

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 17.11.2004

ORIGINAL APPLICATION NO. 218/2003

Parmanand Soni son of Shri Dal Chand aged about 62 years, resident of 41 K.M., Colony, Sendra Road, Beawar, District Ajmer (Rajasthan)

....Applicant

VERSUS

1. Union of India through Secretary Ministry of Labour & Employment, Government of India, New Delhi.
2. Director General, Employees' State Insurance Corporation, Panchdeep Bhawan, Kotla Road, New Delhi.
3. Regional Director, Employees' State Insurance Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur.

....Respondents.

Mr. Ajay Gupta, Counsel for the applicant.
Mr. U.D. Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)
Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. A.K. BHANDARI

The applicant filed this OA u/s 19 of the AT Act to seek the following reliefs:-

(i) By an appropriate order or direction the impugned order dated 1.4.2002 and dated 28.09.2001 (Annexure A&2), issued by the respondent may kindly be declared null and void and be quashed and set aside and the respondents may be directed to pay the amount of deductions alongwith interest @ 24% p.a.

(ii) Any other beneficial order or direction which the Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

(iii) Costs of this OA may also be quantified in favour of the applicant.

12

2. The brief facts of the case as stated by the applicant are that the applicant, Manager cum Inspector (Manager Grade II) ESI Corporation, Kota, was due for retirement in February, 1998, but Respondent No. 3 made some unwarranted 'unconstitutional demands', refusal to which by the applicant angered him, and he issued a charge sheet just three months before applicant's retirement on 20.10.1997 (Annexure A/3). On receipt of the same, the applicant requested for some documents to enable to him to submit reply but the same was declined. However, he submitted his reply on 17.12.1997 (Annexure A/4). Thereafter nothing much was done for quite sometime but all the benefits of retirement were withheld as the charge sheet had been served upon him. Inquiry Officer, Shri D. Giri, was appointed on 10.8.1998 to hold the inquiry against him, On 31.10.1998, applicant repeated the request for supply of certain documents but the same was not acceded to inspite of repeated requests. The Inquiry Officer was then changed and Shri Y.M. Parate was appointed as Inquiry Officer on 27.12.1999. The applicant again requested for the documents but of no avail. The same were not even shown to him. The applicant had also prayed to change the Defence Assistant but this request was also rejected by Respondent No. 3 and ultimately while not affording opportunity of personal hearing as well as violating principles of natural justice, Inquiry Officer completed the inquiry and submitted his report to the Disciplinary Authority on 25.7.2001. The copy of the same was given to the applicant, directing him to submit his explanation (Annexure A/5). The applicant submitted detailed explanation on 8.8.2001 (Annexure A/6). However, without looking into the same and without granting further opportunity of hearing, respondent no. 2 passed the order of punishment on 28.9.2001 (Annexure A/2) imposing penalty of forfeiture of 10% of basic pension (with proportionate reduction in dearness relief) for a period of three years. The applicant preferred appeal before respondent no. 1 but the same was rejected vide order dated 1.4.2002 (Annexure A/1) without considering memo of appeal and the facts of inquiry. Thus aggrieved by these orders, he has filed this OA.

3. In the grounds, it is stated that the order of punishment as well as one rejecting the appeal are arbitrary and illegal. That without regard to his unblemished service and without considering that he was going to retire within a few months, the charge sheet was served upon him with malafide intentions. Shri G.L. Kapoor, Regional Director of ESI Corporation, was having some personal grudge against the applicant for which he had made some complaints to the higher authorities. Enraged by these complaints, Shri Kapoor with malafide intention issued a charge sheet to the applicant. It is further stated that applicant submitted detailed reply but nothing was done for six months and Inquiry Officer was appointed only when the applicant requested for retiral dues, with-held on account of charge sheet. That while imposing punishment, no record has been paid

✓

to the unblemished service record of the applicant. That the applicant has not caused any financial loss to the Government, therefore, the impugned orders of withholding gratuity is contrary to rules and deserves to be quashed. That his request for calling defence witnesses, S/Shri G.L. Soni and Hardwari Lal Nagpal, officers of RFC and Health Department respectively because they were aware of the true facts of the case was unjustifiedly denied by the Inquiry Officer. Similarly the request for relevant documents by DA and IO was declined ^{by DA and IO} in spite of repeated requests, which makes the inquiry violative of rules and principles of natural justice. That no written instructions exist under which the applicant was required to visit the premises of the firm concerned, the alleged violation of which is the basis of charge No. 1. Similarly there is no rule under ESI Act due to which partnership firm and a firm registered under the Companies Act are treated as the same unit. The applicant put forth number of examples wherein in similar circumstances partnership firm and a private Ltd. company were treated as two different legal entities but of no avail. Therefore, impugned orders are wrong. The applicant has also been denied personal hearing by the respondents, during the inquiry defence documents were not allowed to be inspected by the applicant which were very much relevant to the case. Also that, even though the charge sheet is based on the irregularities committed by M/s Mosad Securities Services Pvt. Ltd. but no action has been taken against this firm under the provisions of Section 84 of the ESI Act, 1948 for its prosecution.

4. The respondents have submitted a detailed reply. In it, it is stated that it is wrongly alleged that the charge sheet was served upon the applicant just before his retirement to harass him but the same has been served when some lapses on his part pertaining to M/s Mosad Securities Services, Kota had come to notice, and he was asked to submit his clarifications for the circumstances under which he had committed these lapses mentioned in the notice on 19.12.1996 (Annexure R/1). The applicant's reply thereto was carefully examined but since the explanation was not satisfactory, the competent authority vide order dated 7.2.1997 recorded on file to initiate disciplinary proceedings for imposition of major penalty against the applicant. Thereafter on completion of all the requirements and the collection of the relevant documents, charge sheet was issued vide Memorandum dated 20.10.1997 (Annexure A/3). The "unconstitutional demands" of the Respondent No. 3 refused by the applicant is totally denied. The applicant has not indicated the details of the 'unconstitutional desires' nor has respondent No. 3 been impleaded specifically by name in the OA. Therefore, this allegation deserves to be ignored. The statement of imputation annexed to the charge sheet fully supports the charge sheet. Regarding documents desired by the applicant, it is stated that he has been supplied some documents vide letter dated 15/16.12.1997 (Annexure R/2), after which he submitted his reply, and in this reply, he has not made any grievance about non supply of documents.

Due to this reason, allegation of the applicant that documents had not been supplied at this stage is not correct. Since charge sheet was pending against him on the date of his retirement, he was only entitled for grant of provisional pension, which was allowed but he was not entitled for payment of gratuity as per provisions of Rule 69 of the CCS(Pension) Rules, 1972. Regarding change of Inquiry officer, it is stated that competent authority had nominated Joint Director (DE) North Zone as the Inquiry Officer but on the relevant date, the said post was vacant and since Shri D. Giri assumed the charge of the said post, order was issued to appoint him as an Inquiry officer. Regarding Defence Assistant, it is stated that Shri S. Gulatia was initially allowed as his Defence Assistant but afterwards applicant requested to allow Shri S.K. Vyas, Advocate, as his defence Assistant which was declined because the Presenting Officer was only an Inspector and he was neither an Advocate nor an experienced Defence Assistant. A copy of the said letter dated 25.1.2001 is annexed as Annexure R/5. Regarding denial of personal hearing, it is stated that since full opportunity has been given to him in conformity with disciplinary rules and principles of natural justice due to which personal hearing by the DA was not necessary. Inquiry report was supplied to the applicant which is a very comprehensive document and it deals with all aspects of the points raised by the applicant, and after taking into consideration the evidence - oral as well as documentary - produced by the prosecution as well as by the applicant. Therefore, allegation of violation of rules, and principles of natural justice by the Inquiry Officer is denied. Similarly, there is no irregularity in the punishment order which is a detailed and comprehensive order covering all the points made by the applicant in his representation dated 8.8.2001. Due to these circumstances, there was no need of giving further opportunity of personal hearing by the DA. The Appellate Authority also wrote detailed order covering all aspects of appeal. Since the allegations against the applicant were serious, they fully justify stringent penalty. And with due regard to the fact that applicant had already retired, he did not choose to enhance the penalty. This clearly shows that Appellate Authority had applied his mind while deciding the appeal.

5. In reply to the grounds, above pleadings have been repeated. While denying malafide on the part of Shri G.L. Kapoor, Regional Director, it is stated that on the contrary, Shri G.L. Kapoor took note of the irregularities committed by the applicant which are amply proved by the Inquiry. It is also stated that there is no irregularity in the order imposing forfeiture of 10% of pension because the same is as per rules and due to the consideration of applicant's retirement, the Appellate Authority did not enhance the penalty although the same was fully justified in the circumstances of the irregularity committed by the applicant. It is also clarified with the help of provision of Rule 9 of CCS(Pension) Rules that there is no irregularity in penalty of withholding or withdrawing pension

✓

or part thereof even though no financial loss is caused to the Government. Defence witnesses S/Shri G.L. Soni and Haridwari (both non departmental persons) were not called by the IO for the reasons very clearly stated in his proceedings dated 15.5.2001 (Annexure R/9). Besides applicant has not explained how not calling them as defence witnesses has prejudiced his case. The applicant has alleged that respondents have not noticed the fact that he visit the premises of M/s Mosad Securities Pvt. Ltd. on 2.7.1996 but because no responsible person was available to assist him for conducting the survey, he returned back without conducting the survey which was required to do as per rules. It is also proved that he had completed the proceedings in his own office on 2.7.1996 only on the basis of Attendance Register brought these by Shri Girwar Singh Shekhawat, Managing Director. A copy of Survey Report is annexed as Annexure R/6. It is also stated that the expression 'visit' does not simply mean going to the place and coming back. Thus it is established that applicant did not conduct any survey but only visited the premises on 2.7.1996. The request of the applicant for documents was duly considered by the Inquiry Officer but on finding that same were not relevant for his defence, request was not granted. Certain documents were shown to him on 15.2.2001 and 15.3.2001, proof of which is the proceedings of these dates annexed as Annexure R/9 and Annexure R/10. Besides applicant has not stated which specific documents have not been furnished to him nor he has shown their relevance to the charges and in what manner denial of the same has prejudiced his defence. Therefore, this plea is to be ignored. Instructions regarding submission of inspection/survey report were shown to him during inquiry and it is evident that by not complying the same he had lapsed in the matter. This was ^{justified} by prosecution witness, Shri V.V.S.P. Ramchandra Rao, Dy. Director vide his statement dated 20.12.2000 (Annexure R/11). Regarding contention that firm can operate under different names and the applicant has also acted in accordance with law and many examples of the same were cited by the applicant, it is stated that M/s Mossad Security Services Kota was already registered under the provisions of Employees' State Insurance Act, 1948 but had not been making compliance of the said provision right from its inception and with a view to avoiding the liabilities, the said unit changed its name to M/s Mossad Security Services (Pvt) Ltd. Kota and approached the local office of ESI at Kota which was under the charge of the applicant, he being the Manager. The applicant, therefore, was aware of the existence of the said establishment. It is further stated that it was well within the domain of the applicant to have considered whether both the said establishments were different or same especially when he was aware of the existence of M/s Mossad Security services being already in existence. He was also duty bound to specifically bring this fact to the Headquarter's notice. This failure has been fully considered by the IO in para No. 51 of his report. Thus it was not open to the applicant to take the decision that both the said establishments were different. Thus he had failed to discharge his duties correctly. Regarding personal hearing during

X2

inquiry, it is stated that full opportunity was given to the applicant at every stage of it and due to this reason, personal hearing was not necessary. That full opportunity to cross examine the witnesses was given is evident from the copy of statement of Shri V.V.S.P. Ramchandra Rao, Dy. Director (Annexure R/13). Thus it is clear that inquiry has been concluded as per the extant rules. That plea that no action was taken against M/s Mossad Security (Pvt.) Ltd., has no relevance to the charges levelled against the applicant due to which it should be ignored. Thus the action of the respondents is perfectly as per the law, rules and principles of natural justice and, therefore, this OA deserves to be dismissed.

6. The applicant has filed a very detailed rejoinder. In it, it is stated that the impugned punishment order dated 28.9.2001 and 1.4.2001 were passed with a view to save Regional Director, G.L. Kapoor, who held malice against the applicant and that with malafide intention he wanted to harass and punish him. It is also stated that action of the applicant is innocent and without intention. That he has not caused any financial loss to the Government and at the most it was an error of judgement and therefore, punishment order deserves to be quashed. It is also stated that first notice dated 15.10.1996 (Annexure A/7) issued by Deputy Director, ESIC Jaipur did not contain the charge of non visit to Unit but due to malice of Shri G.L. Kapoor, Regional Director, towards the applicant due to non compliance of illegal orders to ensure admission and expenditure on his son's education at Kota, it was added in the subsequent charge sheet. Letters dated 23.10.1997 (Annexure A/8) and 28.11.1997 (Annexure A/9) are annexed to show how documents required were not supplied even till the date of reply to the charge sheet. Thus reasonable opportunity has not been granted, but hastened the reply because he wanted the Departmental inquiry to be completed before his retirement. Also discrimination against the applicant has been committed by not treating M/s Mossad Securities Services as two firms whereas innumerable examples of such type are available which were submitted by him in course of inquiry, by document annexed as Annexure A/10, The applicant also wrote many complaints to higher authority against the illegal action of respondents, annexed as Annexure R/11 and R/12 but of no avail. The applicant has also stressed that delay in issuance of charge sheet and appointment of Inquiry Officer has caused him grave injustice in relation to retiral dues. It is also alleged that this delay was caused by the respondents with malice by changing Inquiry officer frequently and by not providing documents etc. It is also stated that he submitted number of complaints against Shri G.L. Kapoor to the authorities but they have not taken note of them. Copies are attached to the rejoinder.

7, Parties were heard at length.

1/2

8. The counsel for the applicant has specifically referred to infirmity in procedure, delay of 8 months after retirement in finalising the Departmental inquiry, frequent change of Inquiry Officers, documents required by the applicant were not supplied to him, advice of the UPSC not taken even though it should have been taken as per Swamy's Compilation in cases of punishment of pensioners (whether Gazetted or non-Gazetted), malafide intention of the respondents particularly, Shri G.L.Kapoor and their pre-meditation to punish the applicant. It was also elaborated that facts innumarated in his representations after the receipt of charge sheet and after receipt of Inquiry report respectively were not considered by the DA while meeting the out punishment. That prosecution witnesses had admitted that similar irregularities were committed by other staff but they were ignored. That Inquiry Officer erred in not providing documents and not calling defence witnesses which has prejudiced his case and lastly that Advocate was not allowed as defence Assistant even though the Departmental inquiry involved serious questions of law.

9. Per contra, learned counsel for the respondents disputed the contention that UPSC had to be consulted in this case. While citing decision of Hon'ble Delhi High Court in the case of O.P. Gupta vs. Delhi Vidhyut Board reported vide 2000(6) SLR 457, in para 8, of it was contended that ESI being a autonomous body there was no need to consult the UPSC and also that in terms of minutes of the Standing Committee dated 28.5.1979, the power of President under Rule 9 of the CCS(Pension) Rules, 1972 are to be exercised by the Director ESI Corporation. Regarding the facts of the case, it is stated that applicant admitted having visited the premises ~~place~~ but having not found any responsible person there, called the Manager of the firm with records in his office. It is clear that his visit was not effective as envisaged under rules, but it was only formal one during which he did not physically see ^{the} working of the employees nor inspected documents. That he was bound to do ^{under} these rules, due to which charge no. 1 is proved by his own admission. Further that allegation ^{against} that Shri G.L. Kappor are not at all supported by evidence nor he has been made party even though malafide has been alleged against him which is necessary under rules. Also various correspondence stated by him to be complaints ^{against} Shri G.L. Kapoor are of much later date than charge sheet and inquiry. ^{Documents} The Documents and defence witnesses were denied because they lacked relevance to the charges and Inquiry Officer has been given such discretionary powers under the rules which he correctly exercised. Due to the circumstances that M/s Mossad Security Services were already covered under provisons of EST ACT 1948 and not making compliance of the said provision right from its inception, the applicant failed to see the illegality in changing its name to avoid liabilities. It was a major lapse on its part which should have come to his notice if he effectively visited the premises and submitted correct report to his superiors in time, Regarding personal hearing it is argued that inquiry has been conducted fully

✓


complying the extant rules, therefore, the same was not necessary. For this, Cases decided by Hon'ble Supreme Court vide 1994 SCC (L&S) 1017 State bank of Patiala vs. Mahendra Kumar and 1999 SCC (L&S) 1228, State Bank of India vs. Luther Kondhpani were cited. Therefore, was concluded that present OA is without merits.

10. After careful consideration of facts and pleadings, it is clearly seen that there has been no violation of rules in conducting the departmental inquiry. The charge sheet was served upon the applicant which contained statement of allegations and lists of documents and witnesses to be relied upon. The applicant was given show cause notice to accept or deny charges and he denied the same, after seeing documents he had demanded. The inspection of some documents was permitted during inquiry is amply proved documentarily by the respondents (letters dated 15.2.1999 and 15.3.1999). Defence assistant was provided and we find no illegality in denial of practising Advocate as the Defence Assistant because the Presenting Officer was not a legal Practitioner. Denial of certain documents is justified because neither their relevancy was explained nor how their denial has caused prejudiced has been shown by the applicant in the OA. The reasons for denial of two defence witnesses who do not belong to the department of the respondents has been satisfactorily explained by the respondents, as not relevant to the charges. Denial of personal hearing is also justified in light of the decisions of the Hon'ble Supreme Court cited by the counsel for the respondents (supra). On careful perusal of inquiry report, order of punishment and Appellate order rejecting the appeal reveal that their detailed orders are inclusive of all the facts adduced by the applicant during inquiry and various representations and Memo of appeal and by no definition, they can be considered to be mechanical or without application of mind. In these circumstances, the allegation of pre meditation to punish the applicant on the part of the respondents is also not proved. It is seen that ESI being a Corporation, the consultation of UPSC even in matter of retired pensioners (Gazetted or Non Gazetted) employees in it is not necessary. Besides by approval by Standing Committee dated 28.5.1979, the power of President of CCS(Pension) Rules 1972 have been delegated to the Director General of ESI, due to which there has been no illegality on the part of the respondents in not consulting the UPSC in this matter. The alleged malafide intention of Shri G.L. Kapoor, applicant's immediate superior officer, cannot be considered by us because he has not been made a party in this litigation and thereby he has been denied opportunity to defend himself and also because there is no evidence worth the name to substantiate the allegation raised against him.

11. Due to the reasons stated above, we find no basis for our interference in this matter and for the same reasons, the OA is dismissed.


(A.K. BHANDARI)

MEMBR (A)


(M.L. CHAUHAN)

MEMBER (J)