ADMINISTRATION)
(iii)	AIR 1982 SC 1511 KISHAN CHAND MANGAL VS. STATE OF RAJASTHAN
(iv)	AIR 1974 SC 989 SOM PRAKASH VS. STATE OF DELHI
(v)	AIR 1986 SC 1899 STATE OF ANDHRA PRADESH VS. B. CHANDRAIAH AND ANOTHER

66. The principles outlined in these rulings are summarised below:-

(i) Where the inference of guilt of an accused person, is to be drawn from circumstantial evidence, only those circumstances must in the first place be cogently established. Further, these circumstances should be of a definite tendency, pointing towards the guilt of the accused and in their totality, must unerringly lead to the conclusion, that within all human possibility, the offence was committed by the accused and none else.

(ii) Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality not isolated scrutiny. While it is necessary, that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. Proof beyond reasonable doubt is a guideline, not a fetish and a guilty man

.....46/-

cannot get away with it, because truth suffers some infirmity, when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof conviction.

(iii) Evidence Act (1 of 1872) Section 3-Circumstantial evidence - Bribery case - Visit of accused (Factory Inspector) to factory of complainant - Demand of bribe by accused from complainant - visit of complainant and raiding party to house of accused - accused taking out currency notes from his diary and giving the same to accused - Accused keeping them under the pillow of his cot - Recovery of currency notes and numbers tallied with the memorandum already prepared- events subsequent to prior demand, unexplained by the accused - It could not be said that there was no evidence of prior demand - Accused could not be said to be unwilling victim nor a fence-sitter.

Merely because witnesses relating to trap in a bribery case are petty clerks, their evidence cannot be rejected as wholly unreliable, more so when they do satisfy the test of witnesses independent of police influence.

So called ~~inner~~ minor variations between the evidence of witnesses and omission of trivial details, do not render unreliable, the testimony of trap witnesses.

(iv) Bribes are paid not only to get unlawful things done but to get lawful things done promptly since time means money. "Speed money", is the key to getting lawful things done in good time and "operation of signature", be it in a gate pass or a proforma, can delay the movement of goods, the economics whereof indude investment in bribery..

.....47/-

(v) Where there is direct evidence of an acceptable nature regarding commission of offence, question of motive becomes immaterial.

67. The applicant asserts, that the respondents have held him guilty of the charge on "no evidence" and is principally relying on the report of the Inquiry Officer (Annexure B), who acquitted him, giving him the benefit of doubt. The various rulings cited by the applicant - vide para 58 to 63 supra, do not come to his avail, as the facts and circumstances of these cases to which they relate, bear little parity to the case of the applicant. A critical study of the above report of the Inquiry Officer (Annexure B) makes it clearly manifest, that he has not analysed dispassionately and faithfully, the evidence both documentary and circumstantial. Instead of taking a holistic view of the evidence, he has merely nit picked seeming disparities and discrepancies in the statement of witnesses and has traversed beyond his ken, labouring on various possibilities particularly in regard to the phenolphthalein test and has given the applicant the benefit of doubt and acquitted him.

68. On the other hand, the counsel for the respondents has endeavoured to present a cohesive and coherent analysis of the entire gamut of evidence, bringing out nexus with the crucial stages of motive for, demand and acceptance of bribe in the conduct and behaviour of the applicant in this entire case. The principles enunciated in the various rulings relied on by him - vide paras 65 and 66 supra in our view, are apt and relevant to the case of the applicant and amply go to prove, that the applicant has been held guilty by the respondents on evidence, both documentary and circumstantial, cogently established with reference to the above three crucial facets of bribery.. The guilt casts a serious reflection on the integrity and moral turpitude of the applicant, who held a responsible post in

....48/-

the ESIC. It is needless to impress, that a responsible public servant, in whom implicit trust and confidence is reposed by the organisation, should display the highest sense of probity and integrity, in the discharge of his duty, with a view not only to prevent hardship and harassment to the public but what is more, ~~is~~ to be a shining exemplar of purity and justice in public administration, lest the values which we greatly cherish are seriously eroded and the image of that administration is tarnished to bring it into disrepute. Even then, the respondents are seen to have taken a sympathetic view of the matter, and have imposed on the applicant, only the penalty of compulsory retirement, not denying to him pensionary benefits.

69. Before we part with this case, we cannot refrain from animadverting, on the manner in which the CBI arranged the trap and recorded the mahazar, in regard to the trap incident, which leaves much to be desired. The trap could have been more professional, thorough and meticulous in its planning and execution at each stage, leaving no room whatsoever, even for lurking doubt or suspicion.

70. We are convinced that the punishment meted to the applicant is condign and is based on evidence, conclusively establishing his guilt. We, therefore, find no convincing reason to interfere with the same.

71. As all the contentions urged by the applicant fail, this application is liable to be dismissed. We therefore dismiss this application, with no order as to costs.

Sd/-
VICE CHAIRMAN

Sd/-
MEMBER (A)

sr /TRUE COPY/

B.V. Venkatareddy
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
IInd Floor, Indira Nagar,
BANGALORE-560 038.

Application No. 653/86 (T)
(Cop. No. 1174/85)

Dated the 4/2/87

To

1. Shri Sanjeev Malhotra,
   All India Services Law Journal,
   Hakikat Nagar, Mal Road,
   NEW DELHI - 110 009.

2. Shri R. Venkatesh Prabhu, Member,
   Editorial Committee,
   Administrative Tribunal Reporter,
   67 - Lawyer Palace Orchards,
   BANGALORE-560 003.

3. The Registrar,
   Central Administrative Tribunal,
   Principal Bench, Feridkot House,
   Copernicus Marg,
   NEW DELHI - 110 001.

4. The Editor,
   Administrative Tribunal Cases,
   C/o Eastern Book Co.,
   34, Lal Bagh,
   Lucknow - 226001.

Subject: Sending Copies of Order passed by the Bench in application No. 653/86 (T)

....

Please find enclosed herewith the copy of the Order passed by this Tribunal in the above said Application on 30-1-87 for needful. The Judgement is ordered to be reported.

B.V.V.R.A.P.
By. Regn.
SECTION OFFICER
(JUDICIAL)

Encl: as above.

O/C

Sl. J/A
Please issue to adv
AR 4/2/87

Easterri Book Co., 34, Lalbagh, Lucknow-226001

From :

Dated 16-2-87

The Editor

Administrative Tribunals Cases

ACKNOWLEDGEMENT

We acknowledge receipt of your ~~letter(s)~~ Application Nos. 245/86(T) dated 20.1.87 & 1653/86(T) dated 4-2-87

and packets therewith containing 2 judgments.

Thanking you

FOR Acaur

Editor

Easterri Book Co., 34, Lalbagh, Lucknow-226001

From :

Dated 16-2-87

The Editor
Administrative Tribunals Cases

ACKNOWLEDGEMENT

We acknowledge receipt of your ~~letter(s)~~ Application Nos. 245/86(T) dated 20.1.87 & 1653/86(T) dated 4-2-87 and packets therewith containing 2 judgments.

Thanking you

FOR ACaur
Editor

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
@@@@@@@@@@@@@@@@

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 24/8/87

REVIEW APPLICATION NO 58 /87( )
IN APPLICATION NO. 1653/86(T)

W.P. NO /

Applicant

Shri S.K. Srinivasan V/s The Director General, ESIC & 2 Ors

To

1. Shri S.K. Srinivasan
No. 64, 7th Temple Road
Malleswaram
Bangalore - 560 003

2. Shri M.S. Nagaraja
Advocate
35, (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

3. The Director General
Employees State Insurance Corporation
ESIC Building
Kotla Road
New Delhi

4. The Chairman
Standing Committee of the ESIC &
the Additional Secretary
Department of Labour
Ministry of Labour
Shram Shakthi Bhavan
Rafi Marg, New Delhi- 110001

5. The Regional Director
E.S.I. Corporation
No. 10, Binny Fields
Binnypet
Bangalore - 560 023

6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel,
High Court Bldg
Bangalore - 1

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/ ~~INTERIM ORDER~~ passed by this Tribunal in the above said Review application on 20-8-87.

DEPUTY REGISTRAR
~~SECTION OFFICER~~
(JUDICIAL)

Encl : as above

7. Shri M. Papanna
Advocate
99, Magadi Chord Road (Near State Bank of Mysore)
Vijayanagar
Bangalore - 560 040

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 20TH DAY OF AUGUST, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri P. Srinivasan, Member (A)

REVIEW APPLICATION NO. 58/1987

Shri S.K. Srinivasan,
No.64, 7th Temple Road,
Malleswaram,
Bangalore. .... Applicant.

(Shri M.S. Nagaraj, Advocate)

v.

1. The Director General,
Employees' State Insurance
Corporation, ESIC Building,
Kotla Road,
New Delhi.

2. The Chairman,
Standing Committee of the ESIC
and the Additional Secretary,
Department of Labour,
Ministry of Labour,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi.

3. The Regional Director,
E.S.I. Corporation,
No.10, Binny Fields,
Binnypet,
Bangalore-23. .... Respondents.

(Shri M.S. Padmarajaiah, SCGSC for R-1)
(Shri M. Papanna, Advocate for R-2&3)

This Review Application having come up for hearing to-day, Vice-Chairman made the following:

ORDER

In this application made under Section 22(3)(f) of the Administrative Tribunals Act, 1985 the applicant has sought

for a review of the order made on 30.1.1987 dismissing his Application No.1653/86(F) in which he had challenged an order of compulsory retirement in a disciplinary proceeding.

2. The principal ground on which the applicant sought for review was that in Application No.1678/86(T) decided on 16.4.1987 another Division Bench of this Tribunal had upheld his contension that the Regional Director, ESI,(RD) had no competence to initiate the disciplinary proceedings against him. But this very question, had been referred to a Full Bench of this Tribunal in Application No.473 and 474/87 which in its opinion rendered on 10.8.1987 had overruled the decision rendered in Application No.1678/86 and had ruled that the RD was competent to initiate the disciplinary proceedings as held in A.No.1653/1986. For the very reasons stated by the Full Bench in A.No.473 and 474/87 the principal ground for review calls for rejection.

3. In the other two grounds, the applicant really asks us to reexamine the order made against him as if we are a court of appeal and come to a different conclusion which cannot be done in a Review.

4. On the foregoing discussion we hold that this Review Application is liable to be dismissed. We, therefore, dismiss this Review Application but in the circumstances of the case, we direct the parties to bear their own costs.

"True copy"

Sd/-
Vice-Chairman

Sd/-
Member (A)

DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

True Copy

bsv/Mrv.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

IInd Floor,
Commercial Complex (BDA),
Indira Nagar,
Bangalore-560 038.

F.No.11/1/86- Judl. 8-3-88.

To

Shri Pradeep Bahl,
Editor in charge,
Delhi Law Times Office,
5335, Jawahar Nagar,
(Kolhapur Road),
Delhi-110 007.

Subject: Sending of copies of Judgements.

.....

Sir,

I am directed to refer to your letter dated 19-2-88 addressed to Hon'ble Shri L.H.A.Rego, Member(A), on the above subject.

As directed copies of the following orders are sent to you with request for publication.

1. A.No.1653/86(T)	-	Order dt.30-1-87 of Bangalore Bench.
2. Tr. A.Nos.125 & 126/86	-	Order dt.24-8-87 of New Bombay Bench.
3. O.A.No.341/86	-	Order dt.25-8-87 of New Bombay Bench.
4. O.A.No.449/87	-	Order dt.26-8-87 of New Bombay Bench.
5. O.A.No.373/86	-	Order dt.27-8-87 of New Bombay Bench.

Yours faithfully,

(N.RAMA MURTHY)
SECTION OFFICER(J).

✓ Copy to file of A.No.1653/86(T).

Recd. by post. Enter in SLP list
SLP Register & main Register. Add to file & note.
Thereafter o/c a copy of this to Hon'ble VC &
Hon'ble members with a copy of O.A. order as per
R: 143 of R o P '93. 20/6/94 SO (J-II) B.B.

D.NO. 2588/87 /SEC. IV A
SUPREME COURT OF INDIA
NEW DELHI.

From:-
The Registrar,
Supreme Court of India
New Delhi.

DATED:- 7/6/94.

To

The Registrar,
Central Administrative Tribunal,
Bangalore Bench,
BANGALORE.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL/~~CRL.~~) NO. 6834/87
(Petition under Article 136(1) of the Constitution of India
from the Judgment and Order dated 30/11/87
of the ~~High Court of Judicature at~~ Central Admn. Tribunal,
Bangalore Bench in A. No. 1653/86 (T. No. 1174/85)

S.K. Srinivasan

...PETITIONER(~~S~~)

-VERSUS-

The Director General of ZOAS.

...RESPONDENT(~~S~~)

Sir,

I am directed to inform you that the petition above mentioned filed in the Supreme Court was dismissed by the Court on 17/3/94

Yours faithfully,

[signature]
For Registrar