

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CAMP AT NAGPUR

O.A.359/91

Surendra Kumar Mahananda,
Assistant Regional Director,
Employees' State Insurance
Corporation,
Nagpur Sub Regional Office,
Panchdeep Bhavan,
Ganeshpeth,
Nagpur - 18.

.. Applicant

vs.

1. The Central Provident Fund
Commissioner,
9th Floor, Mayur Bhavan,
Cannnaught Circus,
New Delhi - 110 001.
2. The Regional Provident Fund
Commissioner,
Bhavishya Nidhi Bhavan,
Post Box No.3875,
Dr.Balasundram Road,
Coimbatore - 641 018(T.N.)
3. The Director General,
Employees' State Insurance
Corporation, E.S.I.C.Building,
Kotla Road,
New Delhi.
4. The Joint Director,
Employees' State Insurance
Corporation,
Nagpur Sub Regional Office,
Panchdeep Bhavan,
Ganesh Peth,
Nagpur - 18.
5. Union of India
through
The Secretary,
Ministry of Labour and
Rehabilitation,
Govt. of India,
Shramshakti Bhavan,
New Delhi.
6. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahajahan Road,
New Delhi - 11, .. Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.S.V.Khondalay
Advocate for the
Applicant.

2. Mr. M.D. Samel
Advocate for
Respondents No.3 & 4

JUDGMENT:
(Per M.Y. Priolkar, Member(A))

Date: 22-7-1992

The applicant while serving as Manager Grade I in the Employees' State Insurance Corporation was offered appointment to the post of Assistant Provident Commissioner on 25-6-1990 after selection by UPSC in response to an open advertisement. After completion of pre-appointment formalities, the applicant was asked to report on 17-12-1990 after getting himself relieved from the Employees State Insurance Corporation (ESIC). The new post of Assistant Provident Fund Commissioner is in the Office of the Central Provident Fund Commissioner, which is a separate organisation but under the same Ministry of Labour. The applicant had written to Jt. Regional Director, ESIC, Nagpur on 28-6-90 informing him of his selection and that on receipt of orders, he "may leave the present job and will resign" and subsequently on 17-11-1990 requested respondents No.3 and 4 to relieve him from 14-12-1990. But as no reply or any order of relief or acceptance of resignation was received by the applicant till that date, he handed over charge to his Deputy Manager and joined the new post at New Delhi.

2. A chargesheet was served on the applicant alleging that the applicant did not get himself duly relieved before joining the new post and thereby did not show devotion to duty, and penalty of postponement of increment for two years by the was imposed by the Director General ESIC. On appeal the appellate authority set aside the penalty. Meanwhile the applicant was repatriated by the Employees Provident Fund organisation to the E.S.I.C, where he is presently

working as Manager Grade I. The prayer in this application is that the repatriation effected by the Provident Fund Commissioner(C.P.F.C)vide his impugned order dated 8-4-1991 be quashed and set aside, as illegal.

3. The applicant contends that his repatriation is virtually a reversion from Group A post (Rs.2200-4000 scale)to Group B post (scale of Rs.2000-3500) which is a major penalty and could not be inflicted without conducting the necessary enquiry and without giving the show cause notice. The respondents C.P.F.C. have stated that the appointment of the applicant in their organisation was subject to production of a valid discharge certificate from the present employer as was made clear in the offer of appointment. But the head office of E.S.I.C. had informed them on 2-1-1991 that the applicant was not being relieved for taking up the appointment as Assistant Provident Fund Commissioner as there was a prima facie vigilance case against him which had come up after the earlier vigilance clearance of 20-9-1990. Therefore, as soon as this fact of non relief was brought to their notice, the applicant was repatriated back to his parent department.

4. It is difficult for us to accept the applicant's contention that his repatriation to his parent department for joining in his previous cadre has to be treated as reversion from a higher to a lower post which could be done only after disciplinary action. Reversion could be only from a higher to a lower post in the same department and not to a post in a different organisation where he had a lien as in this case, which according to the respondents, was on the ground of non-compliance with the requirement contained under item 5 of the

offer of appointment relating to the production of valid discharge certificate as per clause 7 of the offer of appointment dated 25-6-1990.

5. The applicant contends that he had given the required three months' notice preparatory to resignation by his letter dated 28-6-1990 (Annexure 7). Firstly, this letter was addressed to his immediate superior, namely Joint Regional Director, Sub-regional office, E.S.I.C.Nagpur and not to the authority competent to accept the resignation nor was there any request therein that it should be transmitted to the competent authority. Secondly, the subject of the letter is given as "Selection to the post of Asstt.Provident Fund Commissioner under the Ministry of Labour in respect of self" and the letter merely intimates the fact of his selection and also informs that on receipt of the orders from the concerned authorities, he "may leave the present job and will resign". The last line of the letter is that "this may please be treated as notice of intimation" and not notice of resignation as claimed by the applicant in the present application. Obviously this letter could not be treated as resignation letter and did not warrant any reply. The actual resignation was submitted by him on 17-11-1990 requesting for relieving him from duty on 14-12-1990. This was followed by a reminder on 11-12-1990. It is not in dispute that as per the relevant staff regulations of ESIC a permanent employee has to give three months' notice of resignation. As stated by the Director General ESIC in her order dated 27-9-1991, the applicant's resignation letter submitted on 17-11-1990 was duly processed and the Joint Regional Director, Nagpur sub-region

was informed on 11-12-1990 not to relieve the applicant on 14-12-1990. She also states, though this is denied by the applicant, that the applicant himself had contacted the Joint Regional Director, Nagpur over phone on 14-12-1990 whereupon he was told that he would not be relieved that day, but that the applicant chose to ignore this direction and got himself relieved without any authority. The fact, therefore, remains that the applicant had thus handed over charge to the lower authority without the approval of any higher authority. The certificate of transfer of charge produced by the applicant will not, therefore, constitute a valid discharge certificate or a proper relieving order. We are, therefore, of the view that the applicant having violated the terms and conditions set out in the offer of appointment dated 25-6-1990, was liable for repatriation and the question of holding enquiry under CCS (CCA) Rules did not arise. We do not also see any substance in the applicant's allegation that respondents Nos. 3 and 4 have acted out of malice and vengeance, since the refusal of these respondents to relieve the applicant at short notice on the date asked for after curtailing the prescribed notice period of three months is ~~xxx~~ stated to be due to a vigilance case having came up against the applicant.

6. In the circumstances, we do not think this is a fit case for interference by this Tribunal. The application is, accordingly, dismissed with no order as to costs.

M.Y. PRIOLKAR
Member (A)

U.C. SRIVASTAVA
Vice-Chairman

2. None of the above is an error of fact or of law apparent from the record. Detailed reasons have been given in the judgement for ~~the~~ conclusion reached. What the review petitioner seeks, in fact, is a re-consideration of the judgement on the ground that it is erroneous on merits. This cannot be done in a review petition. If the review petitioner felt aggrieved by the judgement of this Tribunal, his proper forum was the Court of Appeal.

3. In this view of the matter, we do not see any merit in the review petition, which is accordingly dismissed.


(M.Y. PRIOLKAR)

M/A


(U.C. SRIVASTAVA)

V/c

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH (0)

REVIEW PETITION NO: 142/92
IN O.A.NO.359/91

Surendra Kumar Mahananda,
Nagpur.

.... Applicant

v/s

Central Provident Fund
Commissioner,
and others.

.... Respondents.

CORAM : HON'BLE SHRI JUSTICE U.C.SRIVASTAVA, V/c

HON'BLE SHRI M.Y.PRIOLKAR, MEMBER (A)

TRIBUNAL'S ORDER:

20 - 10 - 1992

This Review Petition is filed by the Original Applicant in O.A.No.359/91 against our judgement dated 22.7.1992 in that O.A. The Review is sought mainly on the following three grounds:

- i) The Tribunal has erred in accepting the respondents' contentions in their written reply that the applicant could not be relieved because a prima facie vigilance case had come up against the applicant,
- ii) The Tribunal has not considered the fact that the applicant was not informed that the resignation was not accepted, and
- iii) The Tribunal has also erred in interpretation of the notice and should not have pricked holes in the notice to invalidate it.