

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.:90/95

Dated this 9th the th day of November 2000.

Smt.Momina H. Sayed

Applicant

Mr.G.S. Walia.

Advocate for the
Applicant.

VERSUS

Union of India & Anr.

Respondents.

Mr.V.D. Vadhavkar for
Mr.M.I. Sethna

Advocate for the
Respondents.

CORAM :

Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A)

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

} NO

Shanta Shastry
(Shanta Shastry)
Member (A).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.90/95

Dated this 9th the day of November, 2000.

Coram : Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A).

Smt. Momina H. Sayed,
Working as
Lower Division Clerk,
Posting Section,
Regional Office,
Employees State Insu. Corpn.
ESIC Bhavan,
Lower Parel,
Mumbai - 400 013.

.. Applicant.

(By Shri G.S. Walia, Advocate)

Vs.

1. Union of India, through
Regional Director,
Employees' State Insu. Corpn.,
ESIC Bhavan, Lower Parel,
Bombay - 400 013.

2. Director General,
E.S.I. Corporation,
Panchdeep Bhavan,
Kotla Road,
New Delhi.

.. Respondents.

(By Shri V.D. Vadhavkar, for
Shri M.I. Sethna, Advocate)

O R D E R

[Smt. Shanta Shastry, Member (A)]

In this O.A. the applicant has prayed to quash
and set aside the orders dated 17.8.1993, 28.4.1994 and

20.7.1994 as well as to quash and set aside the penalty of reversion and to direct the respondents to consider the case of the applicant for promotion to the post of UDC with consequential benefits. The applicant has also claimed arrears of pay and difference of pay with 18% interest thereon and costs.

2. The applicant who was working as UDC in the Posting Section at Colaba of the Employees' State Insurance Corporation at the relevant time was charge sheeted on 20.5.1987 for committing gross mis-conduct and exhibited lack of integrity and conduct unbecoming of a Corporation employee, in contravention of Rule 3(i) and (iii) of Central Civil Services Rules 1964 read with Regulation 23 of ESIC (staff and Conditions of Service) Regulations, 1959. The charge was that the applicant has submitted fraudulent medical reimbursement claim dated 15.1.1987 in respect of the period of sickness from 29.11.1986 to 9.1.1987 with malafide intention of inflating claim by Rs.100/-. A regular inquiry was conducted. The Inquiry Officer submitted a report on 17.5.1988 holding the charges proved and finding the applicant guilty of the charges. The disciplinary authority agreed with the findings of the Inquiry Officer and imposed major penalty of reversion i.e. reduction in rank from UDC to LDC with effect from 5.8.1988 to the substantive post of LDC at the minimum of pay of Rs.950/- in the scale of Rs.950-1500 vide order dated 5.8.1988.

The applicant then preferred an appeal against the aforesaid order. The appeal was rejected vide order dated 13.7.1989. A second appeal was preferred to the Chairman, Standing Committee, ESIC on 31.7.1989 but it was also rejected on 30.1.1990. The applicant thereafter filed an O.A.518/90 in this Tribunal against the order dated 5.8.1988 of the disciplinary authority as well as the order of the appellate authority. The Tribunal by its order dated 11.10.1991 quashed the penalty order dated 5.8.1988 and the appellate orders and gave liberty to the respondents to proceed with the inquiry from the stage of giving a copy of Inquiry Report to the applicant and giving her reasonable time to file a representation. In compliance of the order of the Tribunal the respondents issued a fresh order dated 21.4.1992 informing the applicant that the penalty order dated 5.8.1988 stands set ~~aside~~ and the departmental inquiry initiated against her vide Charge Sheet Memo dated 20.5.1987 stands restarted denovo from the ^{stage of} supply of copy of Inquiry Report to her. A copy of the report of the inquiry officer was furnished to the applicant. She gave her representation, it was considered and a fresh penalty order was issued imposing the major penalty of reverting the applicant to the post of LDC and fixing the pay at the stage of Rs.1010/- in the scale of LDC with effect from 17.8.1993. The applicant filed an appeal against the same on 10.9.1993. In the

meantime the applicant also filed a contempt petition No.138/93 for non payment of difference of pay and allowances admissible between the post of LDC and UDC from 5.8.1988 to 11.10.1991. The Contempt Petition was dismissed vide order dated 25.3.1994 of the Tribunal stating that the applicant would have an opportunity to agitate the matter further if the appeal already preferred goes against her and that would be a separate proceeding. Her appeal was considered and orders were passed on 28.4.1994 by the appellate authority by modifying the penalty order dated 17.8.1993 as under:-

- (i) The Appellant shall be paid the pay of UDC if otherwise entitled till the denovo order dated 17.8.1993 came into force.
- (ii) With effect from the date of operation of the penalty order dated 17.8.1993, the basic pay of the Appellant shall be fixed at the stage which she would ^{have} been drawing had she been working as LDC from the beginning.

Thereafter a speaking order was passed on 20.7.1994 making it clear that the applicant is not entitled to the pay of UDC for the period from 5.8.1988 to 10.10.1991. Being aggrieved by these orders the applicant has approached this Tribunal for relief.

3. It is the contention of the applicant that the impugned order of 17.8.1993 is illegal and bad ~~in~~ law. The order dated 28.4.1994 denying her the pay of UDC for the period from 5.8.1988 to 10.10.1991 has not been passed by the competent authority. Also the order dated 20.7.1994 is against the basic principles of natural justice. According to the applicant the Regional Director who passed the order dated 17.8.1993 has no powers to issue the order. The applicant has also alleged that the disciplinary authority could not prove the case of the alleged tampering with documents and there was no confirmation of the handwriting on the alleged tampered document. She did not admit the charges. No reasonable opportunity was given to her. One Shri V.M. Potdar who was produced as a witness by the disciplinary authority was a close relative of the owner of the medical shop and his evidence ought to have been rejected. Further the Deputy Regional Director passed a further order modifying and reversing the order passed by the Director General which is bad in law as the appellate order cannot be reviewed by an earlier authority or by the same authority. Even the Director General has no power to review the order modifying the order and in any ~~the~~ case said orders ought ~~to~~ not to have been passed without giving the applicant reasonable opportunity to represent. The applicant has further contended that the order of the disciplinary

authority is bad in law and does not specify the period for which the applicant has been reverted to the lower post of LDC because of this the applicant has not been considered for promotion. It is urged by the applicant that she is entitled to the pay of UDC till the denovo order dated 17.8.1993 came to be passed for the period from 5.8.1988 to 10.10.1991.

4. The respondents have opposed the relief. It is stated in the written reply that the applicant was given full opportunity to represent her case and make her submissions as per rules and prescribed procedures. It is only after conducting the inquiry as per rules that being found guilty, a major penalty was imposed on her. The applicant has also been paid the salary of UDC from 11.10.1991 till 16.8.1993. According to the respondents the charges against the applicant were proved and she has been rightly punished. As regards the payment of UDC's salary for the period from 5.8.1988 to 10.10.1991 is concerned it was duly examined and it was decided that since the applicant was found guilty of gross mis-conduct and since she was awarded major penalty she cannot be paid for the period mentioned as she did not work as UDC during that period. The Learned Counsel for the respondents relies on several judgments of the Hon'ble Supreme Court as well as the Tribunal which are listed below.

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- (i) Shri Rakhalchandra Day Vs. Union of India (Reported at page No.333 in All India Services Law Journal for 1991. Vol.39, Part III). It was held that no work no pay where the penalty is set aside on technical grounds.
- (ii) Ramakrishnaiah Vs. Union of India 1989(2) SCC 541, para 19, the Hon'ble Supreme Court held that it is settled service rules that there has to be no pay for no work.
- (iii) Mathai Chacko Vs. Madan M.L. Sharma, 1992(4) ELR 171. Full Bench judgment in M.P. Bhatt & N.R. Natanam Iyer Vs. Union of India in their judgment dated 27.11.1991.

5. In regard to the defective penalty order in that the period for which the reversion would be in force has not been mentioned, the respondents have drawn attention to Rule FR 29, it is not mandatory to specify the period of penalty. According to Sub-rule 3(i) of FR 29, where no period has been specified in the order of penalty, the conclusion is that the penalty is for an unspecified period, in such cases the Government servant should be deemed to be reduced for an indefinite period i.e. till such date as on the basis of his/her performance subsequent to the order of reduction, he/she may be considered fit for promotion. This being so the respondents are of the view that the order cannot be faulted.

6. We have heard both the Learned Counsel for the

applicant as well as the respondents and have given careful consideration to the submissions made. We find that so far as the inquiry is concerned proper procedure has been followed, due opportunity was given to the applicant in compliance with the directions of this Tribunal in O.A. 518/90 and the applicant was held guilty of charges levelled against her. The order of the disciplinary authority is reasoned so also the order of the appellate authority. We do not find any fault in the said orders to intervene in the matter. The next point for consideration is whether the applicant is entitled to the pay of UDC during the period from 5.8.1988 to 10.10.1991 when by an earlier order the applicant was reverted to the post of LDC. The stand taken by the respondents is that since the applicant did not work as UDC during this period she is not entitled to the pay of the UDC. The respondents have also produced enough case law in support of their stand. We find that the initial punishment order dated 5.8.1988 was quashed and set aside by this Tribunal in O.A.518/90, therefore, the punishment awarded does not survive. Further the applicant was reinstated as UDC with effect from 11.10.1991 i.e. the date of the order of the Tribunal. When the Tribunal quashed the order dated 5.8.1988, infact that order does not survive. The applicant should have been deemed to have been continued as UDC from 5.8.1988. It is to be

noted that even during the period from 11.10.1991 to 17.8.1993 the applicant did not perform any duty as UDC but the respondents reinstated the applicant from 11.10.1991 as UDC and have paid her the UDC's pay for the said period. Therefore, the argument that she did not perform any duty from 5.8.1988 to 10.10.1991 cannot be accepted for not paying the difference in the pay of the LDC and UDC because for all practical purposes she is deemed to have been reinstated from 5.8.1988. Further the impugned order dated 17.8.1993 clearly states that it is to be implemented with immediate effect. The fourth sentence from the bottom of the order says that the Regional Director, Employees State Insurance Corporation, Maharashtra imposed the major penalty on the applicant by reverting her to the post of LDC with immediate effect. This is confirmed by the order dated 6.9.1993 wherein in para 2 it is stated that the applicant stands reverted to the post of LDC with effect from the date of issue of the order i.e. 17.8.1993. It is therefore clear that the applicant was not on any punishment during the period from 5.8.1988 to 10.10.1991. It is not her fault if she was not allowed to function as UDC during that period. Moreover she was prevented from performing the duty. If she is not paid salary for this period it would amount to punishing her without the inquiry having been completed. In our considered view, therefore, the applicant needs to

be paid the salary of UDC for the aforesaid period. The arrears by way of difference between the salary of UDC and LDC needs to be paid to the applicant alongwith 12% interest from the date due till it is actually paid.

7. The applicant has raised the issue of promotion and the order of the disciplinary authority being defective because the period for which she is reduced is not specified in the order. It is a fact that the impugned order of 17.8.1993 does not specify the period. The respondents have drawn attention to F.R.29(3) which allows the authority ordering reduction to either specify or not to specify the period of reduction. However, we find that the Govt. of India have issued O.M.No.9/13/62-Estt.(D) dated 10th October, 1963 and No.30/63-Estt.(D) dated 7th February, 1964 clarifying that if the order of reduction is intended for an indefinite period the order should be framed as follows:-

" 'A' is reduced to the lower post/grade/service of 'X' until he is found fit by the competent authority to be restored to the higher post/grade/service of 'Y' ". [Please see GOI Order No.13 under rule 11 of Swamy's Compilation of CCS(CCA) Rules].

Since in the present case the impugned order has not specified the period of reduction it is to be presumed that the intention is that it should be for an indefinite

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period or permanently. Reduction in rank permanently is also not permissible. Therefore the order should have been framed as per the format given above. To that extent the impugned order suffers from infirmity. The impugned orders therefore need to be set aside to the extent they relate to the period of reduction in rank.

8. In the facts and circumstances of the case, we direct the respondents to pay the difference in the salary of the UDC and the LDC to the applicant for the period from 5/8/1988 to 10/10/1991 alongwith 12% interest from the date due till it is actually paid. The impugned orders dated 17/8/1993 and 28/4/1994 as indicated in para 7 above are quashed and set aside in so far as they relate to the non specifying of the period of reduction in rank.

In the result the O.A. is partly allowed. We however do not order any costs.

Shanta

(Shanta Shastry)
Member(A)

P.L.Jain

(S.L.Jain)
Member(J)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO.5/2001
IN OA 90/95.

DATED: 7th Feb, 2001.

CORAM: HON'BLE SHRI S.L.JAIN, MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

1. Union of India through
Regional Director
Employees' State Insurance Corporation,
E.S.I.C. Bhawan, Lower Parel,
Bombay - 400 013.
2. Director General E.S.I. Corporation,
Panchdeep Bhavan,
Kotla Road,
New Delhi. ... Review Petitioners
(Original Respondents)

V/s.

Smt. Momina H Sayed,
Working as Lower Division Clerk,
Posting Section (L.O. Madanpura)
E.S.I. Corporation,
Panchdeep Bhavan,
Mumbai - 400 013.

Respondent
... (Original Applicant)

TRIBUNAL'S ORDER:

Per Smt. Shanta Shastri, Member(A)

This Review Petition is filed by the respondents in OA-90/95 which was decided on 9/11/2000. The OA was partly allowed directing the original respondents, that is the review applicants to pay difference in salary of Upper Division Clerk and LDC to the Original applicant for the period from 5/8/1988 to 10/10/91 alongwith 12% interest. Also the orders dated 17/8/93 and 28/4/94 were quashed and set aside in so far as they related to the non specifying of the period of reduction in rank.

2. The Review Petitioners have argued that the applicant in the OA was paid the wages of UDC cadre w.e.f. 11/10/91 itself even though she was not working as UDC. Further, reliance has been placed on a judgement of the Guwahati Bench of this Tribunal

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in Rakhalchandra v/s. Union of India. Also the Supreme Court has observed in the case of Managing Director Food Corporation of India V/s. Narendra Kumar Jain that the ratio in Mohd. Ramzan Khan's case is applicable only prospectively. Therefore, no punishment imposed earlier to the date of the judgement in Ramzan Khan's case shall be open to challenge on the ground of non supply of enquiry report. In the present case, the penalty order dated being 5/8/1988 is being set aside on the technical ground of non supply of inquiry report, the principle of 'no work no pay' applies and hence the Tribunal has failed to appreciate this fact. Secondly, the penalty orders dated 17/8/93 and 28/4/94 have been set aside on the technical ground that the proforma prescribed below FR 29 has not been used while passing the penalty order of reduction to the lower cadre for indefinite period. The Review Petitioners have submitted that the operative part of the order appears to be very ambiguous so far as it allows the OA partly but grants the entire relief of quashing and setting aside penalty orders and giving direction for difference of pay with 12% interest. They are therefore seeking clarification.

3. We have considered the grounds for review. The review petitioners had cited the judgement in the case of Rakhalchandra (supra) during the course of hearing of the OA and the same was noted by us. Raising the same ground again amounts to re-arguing of the case. Also having conducted fresh enquiry from the stage of furnishing of enquiry report as the order between the parties has become final the respondents are now not entitled to raise this plea in view of Ramzan Khan's ratio. This ground is not maintainable. According to us, the direction to pay the difference in pay from 5/8/88 to 10/10/91 does not call for any

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review. As regards the clarification on the partial setting aside of the impugned orders relating to the portion concerning the mentioning of the period for which the applicant was to be reduced in rank it was observed that the impugned orders are silent on the period for which the penalty of reduction in rank is to be in operation, it could be for an indefinite period or for a specific period but it needs to be specified. The ambiguity is in the impugned order in not mentioning the period of reduction and not in the Tribunals order.

4. In our view, no review is called for. Accordingly, the RP is rejected.

Shanta Shastri
(SHANTA SHASTRY)
MEMBER(A)

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

abp

13/12/01
order/Judgement despatched
to applicant, silent (s)
on 13/12/01

hp