

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

Dated : 25 JAN 1989

APPLICATION NO (x) 952 / 88(F)

W.P. NO (S)

Applicant (s)

Respondent (s)

Shri S. Luoie

V/s

The Regional Director, ESIC, Karnataka Region,  
Bangalore & another

To

1. Shri S. Luoie  
Upper Division Clerk  
Employees' State Insurance Corporation  
Regional Office  
No. 10, Binnyfields, Binnypet  
Bangalore - 560 023

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

3. The Regional Director  
Employees' State Insurance Corporation  
Karnataka Region  
No. 10, Binnyfields, Binnypet  
Bangalore - 560 023

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

5. Shri M. Papanna  
Advocate  
99, Magadi Chord Road  
Vijayanagar  
Bangalore - 560 040

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER ~~/BY THE BENCH~~ ~~/BY THE BENCH~~  
passed by this Tribunal in the above said application(x) on 12-1-89.

*g.c.*  
DEPUTY REGISTRAR  
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 12TH DAY OF JANUARY, 1988.

Present:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. P. Srinivasan,

.. Member(A).

APPLICATION NUMBER 952 OF 1988

S. Luois,  
Aged 39 years, S/o A. Selvaraj,  
Working as UDC in Employees'  
State Insurance Corporation,  
Karnataka Region, Bangalore.

.. Applicant.

(By Dr. M. S. Nagaraja, Advocate)

v.

1. The Regional Director,  
Employees' State Insurance Corporation,  
Karnataka Region,  
Bangalore.

2. The Director General,  
Employees' State Insurance Corporation,  
ESIC Building, Kotla Road,  
NEW DELHI.

.. Respondents

(By Sri M. Papanna, Advocate)

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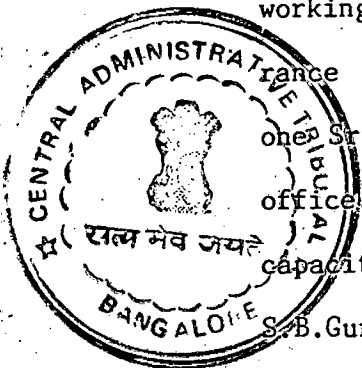
This application having come up for hearing this day, Hon'ble Vice-Chairman made the following:

ORDER

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 ('Act').

2. On 10-6-1981, which is the material date, the applicant was working as Teller in the local office of the Employees' State Insurance Corporation ('ESIC'), H.A.L. Township, Bangalore, and ~~xxxx day~~ one Sri Abdul Razak ('Razak') was working as Deputy Manager in that office. On that day, the applicant and Sri Razak in their respective capacities performed their duties in making payment to one Sri S. B. Gururamu a beneficiary of ESIC.

3. On the aforesaid payment made to Sri Gururamu two separate disciplinary proceedings were initiated against the applicant and



Sri Razak by the Regional Director (RD), ESIC, Bangalore - one of the disciplinary authorities under the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 ('Regulations') on the charges levelled against them and the charge against the applicant reads thus:-

That Shri S.Louis while functioning as Teller at Local Office, HAL (Township), on 10th June, 1981 booked an expenditure of Rs.300/- vide entry at Sl.No.504 of Schedule Sheet No.E-57 dated 10th June 1981 towards of sickness benefit for 20 days at Rs.15/- per day to an Insured person by name Shri S.B.Gururamu, Ins.No.53/921429 in collusion with Shri Abdul Razack, Deputy Manager whereas no such amount was received by the said Insured person Shri S.B.Gururamu, Ins. No. 53/921429 on 10th June, 1981. Shri S.Louis in collusion with Shri Abdul Razack, Deputy Manager thus misappropriated a sum of Rs.300/- which amounts to lack of integrity, thereby violating Rule 3(i) of C.C.S.(Conduct) Rules, 1964 read with Regulation 23 of the E.S.I. Corporation (Staff and conditions of Service) Regulations, 1959."

The charge against Razak is also on the very incident alluded here with modification necessary in his case. Both of them denied the charges levelled against them and contested the proceedings.

4. On the completion of the proceedings the RD by his order dated 5th March, 1987 (Annexure-A2) holding the applicant guilty of the charge levelled against him imposed on him the penalty of stoppage of two increments without cumulative effect. On appeal, the Director General ('DG') ESIC, by his order dated 30-3-1988 has affirmed the same. In this application made on 28-6-1988 the applicant has challenged the said orders.

5. On Razak also, the RD held him guilty of the charge levelled against him and imposed on him the punishment of reversion from the post of Deputy Manager to the post of Head Clerk and the same had been affirmed by the DG on appeal which were challenged by Razak before this Tribunal in Applications Nos. 1678 of 1986, 473 and 474 of 1987. On 29-1-1988, a Division Bench of this Tribunal consisting of one of us (Justice Sri K.S.Puttaswamy, VC) and Hon'ble Sri L.H.A.Rego, Member (A) had allowed them since reported in [(1988) 7 ATC 14] quashing the orders of the DG and the RD, however reserving

liberty to the DG to initiate fresh disciplinary proceedings against Razak.

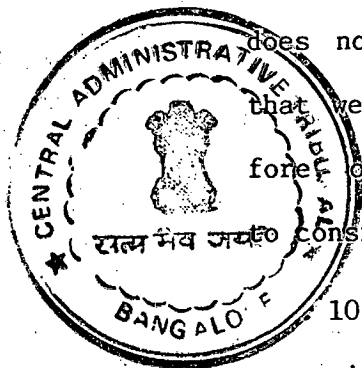
6. With the liberty so reserved, the DG has initiated fresh disciplinary proceedings against Razak on the very incident with which the applicant has been charged which is still pending before the Inquiry Officer appointed thereto for that purpose.

7. Dr.M.S.Nagaraja, learned counsel for the applicant, contends that the charge framed against his client and Razak relate to their respective roles on one and the same incident and, therefore, it was imperative for the authorities to have held common proceedings in conformity with Regulation No.5 of Schedule III of the Regulations and that failure vitiates the impugned orders and they are liable to be quashed on that ground itself.

8. Shri M.Papanna, learned counsel for the respondents contends that the contention now urged for the first time at the hearing without urging the same before the authorities as also in the application should not be permitted to be urged and that in any event there was no merit in the contention urged for the applicant.

9. In the very charge, there is a reference to Razak and the role played by him. On the legal proceedings which earlier terminated against Razak and again pending, the respondents are not taken by surprise. Apart from these, the contention urged for the applicant does not involve any investigation of facts. We are of the view that we should permit the applicant to urge this ground. We therefore overrule the preliminary objection of Sri Papanna and proceed to consider the contention on merits.

10. The applicant and Razak have been charged on one and the same incident. In the charge against the applicant, there is reference to the role played by Razak. In the charge against Razak, there is reference to the role played by the applicant. The charges against both are thus intertwined. On these facts themselves without



anything more also, the disciplinary proceedings against both have to be dealt together. If that is not done, then that will cause prejudice to both and at any rate to the applicant which is too apparent and implicit.

11. Regulation 5(1) of Schedule III of the Regulations, which is in pari materia with Rule 18 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 dealing with common proceedings reads thus:-

5. Common proceedings - (1) Where two or more employees are concerned in any case, the Director General or any other authority competent to impose the penalty of dismissal from service on all such employees may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

NOTE:- If the authorities competent to impose the penalty of dismissal on such employees are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others".

This rule has been framed to regulate common proceedings as in the present case. On the terms of this Rule, it was necessary to have dealt the proceedings against the applicant and Razak together. In completing the proceedings and imposing the penalty against the applicant there is a clear contravention of this Rule. On this ground itself, we must annul the impugned orders and issue appropriate directions.

12. In the fresh proceedings against Razak two witnesses have been examined on the charge framed against him. In the event, the DG decides to initiate fresh proceedings against the applicant and hold common proceedings in conformity with Regulation No.5(1) of the Regulations, then the DG and the Inquiry Officer should modulate the inquiry in conformity with the principles enunciated by the Supreme Court in STATE OF MYSORE AND OTHERS v. SHIVABASAPPA SHIVAPPA MAKAPUR (AIR 1963 SC 375). From this, it is open to the Inquiry Officer to recall the witnesses already examined in Razak's case tender them for further examination on the charge made against the

applicant and permit their cross-examination by both. On this, the department is naturally entitled to lead such further evidence as it proposes place against the applicant and Razak.

13. In the light of our above discussion, we quash the orders (Annexures A2 and A5) impugned by the applicant. But, this order cannot and does not prevent the DG from initiating fresh disciplinary proceedings against the applicant if he so decides on the very matter or incident which forms the subject matter of the impugned orders and complete the same in a common proceeding against him and Razak in accordance with law.

14. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.



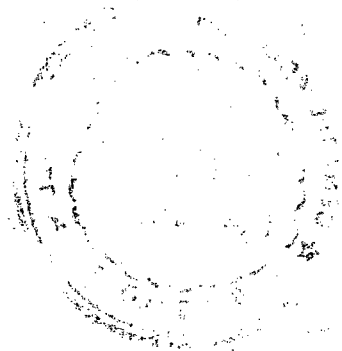
Sd/-  
VICE-CHAIRMAN. 12

Sd/-  
MEMBER (A)

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*Ra. Venkatesh*  
DEPUTY REGISTRAR (JDL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

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