

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH BANGALORE

DATED THIS THE 6th MARCH 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)  
Hon'ble Sri L.H.A. Rego - Member (A)

APPLICATION No. 1677/86

P.K. Phillip  
Deputy Manager  
ESI Corporation  
Local Office Seshadripuram  
No.7, N.S. Iyengar Street  
Bangalore 560 020

- Applicant

(Sri S.Vasantha Kumar, Advocate)

and

1. The Director General Employees State Insurance Corporation  
'ESIC Buildings', Kotla Road, New Delhi
2. Harmindar Singh  
Director General Employees State Insurance Corporation, ESIC Building, Kotla Road  
New Delhi
3. The Regional Director Employees State Insurance Corporation, Regional Office,  
No.13, Kumarpark East Extn  
Bangalore 560 001

- Respondents

(Sri M. Papanna, Advocate)

This application came up for hearing  
before this Tribunal and Hon'ble Sri Ch. Ramakrishna  
Rao, Member (J) to day made the following

.....2

*Chd*

O R D E R

This application was initially filed in the High Court of Karnataka as a writ petition and subsequently transferred to this Tribunal. The facts giving rise to this application are, briefly, as follows.

2. Disciplinary proceedings were initiated against the applicant while he was working as Manager Grade II by the Director General Employees State Insurance Corporation ('DG ESIC') - R2 by issuing a memo dated 12.11.1979 ('Memo') (Annexure A). The charges alleged against the applicant were that in respect of two money orders of Rs.75/- and Rs.60/- there were temporary misappropriations for a period of 14 and 18 days respectively. The applicant submitted his reply dated 24-11-1979 (Annexure B) wherein he categorically denied the charges. The Enquiry Officer ('EO') held that these charges were not established. R2, however, differed with the findings of the EO and in his order dated 5.11.83 imposed the penalty of reduction to the lower post mentioned therein. Aggrieved by this order the applicant has filed this application.

3. Shri S.Vasanth Kumar, learned counsel for the applicant, contends that two of the documents listed in the annexure to the memo viz. Money Order Acknowledgement Portion ('MOAP') relating to Money Order for Rs.75/- and MOAP relating to the Money Order for Rs.60/- were not filed during the enquiry by R2; that adverse notice

notice was taken by the EO of the failure on the part of R2 to file these documents; that PW2, Retired Post Master Office in charge of Foreign Post/~~xxxxxx~~ ('RPM'), Millers Road, Bangalore stated in his deposition that the Money Orders stated to have been paid at Shanti Nagar Post Office on 3.4.78 and 16.3.78 might have been paid either to the payee or the remitter; that PW 2 could not categorically say to whom the Money Orders were actually paid; that R2 had not taken steps for examining the two postmen cited as witnesses in Annexure IV to the Memo and in view of these facts and circumstances, R2 was not justified in imposing the penalty.

4. Sri M. Papanna, learned counsel for the respondents, submits that PW1, Cashier in the local office, has clearly deposed in his deposition that ~~he~~ received the amounts for booking on 17.4.78 and 3.4.78 in respect of money orders remitted on 22.3.78 and 1.3.78 respectively; that he had also identified the initials of the applicant on money order coupons; that there was <sup>no</sup> reason to doubt the genuineness of the two money order coupons even though they did not bear the stamp of the local office or stamp of the Postal Department; that the letter dated 5.6.79 from the Sub-Post Master clearly establishes that the two money orders for Rs.60 and Rs.75 remitted by the Local Office on 1-3-1978 and 22-3-1978, were returned undelivered to the remitter on 16-3-1978 and 3-4-1978, respectively; that the deposition of the Sub-Post Master substantiates the charges and R2 was, therefore, justified in differing from the findings of the EO.

*CPJ*

5. We have considered the rival contentions carefully. We cannot help observing that PW2 (RPM) has not given categorical replies to certain important questions. While stating that the MO was to be paid either to the payee or to the remitter, he could not say to whom the payments were made in these ~~two~~ two particular instances. He has clearly stated that when the money order is paid the signature is taken at the back of the second portion, which will be sent to the remitter along with the postal seals. He has also stated that the money order acknowledgement portion in the money order form is preserved for a period of 18 to 20 months. If so, we are at a loss to know ~~why R2 could not~~ <sup>/arrange for the production of</sup> ~~xxxxxx~~ the MOAPS relating to the money orders for Rs.75 and Rs.60, which would have clinched the issue regarding the date of payment of the money orders in question.

6. R2 in his order dated 5.11.83 has placed reliance on the deposition of PW1 (Cashier) without pausing to consider whether such a deposition could ~~xxxxxxxxxxxx~~ validate <sup>substitute</sup> ~~for~~ the non-production of vital documents namely, MOAPS, which were enumerated in the list of documents (Annexure III to the Memo). R2 also took into account the deposition of the Sub-Post Master but as already noticed, his deposition is not sufficiently <sup>not</sup> ~~informative or categorical.~~ <sup>Ch</sup> The postmen were also <sup>not</sup> ~~examined.~~

7. We are of the view that in the case of the kind we are dealing with, primary evidence in the form of MOAPS should be furnished and non-production thereof would lead

to an adverse inference. On a careful consideration of the material on record, we have no hesitation in holding that the charges have not been established beyond doubt and we, therefore, set aside the order dated 5.11.1983 of R2.

8. In the result the application is allowed.

No order as to costs,

*Condamet*

Member (J)

*Member (AM)* 6.3.84

✓  
D.No. 2812/87/sec.iv-A

SUPREME COURT OF INDIA  
NEW DELHI

Dated 26th November, 1987

From:

The Additional Registrar,  
Supreme Court of India,

To

~~The Registrar,  
High Court of~~

Bq/2 S.R.K.  
Sew 34  
The Registrar,  
Central Administrative Tribunal,  
Bangalore.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 7287/1987

(Petition under Article 136 of the Constitution of India for Special Leave to Appeal to the Supreme Court from the Judgment and Order dated 6th March, 1987 of the ~~High Court of Bangalore~~ Central Administrative Tribunal, Bangalore in Application No. 1677 of 1986)

Director, General, E.S.I Corpn. & Ors....Petitioners  
Vs.

Shri P.K.Philip....

....Respondent

Sir,

I am to inform you that the petition above-mentioned for Special Leave to Appeal to this Court was filed on behalf of the petitioner above-named from the judgment and Order of the High Court noted above and that the same was ~~not~~ dismissed by this Court on the 12th day of November, 1987.

Yours faithfully,

*D. S. K.*  
for ADDITIONAL REGISTRAR

29	A. 1396/86 (CT) CWP 2484/84	S. Suryanarayana	9-3-87	Allowed FD (C) CH I issued on 3/4/87
30	A. No. 1826/86 (CT) CWP 33430/82	K.V. Suryanarayana Rao	9-3-87	Allowed FD (C) CH I issued on 3/4/87
31	A. No. 1677/86 (CT) CWP No. 21351/82	P.K. Philip	6-3-87	Allowed issued on 11/5/87
32	A. No. 1674/86 (CT)	P. Raghavam	6-3-87	Transferred to Principal
33	A. No. 1675/86 (CT)	K.M.R. Pillai	-00	Bench for further
34	A. No. 1705/86 (CT)	Mohandlal	-00	Proceed <sup>As released from</sup> Treated on Part heard issued on 11/3/87
		All these Main Appals <del>sent</del> sent to Delhi Bench on 9/11/87		
35	A. No. 920/86 (CT) CWP No. 23223/84	V.L. Lomradade (in Feb list)	23-2-87	Allowed (C) issued on 10/5/87
36	A. No. 71/87 (P)	G. Anantarama Suralige	10-3-87	Dismissed DA CH I issued on 23/3/87
37	A. 1802 to 1815/86 (CT) to CWP 1105 to 1118/82	N.B. Khmagamni + 14 Ors.	10-3-87	Dismissed (C) FD CH I issued on 23/3/87
51	R.A. 19/87 in A. No. 211/86	Sr. Supdt of Post offices to another	5-3-87	Disposed of issued on 2/4/87
52	R.A. 20/87 A. No. 475/86 (CT)	Supdt of post offices Mandya & another	5-3-87	Dismissed issued on 16-4-87