

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00037/2014

ORDER RESERVED ON: 02.01.2015

DATE OF ORDER: 0.1.2015

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Teeka Ram Meena S/o Har Sahai Meena, aged around 40 years, R/o 119, Bhagwati Nagar, Jaipur, presently working as Assistant in the Employees State Insurance Corporation, Udyog Bhawan, Tilak Marg, Jaipur.

...Applicant

Mr. Amit Mathur, counsel for applicant.

VERSUS

1. The Director General, Head Quarter, Employees State Insurance Corporation, New Delhi.
2. The Regional Director, Employees State Insurance Corporation, Udyog Bhawan, Tilak Marg, Jaipur.

...Respondents

Mr. T.P. Sharma, counsel for respondents.

ORDER

The applicant has filed the present Original Application praying for the following reliefs:

- (i) The present original application may kindly be allowed and order Annexure-A/1 dated 17.01.2013 may kindly be quashed and set-aside. The period of suspension of the applicant from 2004 to 2009 may kindly be treated as period spent on duty for all the purposes and the applicant may be allowed all actual benefits for this period along with the arrears, leave etc.
- (ii) any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.

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(iii) Cost of this original application also may be awarded in favour of the applicant."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was placed under suspension vide order dated 06.12.2004 (Annexure A/2) in pursuance to the Rule 10 (1) of the Employees State Insurance Corporation (Staff and Conditions of Service) Regulation 1959 because of a criminal case pending against the applicant. The Special Judge, Session Court (Prevention of Corruption Act) Udaipur, vide judgment dated 31.10.2008 (Annexure A/3) acquitted the applicant. For the same offence, a departmental proceeding was also initiated against the applicant. The applicant was issued a charge-memo dated 26.03.2007 (Annexure A/4) under Rule 14 of the ESIC (Staff and Conditions of Service), Regulation 1959. The suspension of the applicant was revoked by the respondents vide order dated 24.03.2009 (Annexure A/5) i.e. during the pendency of the disciplinary proceedings. However, after the applicant was acquitted in the criminal case, the applicant was awarded a punishment of withholding of two annual increments without future effect, however, the applicant would not be entitled for any arrears of the increments on the expiry of the penalty period vide order dated 31.01.2012 (Annexure A/6). Thereafter, the applicant was issued a show cause notice

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dated 13.12.2012 (Annexure A/7) with regard to the treatment of the suspension period from 06.12.2004 to 23.03.2009. The applicant submitted his representation on 18.12.2012 (Annexure A/8) against the show cause notice.

3. Learned counsel for the applicant submitted that the grievance of the applicant is that the respondents have wrongly passed the order dated 17.01.2013 (Annexure A/1). The applicant was placed under suspension in 2004 and his suspension was revoked on 24.03.2009 (Annexure A/5). When the applicant was suspended there were no disciplinary proceedings against the applicant. The disciplinary proceedings were started against him vide memorandum dated 26.03.2007 (Annexure A/4). When the suspension was revoked on 24.03.2009 (Annexure A/5), the disciplinary proceedings were pending against the applicant; therefore, the revocation of the suspension of the applicant was based on his acquittal in the criminal case. The respondents have treated the suspension period from 06.12.2004 to 23.03.2009 as follows: -

- "1. Not to treat period of suspension as a period spent on duty.
2. His pay shall be fixed as per the recommendations of 6th Pay Commission. Only notional increments shall accrue. No arrears for period of suspension shall be paid.
3. Restrict the Pay and Allowances during the period of suspension to subsistence allowance and other allowances already paid to him during the said period.

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4. No EL and HPL will be credited for the said suspension period.
5. The above period of suspension shall count for pensionary benefits."

4. Learned counsel for the applicant submitted that the order dated 17.01.2013 (Annexure A/1) is illegal and, therefore, it should be quashed and set aside. He submitted that the applicant is entitled for all the benefits of service once he has been acquitted by the criminal court. He further submitted that if the penalty order in a departmental proceeding is of minor nature then the incumbent is entitled for all the benefits provided under the service law. He cannot be declined of any other benefits attached to his post. Therefore, the order dated 17.01.2013 (Annexure A/1) be quashed and set aside and the period from 2004 to 2009 may be treated as period spent on duty for all purposes and the applicant may be allowed all actual benefits for this period along with the arrears, leave, etc.

5. In support of his averments, learned counsel for the applicant referred to the following case law: -

- "(1). Nathu Ram vs. Jaipur Vidyut Vitran Nigam Ltd. and Ors. (date of judgment 06.07.2007) – High Court of Rajasthan, Jaipur Bench – RLW 2008 (1) Raj 665.
- (2) P.K. Shrivastava vs. UOI & Ors. (OA No. 336/2010) (date of order 04th October, 2013) – Central Administrative Tribunal, Jabalpur Bench."

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6. On the other hand, the respondents have filed their written reply. In the written reply, the respondents have taken a preliminary objection regarding the maintainability of the present Original Application. The respondents have stated that the applicant, by way of filing the present OA, is challenging the order dated 17.01.2013 whereby the disciplinary authority having considered the facts of the case passed the order dated 17.01.2013. The applicant did not file any appeal before the Appellate Authority against this order. Since applicant was having alternative efficacious remedy, which he did not avail, hence, the present OA filed by the applicant is pre-mature, thus, the same deserves to be rejected by this Hon'ble Tribunal.

7. It is further submitted by the respondents that under the Staff and Conditions of Service Regulation 1959, the provision of appeal is available under the Regulation 18 but the appellant failed to avail the remedy prior to approaching this Hon'ble Tribunal. Hence, on this ground alone, present OA deserves to be dismissed.

8. Learned counsel for the respondents further submitted that the applicant was acquitted in the criminal trial on technical grounds and he was given the benefit of doubt. It was not an honourable acquittal by the criminal court. Since the applicant has been given the benefit of doubt by

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the court of law, therefore, it cannot be said that he was acquitted in entirety from the charges levelled upon him.

9. Learned counsel for the respondents also submitted that even in the departmental proceedings, the applicant has been imposed a minor penalty. The respondents before passing the order dated 17.01.2013 (Annexure A/1) issued a show cause notice to the applicant on 13.12.2012 (Annexure A/7). The applicant submitted his reply on 18.12.2012 (Annexure A/8) to the show cause notice. The respondents after considering all the facts of the matter passed the order dated 17.01.2013 (Annexure A/1), which is perfectly legal.

10. Learned counsel for the respondents referred to the judgment of the Hon'ble Supreme Court in the case of **Banshi Dhar vs. State of Rajasthan and another** (CA No. 4400 of 2005 – decided on 31.10.2006) reported in (2007) 1 SCC (L&S) 205 wherein the Hon'ble Supreme Court has held that full back wages is not a rule in case of acquittal. It would depend upon the facts and circumstances of each case. He also referred to the judgment of the Hon'ble Supreme Court in the case of **K. Ponnammamma (Smt.) vs. State of Kerala and Others** reported in 1997 SCC (L&S) 999. In this case also, the petitioner was acquitted in a criminal case. On acquittal after conducting

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an enquiry, authorities denied back wages to the petitioner. The Hon'ble Supreme Court held that no interference was called for. He also referred to the judgment of the Hon'ble Supreme Court in the case of **State of U.P. and Others vs. Ajit Singh and another** reported in AIR 1999 SC 2863 in which the Hon'ble Supreme Court held that even where a dismissal order is revoked and there was no decision to hold further inquiry, the respondents would not be entitled to full salary for suspension period.

11. Heard learned counsels for the parties, perused the documents available on record and the case law as referred to by the learned counsels for the parties.

12. The facts of the case are not disputed. The applicant was placed under suspension on account of a criminal case pending against him. The applicant was subsequently acquitted by the court of law giving him the benefit of doubt. The respondents have also initiated departmental proceedings against him in which a minor penalty was imposed on the applicant. During the pendency of the disciplinary proceedings, the suspension order of the applicant was revoked vide order dated 24.03.2009 (Annexure A/5).

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13. The respondents have raised preliminary objection regarding maintainability of the present Original Application. Learned counsel for the respondents drew my attention to the provisions of Regulation 18 of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 which deals with 'orders against which appeal lies'. The provisions of Regulation 18(v)(d)&(e) of the said Regulations 1959, are quoted below:

"(d). determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;

(e). determining his pay and allowances: -

(i) for the period of suspension, or

(ii) for the period from the date of his dismissal, removal or compulsory retirement from service or from the date of his reduction to a lower grade, post, time-scale or stage in a time scale of pay, to the date of his reinstatement or restoration to his grade of post, or;

14. From the perusal of the order dated 17.01.2013 (Annexure A/1), it is clear that the applicant could have filed an appeal against this order if he was aggrieved by this order as per provisions of Regulation 18 of the said Regulations 1959. Learned counsel for the applicant submitted that the provision of appeal is provided only in case of the orders passed by the Disciplinary Authority for

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imposing major penalty. There is no provision of appeal against the order dated 17.01.2013 passed by the Disciplinary Authority, therefore, the contention of the learned counsel for the respondents that the applicant did not avail alternative remedy of appeal as provided under the provisions of Regulation 18 of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 is not correct.

15. I have carefully perused the provisions of Regulation 18 of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as quoted in para 13 of this order. From the perusal of the Regulation 18, it is clear that the order passed by the Disciplinary Authority dated 17.01.2013 (Annexure A/1) is an appealable order. If the applicant was aggrieved by this order, he could have filed an appeal to the Appellate Authority under the provisions of Regulation 18 of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959. The applicant did not avail of this alternative remedy available to him under the said Regulations. Thus, under these circumstances, the present Original Application appears to be premature.

16. As per Rule 20 of the Administrative Tribunals Act, 1985, a Tribunal shall not ordinarily admit an application

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unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. In the present case, there is a clear provision of appeal under the Regulation 18 of the said Regulations 1959. The applicant has not exhausted the remedy available to him by way of appeal, if he was aggrieved by the order dated 17.01.2013 (Annexure A/1), thus, the present Original Application is not maintainable at this stage. Therefore, the present Original Application is dismissed as being premature with no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat