

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.367/99

DATE OF ORDER : 12.4.2000

Between:-

G.Venugopal

...Applicant

And

1. The Employees State Insurance Corporation, rep.
By its Director General, Panchdeep Bhavan, Kotla Road,
New Delhi.
2. The Regional Director, Employees State Insurance Corporation,
Regional Office AP, Hill Fort Rd, Hyderabad.

...Respondents

COUNSEL FOR THE APPLICANT : Shri P.Kishore Rao

COUNSEL FOR THE RESPONDENTS: Shri N.R.Devaraj, Addl. CGSC

CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J)).

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(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J)).

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Heard Shri P.Naveen Rao for Shri P.Kishore Rao, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the Respondents.

2. During the year 1991 the applicant was working as UDC Cashier in the office of the Respondents at Hindupur.

3. M/s Gajmuk Security Force, Hindupur is an employer registered under the ESI Corporation Act, (herein after referred to as the Act).

4. It is alleged that the applicant while working as UDC Cashier during the said period had rendered part time consultancy services to the M/s Gajmukh Security Bureau, Hindupur.

5. Respondents interpreted the said services as violating the Rule-15 of the CCS(CCA) Conduct Rules and also violative of regulations of the ESI Corporation Staff (Conditions of Services) Regulations, 1959.

6. Hence the Respondent No.2 by his proceedings No.52-C 14/14/3/94.Estt.I dated 31.1.1994 (page-11 to the reply) issued a charge memo. The mis-conduct alleged against the applicant reads as under :-

Sri G.Venugopal, UDC, Regional Office, Hyderabad while he was working as UDC-CASHIER AT Local Office, Hindupur, in the years 1990 and 1991 engaged himself in rendering part-time consultancy service to one M/s Gajmukh Security Bureau, Hindupur, which is covered under ESI Act, under Code No.53-5857-101.

Sri G.Venugopal, being a public servant while in the services of the ESI Corporation, is prohibited, as per the Conduct Rules applicable, to indulge himself in such acts.

Sri G.Venugopal, by such of his acts exhibited lack of integrity and committed misconduct which are unbecoming of a Corporation employee and thereby violated the provisions under Rule 15 of CCS(Conduct) Rules, 1964, read



with Regulation 23 of ESI Corporation (Staff and Conditions of Service) Regulations, 1959, as amended.

7. The detailed inquiry was conducted into the above misconduct.
8. The defence of the applicant in the disciplinary proceedings was that he had not violated any of the Conduct Rules. That under the bonafide belief he was eligible to render the services to the said employer had in fact prepared 3 challans and return of compensation (R.C. for short). Thus he submitted that the applicant has not committed any misconduct. In support of his defence he relied upon the conditions of Form No.C-11.

8. Para-6 and 9 of the said Form C-11 are re-produced here below :-

6. For the sake of convenience, your establishment has been allotted Code No..... which may kindly be used in all communications sent to this Office and all forms at the places indicated for the purpose. The Local Office of the corporation situated.....has been instructed to render necessary assistance to your in connection with registration of your employees. In case you find any difficulty or for any other purpose which may be necessary in connection with the Scheme, you are requested to contact the Manager of the above Local Office who will render necessary help in the matter.

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9. The Corporation Officials would be pleased to render all necessary and possible assistance to you in discharging your duties and obligations under the ESI Act, 1948, and I am confident of and prompt and timely compliance with the provisions of the ESI Act and Regulations on your part.

9. On 19.1.1998 the Inquiry Officer submitted his report.
10. The Disciplinary Authority considered the plea of the applicant and observed as under :-

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Coming to the point whether the charged official had violated Rule-15 of CCS(Conduct) Rules, 1964 read with Regulation-23 of ESI Corporation (Staff and Conditions of Service) Regulations, 1959, as amended this Rule 15 state that "Government servant shall, except with the previous sanction of the Government, engage directly or indirectly in trade or business or undertake any employment". The Act of the charged official in writing the challans and Return of contributions in respect of a Private Organization, without permission or direction of his superior constitute a violation of Rule 15 of CCS(Conduct) Rules, 1964.

In view of all the above, I am in agreement with the findings of the Inquiring Authority and hold the charged official Sri G.Venugopal, guilty of the offence for what he was charge sheeted.

While considering the quantum of penalty, I should keep in mind the nature of the ESI Corporation as an organization discharging statutory functions of providing various social security services to lower paid employees of factories and establishments and dealing with Public money and having to deal with a large number of employers who are required to promptly register their employees under the ESI Act, pay their monthly contribution in time, submit Returns in time and also ensure that information and Returns are submitted promptly and correctly, so that none of their employees covered under the ESI Act is deprived of the benefits under the Act. Hence the employees of ESI Corporation have a fiduciary relationship with employers covered under the Act and hence required to maintain a very high degree of integrity, character and limit their relationship with such employers to the office work within the Office and with the knowledge of their immediate superiors. The penalty imposed on the charged official should therefore, have deterrent effect keeping in view his cadre and length of service.



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11. The Disciplinary Authority by his proceedings dated 27-4-1998 (Annexure-XI pages 37 to 40) imposed the punishment of reduction of the applicant from the post of UDC Cashier to the lower post of LDC with effect from the date of service of the order until he is found fit after a period of 5 years from the date of the order to be restored to the higher post of UDC/UDC Cashier. However, it is observed that he shall not on his repromotion to his original post regain his original seniority in the higher post of UDC/UDC Cashier which was assigned to him prior to the imposition of penalty and as and when he is promoted to the post of UDC/UDC Cashier, his seniority shall be fixed with reference to the date of such promotion. The period of reduction will also operate to postpone his future increments in the time scale of his original post, on his restoration to that post. Respondent No.2 is the Disciplinary Authority.

12. Against the said punishment order the applicant submitted an appeal to the Respondent No.1. The appeal was disposed of by the Additional Commissioner (P&A). The order of the Appellate Authority is at Annexure-XII (pages 41 and 42). The Appellate Authority confirmed the punishment and rejected the appeal on 30-11-1998.

13. The applicant has filed this OA to call for the records relating to the order dt.27-4-1998 passed by Respondent No.2 and the order dated 30-11-1998 passed by the Respondent No.1 and to quash or set aside the same and to grant all consequential benefits to the applicant as regards the arrears of pay etc.,.

14. The applicant has challenged the impugned orders on the following grounds :-

By writing the challans of the employer no misconduct was committed by him. That the ESI Corporation is aimed to be a custodian of the rights of the employees working in the private organization which are brought under the provisions of the ESI Corporation. The primary duty of the Corporation to invoke the provisions of the Act and to see that the employer does not violate the same and the claims of the employees working with the employer. All the employees



of the Corporation are expected to work in obedience to the act. The Corporation is thus endowed itself to assist an employer in discharging his duties as per the provisions of the Act. The Corporation has also, in addition promises the employers to extend all possible help and assistance from the employees of the Corporation and the Corporation Officials are to extend assistance in discharging the duties by the employer as per the Act.

15. It is the usual practice of all the officials working in the corporation to assist the employers who come to them seeking certain clarification for fulfilling certain formalities. Similarly M/s Gajmukh Security Bureau approached the applicant to help him in filling up the challans. The applicant had written the CF and handed over to the said employer. This act of the applicant was under a bonafide impression that he was discharging his duties in furtherance of the undertaking given by the Corporation and did so in good faith. Therefore it does not amount to result in part time employment or consultancy so as to attract Rule 15 of the CCS (Conduct) Rules. Even the ingredients of the Rule 15 of the CCS (Conduct) Rules are not substantial. He submits that he prepared the challan forms when the employer approached him and under the bonafide belief that he was bound to attend to the requirement of such an employer. He submits that he gained such an impression on account of the provisions contained in from No.C-11.

16. Now for the first time the Inquiry Officer gave a different interpretation and his interpretation has been accepted by the respondent authorities. In view of the stand taken by the Inquiry Officer and the respondent authorities it is now clear that the officers of the Corporation are not required to write such challans and it is not part of their duties.

17. As a lay man attending to his duties in the capacity as a UDC he discharged those functions and he prepared challans only on 3 occasions and therefore it cannot be said that he has committed a misconduct. Further it is submitted that there is no evidence to establish that the said M/s Gajmukh

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Security Bureau had made any payment to the applicant for filling up the 3 challans. Unless this fact is established, it cannot be said that the applicant was gainfully employed without consent of the Corporation. He had not violated Rule-15 of the CCS (Conduct) Rules. The Inquiry Officer gave an altogether different interpretation to the conditions found in Form No.C-11 and the same have been accepted by the respondent authorities.

18. He submits that the dates mentioned on the 3 challans were not written by him. The dates were put by the employer as per his convenience. Merely because one of the dates on the challans contains the date of a holiday, it cannot be held that the applicant was liable as if he was writing the challans on a holiday and thus he was engaged in private service/consultancy.

19. The interpretation given by the Inquiry Officer is very narrow and pedantic one. The conditions in Form No.C-11 does not anywhere indicate that it is the Manager who alone is expected to assist the employer. Such a view cannot be taken from the interpretation of the conditions in form No.C-11. Note in para-6 of the from C-11 reference to local Manager is made whereas such a refserence is not available in para-9 of the from No.C-11.

20. The applicant submits that the allegations made against him have not been established. Only on the basis of the narrow interpretation given by the Inquiry Officer and accepted by the Respondent Authorities he has been punished. The punishment imposed by the authorities is too harsh and grave. The finding of the Inquiry Officer is not based on any witness and on his own interpretation of the conditions of Form No.C-11.

21. The applicant submits that the incident took place in the year 1989 and he was issued with charge memo on 31.1.1994. Thus there was long delay in initiating the Disciplinary Proceedings.

22. The applicant submits that as a result of the earlier Disciplinary Proceedings, he was imposed punishment of reversion by order dated 3.6.1992 to the post of LDC for a period of 5 years. He had challenged the said punishment

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in OA 1124/92, which was decided on 4.5.1993. This Tribunal set aside the punishment and directed the Disciplinary Authority to award appropriate punishment in accordance with the law. Accordingly the Disciplinary Authority by his order dated 4.6.1993 imposed the punishment of reversion to the post of LDC for a period of 5 years and on completion of the said period the applicant was to revert back to his post as UDC. He has challenged the punishment order before the Appellate Authority. The Appellate Authority modified the punishment by his order dated 10-2-1994. He has submitted a revision petition to the revisional authority. The revisional authority by his proceedings dated 22.7.1994 modified the punishment of the Disciplinary Authority by reducing the period of reversion from 5 years to 3 years. He submits that on expiry of the said 3 years period he was to get back to his original position of UDC. He submits that the said punishment was over by June, 1996. Ignoring his claim, the respondent authorities have again imposed the punishment of reduction to the LDC cadre. Therefore the present reversion from the category of UDC to LDC is void and non est in the eye of law. Mere pendency of the Disciplinary Proceedings is not a ground to withhold promotion

23. The applicant further submits that present reversion to the post of LDC for a period of 5 years is too harsh. The conditions imposed while imposing the penalty may prevent him from getting his original post of UDC. Thus the applicant submits that he is deprived of his promotional chances.

24. The respondents have filed a reply stating the details of the mis conduct. They further submit that the applicant had in fact admitted to have prepared the 3 challans dt. 14.3.90, 20.12.90 and 28.7.90 respectively and return of contribution for CPE dated 13.9.1990. His writings on these documents were confirmed by the hand writing expert. The contention that he had prepared the challans and the RC under the bonafide impression that he was discharging his duties in furtherance of the object of the Act and as per the instructions contained in Form No.C-11. That his contention cannot be accepted that Form No.C-11 is a standard letter to be

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communicated to the employers informing the coverage of their units under the ESI Act and allotting code number. That as per para-6 of the said Form No.C-11 Local Manager is the appropriate authority who has been authorized to render necessary assistance to the employers. That in para-9 the phrase "Corporation Officials" by necessary implication relates only to the Manager of such local office that the applicant was not competent to render any assistance to the employers registered under the Act. That unless the applicant was specifically directed to do so by the Manager. That the applicant had prepared 3 challans during a span of 8 months period and the R.C. Considering the fact that all the pages contains names of 105 persons and it required access to the records of the authority and also involved considerable quantum of clerical work which cannot be said to be a plausible assistance under the Act. That M/s Gajmukh Security Force, Hindpur was an employer under the Act. That by doing this the applicant violated Rule-15 of CCS(Conduct) Rules. That it is after thought of the applicant to take shelter under paras 6 and 9 of the Form C-11. That the applicant could not have prepared the challans and R.C. unless directed by the Manager. That the Disciplinary Authority failed to establish the fact that the applicant was gainfully employed or rendered private service consultancy to M/s Gajmukh Security Bureau, Hindupur. That there is clear violation of Rule-15 of CCS(Conduct) Rules by the applicant. To attract Rule-15 of the CCS(Conduct) Rules whether he was gainfully employed or not is an irrelevant matter for consideration. That the applicant performed these services to the employer during the office hours. That the Manager of the Local Office is the only official competent to deal with the employers registered under the Act and to suggest what to do and how to do for proper compliance under the Rules and also rendering necessary guidance and help to the outsiders is definitely not a part of the office work and it is the responsibility of the head of the local office and also they have stated that after expiry of the period of punishment of the applicant he was resorted to the post of UDC with effect from 4.6.1996 along with his original seniority. While this was

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so, because of the punishment on the charge memo dated 31.1.1994, he could not be promoted as he was under cloud in view of the penalty order dated 27.4.1998. he could not be considered for promotion to the next higher post. The averments made by the applicant in this connection are not correct and that in a similar case where one employee by name A.Swamy was applicant in OA 1576/98 decided on 22.2.1999 had accepted the contention of the Department and that the version of the applicant that the punishment is harsh cannot be considered by this Tribunal. Thus they pray for dismissal of the OA.

25. During the course of arguments, the learned counsel for the applicant mainly pressed the conditions incorporated in Form No.C-11 and submitted that the applicant under the bonafide belief felt that he was discharging the duties as per the object of the Act and that he had not committed any misconduct. That the applicant had not taken any pecuniary advantage while filling the 3 challans and R.C. Therefore under any stretch of the imagination the action of the applicant cannot be termed as mis conduct. Further he submitted that the imposition of the penalty to a lower rank for a period of 5 years with further restrictions is too harsh.

26. As against this, the learned Standing Counsel for the Respondents contend that the applicant cannot take shelter from conditions of Form C-11 and that Manager of the local office is the proper authority to give necessary guidance to the employers registered under the Act and that the applicant could not have prepared the 3 challans and RC. It is a clear violation of Rule 15 of CCS(Conduct) Rules. Thus they submit that the respondent authorities have acted in accordance with the law in imposing the penalty on the applicant. In support of their contentions they rely upon the decision rendered in OA 1576/98 decided on 22.2.1999.

27. It is now to be seen whether the action of the applicant in preparing 3 challans and RC amounted to engaging in private work/consultancy attracting the provisions of the Rule-15 of the CCS (Conduct) Rules and also regulation 23 of

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ESI Corporation Staff Services Regulations, 1955 on the face of the paras-6 and 9 of Form No.C-11.

28. Paras 6 and 9 of the Form No.C-11 have been extracted above. The applicant relies upon these paras to contend that his action was under bonafide impression that he was also responsible to fulfill the objects of the Act and he did so under the bonafide impression. Thus he submits that he has not secured any advantage from the Gajmuk Security Bureau, Hindupur. In fact he has produced a letter (Annexure-VII page-31 to the OA). It is issued by the Gajmukh Security Bureau, Hindupur. As contended by the learned counsel for the respondents whether securing pecuniary advantage is not a relevant fact under Rule 15 of CCS(Conduct) Rules.

29. The M/s Gajmuk Security Bureau, Hindupur is a registered employer under the Act. IN para-6, the employer who has been registered under the Act has been requested to contact the Manager of the above local office who will render the necessary help in the matter. In para-9 it is further stated that the corporation officials would be pleased to render all necessary and possible assistance in discharging duties under the Act.

30. The respondents attempted to interpret this rule as to mean that only the Manager of the local officer is competent to render assistance to an employer and therefore the applicant could not have prepared the 3 challans and the RC.

31. In our humble view the respondents have not properly interpreted the para-9 of the Form No.C-11. If they felt that taking advantage of para-9 any of the officials working under the Corporation may to indulge in private practice/consultancy with the employer, they could have given a circular instructions to all the employees and the employers registered under the Act. Para-6 is quite different from para-9. Para-9 is a general instructions given to an employer to the effect that the corporation officials will be pleased to render all necessary and possible assistance to the employer in discharging duties and obligations under the Act.

32. This para-9 could not be interpreted to mean that the Corporation officials refers only to a Manager of the local office. That the staff of the Corporation is officials of the Corporation. True interpretation has to be given to the para-9. When there is no ambiguity in para-9 no interpretation can be made so as to defeat the object of the para. The object of the para-9 is that the Corporation officials are expected to render all necessary and possible assistance to an employer to discharge his duties and obligations under the Act. When that is so, it is not possible to interpret "the corporation officials" to mean and refer only to the Manager of the local office". If that is so, they should have replaced the phrase "Corporation Officials" with that of the "Manager of the Local Office".

33. The applicant had not put the dates on the 3 challans prepared by him. Therefore it cannot be said that he had prepared the three challans, on the dates mentioned thereon.

34. The applicant admits to have prepared the 3 challans and RC. He has stated in clear terms that he did so under the bonafide impression and that by doing so he will be rendering all necessary and possible assistance to an employer under para-9 of the Form No.C-11.

35. The Respondent authorities have not properly understood the true import of paras 6 and 9 of the Form C-11. They have attempted to give a narrow interpretation in the Disciplinary Proceedings. They should have been more careful to avoid such instances by issuing proper instructions and circular to the officials working under them.

36. If they felt that the contents incorporated in para-9 may lead to malpractice by their officials then they should have attempted to amend suitably. Without doing certain exercise they attempted to give an interpretation to the disadvantage of the employees of the corporation.

37. The misconduct alleged is in no way refers to the Rule-15 of the CCS (Conduct) Rules. In fact the Corporation officials are governed by the Rules of

38. In Disciplinary Proceedings a case of Delinquent Employee cannot be compared with that of another Delinquent Employee. Here the mis-conduct alleged have been fully explained by the Delinquent Employee that he did so under the bonafide belief that he was expected to render the possible assistance to an employer registered under the Act. It is on the interpretation of these paras in form No.C-11 the respondent authorities passed the impugned order. Their interpretation is very narrow and they have not brought out any circular instructions issued to for all the Corporation employees not to render any assistance as incorporated in Form C-11 and that any such instance would attract the provisions of Rule 15 of the CCS (Conduct) Rules read with Regulation 23 of the ESI Regulations 1959.

39. In that view of the matter we feel that the explanation offered by the applicant is liable to be accepted. The Respondent Authorities failed to give proper interpretation to paras-6 and 9 of the Form No.C-11.

40. In that view of the matter we feel that the mis-conduct alleged against the applicant cannot be termed as mis conduct attracting penal consequences.

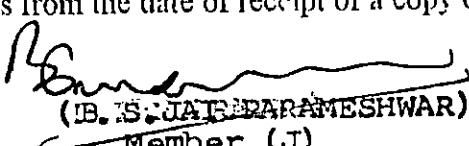
41. As we have formed an opinion that the mis-conduct alleged against the applicant does not amount to mis-conduct, we have no other alternative except to set aside the impugned orders.

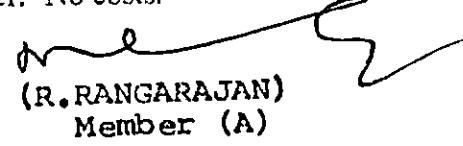
42. We make it clear that the respondent authorities if they feel necessary that para-9 of the Form C-11 must confine only to the Manager of the Local Office, they may consider the feasibility of making necessary amendment to the said Form C-11.

43. In that view of the matter, we pass the following order :-

- (a) The impugned orders are hereby set aside;
- (b) The applicant is entitled to the consequential benefits as his punishment has been set aside.

44. The applicant shall be restored to his original post of UDC within 3 months from the date of receipt of a copy of this order. No costs.


(B. S. JAI PARAMESHWAR)
Member (J)


(R. RANGARAJAN)
Member (A)