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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDE
AT HYDERABAD

ORIGINAL APPLICATION No.590/92

DATE OF JUDGEMENT: 30.1.1992

Between

Sri G.Vasantha Rao

.. Applicant

and

1. Union of India rep. by
Secretary,
Min. of Labour, Shramshakti Bhavan
New Delhi-1.

2. Director General,
ESI Corporation ESIC Building
Kotla Road
NEW DELHI

3. Regional Director (Estt.I)
ESI Corporation Andhra Pradesh
5-9-23, Hill Fort Road
Adarshnagar
HYDERABAD 500 463

.. Respondent

Counsel for the Applicant

::Mr TVVS Murthy

for Mr T.Jayant

Counsel for the Respondents

::Mr N.R.Devraj

CORAM:

HON'BLE SHRI A.V. HARIDASAN, MEMBER(JUDICIAL)

HON'BLE SHRI A.B. GORTHY, MEMBER(ADMINISTRATION)

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JUDGEMENT

{As per Hon'ble Shri AV Haridasan, Member(J)}

This application, under Section 19 of the Administrative Tribunals Act, is directed against the order dated 25.3.1991 (Annexure A-6 to the OA) of the third respondent, imposing on the applicant the penalty of compulsory retirement from service, and the order dated 2.4.92 (Annexure A-8 to the OA) of the ~~second~~ respondent \longleftrightarrow rejecting his appeal against the order at Annexure A-6.

2. Factual Matrix can be stated as follows:
The applicant was working as a Lower Division Clerk in the ESI Corporation, Vizianagaram. One Sri G.Sanyasi Rao gave a complaint to the CBI, Visakhapatnam that Shri H.Lakshminarayana, Manager, ESI Corporation, Vizianagaram, made a demand for payment of Rs.500/- to him as illegal gratification and further ~~an~~ sum of Rs.500 for being paid to the staff in his office, like, Sri G.Vasanth Rao (the applicant in this case) Shri Gurumurthy, Cashier, etc. for disbursement of dependent's benefits sanctioned to the mother of Sri G.Sanyasi Rao on the death of his father, while working at Aruna Jute Mill, Vizianagaram on 13.10.1987.

Not willing to pay the bribe demanded by Shri H.Lakshminarayana, Sri G. Sanyasi Rao made a complaint to the CBI. The CBI arranged a trap on 8.3.1988. As the manager was said to have directed Sri Sanyasi Rao to hand over the sum of Rs.500/- to the applicant Sri G.Vasanth Rao, it is alleged that the applicant received the sum of Rs.500/- from the said Sanyasi Rao as illegal gratification for Shri H.Laxminarayana the Manager of ESI local office, and also made a demand

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for another sum of Rs.500/- for the staff including himself. The CBI officers caught the applicant at the time he is said to have received the sum of Rs.500/- and after testing the currency notes and the hand of the applicant, for detecting the acceptance of the money, laid an FIR in the Magistrate Court. The proceedings were not further held in Court and the charge-sheet was also not laid. However, on the basis of inquiry held by the CBI, the applicant was proceeded against departmentally. He was served with a memorandum of charges dated 24.6.88 which contained the following charges.

" That, Shri G.Vasantha Rao, while functioning as clerk, ESI Corporation, Local Office, Vizianagaram by abusing his position as public servant, accepted an amount of Rs.500/- from Sri G.Sanyasi Rao on 8.3.88 on behalf of Sri H. Taxminarayana, Manager, Employee State Insurance Corporation Local Office Vizianagaram as illegal gratification other than legal remuneration towards release of dependent benefits amount payable to the mother of Sanyasi Rao which was due to be paid to the demise of his father late Shri Polipalli who died while working in Aruna Jute Mills on 13.10.87.

Further, the said Sri G.Vasantha Rao demanded an amount of Rs.500/- on 8.3.88 ~~xxxxxx~~ at ESI local office from G.Sanyasi Rao as illegal gratification to be paid after receipt of dependents benefit amount to his mother and thereby committed gross mis-conduct as detailed in the statement of imputations of mis-conduct.

By the afore said acts, Sri G.Vasantha Rao exhibited lack of integrity, conduct, unbecoming of a public servant and thereby violated Rule 3 of CCS Conduct Rules, 1964, read with Regulation 23 of ESI Corporation (Staff and conditions of service) Regulations, 1959 (as amended.)

Sd/-
Regional Director
Regional Office
Andhra Pradesh
Hyderabad.

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2. In the statement of imputations which is Annexure A-2 to the memorandum of charges, it was alleged that Shri H. Laxminarayana, the Manager of the ESI Corporation, Local Office, demanded Sri Sanyasi Rao to pay a sum of Rs.500 to him as illegal gratification and to pay a further sum of Rs.500 to be paid to the staff of ESI Corporation including the applicant and the Cashier, that on 8.3.88, Shri G. Sanyasi Rao along with one Sri S. Bangaraiah and other members of the trap party went to the ESI local office, that on being told by the Manager, Shri G. Sanyasi Rao paid Rs-500/- to the applicant in the presence of Shri Bangaraiah, that the applicant made a demand for a further sum of Rs.500/-, that he was caught re-handled by the CBI Party and that by receiving Rs.500/- as illegal gratification on behalf of Shri H. Laxminarayana the manager of ESI Corporation Local Office and making a demand for a sum of Rs.500/- for himself and others, the applicant has exhibited lack of integration and devotion to duty and a conduct unbecoming of a public servant. The applicant denied the charges ^{and} a regular inquiry was held. The Inquiry authority, on the basis of the evidence on record at the inquiry, submitted a report holding that the charges against the applicant were established. The third respondent, who is the Disciplinary authority, accepting the findings of the Inquiry authority held the applicant guilty of the charges and imposed on him the penalty of compulsory retirement. The appeal filed by the applicant against the order of the Disciplinary authority was also rejected by the appellate authority i.e. 2nd respondent. It is challenging these orders of the Disciplinary Authority and the Appellate authority, the applicant has filed this application.

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3. The applicant has alleged in the application that the charge sheet itself was vitiated as the charges of corruption being criminal offence under Secs. 161, 162 and 163 of the IPC, triable by a Criminal Court, a departmental proceeding for such an offence is without jurisdiction, that as the CBI authorities after filing the FIR in Court ~~had~~ subsequently dropped the proceedings for want of evidence, there is no justification for ~~taking~~ the departmental proceeding against the applicant, that the applicant has been denied reasonable opportunity to defend himself in as much as, he was not permitted to be assisted by a legal practitioner, while the ~~presenting officer~~ Presenting Officer was a CBI Inspector who was well trained in prosecution, that the ~~findings~~ findings of the Inquiry officer and the Disciplinary authority that the charges against the applicant are proved is perverse, as the same was not ~~based~~ on any evidence at all, that the third respondent has committed a grave error in holding that the case of the applicant in involving the Manager at a later stage was ^{an} after thought against the imputations of a misconduct and the allegations in the memorandum of charges itself that the general remarks made by the third respondent in paragraph 5(a)(2)(i) of the impugned order of punishment being extraneous to the scope of the inquiry and having influenced the decision of the third respondent in the matter of penalty is unsustainable and illegal and that the appellate authority has not considered the grounds raised by him in his appeal against the charges properly and therefore, the impugned orders are liable to be set aside.

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4 4 The respondents have contended that the Tribunal has no jurisdiction to entertain this application, that the inquiry was held in conformity with the rules, that the case of the applicant that he was denied reasonable opportunity to defend, in as much as, he was not allowed to engage a legal practitioner, has no merit ~~as~~ ~~as~~ as in a departmental proceeding, the employee facing a charge is not entitled to have the assistance of a legal practitioner, that the case of the applicant ^{as} that the CBI did not prosecute the applicant though FIR was laid, no departmental proceeding against him can be initiated on the very same allegations is devoid of merit, that as the guilt of the applicant was established in the inquiry, ~~and~~ the penalty of compulsory retirement was validly imposed on the applicant.

5 We have given our anxious considerations to the facts of the case as brought out in the pleadings and the arguments advanced by the counsel appearing on either side. We have also carefully perused the entire file relating to the disciplinary proceedings.

6. The contention of the respondents that the Tribunal has no jurisdiction to entertain ~~an~~ an application against an order passed in a ~~deper~~ disciplinary proceedings has only to be mentioned and rejected; because, the forum before which the order of a disciplinary authority imposing any penalty on a Central Govt. servant or an official of an organisation notified under Section Administrative Tribunals Act, is the Central Administrative Tribunal. Therefore, this argument is mis-conceived.

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Important points argued by the learned counsel for the applicant, assailing the impugned orders of penalty and the appellate authority's order are-

- i) the proceedings are vitiated for the reason that as the misconduct alleged in the memorandum of charge being criminal offence for which an offender could be prosecuted in a criminal court, no proceedings can be initiated on the very same allegations by the department.
- ii) the action on the part of the inquiry authority in not allowing the applicant to be represented by a legal practitioner has resulted in violation of principles of natural justice in as much as, reasonable opportunity for defending him was not offered to the applicant.
- iii) The finding that the applicant is guilty of the charges is based on no legal evidence and therefore perverse.
- iv) the observation of the disciplinary authority that the entire local office of the ESI Corporation was involved in corrupt practices, that the applicant himself was corrupt and that his attempt to involve the Manager was only an after-thought being extraneous to the scope of the inquiry not born out even by the allegations in the charge or evidence and having influenced the mind of the disciplinary authority, in determining the penalty to be imposed, the penalty of compulsory retirement imposed on the applicant is unsustainable; and,
- v) the appellate authority has not applied his mind to the grounds raised by the applicant in his appeal memorandum.

We shall deal with these arguments one by one.

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8. The argument of the learned counsel for the applicant that as the imputations against the applicant contained in the memorandum of charges and annexure there to being of criminal in nature, disclosing specific offences, there was no jurisdiction for the third respondent to charge sheet him and to initiate disciplinary proceedings is also totally mis-conceived. Even if an action or omission of a Government servant amounts to a criminal offence, if it is also a misconduct, there is nothing de-barring the department from proceeding against him departmentally, and not ^{to} prosecute him. The same can be said about the argument of the learned counsel for the applicant that once CBI having filed the FIR in a competent court and decided not to file a charge-sheet, it is not open for the department~~x~~ to initiate disciplinary proceedings. If the prosecuting agency finds that the ~~charge-sheet~~ ^{if} filed in the criminal court may not be sustained for want of unimpeachable evidence, it may refer the case by filing a final report to that effect; but, that does not preclude the department from proceeding against the employee, if there is sufficient material to find him guilty of mis-conduct. Since the standard of proof required in a criminal case is of much higher degree than in a departmental proceedings, the fact that the criminal proceedings was dropped need not necessarily preclude the department^{from} proceedings being initiated.

9. The learned counsel for the applicant argued that there is denial of reasonable opportunity to defend the applicant, in as much as, he was not permitted to avail the assistance of a legal practitioner while the prosecution^{case} against him was presented by an Inspector of CBI. In this connection, the learned counsel for the

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applicant referred to the decision in Dr K.Subba Rao Vs State reported in AIR 1957 AP 414, the decision of the Calcutta High Court in Nipendranath Vs Chief Secretary, Govt. of West Bengal, reported in AIR 1961 Cal.1 and another ruling of the AP High Court in the case of Rao Rallapalli Suryanarayana Vs State of AP reported in 1968 SLR 77. Having gone through the entire proceedings of the inquiry, we do not find that the applicant had, at any time, requested the inquiry authority to allow him to be represented by a legal practitioner. It is seen that the defence assistant of the applicant, had, raised an objection that the CBI Inspector should not be permitted to present the case on behalf of the disciplinary authority, as he was not competent to do so. A ruling was given by the inquiry authority that the objection was unsustainable. But, nowhere it is seen that the applicant had sought permission to engage a legal practitioner to defend himself. Therefore, there is no basis for the argument that there is denial of reasonable opportunity to defend himself as he was not allowed to engage a legal practitioner, for the simple reason, that the applicant had never requested the disciplinary authority to allow him to engage a legal practitioner. Therefore, this argument also is devoid of merit.

10. The charges against the applicant are, that he, on 8.3.88 received a sum of Rs.500/- as illegal gratification from Sri G.Sanyasi Rao, on behalf of Sri H. Laxminarayana, the Manager of the local office of ESI Corporation, and that, he made a demand for a further sum of Rs.500/- on 8.3.88 at the ESI local office from Shri G.Sanyasi Rao as illegal gratification to be paid, after receipt of the

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dependent benefits of his mother. In the statement of imputations, it has been alleged that Sri G.Sanyasi Rao stated that Sri H.Laxminarayana, the Manager of the local Office of ESI Corporation on 8.3.88 called Sri G.Vasanth Rao, the applicant and instructed him to properly brief Shri Sanyasi Rao and take from Sri Sanyasi Rao Rs.500/- on his behalf and that, Sri Vasanth Rao, the applicant herein, had taken from Sri G.Sanyasi Rao Rs.500/- as bribe and advised him to come to the office, the next day along with necessary life certificate, etc., and that, he demanded another sum of Rs.500/- for himself and all the office staff. 7 witnesses were examined in support of the charge and two witnesses were examined in defence. Even according to the statement of imputations, the trap was arranged to Book Sri H.Laxminarayana, the Manager of the local office of ESI Corporation, on the ground, that he had made a demand of Rs.500/- as bribe for releasing the dependent benefits to the mother of Sri Sanyasi Rao and has also stated that a further sum of Rs.500/- should be paid to the staff including the applicant and the cashier in the office. In the complaint given by Sri G.Sanyasi Rao, a copy of which was marked as P1 in the inquiry, the allegation was that Sri H.Laxminarayana made the demand and there was no allegation that the applicant ~~xxx xxx~~ had made any such demand though it was alleged that the applicant was also with the said Sri H.Laxminarayana, the Manager of the local ESI Corporation. It turned out that money was paid in the hands of the applicant; because, allegedly Sri Laxminarayana had asked Sri Sanyasi Rao to make the payment to the applicant and had instructed the applicant to

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to receive the money on his behalf. PW2, PW3 and also some other witnesses have deposed that the applicant on 8.3.88 came out from the office along with Sri G.Sanyasi Rao and Sri Sanyasi Rao paid Rs.500/- to the applicant at which time, the CBI official apprehended the applicant. PW2, Sri Sanyasi Rao, the complainant in this case in his ~~chief~~ examination, stated, that Exhibit P1 and P2 were signed by him and that, he stood by the statement given by him and recorded by the CBI official. In cross-examination, he hesitated as follows:

"Question:: Do you know Mr Vasantha Rao?

Answer :: Because I know him as I was going to office after my father's death.

Question:: Did he demand any money?

Answer :: He did not.

Question:: ~~Did he~~ ^{Police Gupta} to pay to Sri Vasantha Rao anything?

Answer :: No."

The presenting officer put a question in re-examination "at that time did Vasantha Rao demanded money and take it?" to which, the PW2 answered that he demanded and received.

Sri TVVS Murthy, counsel for the applicant argued that a reading of the testimony of PW2 ^{would show} that the witness has not implicated the applicant and that, the answer in re-examination cannot be considered as an affirmative testimony given by him, that the applicant had demanded any money, from Sri Sanyasi Rao. The learned counsel for the respondent argued that, in the statement given by the PW2, while he was questioned ~~on the statement~~ by the CBI inspector, Sri Sanyasi Rao, PW2 had stated that the applicant demanded Rs.500/-, that the testimony of the witness includes the statement given to the CBI Inspector also, and therefore, it cannot be said that

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Sri Sanyasi Rao at no point, in his testimony, stated that the applicant had made the demand. It is true that the examination of a witness includes, chief examination, cross-examination and re-examination. In a departmental proceeding, a statement recorded during the preliminary investigation can be admitted in evidence if the maker of the statement affirms the same and if the maker of the statement is made available for cross-examination. Here, Sri Sanyasi Rao, the PW2, has been made available for cross-examination and was cross-examined on behalf of the applicant. He has also stated that he stood by the statement recorded by the CBI inspector. Therefore, if this statement has been affirmed by him, and if this statement can be taken as one recorded during the preliminary investigation in a departmental proceeding, it can be said that the witness Sanyasi Rao had stated while questioned during preliminary investigation, that the applicant had made a demand and that, he had knowledge of the fact that the sum of Rs.500/- received by him represented illegal contribution made to Sri M. Taxminarayana. It was argued by Sri Murthy that the statement recorded by an Inspector of CBI during investigation of a criminal case, after registering the FIR cannot be considered as a recorded statement made during preliminary investigation, and that the above statement cannot be used for any purpose other than for contradicting the maker of the statement if examined in Court. Therefore, Sri Murthy argued that the statement of Sri Sanyasi Rao PW2 and that of Sri S. Bangariah PW3, recorded by the CBI Inspector during the enquiry cannot be treated as substantive evidence in view of the bar contained in Section 161 and 162 of the Code of Criminal Procedure.

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This argument may appear to be very persuasive; but, a proper construction of the provisions contained in Section 161 and 162 of the Code of Criminal Procedure would make it clear that the statement recorded by a police officer under Section 161 Criminal Procedure Code can be used by the accused only for contradicting the witness and for no other purpose in any trial or enquiry under the Code. But the bar contained in Section 162, does not extend to the disciplinary proceedings because that is not an trial or enquiry under the Code. The statements though recorded by CBI Inspector, was read over and translated to the PW2 Sri Sanyasi Rao by the Presenting Officer during enquiry and Sri Sanyasi Rao said that he stood by what was stated in the statement. Similarly, PW3 Sri Bangarlah has also affirmed that he stood by the statement recorded by the CBI Inspector while the same was read over and translated to him in Telugu. PW2 has, in his statement recorded by CBI Inspector which cannot be considered as part of the Chief examination in the enquiry, stated that Sri Vasantha Rao, the applicant was present when the manager demanded Rs.500/- as bribe for him and another sum of Rs.500/- for the staff including the applicant, that on 8.3.88 the manager instructed Sri Vasantha Rao to accept Rs.500/- from Sanyasi Rao outside the office, that the applicant came out with him and PW3, that the applicant received Rs.500/- and demanded that Rs.500/- for the staff ~~including~~ including him should be paid after receiving the dependent benefits and that at that time, PW7 and other officers caught the applicant red-handed. PW3 Sri Bangarlah also, has in his statement recorded by CBI Inspector which was affirmed by him at the enquiry stated the same details. Though the

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PW2, Sanyasi Rao in cross-examination answered that applicant did not demand money, in re-examination he has stated that the applicant demanded and accepted money. In the statement of PW3 Bangariah as stated earlier he has corroborated what PW2 had stated. But, in cross-examination he said that the applicant did not demand money. But he has stated that the manager had instructed Sri Sanyasi Rao to pay Rs.500/- to the applicant and the applicant came out and accepted the money. Under these circumstances it cannot be said that there is no evidence at all to establish that the applicant received Rs.500/- from Sanyasi Rao knowing it to be bribe and that he made a demand for Rs.500/-. This evidence may not be sufficient in a criminal case. But, in a departmental disciplinary proceedings, the degree of proof required is not the same as required in a criminal case. If the disciplinary authority on the basis of some evidence collected at the time of a finding in a proceeding of this nature, it is not open for the Tribunal to embark on a re-appreciation of evidence and to see whether a different conclusion is possible. Even if a different conclusion is possible, the Tribunal will not interfere with the findings on fact, unless, it is manifestly perverse. Therefore, we are not persuaded to hold that the finding of the disciplinary authority that the charges against the applicant has been established is perverse.

11. The learned counsel for the applicant argued that the disciplinary authority has without any basis, held that the applicant tried to involve the Manager only as an after thought and that there was corrupt practice in the office and that this has vitiated the finding. Though the observation of the disciplinary authority was

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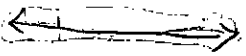
unnecessary and baseless, nevertheless, we are of the firm view that the finding is not vitiated because of the avoidable observation since the same is supported by evidence.


12. Sri Murthy finally argued that the disciplinary authority has committed error in awarding the applicant the penalty of compulsory retirement, because, as the applicant did not have the requested length of service to be entitled to get pension, the compulsory retirement in his case actually is as bad as removal from service. He further argued that the appellate authority also failed to consider this aspect and that, for that reason, the impugned orders are liable to be set aside. He also relied on some ruling to the effect that the State cannot compulsorily retire a person if he has not completed the minimum length of service to be entitled to pensionary benefits. The rulings referred to, by the learned counsel for the applicant do not pertain to awarding the penalty of compulsory retirement in a disciplinary proceeding, but to retiring a government servant on public interest. Therefore, there is no merit in this argument of the learned counsel for the applicant. If the disciplinary authority finds that a person lacks integrity and devotion to duty and that his mis-conduct is such that it renders him unfit to continue in government service, then a penalty of compulsory retirement is the mildest penalty that can be awarded. So, we do not find any reason to interfere with the impugned orders.

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13. Though we are not persuaded to interfere with the impugned orders, we cannot refrain ourselves from expressing our astonishment at the attitude of the respondents in not taking any action against Sri Laxminarayana, Manager, against whom the trap was arranged and tangible evidence was collected to show that he had demanded illegal gratification from Sri Sanyasi Rao and that the applicant received Rs.500/- from Sri Sanyasi Rao only as the agent of Sri H. Laxminarayana, Manager of the Local office of ESI Corporation.

14. ^{On the result} However, in the  conspectus of facts and circumstances, this application, which is devoid of merits, is dismissed ^{to bear their} own costs.


(A.B. GORTHI)
Member(A)


(A.V. HARIDASAN)
Member(J)

Dated: 30-1-1995

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DEPUTY REGISTRAR(J)

- To
1. The Secretary, Min. of Labour, Shrama Shakti Bhavan, New Delhi-1.
 2. The Director General, ESI Corporation ESIC Building, Kotla Road, New Delhi.
 3. The Regional Director, (Estt.I), ESI Corporation, Andhra Pradesh, 5-9-23, Hill Fort Road, Adarshnagar, Hyderabad - 500 463.
 4. One copy to Mr. T. Jayant, Advocate, CAT, Hyderabad.
 5. One copy to Mr. N.R. Devraj, Sr. CGSC, CAT, Hyderabad.
 6. One copy to Library, CAT, Hyderabad.
 7. One spare copy.

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TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(S)

AND

THE HON'BLE MR.A.B.GORTHY : MEMBER(A)

DATED : 30/95

ORDER/JUDGEMENT.

M.A/R.P/C.P.No.

in

O.A.No. 590/92

Admitted and Interim directions
issued

Allowed

Disposed of with Directions

Dismissed ✓

Dismissed as withdrawn

Dismissed for Default.

Rejected/Ordered

No order as to costs.

No spare copy

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