

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 808/94

Date of Decision : 20<sup>th</sup> October 2000

A.V.Tungare Applicant.

Shri M.S.Ramamurthy Advocate for the  
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri V.D.Vadhavkar for Advocate for the  
Shri M.I.Sethna Respondents.

CORAM :

The Hon'ble Shri B.N.Bahadur, Member (A)

The Hon'ble Shri S.L. Jain, Member (J)

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library yes

P.L.JAIN -  
(S.L.JAIN)  
MEMBER (J)

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.808/94

Dated this the 20<sup>th</sup> day of October 2000.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Arun Vinayak Tungare,  
R/o Tamhane House,  
Near Chavodi, Nerul,  
Tal. Karjat, Dist. Raigad,  
Maharashtra.

... Applicant

By Advocate Shri M.S.Ramamurthy

V/S.

1. Employees State Insurance Corporation, Panchdeep Bhavan, Kotla Road, New delhi.
2. The Secretary, Govt. of India, Ministry of Labour, Shram Shakti Bhavan, New Delhi.
3. Chairman, Standing Committee, Employees State Insurance Corp., ESIC Building, Kotla Road, New Delhi.
4. Director General, Employees State Insurance Corporation, ESIC Building, Kotla Road, New Delhi.
5. Deputy Administration Officer (Vig), ESIC, Panchdeep Bhavan, Kotla Road, New Delhi.

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del/-

6. The Financial Commissioner,  
ESIC, Panchdeep Bhavan,  
Kotla Road, New Delhi.
7. Shri H.F.Rane,  
Jt. Regional Director,  
Sub-Regional Office, ESIC,  
Panchdeep Bhavan,  
Ganesh Peth, Nagpur.
8. Shri Barahate,  
Insurance Inspector (L),  
Sub Regional Office, ESIC,  
Panchdeep Bhavan,  
Ganesh Peth, Nagpur.

... Respondents

By Advocate Shri V.D.Vadhavkar  
for Shri M.I.Sethna

ORDER

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for a declaration that the applicant has not pleaded guilty to the charges levelled against him under Memorandum of Chargesheet dated 23.5.1990, <sup>The said</sup> ~~charge sheet~~ as well as the Enquiry Officer's report dated 3.4.1992 are unsustainable in law, that the Enquiry Officer had acted with bias, prejudice and in a cunning and treacherous manner with the active connivance of Shri Barahate brought in as the defence assistant and that the so-called enquiry conducted by him and the report submitted by him are bad in law, null and void, the order of dismissal passed by the disciplinary authority,

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order in appeal and in Revision dated 7.7.1992, 1.6.1993 and 17.12.1993 respectively are malafide, arbitrary, bad in law as well as null and void with a further declaration that the applicant continued in service of the Corporation without any break and with all attendant benefits of seniority, promotion and emoluments as if the impugned orders dated 7.7.1992, 1.6.1993 and 17.12.1993 have not been passed. The said orders are sought to be quashed and set aside and applicant be reinstated in service with full backwages with proper fixation of pay in the scale of Rs.650-1200 (2000-3500) as prayed for in his representation dated 10.10.1992 along with the consequential monetary benefits.

2. The applicant was serving as Manager, Grade I (Gazetted) in Tamil Nadu region. He was served with chargesheet dated 23.5.1990 issued by Director General of Employees State Insurance Corporation in respect of the charges to his earlier posting at Akola. After appointment of the Enquiry Officer Shri S.R.Srinivasan, who retired subsequently, Shri H.F.Rane was appointed as Enquiry Officer. After submission of the Enquiry Officer's report, the disciplinary authority awarded the penalty on 7.7.1992 of dismissal of the applicant from service. An Appeal was filed against the said order which was also dismissed vide order dated 1.6.1993. Revision against the said order was filed, which was decided on 17.12.1993 rejecting the same.

*Shri -*

3. The applicant was served the chargesheet dated 23.5.1990 which contains 11 charges. Charges I to VI relates to certain small payments made to the insured persons, Charge VII relates to non submission of immovable property details, Charge VIII relates to non-submission of ACRs by the applicant alongwith his own for the years 1986 and 1987, Charge No. IX relates to allowing to join duty to one B.S.Ghoral in violation of the order of the Joint Regional Director, Nagpur, Charge Nos. 10 and 11 relates to failure to furnish reply to show cause notice dated 8.9.1987 and 17.11.1987 respectively. The applicant replied to the chargesheet by pleading not guilty. After appointment of the Enquiry Officer in preliminary enquiry on 5.12.1990 again he pleaded not guilty to the charges. When Srinivasan, Enquiry Officer retired, another Enquiry Officer Shri H.F.Rane and new Presenting Officer were appointed. The hearing date was 23.9.1991 which was adjourned to 6.1.1992, on the said date again the applicant pleaded not guilty to the charges. The hearing date was fixed on 27.1.1992, 3.2.1992, on the said dates, with the connivance of the Enquiry Officer Shri J.D.Barahate approached the applicant to act as his Defence Assistant to which the applicant agreed. The Defence Assistant Shri J.D.Barahate persuaded the applicant to plead guilty to the charges levelled against him so that the superior officers shall take a lenient view in awarding penalty. On this assurance, the applicant on 3.2.1992 is alleged to have pleaded guilty to the said charges while in fact he has not voluntarily and legally pleaded guilty to the said charges.

Sign -

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4. The grievance of the applicant is that on the assurance of Shri J.D.Barahate who was in connivance of the enquiry officer who assured that if he pleads guilty to the charges, lenient view in awarding the punishment will be adopted. On this assurance, he pleaded guilty to the said charges which was even not a proper plea of guilty but also obtained under promise. As the applicant has denied the charges, and after his denial, the Enquiry Officer Shri S.R.Srinivasan, who subsequently retired was appointed and on 5.10.1990 again he pleaded not guilty to the said charges before Shri S.R.Srinivasan, hence, there was no occasion to the applicant to plead guilty except on the assurance given by Shri J.D.Barahate, the Defence Assistant. The Enquiry Officer submitted his report dated 3.4.1992. The applicant was served with a notice of the Enquiry Officer's Report and he offered no comments against the same. The disciplinary authority awarded the penalty on 7.7.1992 removal from service without application of mind. In appeal, he requested for an opportunity of personal hearing and the Appellate authority failed to afford personal hearing and also dismissed the appeal without application of mind. The applicant moved the Revisional authority and the revision was decided on 7.3.1992 by authority not competent to decide the same without considering the several grounds urged in revision. The charges as stated above were of different nature and vague one. The authorities passed the non speaking orders, hence this OA. for the above said reliefs.

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5. The Respondents have resisted the claim of the applicant and prayed for dismissal of the OA with costs. It is necessary to state that the Respondents have not filed a detailed written statement and they have filed only the written statement opposing the admission which is signed by Shri T.M.Joseph, Deputy Regional Director, Bombay. Before we proceed to examine the case on merits, it is necessary to mention that Shri H.F.Rane, who was the Inquiry Officer and Shri Barahate, who was the Defence Assistant i.e. Respondent Nos.7 & 8 respectively in the present case, have not filed any written statement in respect of the allegations levelled by the applicant against them.

6. The Applicant replied to the charge sheet by pleading not guilty. After appointment of the Inquiry Officer, again on 5/12/90, he pleaded not guilty to the charges. Shri S.R.Srinivasan who was the Inquiry Officer had retired thereafter and Shri H.F.Rane, Respondent No.7 was appointed as inquiry officer. The hearing date was fixed as 23/9/91 which was adjourned to 6/1/92. On the said date again the applicant pleaded not guilty. The hearing date was fixed on 27/1/92, 3/2/92 and on 3/2/92 the applicant is said to have admitted the charges levelled against him. It is suffice to say that after retirement of Shri Srinivasan, when Shri H.F.Rane was appointed as Inquiry Officer, it was neither necessary nor permissible by rule or law to conduct the enquiry afresh. In this respect, Employees State Insurance Corporation (Staff and Conditions of service) Regulations, 1959, Procedure for imposing minor penalties alongwith Rule 3 which is for imposing major penalties sub clause (21) is worth mentioning which is as under:-

*Signature*

...7.

21. Wherever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiry authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by itself.

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

7. On perusal of the same, it is clear that the jurisdiction of the succeeding Inquiry Officer is only in respect of the evidence recorded by his predecessor and none else.

8. It is true that the applicant has signed the charges levelled against him stating that "I accept the charge." This fact cannot be taken into consideration in isolation for the reason that on the same date at the same time of accepting the charges, he has submitted a letter dated 3/2/92, the material portion of the said letter which is contained in para 3 & 4 is worth mentioning which is as under:-

I voluntarily and unconditionally plead guilty for all the charges levelled against me and humbly request you to kindly pardon me for the same. I have further to submit that these omission and mistakes were occurred only because of the mental disturbance on account of family problems.

I have to submit that my humble request of taking lenient view in awarding the punishment in my case may kindly be conveyed to the Disciplinary Authority for which act of kindness I shall remain highly obliged.

...8.

*Sum / -*



9. On perusal of the same it is made out that the applicant was mentally disturbed on account of family problems. Request for pardon and taking a lenient view in awarding the punishment was made. This leads us to arrive to a prima facie finding that before making the alleged admission, the applicant was in the hope that either he will lenient view will be taken on account of the reasoning given by him. It is worth mentioning that the applicant who has denied the charges not for once but for three times submits such an alleged admission of guilt, the reason behind it was necessary to be examined by the Appellate Authority, before who this point was raised by the applicant.

10. After considering the said fact, the Appellate Authority recorded the finding "There is nothing in the documents to show that the Inquiry Office induced or compelled him to plead guilty. The pleading in this regard is therefore without emphasis.

11. The learned counsel for the applicant relied on (1972) 20 ATC 824, G.Vishwanathan V/s. Chief Executive Heavy Water Board and Another, Bombay and argued that an admission cannot be acted upon if it is given on a verbal assurance to the employee that he would be awarded lenient punishment but the assurance is not hounoured. On the same analogy, he argued that it was necessary for the Appellate Authority to have enquired into the matter and then to arrive to a conclusion. For arriving to a conclusion if necessary, an enquiry ought to have been held if there are rival contentions of the parties in this respect. Even the Appellate Authority failed to call the comments of Respondent Nos.7 & 8 in this respect. Hence, the Appellate Authority according to him failed to discharge the duties. We agree to the submission made by the Learned counsel for the applicant in view

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of the facts and circumstances narrated above.

12. The appeal was decided by the Chairman, Standing Committee, Employees State Insurance Corporation. The applicant submitted a revision petition against the same. It was decided on 17/12/93 stating the fact that as per regulation 17 of ESIC, (Staff and Conditions of service) Regulations 1959, no appeal lies against the order of Chairman. The present petition is against the order of Chairman and therefore not admissible, a revision petition is always against the order of a subordinate authority, the power to revise any order of a subordinate authority lies with the Chairman.

13. Regulation 22 is worth mentioning which is as under:-  
 REVIEW--(1) Notwithstanding any thing contained in these regulations, in the case of an order imposing any of the penalties specified in regulation 11, the authority to whom the first or the second appeal in relation to such order lies may at any time, either on his or its own motion or otherwise call for records of any inquiry and review any order made under these regulations and may -.....

On perusal of the same we are of the considered opinion that this provision applies irrespective of notwithstanding anything contained in these regulations. The only bar which is by sub clause (2) is that question for review shall be examined only after the disposal of the appeal where such appeal has been preferred. The authority who has dealt the appeal can also re-examine matter in review. Thus, the Respondents have refused to exercise the powers vested in them.

14. The Learned Counsel for the applicant relied on AIR 1961 SC 1070 Jagdish Prasad Saxena V/s. The State of Madhya Bharat and

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argued that if statements does not amount to clear admissions of guilt, they cannot be acted upon. We agree to the submission made by the Learned Counsel for the Applicant and we direct that while examining the case of applicant, the authorities are expected to examine that whether the statement dated 3/2/92 also amounts to admission of guilt or not.

15. If we peruse the notice given by the Disciplinary Authority to the applicant, it does not specify the proposed penalty. It was necessary in view of above regulation (26)(i)(b) which is as under:-

(b) give the employee a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry.

16. As the matter now requires consideration on allegations of connivance/conspiracy between the Inquiry Officer and the defence assistant along with whether admission amount to guilt or not, the matter deserved to be remitted to the Disciplinary Authority for proceeding in accordance with the observations made above.

17. In the result, the order of dismissal order in appeal and revision dated 7/7/92, 1/6/93 and 17/12/93 respectively are quashed and set aside. The matter is remitted to the Disciplinary Authority to examine whether there was a clear admission of the guilt of the applicant, and whether it was not obtained by conspiracy between the defence assistant and the Inquiry Officer with an assurance that a lenient view in awarding the penalty shall be granted. As the matter is too old, it is expected that necessary orders shall be passed by the Disciplinary authority within two months from the date of receipt of the copy of the order and if further enquiry is necessary, it shall be completed within a period of six months thereafter. No order as to costs.

S.L.J. -  
(S.L.JAIN)  
MEMBER(J)

B.N. Bafadur  
(B.N. BAFADUR)  
MEMBER(A)

mrj/abp