

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 26th day of May 2005

ORIGINAL APPLICATION NO. 564/2002

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. A.K. BHANDARI, MEMBER (ADMINISTRATIVE)

Ansar Ahmed son of Shri Rafiq Ahmed, aged about 63 years, resident of Plot No. 2/1, Van Vihar Colony, Housing Board, delhi Bye Pass, Opposite Idgah, Jaipur, Rajasthan.

.....Applicant

By Advocate: Mr. Manish Bhandari

versus

- 1 Union of India through the Secretary, Ministry of Labour, New Delhi.
- 2 The Director General (Headquarters), Employees State Insurance Corporation (ESIC), ESIC Bhawan, Khotala Road, New Delhi.
- 3 The Chairman, Standing Committee, Employees State Insurance Corporation (ESIC), Panchdeep Bhawan, Kotala Road, New Delhi.
- 4 The Regional Director, Regional Office, Employees State Insurance corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur.

....Respondents.

By Advocate : Mr. U.D. Sharma

ORDER

PER HON'BLE MR. A.K. BHANDARI

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seek the following reliefs:-

- (i) by an appropriate order or direction, the impugned order, the impugned orders dated 3.7.2001 and dated 28.12.2001 (Annexure A/1 and A/2, respectively) may kindly be quashed and set aside.
- (ii) to issue an appropriate order or direction, the respondents may kindly be directed to make 100% pension to the applicant and arrears thereof with effect from the period it became due, may also kindly be made with appropriate interest with all consequential benefits.
- (iii) any other appropriate order or direction, which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case, may also kindly be passed in favour of the applicant.
- (iv) Cost may also be awarded to the applicant."

2 The brief facts of the case are that the applicant while working as Head clerk in the respondents department, was served with a charge sheet for accepting bribe of Rs.500/- (Annexure A/3). However, since he was not involved in the matter and the Anti Corruption Department of Rajasthan ~~who~~ had no authority to initiate trap proceedings because he is a functionary of the Government of India, he protested against this charge sheet. He also suspected that this action was motivated at the instance of one Shri Narain Lal from whom the applicant had to claim Rs.500/- due to be paid to a shopkeeper but he did not want to pay it and this led to bad relations with him. These facts are stated in the reply to the charge sheet which is annexed as Annexure A/4. Due to the denial of charges, Inquiry officer was appointed. Surprisingly, in this matter, an

Officer of the CBI was appointed as Presenting Officer whereas as per rules, Presenting Officer should have been an employee of the ESI Corporation. Further that during inquiry, the applicant was not given full opportunity of hearing, ^{and it} he was also not supplied documents, which he had demanded. For Example, copy of Investigation report by the CBI as well as copies of statements of witnesses were not given. Further illegality committed by the Inquiry Officer was that ~~they~~ utilised pre recorded statements of the witnesses and the applicant was asked only to cross examined on the basis of these statements. For illustration, copies of statements of certain witnesses are annexed as Annexure A/5 and A/6. Further that Disciplinary authority without considering the representation of the applicant, passed the impugned order of punishment. The Disciplinary Authority did not take into consideration the fact that Shri Bani Ram at whose instance the allegation of acceptance of bribe was made had actually refused about any such payment, yet at the instance of one Shri Narain Lal, who, as stated above, had to pay the applicant Rs.500/- for purchase of tape recorder, his false statement was relied upon. This was inspite of the fact that this was brought to the notice of Inquiry officer ~~through~~ ^{the} ~~representation annexed as Annexure A/7~~. A copy of the bill of the tape recorder as well as all relevant documents are annexed collectively as Annexure A/8. These shows that a tape recorder was purchased by Shri Narain Lal with the help of the applicant at the cost of Rs.700/-. Only

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Rs.200/- was paid on the day of purchase and balance of Rs.500/- was to be made in due course. As per the record the applicant stood guarantor for Shri Narain Lal. That during inquiry, applicant emphasised that this remaining Rs.500/- was actually paid by Shri Narain Lal which has been shown as bribe in the charge sheet. A copy of statement of Shri Ramesh Chand, Sales man of the tape recorder shop, is also annexed as Annexure A/9. Applicant had also placed on record a copy of the affidavit filed by Shri Bani Ram through order sheet No. 10 dated 22.6.2000 which is annexed as Annexure A/10. Since Disciplinary Authority without considering to these facts had passed the punishment order dated 3.7.2001 (Annexure A/1) and the applicant was seriously aggrieved by it, he filed an appeal dated 16.8.2001 (Annexure A/11). Even the Appellate Authority without considering of full facts to the fact rejected the same by his order dated 28.12.2001 (Annexure A/2. Therefore, this OA has been filed.

3 In the grounds, the above pleadings are repeated to emphasise that the action of the respondents is arbitrary, illegal and violative of Articles 14 & 16 of the Constitution of India. Also that the Departmental Inquiry has not been done in strict confirmity with Rules and there has been violation of natural justice by the Disciplinary authority and the Appellate authority. In the grounds reappraisal of evidence has also been done with a view to show that both the above authorities have wrongly dettoed

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the line adopted by the Inquiry Officer.

4 The respondents have submitted detailed reply. They have half heartedly raised the objection of limitation because the impugned orders were issued on 3.7.2001 and 28.12.2001 respectively but notices to respondents in this OA have been issued on 12.09.2003. However, before proceeding any further, it was verified that this OA was presented in the Registry of CAT on 4.4.2002, which is within limitation and notice to respondents were first issued on 12.09.2003 because in the intervening period, the counsel for the applicant sought time for certain amendments in the cause title etc. Therefore, the preliminary objection of limitation was overruled.

5 As to the facts, it is denied that the impugned order of punishment and appeal have been passed arbitrarily because the entire action was taken in accordance with the provision of Employees State Insurance (Staff and conditions of Service) Regulations, 1959 (for short, ESI Regulations) and the said orders are based on evidence adduced during the inquiry. The applicant's contention that he had no involvement in the matter and that the Anti Corruption Department had no jurisdiction to take action against him and that action is based on conspiracy of Shri Narain lal are vehemently denied. To support these contentions. it is stated that the Anti Corruption Department (in short, ACD) has jurisdiction under the

Prevention of Corruption Act to deal with the cases of corruption against all public servants. Therefore a trap was organised by the ACD on the complaint lodged by Shri Narain Lal from whom the applicant had demanded the bribe and by whom the amount was paid to the applicant. Thereafter, the matter was referred to the CBI for further investigation. The CBI conducted meticulous inquiries and on the basis of its report, the respondents initiated disciplinary proceedings. This action is in accordance with rules and demanding and accepting bribe of Rs.500/- is serious misconduct which is conclusively proved during the inquiry.

6 When the charges levelled against the applicant were denied, by him, an Inquiry Officer was appointed as per ESI rules. Regarding appointment of CBI Officer as Presenting officer, it is stated that under Para 4 (c) of Scheduled III of the said regulations, it is in order for the Disciplinary Authority to appoint, inter-alia, a Government servant as the Presenting officer. Since CBI officer was a government servant, his appointment as Presenting Officer is perfectly legal. It is also emphasised that the applicant was allowed to engage Shri S.K. Vyas, a Practising Advocate, to act as his Defence Assistant. Thus proper opportunity was given to him in the matter of conducting his defence. Regarding non supply of investigation report as well as copies of statement of witnesses, it is stated that the Inquiry Officer has

judiciously exercised his discretion in this matter and those documents only which are relevant to the inquiry and were required to be given as per the rules were given to him. Also, he was allowed to inspect and take extracts of other documents which is as per rules. Regarding allegation that pre recorded statements were utilised by the Inquiry officer, it is stated that during the regular inquiry, after due notice and in the presence of the witnesses, statements were read over when, the applicant was also present and the Inquiry officer proceeded further only after witnesses confirmed that it is true. Thereafter the applicant alongwith Defence Assistant were given full opportunity to cross examine the witnesses and in fact they cross examined all the witnesses at length. The legal position in this regard is well settled that there cannot be any legal objection to such a course of action as no prejudice is caused to the charged officer by it because it cannot be said that the applicant is denied opportunity to conduct his defence. The Inquiry Officer has analyzed the statements of all prosecution and defence witnesses before coming to the conclusion of proving the charges framed against the applicant. Further that perusal of punishment order dated 3.7.2001 shows that it is well reasoned and speaking order, that the Disciplinary Authority has not ignored any evidence specially the statement of Shri Bani Ram and he has not relied entirely upon the statement of Shri Narain Lal. In fact statement of all the witnesses have been analyzed. The respondents have

also objected to re-appreciation of evidence in this OA because this function is basically within the purview of the departmental officers. In this case, the Disciplinary Authority had viewed the matter in proper prospective and when he found sufficient evidence to sustain the charges, punishment was awarded. Regarding allegation of non consideration of statements of employees of the firm from which tape recorder is said to have been purchased by Shri Narain Lal, it is stated that the applicant has tried to introduce new facts, when the said inquiry had been completed. Therefore, such evidence and affadavit could not be taken on record. This aspect has been taken note by the Appellate Authority in his order dated on 28.12.2001. Both the Inquiry Officer and Appellate authority have thoroughly considered these defences but have rejected them on cogent grounds. A close perusal of the inquiry report, the punishment order and the Appellate Authority's order show that the inquiry had been conducted in accordance with the provisions of ESI Rules and the applicant was given full opportunity to conduct his defence. On merit, it is stated that charges levelled against the applicant were proved and punishment and the Appellate order are perfectly legal. The punishment of forfeiture of 50% of applicant's pension is commensurate and not excessive with the gravity of charges of accepting the bribe of Rs.500/-.

7 While answering to the grounds, the above facts are reiterated. It is further stated that the inquiry report

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encompasses all points of defence. It runs into 40 pags. The briefs submitted by the Presenting officer and the Defence have been fully covered in it. Therefore, the allegation that the inquiry report is based on surmises and conjunctures cannot be accepted. Further, the applicant is trying to misguide that Shri Bani Ram was the best witness in the matter. But this is not true. In fact the charge sheet states that the applicant had demanded bribe of Rs.500/- from Shri Narain Lal for making payment of arrears of permanent disablement benefit amounting to Rs.3936/- to Shri Bani Ram. This allegation has been proved against the applicant during inquiry. As regards affadavit given by Shri Bani Ram, it is stated that he disowned the said affadavit and testified that the same was taken in fraudulent manner by taking him to court by Shri Shri Nand Lal by misguiding him and obtaining his thumb impression on some paper which were typed. He being an illiterate person did not know the contents and that no officer of the court had ever read over the same to him to know what was written in them. Thus the said affadavit in no way helps the applicant. The allegation that Shri Narain Lal is instrumental in the entire affair against the applicant is also baseless.

8 Regarding ground that Inquiry Officer did not consider applicant's defence regarding purchase of tape recorder by Shri Nand Lal and balance of amount of Rs.500/- was due to him in favour of Vaishali Music Center and Electronics,

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Udaipur, it is stated that Inquiry Officer has in detailed considered this defence and that mere perusal of Bill No. 30 of Vaishali Music Center and Electronics, Udaipur, copy of which is available on the file of this OA, reveals that price of item as Tape-D Model Repairs does not show that Rs.700/- was sale price and Inquiry officer has clearly stated that it was an invoice for repairs and not for any sale/purchase. The Inquiry officer has also clarified the fact that in the original bill, after the name of Shri Narain lal, the word 'Marfat Ansar Ahmedji, ESI' had been written in different ink, which makes this addition/writing suspicious. The respondents have also objected to the re-appraisal of the new evidence during inquiry. The applicant's first reply after trap by the ACD officer to question whether the recovered amount of Rs.500/- was bribe was that "**mere bachhon ka khayal rakhana, mai kuchh nahin kahna chahta hun.**" which amounts to admission of guilt, and proves that various additional defence taken during inquiry and appeal are merely after thought. Any contradictions in Shri Narain Lal's statements are denied by ~~citing copies~~ ^{comparing} of his statement as Annexure R/1 and Annexure R/2 and Annexure A/5. When these are compared, it reveals that Shri Bani Ram had stated that the trap of the applicant was correct. Further that he had not taken Bani Ram to any advocate nor he had given any affidavit of Shri Bani Ram to Shri Ansar Ahmed. Thus there is no contradiction in his statements. Regarding the ground that applicant had really no role in passing the claim of Shri

Bani Ram and that the entire matter was dealt by Manager of ESI Corporation, it is stated that the applicant was Head-clerk in the local office of ESI, ^{as} Incharge of Establishment and Accounts, he was responsible. The sanction recorded by the Regional Office, Jaipur in favour of Shri Bani Ram was received in the local office on 24.1.1992, which was marked by the Manager, Shri Ram Swaroop Ojha to Shri Ansar Ahmed for payment. On receipt of this order, it was the duty of the applicant to inform Shri Bani Ram and make the payment to him on the basis of Live Register. However, the applicant did not take any action on it till 11.2.1992 despite request made by Shri Bani Ram. Thus it is clear that applicant was really dealing with the case and was responsible for its correct disposal. On the contrary, he indulged in corruption and was caught red handed while doing so. It is also wrong to state that deposition of defence witnesses and contents of documents cited by the Charged Officer have not been taken note of because evidence rendered by the defence witnesses have been analyzed in detailed by the Inquiry Officer.

8 Applicant has submitted a detailed rejoinder. In it, it is emphasised that the Anti Corruption Department has no jurisdiction for initiating anti corruption trap against the applicant, CBI did not find adequate evidence to prosecute the applicant but the respondents have wrongly issued the charge sheet and caused unnecessary harassment and passed illegal punishment order against the applicant.

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Further that inquiry was not held as per the rules as a CBI officer could not be appointed as Presenting Officer, specifically demanded documents were not made available to the applicant and copies of many documents which they were bound to supply were not supplied to him and only their inspection was allowed. That the Inquiry Officer ~~as~~ ~~denied additional documents~~ ~~arbitrarily~~ ~~adopted above method~~ which is evident from Annexure A/12 being proceedings of the preliminary hearing held on 28.9.1992 by which relevant records, namely the ledger and cash book of Vaishali Music Centre and electronics Udaipur, the investigation report of Shri H.S. Singh DYS, CBI and list of powers and duties of head-clerk were refused to be supplied. It is also stated that the denial of investigation report by CBI and Ledger and Cash Book of Vaishali Music Centre and Electronics, Udaipur has seriously prejudiced his case. Similarly by Annexure A/13, it being letter dated 21.7.1994 addressed to Shri Rakesh Kapoor, Inspector, CBI, the applicant was allowed only copies of 14 documents out of the total 26 documents which also amounts to violation of rules. It is also alleged that respondents have adopted the policy of pick and choose about the evidence on record, and have made use of only that evidence which goes against the applicant. This makes the inquiry proceedings illegal and arbitrary.

9 The OA was fixed for hearing on 18.11.2004 on which date arguments of the counsel for the applicant were heard in part. On this date, the respondents were directed to

produce the relevant record of the inquiry proceedings on the subsequent date of hearing. Thereafter the case was listed for remaining hearing on six occasions but parties could not be heard due to one reason or the other. Thereafter on 16.5.2005, with the consent of the parties, it was decided to finalise case on the basis of written arguments after perusal of the record submitted by the respondents in chamber.

10 The record submitted by the respondents consisting of six files viz. (i) CBI Report (ii) Enquiry Report (iii) Daily order sheets and statements of witnesses recorded during the inquiry (iv) file containing the original documents of ESIC concerning this case (v) Cash receipt of Vaishali Music Centre and (vi) representations of the charged officer etc were carefully seen and the written arguments submitted by the parties were kept on the record of the case.

11 We have carefully perused the record and considered all the pleadings and written arguments, and find that objections of the applicant regarding procedural faults in the conduct of inquiry are not correct. In view of vast jurisdiction and limited resources of the CBI, it depend upon the State Anti Corruption Bureau in detection and prosecution of corruption cases in the regions where they do not have their own set ups. This is legally permissible because the State ACBs are equally empowered to deal with

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instances of corruption by public servants under the Prevention of Corruption Act. The CBI, however, conduct thorough inquiries upon the initial action of the State ACB, which has been done in this case also. The CBI, after the inquiry advised the Director ESIC to initiate departmental action against the applicant because there was sufficient evidence to establish that the applicant demanded and accepted bribe of Rs.500/- for payment of arrears of the Permanent Disability Benefit amounting to Rs.3936/-. The respondents accepted this advice because they felt that the level of evidence required to prove the charge in the departmental action were available. The applicant had infact by implication admitted to have accept the bribe, which evidence is not only admissible but is also considered best piece of evidence in departmental action. For this the law is very clear after Hon'ble Supreme Court's judgement in case Delhi Transport Company vs. Shyam Lal, reported vide 2004 SCC (L&S) 1053. The same view was held by their Lordships while deciding case Kuldeep Singh vs. State of Punjab reported in 1997 SCC (L&S) 346. The objections of applicant to Inquiry Officer's reliance upon statements recorded under Section 161 Cr.PC in the departmental action is also not valid because the Inquiry officer had during inquiry confirmed from the deponents their correctness before bringing them on record, and permitted cross examination by applicant and his Defence Assistant. This is clear from the perusal of statements cited as Annexures A/5 and A/6; and corresponding order-

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sheets of the days on which these statements were recorded. The statements and order sheets are signed by the applicant and his Defence Assistant. It is clear that no objection was raised by the applicant then; due to which reason, he cannot be allowed to raise it now. This procedure in a departmental inquiry has been held to be correct by Hon'ble Supreme Court in their decision in case SBBJ vs. Shrinath Gupta reported vide 1996 SCC (L&S) 1464. Since the level of proof and type of evidence required in the departmental action is different than the same required in a Criminal Trial, and since corroborated circumstantial evidence is also considered sufficient in a departmental inquiry, if it leads to preponderance of probability about the proving of the guilt, we feel that there was indeed enough evidence in this case to justify punishment.

12 We agree with the respondents that theory of purchase of Tape-recorder is an after-thought, brought into this case to dissipate the allegation of corruption because it is full of loopholes and contradictions. The report of CBIs inquiries in Delhi and Udaipur and the difference of handwritings on Voucher No. 30 of Vaishali Music Centre seen by us in the folder shown to us by the respondents leaves us in doubt about it. Shri Beni Ram's affidavit is similarly unconvincing. The contention of the applicant that Shri Narain Lal is a mischievous and unreliable person also cannot be accepted because the statements of other witnesses and documentary evidence also prove the charges.

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Bereft of these pleas of the applicant, we came to the conclusion that the Rs.500/- accepted by the applicant is indeed bribe and not balance payment of the cost of tape recorder.

13 As already explained, there is no infirmity in appointment of CBI Officer as Presenting officer because he is also a 'public servant' in terms of Para 4(c) of the Third Schedule of the ESI (Staff & Conditions of Service) Regulations 1959. Such an appointment cannot be considered as having prejudiced the applicant's case because he was permitted appointment of a practicing advocate as the Defence Assistant.

14 The counsel for the applicant had gone at great length objecting to the denial of CBIs investigation report to him, and also that copies of pre-recorded statements of the witnesses were not given to him, although he made repeated demand for the same. However, our perusal of the inquiry report reveals that in Para No. 5.23 of the report, it is stated that copies of earlier statements of witnesses were provided to the charged officer well in advance and they were taken on record only after the witnesses confirmed them. For not providing the investigation report, we are satisfied with the explanation that nothing much was left to be given after giving copies of statements recorded u/s 161 Cr.PC and a copy of the FIR and the final report u/s 173 Cr.PC, submitted by the CBI. From Annexures cited by

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the applicant, it is clear that everything relevant to the case had thus been provided to him and fullest opportunity to defend himself and to cross examine the prosecution witnesses including the CBI and ACB Officers was also afforded. All the defence witnesses demanded by him were also called and the Inquiry Officer had fully considered their evidence while evaluating the total picture. For this, we have carefully seen the respective briefs of the presenting Officer and the applicant, each point of which is accounted for intelligently in the Inquiry report. Perusal of the CBI's file which has been shown to us by the counsel for the respondents reveals that SP SPE Jaipur had requested the Director ESIC to not disclose the contents of Dy. SP CBI's report and use it only for his own understanding of the case. This reservation or confidentiality claimed by the SP SPE Jaipur was permitted under Para 3.3(1) Chapter IX of the Vigilance Manual Volume I. Although we have not been able to see this rule personally, but we have no reason to doubt the correctness of this assertion. Besides, as stated above, our perusal in ~~it that it contained in~~ the CBI's inquiry report reveals nothing more than statements of the witnesses and the conclusions drawn ~~in~~ ^{by} the final report, copies of which were made available as per report of the inquiry Officer. We agree with the argument of the respondents that new and abrupt ~~objection about~~ demand for documents as per Annexures A/12 and A/13 attached with the Rejoinder deserve to be rejected, because they can't be considered as part of the pleadings of this case. More so

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because while raising this demand, the applicant has not explained how their denial has prejudiced his case.

15 We have also very carefully gone though the Punishment and Appellate orders and we don't agree with applicant's assertion that they are mere toeing of Inquiry officer's report. This, because both the authorities have carefully analysed every point raised by the defence. The Disciplinary authority has also considered the age and retiral status of the applicant and he has taken sympathetic view of these facts while passing punishment order.

16 In the final analysis, we feel that there is nothing lacking in the departmental action as far as abidence of rules and procedure and awarding of reasonable opportunity to defend are concerned. Malafide against the respondents is neither alleged, nor is noticed by us. The applicant has, however, alleged that it is a case of no evidence, and that respondents have adopted pick and chose policy in not considering the evidence which was favourable to the applicant, but we find that this allegation is far from true. Therefore, in the circumstances of this case, there is no scope left for our interference with the impugned orders. The punishment appears to be befitting and well considered, and commensurate with the charges because it is a well established principle of administrative jurisprudence that acts of corruption should be dealt with



without mercy.

17 In view of what has been stated above, the OA is dismissed with no order as to costs.

~~AK Bhandari~~

(A. K. BHANDARI)

MEMBER (A)



(M. L. CHAUHAN)

MEMBER (J)

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