

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
*****Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 3 FEB 1988

APPLICATION NOS. 1678/86(T), 473& 474 / 87(F)W.P. NO. 8806 / 85ApplicantRespondentShri T. Abdul Razak & another
ToV/s The Director General, Employees State
Insurance Corporation, New Delhi & 2 Ors

1. Shri T. Abdul Razak
Insurance Inspector
Employees State Insurance Corporation
No. 10, Corporation Quarters
Berlie Street Cross
Shanthinagar
Bangalore - 560 025

2. Shri P.K. Philip
Manager
Employees State Insurance Corporation
Local Office
BEML Nagar
K.G.F. (Kolar District)

3. Shri S. Vasanth Kumar
Advocate
9/1, R.V. Shetty Layout
Seshadripuram
Bangalore - 560 020

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

5. The Director General
Employees State Insurance Corporation
'ESIC' Buildings
Kotla Road
New Delhi

6. The Regional Director
Regional Office (Karnataka)
Employees State Insurance Corporation
No. 10, Binny Fields
Bangalore - 560 023

7. The Secretary
Ministry of Labour
Shram Shakti Bhavan
New Delhi - 110 001

8. Shri M.S. Padmarajaiah
Central Govt. Stg Counsel
High Court Building
Bangalore - 560 001

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

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCHPlease find enclosed herewith the copy of ORDER/~~STAY~~ ~~INTERIM~~ ORDER
passed by this Tribunal in the above said applications on 29-1-88.

R.V. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 29TH DAY OF JANUARY, 1988.

PRESENT:

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

And:

Hon'ble Mr. L.H.A. Rego,

Member(A).

APPLICATIONS NOS. 1678 OF 1986, 473 & 474 OF 1987.

T. Abdul Razak,
S/o late T. Mohamed Budan,
Aged 53 years, Insurance Inspector,
Employees State Insurance Corporation,
No. 10, Corporation Quarters,
Berlie Street Cross,
Shanthinagar, BANGALORE-25.

Applicant in
A.Nos. 1678/86 & 473/87.

P.K. Philip,
S/o late Shri K.P. Philip,
Aged 54 years, Manager,
Employees State Insurance Corporation,
Local Office, BEML Nagar, KGF,
Kolar District.

Applicant in A.No. 474/87.

(By Sri S. Vasanth Kumar, Advocate for Applicant
in A.Nos. 1678/76 and 474/87 and Dr. M.S. Nagaraja,
Advocate for Applicant in A.No. 473/87.)

v.

1. The Director General,
Employees State Insurance Corporation,
'ESIC' Buildings, Kotla Road,
NEW DELHI.

2. The Regional Director,
Regional Office (Karnataka)
Employees State Insurance Corporation,
No. 10, Binny Fields, Bangalore-23.

.. Respondents 1 and 2
in all the applications.

3. Government of India,
by its Secretary,
Ministry of Labour,
New Delhi.

.. Respondent-3 in A.No. 473/87.

(By Sri M.S. Padmarajaiah, CGSSC for R1 & R3
Sri M. Papanna, Advocate for R2)



These applications coming on for hearing Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman, made the following:

O R D E R

As the principal questions of law that arise for determination in these cases are common, we propose to dispose them of by a common order.

2. The Employees State Insurance Corporation ('ESI') is a statutory Corporation established and functioning under the Employees State Insurance Act, 1948 (Central Act No. 34 of 1948) ('the Act') from 19-4-1948 to administer that Act in our country. The ESI is a body corporate with perpetual succession and a common seal and can sue and be sued in that name. The Corporation has its principal office at Delhi and has its 'regional offices' at the State Head Quarters and local offices at various other places of each State. The Director General of the Corporation ('DG') is its principal officer and the Regional Directors ('RDs') are the heads of regional offices who are naturally subordinate to the former.

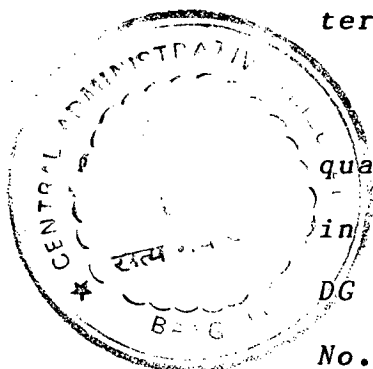
3. Sri T. Abdul Razak ('Razak') applicant in A.No. 1678 of 1986 and 473 of 1987 and Sri P.K. Philip ('Philip') applicant in A.No. 474 of 1987 have been working in one or the other capacity, either in the Regional Director's Office of Karnataka State or at one or the other local office of the State.

4. When Razak was working as Manager of the Local

Office, Dharwad, the Regional Director, Regional Office, Karnataka, E.S.I. Bangalore ('RDK') in his Memorandum No. KAR.RD.VIG.COM.28/83 (TAR) dated 23-1-1985 (Annexure-A) initiated disciplinary proceedings against him under the Employees State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 ('Regulations') on a charge accompanying the same, which he denied.

5. On 11-6-1985 Razak approached the High Court of Karnataka in Writ Petition No.8806 of 1985 under Article 226 of the Constitution challenging on diverse grounds the very competence of the RDK to initiate disciplinary proceedings against him, and obtained stay of those proceedings on 21-6-1985, which has continued ever since then. On the constitution of this Tribunal and the conferment of jurisdiction over ESI by Government under Section 14(2) of the Administrative Tribunals Act, 1985 ('the AT Act') in Notification No.A.11019/16/86-AT dated 2-5-1986, the said writ petition was transferred to this Tribunal under Section 29 of the said Act and the same has been registered as A.No.1678 of 1986.

6. On 16-4-1987, a Division Bench of this Tribunal quashed the aforesaid memo dated 23-1-1985 challenged in A.No.1678 of 1986 with liberty reserved to the DG to hold a fresh inquiry. But, in Review Application No.57 of 1987 filed by the respondents, the order made in the case was recalled and transferred Application No.1678 of 1986 (T) was restored to file and



that is how the same is again before us.

7. When Razak was working as Insurance Inspector at Bangalore, the RDK in his memorandum No.KAR.RD.VIG.-COM.18/83 dated 20-10-1983, instituted another disciplinary proceeding against him under the Regulations on another charge framed against him, as set out in the charge memo accompanying the aforesaid memorandum, which charge he denied. On holding a regular inquiry thereon, the DG by his order No.C-14/11/85-Vig. dated 6-3-1987 imposed on Razak, the penalty of reduction in rank, from the post of Manager (Grade-II) which he was then holding, to the post of Head Clerk/Manager (Grade-III) for a period of one year. In A.No.473 of 1987 filed under Section 19 of the AT Act, Razak has challenged the said order before us.

9. On certain acts/incidents which are not necessary to recount in detail, the RDK in his Memorandum No.KAR.ADM.10(360)/86 Disp. dated 18/25-7-1986 (Annexure-B) had initiated disciplinary proceedings against Philip, on the charges accompanying the said memorandum. On filing his written statement to the same, Philip approached this Tribunal under Section 19 of the AT Act challenging the very initiation of disciplinary proceedings against him by the RDK.

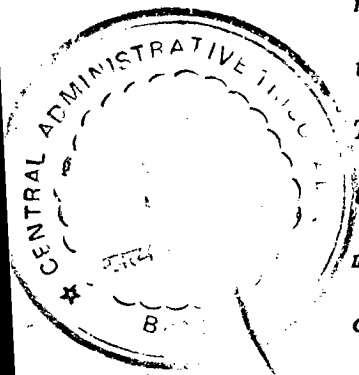
10. On 10-7-1987 we referred one of the questions of law in A.Nos.473 and 474 of 1987 to a Full Bench for opinion. On 10-8-1987, a Full Bench of this Tribunal in its opinion since reported as T.ABDUL RAZAK v. DIRECTOR GENERAL, ESI CORPORATION AND ANOTHER [(1987)4 Administrative Tribunals Cases 968] had upheld

the power of the RDK to initiate disciplinary proceedings, with an appropriate observation on the validity of certain Rules and Regulations that were sought to be urged before that Bench.

11. In all these applications with the leave later granted, the applicants have challenged the validity of Rule 16(2) Employees' State Insurance (Central) Rules, 1950 ('Rules') and Regulations 12(2) and 13(2) of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 ('Regulations') principally on the ground that they suffered from the vice of impermissible and unauthorised sub-delegation.

12. In separate but identical replies filed, the ESI had resisted these applications. While asserting that the impugned Rules and Regulations were valid, the ESI had urged that this Tribunal was not competent to examine their validity. In the very nature of things, it is necessary to examine this and other objections of the respondents first and then their validity, if that is open to us.

13. Sriyuths M. Papanna and M.S. Padmarajaiah, learned counsel for the respondents have contended, that this Tribunal constituted under the AT Act being a Tribunal of limited jurisdiction had no competence to adjudicate the validity of the Rules and Regulations made under the Act. In support of their contention, counsel for the respondents have strongly relied, on the ruling rendered by Ramajois, J. in S.M. PATTANAIK



v. THE SECRETARY TO THE GOVERNMENT OF INDIA AND OTHERS
(ILR 1986 Kar.3954).

14. Dr. M.S.Nagaraja and Sri S.Vasanth Kumar, learned counsel for the applicants have contended to the contrary.

15. Whether this Tribunal constituted under the AT Act has competence to examine the validity of the laws to the extent they deal with the service disputes or not, is concluded in more than one case decided by this Tribunal.

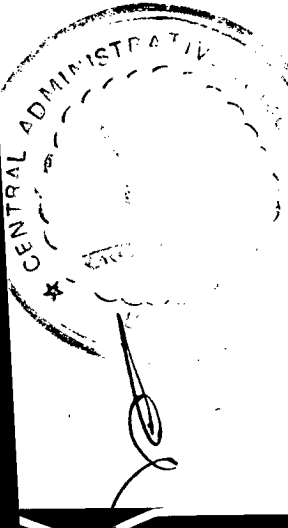
16. In P.N.KOHLI v. UNION OF INDIA AND OTHERS [A.T.R.1987(2) C.A.T. 172] a Division Bench of the Principal Bench speaking through Hon'ble Mr.Justice K.Madhava Reddy, Chairman had examined this very question and had overruled this very objection dissenting from the views expressed by Rama Jois, J. Pattanaik's case (vide pages 193-194). In PUTTAVEERAPPA v. MINISTRY OF COMPANY AFFAIRS (A.No.369 of 1986 decided on 6-11-1986) however, without discussion we have similarly held. Both these rulings have not so far been upset by the Supreme Court.

17. The rulings of this Tribunal, until they are reversed or held otherwise by the Supreme Court are binding on us. We are not bound by the opinion expressed by Ramajois, J. in Pattanaik's case. On these rulings that are binding on us, this objection urged for the respondents is liable to be rejected.

18. We also propose to state our views, on the

views expressed by Ramajois, J. in Pattanaik's case.


19. The AT Act has been enacted by the Parliament in exercise of the exclusive legislative power conferred on it by Article 323(A) of the Constitution. The exclusive legislative power derived under Article 323(A) is sui juris and plenary and is not analogous to the normal legislative power derived by the Union Parliament or State Legislature under our Constitution. This Tribunal has been constituted under the AT Act to decide service disputes which were formerly decided by the High Courts and other civil Courts in the country. This Tribunal constituted under the AT Act with exclusive jurisdiction to decide service disputes had substituted the High Courts in the country (vide: S.P.SAMPATH KUMAR v. UNION OF INDIA - (1987) 1 S.C.C.-124). This Tribunal constituted is not an ordinary Tribunal or an ordinary court of civil jurisdiction or a Tribunal of limited jurisdiction as is generally understood. The jurisdiction of all Courts except the original and supervisory jurisdiction of the Supreme Court has been expressly excluded and is conferred on this Tribunal constituted under the AT Act. The Tribunal exercises the very jurisdiction and power conferred on the High Courts in the country. When the jurisdiction of the High Courts and all other Courts except the Supreme Court is excluded over service disputes and is conferred on this Tribunal, it also necessarily implies that the jurisdiction of



the High Courts to determine the validity of service law is really excluded and is conferred only on this Tribunal if there is a challenge to a service law and its adjudication is necessary.

20. In a service dispute calling for effective relief, this Tribunal cannot fold up its hands and refer that issue either to the High Courts or to any other Court, for opinion and decision on such dispute and then take up only the remaining dispute for consideration. The AT Act makes no such provision at all. Even otherwise, such a situation is even inconceivable and incongruous and would be derogatory to the high status of the Tribunal.

21. The Act does not provide for a reference on the validity of a law to a High Court under Section 113 and Order XLVI of the Code of Civil Procedure as is required to be done by a Civil Court, which is subordinate to the concerned High Court. The very power to decide a service dispute comprehends in itself, the power to decide the validity of the service law if that becomes necessary. The term 'dispute' occurring in the preamble and other sections cannot in isolation, be given the restricted meaning of deciding a dispute other than the validity of a service law. We are of the view, that the restricted meaning attached to the term 'dispute' by Ramajois, J. in Patta-naik's case and the conclusions drawn on that basis are not sound. On the other hand, the AT Act creating the Tribunal confers exclusive, exhaustive and plenary

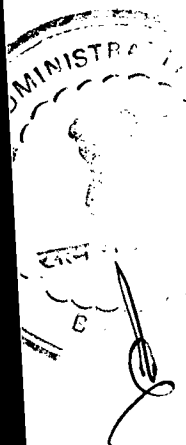


power of deciding service disputes and also confers the power to decide the validity of service law without reference to any other Court or Tribunal or without awaiting decision of any Court or Tribunal over the same, as if it is a subordinate civil Court, with concomitant constraints. For all these reasons, with respect, we regret our inability to subscribe to the views expressed by Ramajois, J. in Pattanaik's case. We are, therefore, firmly of the view that the Tribunal is competent to decide the validity of the impugned Rules and Regulations under the Act.

22. Sri Papanna urged that the applicants before joining service had agreed to be bound by the Rules and Regulations and the orders to be made and, therefore, they cannot challenge the Rules and Regulations.

23. We are of the view that this objection of Sri Papanna has only to be stated to be rejected. The undertaking or agreement, if any, entered into between the applicants and the ESI cannot and does not disentitle them from challenging the validity of any of the provisions on any of the grounds available to them. There cannot be an estoppel against statute and on the application of that principle also the applicants are not disentitled from challenging the Rules and Regulations. We, therefore, see no merit in this objection of Sri Papanna and reject the same.

24. Sri Papanna urged that the Rules and Regulations have been in force for a long time, on the faith



of which the ESI and all its employees had regulated their affairs and therefore their invalidation at this stage on any ground and more so, on the ground urged, would impede smooth functioning of the ESI in the country and on that score and on the consequences ensuing from the same, we should decline to examine the validity of the impugned provisions.

25. When the validity of a law is challenged, a Court or a Tribunal cannot decline to examine its validity merely on the ground, that it has been in force for a long time or also on the consequences that would ensue from their invalidation. We are of the view that this objection urged by Sri Papanna is equally untenable and we therefore reject the same.

26. In A.No.473 of 1987, the applicant had not challenged the order made by the DG in an appeal available to him under the Regulations. Sri Papanna has urged that this disentitles the applicant to move this Tribunal under the AT Act.

27. Section 20(1) of the AT Act directs that the Tribunal shall not ordinarily admit an application unless the applicant had exhausted all the legal remedies available to him by law. The term 'ordinarily' in the context means generally but not always or in all cases. In his appeal, if availed also, the applicant cannot challenge the validity of the Rules, Regulations, Resolution of the SC and the orders of the DG on the ground of impermissible sub-delegation. If that is so, then to insist on the applicant to

exhaust the legal remedy of an appeal under the Regulations will only be an idle formality. We will not be justified in compelling the applicant to exhaust such a remedy at all. For these reasons we see no merit in this objection of Sri Papanna and we reject the same.

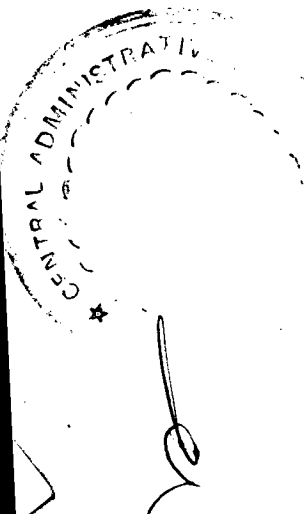
28 As we have rejected all the preliminary objections urged for the respondents in regard to our jurisdiction and power to decide on the validity of the Rules and Regulations, it is now necessary to examine their validity which we now proceed to do.

29. Dr.M.S.Nagaraja urged that Rule 16(2) of the Rules, Regulations 12(2), 13(2) of the Regulations, the Resolution dated 24-5-1968 of the Standing Committee of the ESI ('SC') and the Order dated 9-4-1981 of the DG, empowering sub-delegation of the powers of the DG without the Act empowering the same, were unauthorised, impermissible, illegal and were liable to be struck down.

30. Sri Papanna refuting the contentions of Dr.Nagaraja urged that the impugned provisions, resolution of the SC and the order of the DG were all valid and legal.

31. Rule 16(2) which is challenged by the applicants reads thus:

"(2) The Director General may, with the approval of the Standing Committee, by general or special order, delegate any of his powers or duties under the Rules or the Regulations or under any resolution of the Corporation or the Standing Committee,



as the case may be, to any person subordinate to him. The exercise or discharge of any of the powers or duties so delegated shall be subjected to such restrictions, limitations and conditions, if any, as the Director General may, with the approval of the Standing Committee, impose".

This apart, the applicants had also challenged certain portions of Regulations 12(2) and 13(1) of the Regulations. But, in order to better appreciate their scope and their challenge, it is useful to read them in their entirety and they read thus:

12(2) Without prejudice to the provisions of sub-regulation (1) but subject to the provisions of sub-regulation (3), and of the penalties specified in regulation 11 may be imposed on any employee by the appointing authority or the authority specified in this behalf by a general or special order of the Director General.

13.(1) The Director General or any other authority empowered by him by general or special order may;

- (a) institute disciplinary proceedings against any employee;
- (b) direct a disciplinary authority to institute disciplinary proceedings against any employee on whom that disciplinary authority is competent to impose under these regulations any of the penalties specified in regulation 11."

The applicants' challenge is confined only to the portion of the Regulations viz., "or the authority specified in this behalf by a general or special order of the Director General" and "or any other authority empowered by him by general or special order may" of Regulations Nos.12(2) and 13(1) of the Regulations respectively only.

32. In conformity with the impugned provisions, the SC in its resolution dated 24-5-1968 had authorised

the DG to delegate his powers to any officer subordinate to him and that resolution which is in challenge, reads thus:

"Resolved that notwithstanding any restrictions imposed earlier, the Director General may delegate any of his powers under the Rules, or the Regulations or under any resolution or two Corporation and the Standing Committee, as the case may be, to any officer subordinate to him, subject to such restrictions, limitations and conditions, if any, as the Director General may impose from time to time."

In conformity with this resolution and all other enabling provisions thereto the DG, on 10-5-1974, made a consequential order in that behalf and the same reads thus:

OFFICE ORDER NO.181 OF 1974

In exercise of the powers conferred by Regulation No.12(2) of the Employees' State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959, the Director General hereby delegates powers to the Officers specified in Schedule-I to impose minor penalties specified in clauses (i) to (iv) of Regulation-11 in respect of employees specified in Schedule-II on condition that the powers shall be exercisable in respect of the employees in their respective regions/offices.

This office order supersedes all previous orders on the subject without prejudice to any action taken or proceedings initiated in exercise of the powers conferred by the said orders.

SCHEDULE-I

1. Regional Directors.
2. Director (Medical), Delhi.
3. Administrative Officer, establishment Branch (II) at Headquarters Office.

SCHEDULE-II

1. Head Clerks/Assistants/Managers Grade-III/Personal Assistants.
2. Insurance Inspectors/Audit Inspectors/-Manager Grade-II.

for Director General."

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This order has been modified by the DG on 9-4-1981 and the same reads thus:

"Vig.9(1)/74.

Dt.9-4-1981.

OFFICE ORDER

In exercise of the powers conferred by Regulation 12(2) of the Employees State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 the undersigned hereby delegates powers to the Regional Directors/Director (Medical) Delhi/Administrative Officer-II to impose any of the penalties specified in classes (i) to (ix) of Regulation 11 ibid on class III (excluding Insurance Inspectors/Managers Grade-II/Audit Inspectors and Personal Assistants) and class-IV employees, in their respective Regions/offices. In cases of Insurance Inspectors/Managers Grade-II/Audit Inspectors and personal assistants, the powers already delegated by the Director-General vide office order No.181 of 1974 dated 10-5-1974 to all Regional Directors/Director (Medical) Delhi/Administrative Officer II to impose only minor penalties as specified in clauses (i) to (iv) of Regulation 11 ibid shall be exercisable by them. The powers delegated by the Director General vide office order No.181 of 1974 dated 10-5-1974 circulated under No.16(1)-2/73-E I will thus stand modified to the extent above.

It is clarified that Director General will continue to be the disciplinary authority in respect of Head clerks/Assistants-/Manager Grade-III whose appointments have been made by him/or whose appointments have been made before 1-12-1980 i.e, prior to the issue of this office Memorandum No.7(3)-1/74 E I(B) dated 15-11-1980 to impose major penalties specified in clauses(v) to (ix) of Regulation 11 ibid.

3. This order modifies all previous orders on the subject without prejudice to any action taken or proceedings initiated in exercise of the powers conferred by the said orders.

Sd/- Har Mander Singh, DG "

On the authority of these orders of the DG, the RDK had initiated disciplinary proceedings against the applicants, the details of which we have earlier noticed. In two cases they are challenged at the

very threshold and in one they are challenged on their completion.

33. When the language of a statutory provision or other orders made thereto are plain and unambiguous and are capable of only one meaning, there is hardly any necessity to call in aid any of the Rules of construction of Statutes. We must first read all the provisions and orders bearing this elementary principle.

34. Without any doubt Rule 16(2) of the Rules and Regulations 12(2) and 13(1) of the Regulations in very specific, clear and unambiguous terms had provided for sub-delegation of the powers conferred on the DG to an authority or officer that is subordinate to him. Even the two orders made by the DG reproduced by us in their entirety only confirms this very conclusion. On their plain language no other conclusion is possible. Whether Section 94A of the Act itself permits such sub-delegation as urged by Sri Papanna which must be independently examined, cannot and does not touch on the import and effect of the provisions, the resolution of the SC and the orders made by the DG. We have, therefore, no hesitation in holding that the impugned provisions and orders, had ipso facto, provided for sub-delegation of powers conferred on the DG to RDs by the former.

35. That the ESI, a statutory corporation, can exercise only those powers that are conferred on it by the statute and that the same needs to be ascertained from that statute, is well-settled [See: MYSORE



STATE ROAD TRANSPORT CORPORATION v. GOPINATH GUNDACHAR CHAR - AIR 1968 SC 464 and V. BALASUBRAMANIAM AND OTHERS v. TAMIL NADU HOUSING BOARD AND OTHERS - (1987) 4 S.C.C.738 and Salmond on Jurisprudence, Eleventh Edition para 119].

36. The Act as originally enacted did not make a specific provision either for delegation or sub-delegation. The Employees State Insurance Amendment Act, - 1951 (Central Act 53 of 1951) which came into force on 6-10-1951 inter alia inserted Section 94-A providing for delegation of powers and the same reads thus:


94A. Delegation of powers:- The Corporation and, subject to any regulations made by the Corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation."

This section is the one and the only provision, providing for or regulating delegation of powers under the Act. Except for this, there is no other provision regulating or authorising delegation or sub-delegation of powers under the Act.

37. That the heading of a section gives a clue to the understanding of a section, though it cannot control the plain language of the section itself is well-settled. The heading of the section is 'Delegation of powers'. This section authorises the Corporation and the SC, to delegate all or any of the powers of the Corporation, to such officer or authority of

the Corporation as may be authorised by either of them.

38. The delegation by the Corporation is not subject to any restriction. The Corporation can delegate its powers to any officer or authority without any limitation, restriction or constraint. But, that is not the position in the case of the Standing Committee. The delegation to be made by the SC is subject to the conditions and restrictions made in the Regulations by the Corporation. In other words, the delegation made by the Standing Committee, must be in accordance with the terms and conditions or the restrictions placed on it, by the Regulations made by the Corporation and cannot be in derogation of them.



39. In the body, Section 94A does not employ the terms 'delegation' or even "authorisation". But, the absence of those terms is hardly decisive in ascertaining the true scope and ambit of that section. This section and in particular the terms 'direct' and 'exercisable' employed in that section read in the context and bearing all the rules of construction of statutes, only provides for delegation or authorisation, which in the context of the section means one and the same.

40. The absence of the term "sub-delegation" also, in the section is not decisive in holding that the section does not authorise sub-delegation. But, when we read or analyse the same, bearing every sound rule of construction of statutes, it is impossible to hold that the section itself provides or authorises

sub-delegation of powers, in that very section itself. Any such attempt as urged by Sri Papanna, would not be really a case of interpretation or construction of that provision but only be a case of adding words or reading words that are not found in that section itself. We are of the view that such a course is nothing but legislation in the thin guise of interpretation ^{& which} is not permissible. We are of the view that every one of the rulings, and in particular A.K. ROY AND ANOTHER v. STATE OF PUNJAB AND OTHERS (AIR 1986 SC 2160) relied on by Sri Papanna does not lend support to such an extreme position. We have, therefore, no hesitation in holding that Section 94A only provides for or authorises delegation and does not provide or authorise sub-delegation of the powers conferred on one authority or officer to another authority or officer of the Corporation.

41. Section 94A of the Act expressly provides for delegation and the delegation made in the impugned provisions and the resolution on the DG are authorised and do not suffer from any infirmity. Dr. Nagaraja does not also rightly dispute this position. On this, it is unnecessary for us to deal with what is meant by delegation, its necessity or otherwise in dealing with complex and manifold problems of a modern State. Craies in his Statute Law, 6th Edition in Chapter 13 'Delegated legislation' G.P.Singh in his treatise 'Principles of Statutory Interpretation' 3rd Edition Chapter 12 pages 629 - 690, have exhaustively dealt

with the meaning of delegation necessity and its limitations. We do not consider it necessary to refer to or extract any of the statements in those treatises or the numerous cases commencing from re:ART.143 CONSTITUTION OF INDIA AND DELHI LAWS ACT (1912) ETC. (AIR 1951 Supreme Court 332) (Delhi Laws case) on the same.

41. On the necessity or otherwise of sub-delegation also, there is no controversy. But, the only controversy is whether there can be sub-delegation or not without the legislature conferring such a power on the authority.

42. Craies in his Statute Law under the heading 'Sub'delegation' at pages 313 to 315 (para 12) notices the principles underlying the same and on that topic the learned author states thus:

"The power to sub-delegate must expressly or impliedly authorise by the enabling Act: otherwise the well known principle delegatus non potest delegare comes into operation."

The passage under the heading "Sub-delegation on pages 162 to 164 of the treatise 'the Control of Delegated Legislation' by Hewitt and various other passages of that treatise also support this statement of law. This statement has not been doubted by the Supreme Court and is really reiterated in *BARIUM CHEMICALS v. COMPANY LAW BORAD* (AIR 1967 SC 295) on which Sri Papanna placed strong reliance.



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43. In *EMPLOYEES STATE INSURANCE CORPORATION, BANGALORE v. SHOBA ENGINEERS, BANGALORE AND OTHERS* [1982 (44) FLR 100] a Division Bench of the Karnataka High Court was examining the validity of the orders made by the RDK against Shobha Engineers' and others directing payment of damages under Section 85B of the Act. On the basis of an authorisation made thereto by the DG noticed at pages 104 of the report, Shobha Engineers' and others challenged the same, inter alia on the ground, that those determinations made by the RDK suffered from impermissible sub-delegation under the Act.

44. On an exhaustive review of the legal position and the entire case law, Sabhahit, J. who spoke for the Bench expressed thus:

And Section 94A, as explained above, authorises the Corporation to delagate its powers and does not empower any sub-delegation, and in the case of delegation of judicial or quasi-judicial power, as is contained in Section 85B (1) of the Act. Section 94-A has to be, for reasons discussed above, strictly construed. That being so, we are constrained to hold that, that part of the resolution of the Corporation which authorises the Director General to sub-delegate powers, passed by the Corporation on 28th Febuary, 1976, is void in the eye of law and it does not authorise legally the Director General to authorise his subordinates to exercise powers contemplated under Section 85-B(1) of the Act. It is, therefore, manifest that the office order issued by the Director General on 3rd May, 1976, is void and inoperative and it cannot confer any power on the subordinates mentioned therein to exercise powers under Section 85-B (1) of the Act."

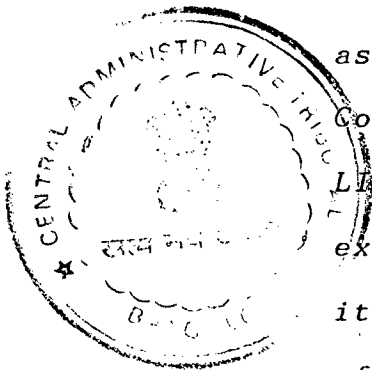
We are in respectful agreement with these views.

45. Sri Papanna urged that Shobha Engineers'

case had really overlooked the true ratio in Barium Chemicals' case, and consequently was not sound and therefore we should follow the principles correctly laid down by a Full Bench of the Patna High Court in RAMESHWAR JUTE MILLS LIMITED v. UNION OF INDIA AND OTHERS (1986 Labour and Industrial Cases page 1225) which had rightly dissented with the views expressed in Shobha Engineers' case.

46. In Shobha Engineers' case, the Court had adverted to and relied on Barium Chemicals' case. We have carefully read all the opinions expressed in this case on the point of sub-delegation. We are of the view that the in Shobha Engineers' case Sabhahit, J. had neither misunderstood nor misapplied the principles enunciated by the Supreme Court in Barium Chemicals' case.

47. In Shoba Engineers' case, the High Court had dissented from the view expressed by Sandhawalia, CJ as the Chief Justice of the Punjab and Haryana High Court in E.S.I. CORPORATION v. DHANDA ENGINEERS (P) LIMITED (1981 Lab IC 658) in which his Lordship had expressed the view that the resolution of the ESI itself had delegated its powers under Section 85B of the Act to the Regional Directors and, therefore, there was no question of impermissible sub-delegation. In Rameshwar Jute Mills Limited's case Sandhawalia, CJ. as the Chief Justice of the Patna High Court speaking for a Full Bench, had followed or approved what had



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been expressed by his Lordship in Dhanda Engineers' case naturally dissenting from the views expressed by Sabhahit, J., in Shoba Engineers' case. We are of the view that the very reasons on which Sabhahit, J. had dissented from the views expressed in Dhanda Engineers' case, which are sound and correct, justify us, to dissent, with respect, from the views expressed in Rameshwar Jute Mills' case. Even otherwise on what we have expressed on Rule 16(2) Regulation Nos.-12(2) and 13(1), the Resolution of the SC and the orders of the DG earlier, the ratio in Rameshwar Jute Mills Limited's case, even if it is sound, does not really bear on the precise question that arises in these cases.

48. Sri Papanna urged that initiation and determination of disciplinary proceedings were administrative in character and, therefore, on the ratio in PRADYAT KUMAR BOSE v. THE HON'BLE CHIEF JUSTICE OF CALCUTTA HIGH COURT(AIR 1956 SC 285) the sub-delegation made to RDs was valid and legal.

49. We are of the view that in determining whether there is permissible delegation or sub-delegation, the nature of the powers, distinctions and differences between them, has hardly any relevance and bearing.

On this short ground, we see no merit in this contention of Sri Papanna. We are also of the view that in Pradyat Kumar Bose's this question did not arise and, therefore, the ratio of that case does not bear on the point.

50. On the foregoing discussion, it follows that Rule 16(2) of the Rules in its entirety, Regulations 12(2) and 13(1) of the Regulations to the extent they permit sub-delegation of powers are ultra vires of the Act and are, therefore, liable to be struck down. With that, the resolution of the SC dated 24-5-1968 and the orders dated 10-5-1974 and 9-4-1981 of the DG deriving their authority from the invalid provisions are also liable to be quashed. From this it follows that the initiation of the disciplinary proceedings by the RDK were wholly without jurisdiction, unauthorised and illegal. If that is so, then all orders made by him or the DG also suffer from the same infirmity and are liable to be quashed without examining all other questions, with liberty reserved to the DG to initiate and complete the proceedings de novo in accordance with law.

51. On the applications of the principles of severability, we hold that the remaining provisions are operable and that no exception can and is taken for their enforcement and operation.

52. In the light of our above discussion, we make the following orders and directions:

- (1) We strike down Rule 16(2) of the Rules in its entirety, the sentence from "or the authority specified in this behalf by a general or special order of the Director General" in Regulation No.12(2) and the sentence from "or any other authority empowered by him by general or special order may" in Regulation 13(1) of the Regulations.



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- (2) We quash Resolution dated 24-5-1968 of the Standing Committee of ESI; Office Order Nos.181 of 1974 and 9(1)/74 dated 10-5-1974 and 9-4-1981 respectively of the Director General,ESI.
- (3) We quash Memorandum Nos. KAR.RD.VIG.COM 28/83 (TAR) dated 21-1-1985 and No.KAR.-ADM.10(360)/86 Disp. dated 18/25-7-1986 initiating disciplinary proceedings against applicants in A.Nos.1678 of 1986 and 474 of 1987.
- (4) We quash Memorandum No.KAR.RD.VIG.COM 18/83 dated 20-10-1983 and the final order No.C-14/14/11/85-Vig. dated 6-3-1987 made thereon by the DG against the applicant in A.No.473 of 1987.
- (5) We declare that these orders cannot and do not prevent the ESI or its Standing Committee from delegating the powers of the ESI to the RDs and others in accordance with law.
- (6) We declare that these orders cannot and do not prevent the DG from initiating fresh disciplinary proceedings, if he so decides, against the applicants on the very matters or incidents which are the subject matter of these proceedings and completing them in accordance with law.

53. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

Sd/-
VICE-CHAIRMAN.
29-7-1988

Sd/-
MEMBER(A)
29.7.88

np/

TRUE COPY

B.V. Venkatesh
31/27

**In the Central Administrative
Tribunal Bangalore Bench,
Bangalore**

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ORDER SHEET

Applicant

T. Abdul Razak & another

Advocate for Applicant

S. Vasanth Kumar & Dr M.S. Nagaraja

Application Nos. 1678..... of 1986(T)
and 474 and 474 of 1987 (F)

V/s

The DG, ESI Corporation, New Delhi & 2 Ors

Advocate for Respondent

M.S. Padmarajaiah & M. Papanna

Respondent

| Date | Office Notes | Orders of Tribunal |
|------|--------------|---|
| | | <p><u>KSPVC/LHARM(A)</u> 29.1.1988.</p> <p><u>Orders on the oral applica- tion made by the respondents for stay of the operation of the order pronounced in the cases:</u></p> <p>In our order just now pronounced, we have struck down Rule 16(2) of the E.S.I. (Central) Rules, 1950, and parts of Regulations 12(2) and 13(1) of the E.S.I. Corporation (Staff and Conditions of Service) Regulations, 1959. On the said basis, we have also quashed the orders challenged in the cases.</p> <p>Shri Papanna submits that the respondents propose to challenge the orders made by us before the Supreme Court under Article 136 of the Constitution, and obtain their stay. He submits that to enable the respondents to obtain copies of the orders, file necessary SLPs with applications of stay and move the Supreme Court, it was necessary for this Tribunal to stay the operation of our order for a period of ninety (90) days from this day.</p> <p style="text-align: right;">(P.T.O.)</p> |

| Date | Office Notes | Orders of Tribunal |
|------|--------------|--|
| | | <p>Dr. M.S. Nagaraja, in our opinion, very rightly, does not oppose the prayer of Shri Papanna. Even otherwise, we are of the view that when the respondents propose to challenge the orders made by us, which has far reaching consequences on the administration of the E.S.I. Act, 1948, we consider it proper to grant stay of the operation of our order pronounced for a period of ninety (90) days from this day.</p> <p>In the light of our above discussion, we allow the oral application made by the respondents and stay the operation of our order made in these cases for a period of ninety (90) days from this day.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;"> <p>Sd/-</p> <p>VICE CHAIRMAN</p> <p>dms. <i>[Signature]</i></p> </div> <div style="text-align: center;"> <p>Sd/-</p> <p>MEMBER (A) ^{20/11/58}</p> </div> </div> <p style="text-align: center; margin-top: 20px;">TRUE COPY</p> <div style="text-align: center; margin-top: 50px;"> <p><i>[Signature]</i></p> <p>CHIEF ADMINISTRATIVE TRIBUNAL</p> <p>BANGALORE</p> </div> |