

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

DESTRUCTION OF RECORD RULES, 1990

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O.A/T.A No. 361/2001

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SECTION OFFICER (Judl.)

FORM No. 4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

ORDERS SHEET

Original APPLICATION NO. 361 / 2001

Applicant(s) Chawdar Dhan Kolela

Respondent(s) L. C. I. Govt

Advocate for the Applicants: B. K. Bhattacharya, S. S. Baru, U.K. Nayak, Mrs. V. D. Das

Advocate for the Respondent: C. A. S. A. Debi Ray

Notes of the Registry	Date	Order of the Tribunal
	17.9.01	Heard counsel for the parties.
in form		The application is admitted. Call for
with file		the records. Returnable by 11/10/01 six weeks.
		List on 12/11/01 for order.
7G/5485/38		<i>U. C. Shastri</i> Member
11.8.2001		<i>Vice-Chairman</i>
PPD		
12.11.01		List the case on 10.12.2001 enabling the respondents to file written statement.
		<i>U. C. Shastri</i> Member
	10.12.01	<i>Vice-Chairman</i> Written statement has been filed by the respondents. The applicant may file rejoinder within three weeks from today.
		List on 11.1.2002 for order.
Service report over still awaiting. No reply has been filed.	mt	<i>U. C. Shastri</i> Member

By
B. K. Bhattacharya

N
O.A.No.361/2001

11.1.02 Pleadings are complete
matter for hearing on 19.2

No. 1018 has been
filed

2.12.01

1018
Member

Vice-Chairman

mb

11/12/2001 19.2.2002 Heard in part. Lit. again on
for further hearing.

W/S. intimated

1018
Member

Vice-Chairman

nkml

26.2.02 Heard learned counsel for the parties.
Hearing concluded. Judgment delivered
open court, kept in separate sheets. The
application is disposed of in terms of the
order. No order as to costs.

1018
Member

Vice-Chairman

mb

14.3.2002

Copy of the Budget
has been sent to the
Office for issuance
that the same to the
appellant as well as
the Govt, CSC for
the Respondent by hand.

1018

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 361 of 2001.

Date of Decision. 26.2.2002.

— Sri Chandar Dhar Kalita — Petitioner(s)

— Sri B.K. Sharma, Sri S. Sarma — Advocate for the
Versus — Petitioner(s)

— Union of India & Ors. — Respondent(s)

— Sri A. Deb Ray, Sri C.G.S. C. — Advocate for the
Respondent(s)

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE CHAIRMAN.
THE HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the Judgment

Whether the Judgment is to be circulated to the other Benches

Judgment delivered by Hon'ble : Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 361 of 2001.

Date of Order : This the 26th Day of February, 2002.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr K.K.Sharma, Administrative Member.

Shri Chandra Dhar Kalita,
Assistant,
Employees State Insurance Corporation,
Regional Office, Guwahati-21. Applicant

By Advocate S/Sri B.K.Sharma, S.Sarma.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Labour,
New Delhi.
2. The Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan, Kotla Road,
New Delhi-2.
3. The Addl. Commissioner (P&A)
Employees State Insurance Corporation,
New Delhi.
4. The Regional Director,
Employees State Insurance Corporation,
Bamunimaidan, Guwahati-21.
5. The Joint Director (D.E/Enquiry Authority)
Employees State Insurance Corporation,
Calcutta-700006. Respondents.

By Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C)

This application under Section 19 of the Administrative Tribunals Act 1985 has arisen and directed against the order dated 26.4.2001 passed by the Deputy Director (Vigilance) for Additional Commissioner(P&A) reducing the penalty of compulsory retirement to that of reduction in pay by five stages. The facts in brief relevant for the purpose of adjudication of the proceeding are set out below :-

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The applicant at the relevant time was holding the post of Assistant, a Class-III post under the respondents. A departmental proceeding was initiated under Regulation 14 and Para 3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 for the alleged misconduct of the applicant. Accordingly the article of charges alongwith statement of imputations were served on the applicant. The applicant was charged for engaging himself directly and indirectly in any trade or business neglecting the job to which he was entrusted by writing ESIC Challans for depositing contribution in ESI fund Account. The applicant in his written statement stated that he rendered assistance in preparing ESI challans. For fulfilling the requirement of the ESI Act he has also stated that he gave up the alleged practice and requested for a lenient treatment. The authority proceeded with the enquiry and on completion of the enquiry submitted his report. In the report the Enquiry Officer found the applicant guilty of both the charges. The applicant submitted a representation on receipt of the enquiry report and by order dated 12.9.2000 after assessment of the materials on record found the applicant guilty of the charges and imposed the penalty of compulsory retirement. The applicant preferred appeal before the authority and the appellate authority considered the matter and took a compassionate view by reducing the penalty of compulsory retirement to that of reduction in pay by five stages. The reduction was to take effect from the date of joining i.e. 2.2.2001 and would be cumulative for a period of five years and he would not earn any

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increments of pay during the period of reduction. The applicant thereafter submitted representation before the Director General (P&A), ESI Corporation for considering his case sympathetically. The Deputy Director, Vigilance by his order dated 26.4.2001 the applicant is to be paid 50% of pay and allowances subject to the provision of FR 54(8). Mr B.K.Sharma, learned senior counsel appearing for the applicant strenuously urged that the respondents authority fell into error in imposing the impugned penalty without considering the materials on record. The learned counsel submitted that the applicant did not receive fair treatment from the respondents, so much so he was not given adequate opportunity to submit representation. The learned counsel further submitted that the materials on record did not establish that the applicant took consultancy work with the two employers and acted only upon assumptions and presumptions. Lastly the learned counsel submitted that the imposition of penalty by reducing his pay by five stages was arbitrary and unjustified in the set of circumstances.

2. Mr A.Deb Roy, learned Sr.C.G.S.C appearing for the respondents contesting the plea of the applicant contended that the authority rightly imposed the punishment on the basis of materials on record. Mr Deb Roy submitted that the authority in the instant case acted in terms of the rule and in absence of any illegality or arbitrariness the question of interference under Section 19 of the Asministrative Tribunals Act does not arise.

3. We have gone through the materials on record. A perusal of the materials on record it is difficult to hold that the inference drawn by the respondents holding

the applicant guilty as perverse. The evidence on record clearly established that the applicant himself wrote under his own handwriting the challans and returns of the employers over a considerable period. The respondents took the decision on considering all aspects of the matter without taking note of any extraneous considerations. On assessment of the evidence on record the respondents reached a conclusion which cannot be said to be perverse or unjustified. The appellate authority on appeal took note of relevant consideration, his service record and reduced the penalty. The applicant throughout received a fair consideration in the hand of the respondents and therefore in the set of circumstances there is no scope for judicial review. Mr B.K.Sharma, learned senior counsel for the applicant however pointing out to the appellate order dated 25.1.2001 submitted that as per the order of penalty the reduction would have affected the future increments of the applicant. In our opinion that is not the true content of the order. The applicant was imposed with a major penalty set out in clause V of Rule 11. On expiry of the penalty period the reduction would have no effect to the future increment of the applicant. On expiry of the penalty period there shall be restoration of his seniority and pay to the grade and all the disabilities will be over after that five years.

Subject to the observations made, the application stands disposed of. There shall, however, be no order as to costs.

K K Sharma
(K.K.SHARMA)
ADMINISTRATIVE MEMBER

(D.N.CHOWDHURY)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case :

O.A. No. 361 of 2001

BETWEEN

Shri Chandra Dhar Kalita Applicant.

AND

Union of India & ors. Respondents.

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Filed by : *Absha Das*
File : C.D
Advocate

Regn. No. :
Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act.1985)

O.A.No. 361... of 2001

Filed by
the applicant
through
Lokendra Das
Advocate
4/9/2001

BETWEEN

Shri Chandra Dhar Kalita
Assistant,
Employees' State Insurance Corporation,
Regional Office, Guwahati-21.
..... Applicant.

VERSUS

1. Union of India,
Represented by the Secretary to the Govt.of India,
Ministry of Labour, New Delhi.
2. The Director General,
Employees' State Insurance Corporation,
Panchdeep Bhawan, Kotla Road,
New Delhi-2.
3. The Addl. Commissioner (P&A)
Employees' State Insurance Corporation,
New Delhi.
4. The Regional Director,
Employees' State Insurance Corporation, ✓
Bamunimaidan, Guwahati-781021.
5. The Joint Director (D.E)/Inquiry Authority,
Employees' State Insurance Corporation,
Calcutta-700006.

..... Respondents.

PARTICULARS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION
IS MADE:

This application is made against the (i) Memorandum of Charge No.43-S.11/18/99-Vig(CDK) dated October 22, 1999. (ii) Report under No.43-S.11/18/99-Vig.(CDK) dated 22.06.2000.(iii) Inquiry Report dated Nil forwarded by the Regional Director vide Memo No.43-S.11/18/99-Vig,(CDK) dated

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17.08.2000; (iv) Article of Charge issued under Memo No.43-S.11/18/99-Vig(CDK) dated September 12,2000 imposing punishment of compulsory retirement; (v) Office order No.17 of 2001 reducing the basic pay of the applicant by five stages from Rs.7075/- to Rs.6200/- from the date of rejoining issued vide No.43-A.20/11/73/79-Estt, dated 02.02.2001 (vi) Order No.C-16/14/82/2000-Vig dated 25.01.2001 reducing the penalty from compulsory retirement to reduction of pay by five stages with effect from the date of his rejoining duty.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act,1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicant is a citizen of India and permanent resident of Assam in Kamrup District. The applicant is presently working as Assistant in the office of the Regional Director, Employees' State Insurance Corporation, Bamunimaidan, Guwahati-21.

4.2. That the applicant states that he initially joined the corporation on 12.3.1979 as Lower Division Clerk and by virtue of his honest, diligent and sincere service to the satisfaction to his superiors, he was promoted to Manager Gr-II/Insurance Inspector/Supdt etc. on regular basis but as posting was made at Kolkata due to certain domestic constraints he had to forgo promotion and continued to serve as Assistant/H.C. which is a Class-III post.

4.3. That while the applicant was serving in the said post of Assistant, he was served with an memorandum of charges issued vide memo No. No.43-S.11/18/99-Vig(CDK) dated 22.10.99 stating, inter alia, that while functioning as Assistant in the Regional Office ESI Corporation, Guwahati during the period from July 1991 to December,1997 committed gross misconduct inasmuch as he himself prepared the records relating to ESI matters in respect of M/s Sudarshan Press and Assam Industrial Corporation during the period from November,1988 to April,1998 . In the said order itself there was a proposal to hold inquiry and [REDACTED] was asked to submit written statement of defence within a period of 10 days from the date of receipt of the memo. It may be stated herein that as per the approved tour programme, the petitioner was on official tour from 26.10.99 to 17.11.99. Therefore, the petitioner vide his letter dated 25.10.99 prayed for 10 days time from 17.11.99 to enable him to submit an effective reply to the charge sheet. The prayer made by the applicant through his letter dated 25.10.99 was rejected vide memo No.43-S-11/18/99-Vig(CDK) dated 02.11.99 which was received by the applicant on 05.11.99 on his return from official tour that too after office hours.

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Thereafter, the applicant on 05.11.99 itself hurriedly submitted his reply denying the allegations. The refusal to grant time as prayed for caused prejudiced for preparing his defence.

Copies of the aforesaid Memorandum of charge dated 22.10.99, letter dated 25.10.99, memo dated 02.11.99 and the reply dated 05.11.99 are annexed herewith and marked as Annexure-I, II, III & IV respectively.

4.4. That the applicant states that on denial of the allegation of charges the Respondents vide order No.43-S-11/18/99-Vig(CDK) dated 21.12.99 appointed Shri R.N.Manna, Joint Director (DE), Calcutta to enquire into the charges and vide order No.43-S-11/18/99-Vig(CDK) dated 21.12.99 Shri C.R.Paul, Deputy Director (Recovery) was appointed as presenting officer violating the rules which is / not in existence in Employees' State Insurance Corporation (Staff and conditions of service) Regulations, 1959, who happens to be Recovery Officer. In fact, there is no such post of Deputy Director (Recovery) under the ESI Corporation.

Copies of the aforesaid orders dated 21.12.99 are annexed hereto and marked as Annexure-V & VI respectively.

4.5. That the applicant states that the disciplinary enquiry was thereafter held and the Inquiry Authority examined three witness but all the witnesses confirmed the integrity and sincerity of the applicant and they never said

that the applicant indulged in part time consultancy works or any such works or took remuneration for such work as alleged by the authority regarding consultancy works of M/s Sudarshan Press and M/s Assam Industrial Corporation. At the time of enquiry proceedings the disciplinary authority did not give chance to the applicant to defend his case by examining defence witness.

4.6. That the applicant states that the Inquiry officer inspite of confirmation of integrity of the delinquent by the witnesses for the Disciplinary Authority and failure on the part of the Disciplinary Authority to establish any lapse in official duties during his service period, closed the enquiry in a very whimsical and hurried manner and submitted the enquiry report holding that the charge leveled against the applicant was established.

A copy of the enquiry report along with enquiry proceedings and the copy of the written brief of the presenting officer are annexed hereto and marked as Annexure-VII & VIII respectively.

4.7. That the applicant states that the applicant in response to the written brief of the presenting officer in the Disciplinary Proceedings submitted a statement of defence before the Joint Director (DE)(E-Z) (Inquiry Authority), ESIC, Calcutta on 28.06.2000 pointing out various irregularities in the enquiry from the initial stage of the allegation of charge and denial of proper defence in the proceedings, as the written statements of evidence submitted by both the employees were ignored.

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A copy of the aforesaid statement of defence dated 28.6.2000 and reply to Inquiry Report dated 31.8.2000 are annexed as Annexure-IX & X.

4.8. That the applicant states that upon receipt of the enquiry report the Disciplinary Authority vide order No.43-S.11/18/99-Vig.(CDK) dated 12.09.2000 imposed the major penalty of Compulsory Retirement upon the applicant.

A copy of the aforesaid order dated 12.09.2000 is annexed hereto and marked as Annexure-XI.

4.9. That the applicant being aggrieved by the aforesaid order of dismissal from service dated 12.09.2000 passed by the Disciplinary Authority submitted an appeal before the Director General, ESI Corporation, New Delhi, the appellate authority, praying for revocation of the aforesaid order dated 12.09.2000 passed by the Regional Director, NE Region, ESI Corporation, Guwahati.

A copy of the aforesaid appeal dated 19.09.2000 is annexed hereto and marked as Annexure-XII.

4.10. That the applicant states that the Appellate Authority completely relied on the findings of the Inquiry Authority and opinion of the Regional Director while issuing the impugned order and the Appellate Authority thereafter vide order No.C-16/14/82/2000-Vig dated 25.01.2001 being satisfied with the appeal made by the applicant partly

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revoked the order of compulsory retirement on a compassionate view and reduced the penalty from compulsory retirement to that of reduction of pay by five stages holding further that the reduction would be operative for a period of five years and the applicant would not earn increment of pay during the period of such reduction. It was further ordered that on expiry of the penalty period the reduction would have the effect of postponing the future increment of pay. The applicant was thus reinstated in service and also ordered to report for duty before the Regional Director, Guwahati within 3 days from service of the said order.

A copy of the said order dated 25.01.2001 is annexed as Annexure-XIII.

11. That the applicant on receipt the aforesaid order dated 25.01.2001 duly joined the service within the stipulated time on 2.2.2001 (F.N.). However, for the period from 12.09.2000 to till his joining on reinstatement, the applicant was not paid his salaries but filing the representation dated 21.3.2001 the authority decided to pay 50% of his salaries as according to them during that period the applicant was treated as without duty vide order No.C-16/14/82/2000-Vig. dated 26.4.2001.

A copy of the representation of the applicant dated 21.3.2001 and order dated 26.4.2001 are annexed hereto and marked as Annexure-XIV & XV.

4.12. That the applicant states that in pursuance of the order dated 25.01.2001 issued by the ESIC Head Quarters, New

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Delhi, the respondent No.4 issued an office order No.17 of 2001. By the said order the Respondent No.4 reduced the basic pay of the applicant by five stages i.e. from Rs.7075/- to Rs.6200/- in the pay scale of Rs.5500-175-9000/-, effective from 02.02.2001 the date of rejoining of the applicant. It was further stated that the reduction shall be operative for a period of five years and the applicant will not earn increments of pay during the period of such reduction. It has also been stated that on expiry of the penalty period, the reduction will have the effect of postponing the future increments of pay. From this order it is apparent that after reduction of five increments i.e. from Rs.7075/- to 6200/- the respondent has imposed further penalty of stoppage of future increments for another five years (thereby stoppage of ten increments) and it has been mentioned that the reduction will have the effect of postponing future increments. The applicant states that such action of the respondents is too harsh, disproportionate and malafide.

A copy of the said order No.17 dated 2.2.2001 is annexed herewith and marked as Annexure-XVI.

4.13. That the applicant states that entire proceeding was initiated by some vested circle to harass and humiliate the applicant on some baseless and frivolous allegations. The applicant states that on a very limited occasions and only in absence of their own Dealing Assistant, employees of the two concerns namely of M/s Sudarshan Press and M/s Assam Industrial Corporation, Guwahati-21 approached the applicant and made request to help them in filling up challans in

proper manner. Accordingly, the applicant helped them by filling up the challans on the few occasions entirely on the request. Both the concerns also submitted written statements of evidence before the Inquiry Authority and confirmed sincere help of the applicant for which no fee or remuneration paid to the applicant. The Inquiry Authority misinterpreted the written statements of both the concerns and concluded that the applicant helped them for regular compliance as required under the ESI Act. Besides, both the above concerns are being periodically inspected by the ESIC Authorities who verified all the relevant records, such as, Cash Book, Ledger, Payment Vouchers etc to verify the correctness of payable amount of ESI dues but never found any voucher for making payment of remuneration for such alleged part time consultancy work. Such periodical inspections are further subject of test inspection of higher officer whether the inspections are carried out correctly or not such test Inspection also carried out and found the inspection carried out correctly. Therefore, the allegation of taking remuneration from the aforesaid concerns is not correct at all correct. Hence, the finding of the Inquiry Officer as well as the imposition of major penalty on such baseless allegations are illegal, arbitrary. Hence, interference from this Hon'ble Tribunal is called upon by this application.

4.14. That the applicant begs to state that in the charge sheet issued by the respondents there is a mention regarding violation of Rule 15 of CCS(Conduct) Rules 1964 but in reality the ingredients of the said Rule 15 is not applicable in the present case. The allegation of violation

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of aforesaid Rule 15 of CCS (Conduct) Rules is baseless. The crux of the charge is that the applicant involved himself in private consultancy works without prior permission from the competent authority. The very initiation of the charges are vague and indefinite and same is violative of various provisions of corporation's rules. As per the corporation's rule regarding registration of Firms under the ESI Corporation carries a specific mention that the corporation official would be duty bound to render necessary and possible help to the said firms as and when necessary. In fact, relying on those rules the applicant rendered his possible help not for his personal gain but to promote the corporation activities with a bonafide believe but the respondents for the reasons best known to them initiated proceeding against the applicant. In this connection mention may be made of registration form (Form C-11) issued to the subscribers wherein there is a mention that the corporation officials would rendered all the possible assistance during his duties. The help rendered by the present applicant was a bonafide help and as per the aforesaid Form-C-11 it is clear that his aforesaid act is a part of his official duty.

A copy of the aforesaid Form C-11 is
annexed as Annexure-XVII.

4.15. That the applicant begs to state that in the inquiry report the respondents have highlighted the written statement filed by the applicant dated 5.11.99 (Annexure-III) and have assumed same to be an admission. In fact, same was not an admission but was a simple prayer for exonerating him from the charges. The aforesaid fact has been admitted by the disciplinary authority while passing

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the impugned order of compulsory retirement. However, ignoring that fact appellate authority again re-open the admission part of the applicant and inserted certain new ingredients which were not in the charge sheet and held him guilty of charges. The fact of personal gain was not within the purview of described charges in the charge sheet but the appellate authority while highlighting the fact mention these aspect of the matter as "some extra income" and therefore the said appellate authority's order is not sustainable and liable to be set aside and quashed.

4.16. That the applicant begs to state that while issuing the impugned charge sheet the word consultancy has been used loosely which means renumeration or professional fee but the ingredient of personal gain is missing in the said charge sheet. In the inquiry report also it is crystal clear that there is no finding regarding extra income or Govt. loss. In fact, both the impugned orders are silent about the fact that the corporation employees are duty bound to render assistance to the parties. Hence the entire finding of the inquiry report and the impugned orders are not sustainable taking in to consideration the duties and responsibilities assigned to the corporation officials as per the Act and Regulation, and same are liable to be set aside and quashed.

4.17. That the applicant begs to state that the appellate authority while issuing the order of penalty after the modification made it clear that the pay of the applicant would be reduced by five stages and effect of such reduction will be effective for 5 years. In the said

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impugned order the respondents have ordered that during the aforesaid 5 years , the applicant will not earn any increment and after the expiry of penalty period the reduction would have the effect of postponing the future increments of pay. From the above it is clear that the appellate authority by issuing the impugned order have violated the rules guiding the field and imposed a combination of penalties which is not permissible in the law. On this score alone the impugned orders are liable to be set aside and quashed.

4.18. That the applicant begs to state that the respondents have acted illegally and without any jurisdiction. As per the delegation of powers of Regional Directors at Regional Offices/Directors/Joint Directors in charge at Sub Regional Offices and Joint Directors (Administration) Head Quarters it is clear that Regional Director who acted as a disciplinary authority is not the competent authority to impose penalty on the applicant as has been done in the instant case. The aforesaid delegation of power has clearly mentioned that fact that the Director General will continue to be the Disciplinary Authority in respect of Head Clerks and Assistants.

An extract of the said delegation of power is annexed herewith and marked as Annexure-XVIII.

4.19. That this application has been filed bonafide and for the ends of justice.

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5. GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1. For that under the Delegation of powers of Regional Directors issued by the ESIC Head Quarters, New Delhi vide letter No.A-38/14/2/95-MSU dated 10th February, 1999 no power has been vested with the Regional Director to impose penalty in respect of Assistants appointed prior to 01.12.1980. In the instant case the Respondents No.2 has imposed the major penalty of Compulsory Retirement against the applicant which power has not been vested with him therefore the Respondent No.2 traveled beyond his ~~legal~~ jurisdiction and power and therefore on this count alone the entire proceeding is liable to be set aside and quashed.

5.2. For that before framing of the charges against the applicant no opportunity to show cause was afforded. Therefore, the entire proceeding as well as the findings of the Enquiry Officer is apparently a pre-concerted move to penalise the applicant, which is legally not sustainable and liable to be set aside and quashed.

5.3. For that in the alleged Departmental enquiry no opportunity whatsoever was afforded to adduce defence witness as the written statements of evidence were ignored and the Enquiry Officer ~~gave his finding~~ ~~on his~~ ~~private~~ and whims concluded the proceeding in a most mechanical manner gave his finding that the charges leveled against the applicant has been proved. Therefore, the enquiry proceedings as well as the enquiry report is liable to be set aside and quashed.

5.4. For that the proceedings as well as the

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punishment of imposition of penalty of stoppage of increments at five stages is disproportionate to the charge and violative of provisions of Rule 15 of the CCS (conduct) Rules 1964 and as such the same is liable to be set aside and quashed.

5.5. For that from bare look at the charges leveled against the applicant with the imposition of penalty of Compulsory Retirement imposed by the Respondent No. 4 who is ~~was~~ not delegated with the power for imposition of such penalty upon the applicant which has been reduced to stoppage of five consequence increments on appeal, is disproportionate and therefore the same are liable to be set aside and quashed.

5.6. For that the Disciplinary as well as the Appellate authority have committed material irregularity in imposing the major penalty, which are disproportionate to the allegation of charge. Therefore the impugned orders are liable to be set aside and quashed.

5.7. For that the authority has miserably failed to take note of the hardship that would be caused to the applicant due to whimsical conclusion of the enquiry and imposition of penalty. This relevant consideration which the authority has failed to take note of in the name of administrative exigency.

5.8. For that the respondents have violated the administrative fairplay and has displayed abject arbitrariness in passing the impugned order of stoppage of five consecutive increments.

5.9. For that the Respondents No.4 has been actuated by ~~malafide~~ malafide and irrelevant consideration in passing the impugned order of punishment when no such power vest on him.

5.10. For that while forwarding the Inquiry Report the Regional Director asked the applicant for submission against the findings of the Inquiry Authority. The representation of the applicant dated 31.08.2000 against the findings of the Inquiry Authority was faxed to Head quarters Office at New Delhi for approval when Shri K.B.Koiri, Stenographer to the Regional Director, Guwahati Office was already stationed there for the said purpose and the final order was passed on 12.09.2000 in haste. As such the impugned order was passed by adopting a procedure which has not been laid down in the Third Schedule and hence liable to be set aside and quashed as per para 14 of ESIC (Staff and conditions of service) Regulations, 1959.

5.11. For that no reasonable time and opportunity has been given to the applicant for submission of the written statement of defence against the Memorandum of Charge Sheet which is against the principle of natural justice and hence liable to be set aside and quashed.

5.12. For that the findings of the Inquiry Authority are based on no evidence. The Inquiry Authority during hearing did not take part of contesting the charge of taking up of part time consultancy work under the employees in question as leveled against the applicant. The Inquiry Authority avoided the main part and could not analyze how part time ^{work} ~~work~~ ^{conducted and} compressed. therefore the findings are totally

perverse and legally not sustainable.

5.13. For that the Presenting Officer appointed in the proceedings was under a wrong para and wrong official designation for the departmental enquiry with his written brief dated 22.6.2000 under the same wrong official designation, is legally untenable and hence the whole proceeding is liable to be set aside and quashed.

5.14. For that in any view of the matter the impugned disciplinary proceeding and the consequent findings and imposition of penalty are not sustainable in the eye of law and liable to set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER

COURT:

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant

application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside and quash the impugned order No.43-S-11/18/99-Vig (CDK) dated 12.09.2000 issued by the Regional Director, ESI, N.E. Region, Guwahati, the Respondent No.4 as far as the applicant is concerned.

8.2. To set aside the entire proceedings as illegal and arbitrary.

8.3. To quash the imposition of penalty of stoppage of five consecutive increments.

8.4. To direct the respondents to pay the usual pay and allowances for the period from 12.9.2000 till the date of his reinstatement.

8.5. To direct the respondents to give promotion to the applicant from 11.1.2000 as per order No.3 of 2000 issued vide No.43-A.22/15/2000-Estt dated 11.1.2000 from which date his immediate juniors was ordered to be promoted.

8.6. Cost of the application.

8.7. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of this application the applicant prays that the impugned order No.17 of 2001 issued vide No.43-A.20/11/73/79-Estt dated 02.02.2001 be suspended insofar as the applicant is concerned.

10.

Application is filed through Advocate.

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 76 548538
2. Date : 11/8/2001
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

VERIFICATION

I, Shri Chandra Dhar Kalita, son of Late Gopinath Kalita, aged about 45 years, presently working as Assistant , Office of the Regional Director, Employees' State Insurance Corporation, Guwahati, Assam, do hereby solemnly affirm and verify that the statements made in paragraphs 2-3, 4-1, 4-2, 4-5, 4-13, 4-15, 4-16, 4-19 are true to my knowledge and those made in paragraphs 1, 4-3, 4-4, 4-5, 4-6, 4-12, 4-14, 4-17 are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have no pressed any material facts of the case.

And I sign on this the Verification on this the 4th day of Sept. of 2001.

Signature.

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE : NORTH EASTERN REGION
BAMUNIMAI DAN :::: GUWAHATI-21.

NO. 43-S.11/18/99-Vig. (CDK)

Dated : Oct. 22, 1999.

M E M O R A N D U M

The undersigned proposes to hold an inquiry against Shri C. D. Kalita, Asstt. _____, Employees' State Insurance Corporation, N. E. Region under Regulation 14 and Para 3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended. The substance of imputations of mis-conduct or mis-behaviour in support of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure - I). The statement of imputations of mis-conduct or mis-behaviour in support of each the articles of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom the articles of charge are proposed to be sustained are also enclosed in (Annexure - III & IV).

2. Shri C. D. Kalita is directed to submit within 10 (ten) days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri C. D. Kalita is further informed that if he does not submit his written statement of defence on or before the date specified in Para 2 above, or does not appear in person before the Inquiring Authority or otherwise fails to or refuses to comply with the provisions of Regulation 14 read with Para 3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 or the order / directions issued in pursuance of the said Regulation, the Inquiring Authority may hold the inquiry against him ex-parte.

5. Attention of Shri C. D. Kalita

is invited Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring in Political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri C. D. Kalita is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964 which is applicable to the Corporation employees by virtue of Regulation of 23 of the, Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

6. Receipt of the Memorandum may be acknowledged.

Enclo : As above.

G. R.
(D. N. / PEGCO)
REGIONAL DIRECTOR,

To

Shri C. D. Kalita,
Assist. Regional Officer
ESI Corporation, N. E. Region.

*** ***

W.D.

- 22 -

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST
SHRI C. D. KALITA, ASSTT. ESI CORPORATION, N.E.
REGION, GUWAHATI.

80

ARTICLE : 1.

Shri C. D. Kalita while functioning as Asstt. at Regional Office, ESI Corporation, Guwahati during the period from 07/91 to 12/97 committed gross mis-conduct inasmuch as he himself prepared the records in respect of M/S Sudarshan Press, Code No. 43-2245 relating to ESI matters under his own handwritings which clearly shows that he took up consultancy work with the aforesaid employer during his tenure of employment in ESI Corporation as a full time employee. Thus, taking up of part-time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provision of Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

ARTICLE : 2.

Shri C. D. Kalita while functioning as Asstt. at Regional Office, Guwahati ESI Corporation, N.E. Region during the period from 11/88 to 04/98 committed gross misconduct inasmuch as he himself prepared the records in respect of M/S Assam Industrial Corporation Code No. 43-1738 relating to ESI matters under his own handwritings which clearly shows that he took up consultancy work with the aforesaid employer during his tenure of employment in ESI Corporation as a full time employee. Thus, taking up of part-time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provision of Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

G.C
22/5/55
REGIONAL DIRECTOR.

Attd

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Attd

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STATEMENT OF IMPUTATION OF MISCONDUCT OR
MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF
CHARGES FRAMED AGAINST SHRI C. D. KALITA,
ASSTT. ESI CORPORATION, N. E. REGION.

31

ARTICLE : 1.

Shri C. D. Kalita while functioning as Head Clerk/Asstt. in ESI Corporation, North Eastern Region during the period from 8/91 to 12/97 undertook consultancy work with M/S Sudarshan Press, Guwahati Code No. 43-2245 during his tenure of employment in ESI Corporation as a full time employee as evident from the facts that he himself wrote under his own handwritings the particulars of ESIC Challans for depositing contribution in ESI Fund Account No. 1 in respect of the above employer for Rs. 1048/- (Challan dated 24.7.91 marked as Q-1, Rs. 1138/- (Challan dated 24.7.91 marked as Q-2), Rs. 1112/- (Challan dated 24.7.91 marked as Q-3), Rs. 1087/- (Challan dated 24.8.91 marked as Q-4), Rs. 1026/- (Challan dated 4.11.91 marked as Q-5), Rs. 1011/- (Challan dated 4.11.91 marked as Q-6), Rs. 6525/- (Challan dated 30.12.97 marked as Q-7), Rs. 3791/- (Challan dated 1.11.97 marked as Q-8), Rs. 2937/- (Challan dated 3.12.97 marked as Q-9) and Rs. 1057/- (Challan dated 27.2.96 marked as Q-10).

The above mentioned documents were submitted by the concerned employer to the office of ESI Corporation Regional Office, Guwahati as required under the provisions of ESI Act, 1948 (as amended). All these documents marked as above were referred to the Govt. Examiner of Questioned Documents, Central Forensic Institute, Calcutta alongwith some specimen hand-writings (marked as S-4 to S-8) and also some admittedly genuine handwritings (marked as A-1 to A-8 and S-1 to S-3) of Shri Kalita for expert opinion. The Govt. Examiner of Questioned Documents vide opinion No. DXB. 19/99/1569 dated 29.6.99 confirmed that the documents marked as A-1 to A-7, Q-9 to Q-11, A-1 to A-8 and S-1 to S-8 were all written by one and the same person i.e. Shri C. D. Kalita in ~~in~~ this case.

Contd.. 2/-

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Thus it is clearly observed that Shri C.D.Kalita had undertaken consultancy work under M/S Sudarshan Press, Code No. 43-2245 without permission of the competent authority and thus violated Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the Corporation employees by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

ARTICLE : 2.

Shri C. D. Kalita while functioning as Head Clerk/ Asstt. in ESI Corporation, North Eastern Region during the period from 11/88 to 04/98 undertook consultancy work with M/S Assam Industrial Corporation, Guwahati, Code No. 43-1738 during his tenure of employment in ESI Corporation as a full time employee as evident from the facts that he himself wrote under his own handwritings the particulars of ESIC Challans for depositing contribution in ESI Fund Account No. 1 in respect of the above employer for Rs. 1172/- (challan dated 10.12.88 marked as Q-12), Rs. 1189/- (challan dated 19.11.88 marked as Q-13), Rs. 1127/- (challan dated 9.1.89 marked as Q-14), Rs. 1101/- (challan dated 13.2.89 marked as Q-15), Rs. 1192/- (challan dated 22.4.89 marked as Q-16), Rs. 1111/- (challan dated 17.3.89 marked as Q-17), Rs. 1124/- (challan dated 17.6.97 marked as Q-18), Rs. 827/- (challan dated 9.6.97 marked as Q-19), Rs. 628/- (challan dated 31.7.97 marked as Q-20), Rs. 740/- (challan dated 9.9.97 marked as Q-21), Rs. 784/- (challan dated 27.9.97 marked as Q-22), Rs. 870/- (challan dated 28.10.97 marked as Q-23), Rs. 845/- (challan dated 25.11.97 marked as Q-24), Rs. 846/- (challan dated 28.1.98 marked as Q-25), Rs. 664/- (challan dated 28.1.98 marked as Q-26), Rs. 625/- (challan dated 24.2.98 marked as Q-27), Rs. 840/- (challan dated 22.4.98 marked as Q-28), Rs. 584/- (challan dated 20.3.98 marked as Q-29) and also wrote in his own hand-writings the Return of Contributions in respect of the said employer for the

Contd.. 3/-

Contribution Period Ending 1.3.89 (marked as Q-31 & Q-32). The above documents were submitted by the employer to the office of the ESI Corporation, North Eastern Region, Guwahati as per provisions of the ESI Act, 1948 (as amended). These documents marked as above, were referred to the Govt. Examiner of Questioned Documents, Central Forensic Institute, Calcutta alongwith some specimen hand-writings (marked as S-4 to S-8) and also some admittedly genuine hand-writings (marked as A-1 to A-8 and S-1 to S-3) of Shri Kalita for expert opinion. The Govt. Examiner of Questioned Documents vide opinion No. DXB, 19/99/1569 dated 29.6.99 confirmed that the documents marked as Q-12 to Q-29, Q-31 to Q-32, A-1 to A-8 and S-1 to S-3 were all written by one and the same person i.e. Shri C. D. Kalita in this case.

Thus it is clearly observed that Shri C. D. Kalita had undertaken consultancy work under M/S Assam Industrial Corporation, Guwahati Code No. 43-1738 without permission of the competent authority and thus violated Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the Corporation employees by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

AKA
22/7/95
REGIONAL DIRECTOR

CEDD

LIST OF DOCUMENTS BY WHICH THE ARTICLES OF
CHARGES FRAMED AGAINST SHRI C. D. KALITA,
ASSTT. ARE PROPOSED TO BE SUSTAINED.

In respect of M/s Sudarshan Press (43-2245)

~~S-10 S-10~~

01. Challan dated 24.7.91 (Q-1)
02. " " 24.7.91 (Q-2)
03. " " 24.7.91 (Q-3)
04. " " 24.8.91 (Q-4)
05. " " 4.11.91 (Q-5)
06. " " 30.12.97 (Q-7)
07. " " 01.12.97 (Q-9)
08. " " 3.12.97 (Q-10)
09. " " 27.2.96 (Q-11)
10. " " 4.11.91 (Q-6)

In respect of M/S Assam Industrial Corporation,
43-1738

11. Challan dated 10.12.88 (Q-12)
12. " " 19.11.88 (Q-13)
13. " " 9.1.89 (Q-14)
14. " " 13.2.89 (Q-15)
15. " " 22.4.89 (Q-16)
16. " " 13.3.89 (Q-17)
17. " " 17.6.97 (Q-18)
18. " " 9.6.97 (Q-19) S-T-7
19. " " 31.7.97 (Q-20)
20. " " 9.9.97 (Q-21)
21. " " 23.9.97 (Q-22)
22. " " 28.10.97 (Q-23)
23. " " 24.11.97 (Q-24)
24. " " 28.1.98 (Q-25)
25. " " 28.1.98 (Q-26)
26. " " 24.2.98 (Q-27)
27. " " 22.4.98 (Q-28)
28. " " 23.3.98 (Q-29) S-28
29. EX RC for CPE 31.3.89 (Q-31 & Q-32) S-951425(A)
S-15(i)

Contd... 2/-

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OTHER DOCUMENTS :

30. Joining report dated nil received on 3.6.88 (A-1)
31. Leave application dated nil (A-2)
32. " " dated 18.8.89 (A-3)
33. " " dated 15.12.88 (A-4)
34. Application for L.E. dated 15.12.88 (A-5)
35. Note sheet page No. 5 of file No. 43-A.28/21/94-95 (A-6)
36. Note sheet page No. 3 & 4 of file No. 43-F.23/20/88-A/CS. (A-7, A-8)
37. Leave application dated 5.12.95 (S-1)
38. " " " 9.12.94 (S-2)
39. Letter " 7.1.94 (S-3)
40. Specimen handwritings (S-4 to S-8)
(iv) 41. Opinion No. DXB. 19/99/1569 dated 29.6.99 given by the GEQD, Calcutta.

G.C.P
22/7/95
REGIONAL DIRECTOR.

W

Verbal

LIST OF WITNESSES BY WHOM THE ARTICLES OF CHARGES FRAMED AGAINST SHRI C. D. KALITA, ASSTT. EST CORPORATION, N. E. REGION IS PROPOSED TO BE SUSTAINED.

01. Shri K. C. Ghosh, Asstt. Director.
02. Shri D. N. Das, Asstt. Director.
03. Shri D. Bhattacharjee, Dy. Director(Finance)
04. Shri L. Loganathan, Asstt. GEOD.

REGIONAL DIRECTOR.

✓✓✓

To
The Regional Director,
of S.D. Corporation,
Suwatali

Subject - Prayer for extension of time for
submission of the written statement
for defence:

Sir;

I have to acknowledge the
receipt of R.O. Memo. No. 43-S. 11/10/99-
Vig. (CDK) dated 22.10.99.

In this connection I have to state
that I shall be on tour from 26.10.99
to 17.11.99 as per audit programme for
audit of local offices.

I therefore request you kindly
to extend 10 days time from 17.11.99
for submission of the written statement
for defence and oblige.

Yours faithfully,

Chakib

25/10/99

CD. K. K. K.

Assistant, R.O. S.D.C.

Guwahati

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE : NORTH EASTERN REGION
BAMUNIMALDAN :: GUWAHATI.

NO. 43-S. 11/18/99 (CDK) Dated : Nov. 2, 1999.

To

Shri C. D. Kalita, Assl
ESIC, Ro, Guwahati-21

Sub: Extension of time.

Sir,

With reference to his application dated 29.10.99, I have to inform that his prayer has been considered but can not be acceded to. Hence, he is advised to submit his reply immediately within the stipulated time.

Yours faithfully,

GW
(D. N. PEGOO)
REGIONAL DIRECTOR

- 31 -

2.

The Regional Director,
S.S.I. Corporation,
Guwahati-21.

Ref. R.O. Memo. No. 43-S. 11/18/99-Vig(CDX).
dated 22/10/99.

Sir,

Kindly refer to R.O. Memo as referred above dated 22/10/99 regarding article of charges for misconduct.

While admitting both the article of charges No. 1 and 2 I have to state that both the nearby employers requested me to help them by preparing the S.S.I. challans and Return of contributions only which are required for making compliance by the employers under the S.S.I. Act.

However, I have already given up the above tasks and I have to request you kindly to forgive me on the above misconduct and oblige.

Yours faithfully,

Calang

5/11/99

(C. Kalita)

Assistant, R.O.

Guwahati-21.

W.D.S.

CONFIDENTIAL गोपनीय

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ANEXURE - V

40

कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

क्षेत्रीय कार्यालय

REGIONAL OFFICE

BAMUNIMAI DAN :: GUWAHATI-21.



NO. 43-S. 11/18/99-Vig. (CDK)

Dated : Dec. 21, 1999.

O R D E R

Whereas an inquiry under Regulation 14 and para-3 of the Employees' State Insurance Corporation (Staff and conditions of service) Regulations, 1959 is being held against Shri C. D. Kalita, Assl.

And whereas the undersigned considers that an Inquiring Authority should be appointed to inquire into the charge sheet framed against Shri C. D. Kalita.

Now, therefore, the undersigned in exercise of the power conferred by sub-para (I) of para-3 of the Third Schedule of the said Regulations hereby appoints Shri R. N. Manna, Jt. Director (DE), ESI Corporation, Eastern Zone, Calcutta as the Inquiring Authority to inquire into the charge sheet against the said official Shri C. D. Kalita Assl.

(D. N. PEGOO)
REGIONAL DIRECTOR.

To

Shri R. N. Manna,
Jt. Director (DE) (EZ),
ESI Corporation, 1st Floor,
124 APC Road,
Calcutta-6.

Copy to :

1. Shri C. D. Kalita, Assl (Audil)
ESI Corporation, Guwahati.
2. Shri C. R. Paul, Dy. Director (REC), ESIC, RO, as Presenting Officer.
3. The Director General, Vigilance, ESIC, Hqrs. Office, Prachin Deep Bhawan, Kotla Road, New Delhi-2.

21/12/99
REGIONAL DIRECTOR.



कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

क्षेत्रीय कार्यालय

REGIONAL OFFICE

BAMUNIMAI DAN :: GUWAHATI-21.

NO. 43-S. 11/18/99-Vig. (CDK)

Dated : Dec. 21, 1999.

O R D E R

Whereas an inquiry under Regulation 14 and para 3 of the Employees' State Insurance Corporation (Staff and conditions of service) Regulations, 1959 is being held against Shri C. D. Kalita, Asstt. Auditor.

And whereas, the undersigned considers that a Presenting Officer should be appointed to present the case on behalf of the undersigned in support of the Article of charges.

Now, therefore, the undersigned in exercise of the power conferred by sub-para 4(1) of para-3 of the Third Schedule of the said Regulations hereby appoints Shri C. R. Paul, Dy. Director (Rec.) ESIC, RO, Guwahati as Presenting Officer.

(D. N. PEGOO)
REGIONAL DIRECTOR.

To

Shri C. R. Paul,
Dy. Director (Rec.)
ESIC, RO, Guwahati-21.

Copy to :

1. Shri R. N. Manna, Jt. Director (DE) (EZ), ESI Corporation, 1st floor, 124 APC Road, Calcutta-6 Inquiring Authority.
2. Shri C. D. Kalita, Asstt. Auditor, ESIC, Guwahati.
3. The Director General, Vigilance, ESIC, Hqrs. Office, Panchdeep Bhawan, Kotla Road, New Delhi-2.

REGIONAL DIRECTOR

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EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE : NORTH EASTERN REGION
BAMUNIMAI DAN :::: GUWAHATI-21.

No.43-S.11/18/99-Vig.(CDK)

Dated : August 17, 2000.

M E M O R A N D U M

Sub: Inquiry Report in the disciplinary proceedings
case against Shri C. D. Kalita, Asstt., ESI
Corporation, N. E. Region, Guwahati-21.

I am to forward herewith a copy of the Inquiry Report dated 09.08.2K as submitted by the Inquiring Authority for information and submission against the findings of the Inquiring Authority, if any, The Inquiry Report alongwith your submission should be returned to this office within 15 days from the date of issue of this memorandum.

This may be treated as MOST URGENT.

Enclo: As above

G. A
(D. 17/8/00)
REGIONAL DIRECTOR.

To

✓ Shri C. D. Kalita,
Asstt.
ESI Corporation,
Guwahati-21.

WAD

Office of the Joint
Director(DE), East
Zone, E.S.I.Corporation,
124, A.R.C. Road,
Calcutta-700 006.

I. LIST OF EXHIBITED DOCUMENTS.

In respect of M/s. Suddarshan Press (43-2245).

- 1) S-1 : Challan dated 24.7.91 (Q-1).
- 2) S-2 : " " 24.7.91 (Q-2).
- 3) S-3 : " " 24.7.91 (Q-3).
- 4) S-4 : " " 24.7.91 (Q-4).
- 5) S-5 : " " 4.11.91 (Q-5).
- 6) S-6 : " " 4.11.91 (Q-6).
- 7) S-7 : " " 30.12.97 (Q-7).
- 8) S-8 : " " 1.12.97 (Q-9).
- 9) S-9 : " " 3.12.97 (Q-10).
- 10) S-10 : " " 27.2.96 (Q-11).

In respect of M/s. Assam Industrial Corporation (43-1738)

- 11) S-11 : Challan dated 10.12.88 (Q-12).
- 12) S-12 : " " 19.11.88 (Q-13).
- 13) S-13 : " " 9.01.89 (Q-14).
- 14) S-14 : " " 13.02.89 (Q-15).
- 15) S-15 : " " 22.04.89 (Q-16).
- 16) S-16 : " " 13.03.89 (Q-17).
- 17) S-17 : " " 17.6.97 (Q-18).
- 18) S-18 : " " 9.6.97 (Q-19).
- 19) S-19 : " " 31.7.97 (Q-20).
- 20) S-20 : " " 9.9.97 (Q-21).
- 21) S-21 : " " 23.9.97 (Q-22).
- 22) S-22 : " " 28.10.97 (Q-23).
- 23) S-23 : " " 24.11.97 (Q-24).
- 24) S-24 : " " 28.1.98 (Q-25).
- 25) S-25 : " " 28.1.98 (Q-26).

26) S-26 : Challan dated 24.2.98 (Q-27).
27) S-27 : " " 22.4.98 (Q-28).
28) S-28 : " " 23.5.98 (Q-29).
29) S-29 : R.C. for C.P. Ending 31.3.89 (Q-31 & Q-32).
&
S-29(i)

Other Documents.

30) S-30 : Joining Report dated Nil received on 3.6.88 (A-1).
31) S-31 : Leave application dated Nil (A-2).
32) S-32 : " " dt.18.8.89 (A-3).
33) S-33 : " " dt.15.12.88 (A-4).
34) S-34 : Application for L.E. dt.15.12.88 (A-5).
35) S-35 : Note Sheet page No.5 of file No.43-A.28/21/94-95 (A-6).
36) S-36 : Note Sheet page No. 3 & 4 of file No.43-F.23/20/
&
S-36(i) (A-7, A-8).

37) S-37 : Leave application dated 5.12.95 (S-1).
38) S-38 : " " " 9.12.94 (S-2).
39) S-39 : Letter " 7.01.94 (S-3).
40) S-40 : Specimen handwritings (S-4 to S-8).
&
S-40(i)
to
S-40(iv)

41) S-41 : Opinion No. DXB 19/99/1569 dated 29.6.99 given
&
by the G.E.Q.D., Calcutta.
S-41(i)

II. LIST OF WITNESSES EXAMINED.

1) PW-1 : Shri K.C. Ghosh, Asstt. Director, ESIC, Guwahati.
2) PW-2 : " D.N. Das, Asstt. Director, ESIC, Guwahati.
3) PW-3 : " D.Bhattacharjee, Dy.Director(Fin), Calcutta.

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Inquiry Report in
the case against
Sri C.D. Kalita,
Asstt., E.S.I.Corp.,
North Eastern Region,
Guwahati.

Under Sub Para (1) of Para-3 of the Third Schedule to the E.S.I.Corporation (Staff & Conditions of Service) Regulations 1959, I was appointed by the Regional Director, E.S.I.Corporation North Eastern Region, Guwahati as the Inquiring Authority to enquire into the Charge framed against Sri C.D. Kalita, Asstt., R.O., Guwahati vide order No.43-S.11/18/99-Vig.(CDK) dt.21.12.99. I have since completed the enquiry and on the basis of the documentary and oral evidences adduced before me, prepared my Inquiry Report as under :

2. PARTICIPATION BY THE CHARGED OFFICER IN THE ENQUIRY AND DEFENCE ASSTT. AVAILABLE TO HIM.

The Charged Officer participated in the preliminary hearing and inspection of listed documents held on 21.2.2000. He was assisted by Sri Jugal Baruah, Insurance Inspector, ESIC, Guwahati as his Defence Asstt. during the regular hearing held on 22.5.2000 and 23.5.2000.

3. ARTICLE OF CHARGE AND SUBSTANCE OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR.

The following is the Article of Charge has been framed against Shri C.D. Kalita, Assistant, N.E. Region, Guwahati :-

ARTICLE-I.

Shri C.D. Kalita while functioning as Asstt. at Regional Office, E.S.I.Corporation, Guwahati during the period from 7/91 to 12/97 committed gross misconduct in as much as he himself prepared the records in respect of M/s. Sudarshan Press, Code No.43-2245 relating to ESI matters under his own hand writings which clearly shows that he took up consultancy work with the aforesaid employer during his tenure of employment in ESI Corp. as a full time employee. Thus, taking up of Part-time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provision of Rule 1 of CCS (Conduct) Rules, 1964 which is applicable to the employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff & Conditions of Service) Regulations 1959 as amended.

ARTICLE-II.

Shri C.D. Kalita while functioning as Asstt. at Regional Office, Guwahati, ESI Corporation, N.E. Region during the period from 11/88 to 4/98 committed gross misconduct in as much as he himself prepared the records in respect of M/s. Assam Industrial Corporation Code No.43-1738 relating to ESI matters under his own handwritings which clearly shows that he took up consultancy work with the aforesaid employer during his tenure of employment in ESI Corporation as a full time employee. Thus, taking up of Part-time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provision of Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corp. (Staff and Conditions of Service) Regulations, 1959 as amended.

According to the statement of imputation of misconduct or misbehaviour, Sri C.D. Kalita, Assistant, E.S.I. Corporation, North Eastern Region while functioning as full time employee in the capacity of H.C./Asstt. in the E.S.I.C., Guwahati during the period from (i) July, 1991 to December, 1997 and (ii) November, 1988 to April, 1998 undertook consultancy work with (a) M/s. Sudarshan Press, Guwahati, Code No.43-2245 and with (b) M/s. Assam Industrial Corporation, Guwahati, Code No.43-1738 as evident from the facts that Sri Kalita, ~~empirical~~ himself wrote under his own hand writing, the following challans and Returns of Contribution in respect of the above named employers who submitted those records in the E.S.I.Corporation, N.E. Region, Guwahati :

(A) M/s. Sudarshan Press, Guwahati, Code No. 43 - 2245.

i)	Challan dated 24.7.91 for	Rs.1048/-	Q - 1
ii)	" " " "	Rs.1138/-	Q - 2
iii)	" " " "	Rs.1112/-	Q - 3
iv)	" " 24.8.91 "	Rs.1087/-	Q - 4
v)	" " 4.11.91 "	Rs.1026/-	Q - 5
vi)	" " " "	Rs.1011/-	Q - 6
vii)	" " 30.12.97 "	Rs.6525/-	Q - 7
viii)	" " 1.11.97 "	Rs.3791/-	Q - 9
ix)	" " 3.12.97 "	Rs.2937/-	Q - 10
x)	" " 27.2.96 "	Rs.1057/-	Q - 11

(B) M/s. Assam Industrial Corporation, Guwahati, Code No. 43-1738

i)	Challan dated 10.12.88 for Rs.1172/-	₹ - 12
ii)	" " 19.11.88 " Rs.1189/-	₹ - 13
iii)	" " 9.11.89 " Rs.1127/-	₹ - 14
iv)	" " 13.2.89 " Rs.1101/-	₹ - 15
v)	" " 22.4.89 " Rs.1192/-	₹ - 16
vi)	" " 17.3.89 " Rs.1112/-	₹ - 17
vii)	" " 17.6.97 " Rs.1124/-	₹ - 18
viii)	" " 9.6.97 " Rs. 827/-	₹ - 19
ix)	" " 31.7.97 " Rs. 628/-	₹ - 20
x)	" " 9.9.97 " Rs. 740/-	₹ - 21
xi)	" " 27.9.97 " Rs. 784/-	₹ - 22
xii)	" " 28.10.97 " Rs. 870/-	₹ - 23
xiii)	" " 25.11.97 " Rs. 845/-	₹ - 24
xiv)	" " 28.1.98 " Rs. 846/-	₹ - 25
xv)	" " 28.1.98 " Rs. 664/-	₹ - 26
xvi)	" " 24.2.98 " Rs. 625/-	₹ - 27
xvii)	" " 22.4.98 " Rs. 840/-	₹ - 28
xviii)	" " 20.3.98 " Rs. 584/-	₹ - 29

The above mentioned documents of employers both at "A & B" were referred to the Govt. Examiner of Questioned Documents, Office of the Govt. Examiner of Questioned Documents, Central Forensic Institute, Calcutta alongwith specimen hand writings and also admittedly genuine hand writings of Sri C.D. Kalita for expert opinion. The Govt. Examiner of Questioned Documents, Calcutta vide their opinion No. DXB 19/99/1569 dt.29.6.99 confirmed that the questioned documents, specimen signatures and genuinely admitted signature: also all written by one and the same person i.e. Sri C.D. Kalita.

Thus, it is clearly observed that Sri C.D. Kalita had undertaken consultancy work under M/s. Sudarshan Press, Guwahati, Code No. 43-2245 and M/s. Assam Industrial Corporation, Guwahati, Code No. 43-1738 without permission from the competent authority and thus violated Rule 15 of C.C.S. (Conduct) Rules 1964 which is applicable to the employees of the E.S.I. Corporation by virtue of Regulation 23 of E.S.I.C. (Staff & Conditions of Service) Regulations, 1959.

4. CASE OF THE DISCIPLINARY AUTHORITY :

Shri C.R.Paul, Deputy Director, Recovery, the Presenting Officer, submitted his written brief by mentioning charges in brief, holding of departmental enquiry by the Joint Director, ESIC, East Zone, Calcutta, in which Shri Paul was appointed as the Presenting Officer. The preliminary hearing was first held on 21.2.2000 followed by regular hearings on 22.5.2000 & 16.6.2000. The Presenting Officer in his brief mentioned about submission of documents submitted by the employers in compliance under the ESI Act to the R.O., ESIC, Guwahati, in which the charged official, Shri C.D.Kalita was suspected to have prepared the related documents in his own handwriting, were collected and sent to Govt. Examiner, Calcutta, alongwith Shri Kalita's specimen signatures and admitted handwritings for their opinion. The GEQD, Calcutta, submitted his opinion and confirmed the handwritings of Shri Kalita. In the course of regular hearings all the Prosecution Witnesses except Shri L.Loganathan, Assistant, GEQD, cited in the charge sheet were examined and cross-examined. During the course of examination-in-chief Shri K.C.Ghosh, Asst.Director of examination-in-chief Shri K.C.Ghosh, Asst.Director (Admn.), Guwahati, has also confirmed the challans marked as S-1 to S-10 in respect of M/s Sudarshan Press, Guwahati, (83-2245) and challans marked subsequently as S-17 to S-28 which were received from the employer, M/s Assam Indl. Corporation, Guwahati (43-1738) were received and processed in the Insurance Branch of R.O. ESIC Guwahati. Shri Ghosh also confirmed the handwriting and signatures of Shri Kalita from the documents marked as S-30 to S-34 and S-37 to S-40. (iv).

Shri D.N.Das, Asst. Director (Audit), R.O. ESIC, Guwahati, also confirmed that the documents marked as S-40, S-40(i) to S-40 (iv) were written and signed by Shri C.D.Kalita, in his presence from the documents marked as S-29 and S-29(i).

Shri D.Bhattacharjee, Dy.Director(F), R.O. ESIC, Calcutta, PW-3, ex-D.D.(F), R.O. ESIC, Guwahati, in his deposition dt. 16.6.2000 also confirmed the documents marked S-35 & S-36 are the records of files No. 43-F.28/21/94-95 and 43-F.23/20/88/Accounts of F&A/cs Br. of R.O.Guwahati and whereas the portion marked on red enclosures on Pages 3, 4, 5 are written by Shri C.D. Kalita, charged official and were seen/authenticated by him. The evidence of Shri Loganathan, Assistant, QED, Calcutta, PW-4, was not felt necessary subsequently as the charged official Shri C.D.Kalita, vide his letter dt. 5.11.99, addressing to the Competent Authority has admitted that he had helped these employers by preparing the above mentioned ESI records/documents and requested to forgive him for his misconducts as levelled against him. Shri C.D.Kalita, charged official, did not produce any witness in his defence.

From the facts discussed while examining the cited documents, in support of the charges and the evidence adduced by the Prosecution Witnesses corroborating the facts and circumstances of the case during the course of hearings, it has been established beyond any reasonable doubt that Shri Kalita while functioning as an Assistant in the ESIC, R.O.Guwahati, was actually doing part time consultancy works with (i) M/s Sudarshan Press, Guwahati, (ii) M/s Assam Indl. Corporation, Guwahati, without any permission from the Competent Authority and violated Rule 15 of the C.C.S. (Conduct)

Rules, 1964, which is applicable to the Corporation employees by virtue of Regulation 23 of the ESIC (Staff & Conditions of Service) Regulations, 1959, as amended and as imputed in the charges.

5. CASE OF THE DEFENDANT :

Shri C.D.Kalita, charged official, submitted his statement of defence as under -

a. While acknowledging the receipt of the charge sheet vide Memo No. 43-S-11/18/99-Vig(CDK) dt. 22.10.99, regarding breach of the provision of Rule 15 of CCS (Conduct) Rules 1964, I prayed for 10 days time from 25.10.99 for submission of written statement on defence as I was on tour from 26.10.99 to 17.11.99 for audit of L.Os. But the prayer has not been accepted to as per letter No. 43-S.11/18/99(CDK) dt. 2.11.99 which was received on 5.11.99 at about 5.45 p.m. and had to reply on the spot. Shri Kalita has stated that he helped the employer for making compliance under the ESI Act and also informed that he has given up the task which seemed to be a violation of Rule 15 of C.C.S.(Conduct) Rules and requested to forgive for the misconduct if any. However, Disciplinary Authority, proposed a departmental enquiry under your (Jt.Dir.(DE)) esteemed high office to enquire into the charges framed for taking up of part time consultancy work in both the concerned employers. During the preliminary hearing on 21.2.2000, Shri Kalita stated that he confirmed the handwritings on challans and lone return of contribution but contested the charge of taking up of part time consultancy work under the employers in question as levelled against him. b. That, Sir, during the first regular hearing on 22.5.2000 the prosecution witness, Shri K.C.Ghosh on query of the "Q-6- Shri C.D.Kalita worked for several years

nder you and any loose on part of Shri C.D.Kalita and any doubt about his integrity", replied, that no lapse is noticed during the period in question. During the second regular hearing on 23.5.2000, the prosecution witness Shri D.N.Das, has also answered 'NO' against his querry about working under him as Asst. during audit, any lapse on the part of the charged official or any doubt of integrity. During the third hearing on 16.6.2000 also, the prosecution witness Shri Bhattacharjee, D.D.(F) replied 'NO' against the same question.

c. That, Sir, regarding non-production of any witness in defence of his case Shri Kalita has stated that he was asked to submit the additional documents if any during the preliminary hearing on 21.2.2000. In the meantime he received two letters from the employers and submitted to the J.D.(Dept. Enq.) which confirmed his help as and when approached him for which no payment was made. This confirmed that he was never a part time employee of their concerns as stated by Shri Kalita. Shri Kalita stated that the additional documents were not supplied by the Disciplinary Authority as he observed enquiry authority's letter No. 43-S-11/18/CDK/DE/Cal/2000 dated 27.4.2000.

In conclusion in support of the charges as levelled against him he stated that the charges is based on mere presumption only. He has already stated that he helped the employers in question for filling up the challans and lone return of contribution but mere presence of handwriting in few challans cannot be taken as a composite proof for taking up part time consultancy work. During the regular hearing on 22.5.2000, 23.5.2000 and 16.6.2000, no proof could be produced in support of receiving any fee for any work done from the concerned employer for the assumed violation of Rule 15(4) of C.C.S.(Conduct) Rules, 1964, rather all the prosecution witnesses confirmed the integrity of Shri Kalita as required for a government servant. As such the charges as levelled against him for taking up the consultancy work with the two concerned employers is totally baseless and unfounded which may kindly be quashed.

6. ANALYSIS AND ASSESSMENT OF EVIDENCE.

S-1 to S-10, are the challans in support of payment of contribution under the ESI Act, 1948 for the month of April, 1991 to September, 1991, April, 1996 to September, 1996, January, 1997 to March, 1997, October, 1996 to December, 1996 and for the month of April, 1995, ^{submitted} at S.B.I., Guwahati submitted by M/s. Sudarshan Press, Guwahati.

S-11 to S-28, are the challans in support of payment of contribution under the ESI Act for the period from October, 1988 to December, 1988, January, 1989 to March, 1989, April, 1997 to December, 1997 and January, 1988 to March, 1988 submitted at S.B.I., Guwahati by M/s. Assam Industrial Corporation, Industrial Estate, Guwahati-21.

S-29 and S-29(i), are the Returns of Contribution for the period from October, 1988 to March, 1989 in respect of Assam Industrial Corporation, Industrial Estate, Guwahati-21 under its Code No.43-1738 submitted by the employer to the E.S.I. Corporation, Regional Office, Guwahati.

S-30, is the Joining Report of Sri C.D. Kalita dated NIL after sick leave from 17.5.88 to 2.6.88 which was received by Head Clerk, Admn., ESIC, R.O., Guwahati on 3.6.88.

S-31, is the extention of application for leave dated NIL submitted by Sri C.D. Kalita which was received by Head Clerk, Admn. on 30.5.88.

S-32, is the application of Earned Leave dated 18.8.89 for 15 days from 25.8.89 to 8.9.89 submitted by Sri C.D. Kalita.

S-33, is the another 15 days Earned Leave application dt, 30.12.88 to 13.1.89) submitted by Sri C.D. Kalita.

S-34, is the application for the grant of encashment of E.L. dated 15.12.88 submitted by Sri C.D. Kalita.

S-35, S-36 and S-36(i), are the Note Portions of File No.43-A-28/21/94-95 and File No.43-F-23/20/88-Accounts. Notes depict that Sri C.D. Kalita written notes and Dy. Director(Finance) and Regional Director, Guwahati have seen vide their signature/ initial on the file.

S-37 and S-38, are the leave applications for 15 days Earned Leave each dated 5.12.95 and 7.12.94 submitted by Sri C.D.Kalita

S-39, is an application dt.7.1.99 addressed to the Regional Director, Guwahati from Sri C.D. Kalita, Caretaker, R.O., ESIC, Guwahati in connection with issuance of an Experience Certificate to Sri Kalita, who intended to apply to the post of D.D./ Dy.A.O. etc. against Union Public Service Commission's advertisement No.25/93 under item No.6.

S-40 and S-40(i) to S-40(iv), are the copies of Returns of contribution for the period from October, 1988 to March, 1989 in respect of M/s. Assam Industrial Corporation, Industrial Estate, Guwahati-21 which were written by Sri C.D. Kalita in the presence of Sri D.N. Das, Asstt. Director, ESIC, R.O., Guwahati on 1.6.99.

S-41 and S-41(i), are the Opinion of Govt. Examiner of Question Documents, Office of the Govt. Examiner of Questioned Documents Central Forensic Institute, Bureau of Police Research and Development (Ministry of Home Affairs), Calcutta. Opinion speaks about similarities in hand writing in the questioned documents specimen signatures and genuinely admitted signature of Sri C.D. Kalita and the same were written by one and the same person

(A.D)

Analysis of documentary and oral evidences provide that Sri C.D. Kalita written employers records regarding the above mentioned challans in respect of both the employers submitted to the S.B.I., Guwahati for deposit employers and employees contribution in the E.S.I. Fund A/C. No.1 and Returns of Contribution for the period from October, 1988 to March, 1989 dated 30.4.89 submitted by M/s. Assam Industrial Corporation, Industrial Estate, Guwahati-21 to the E.S.I. Corporation, R.O., Guwahati. Sri C.D. Kalita vide his reply dt.5.11.89 in respect of Regional Office, Guwahati Memorandum No.43-S-11/18/99-Vig. (CDK) dated 22.10.89 admitted that he helped both the employers by preparing the ESI Challans and Returns of Contribution. He also stated that he has already given up the said task and requested to kindly forgive him for the misconduct. employers also vide their letter dt.3.3.2000 and 22.3.2000 also stated that Sri C.D. Kalita helped them for regular compliance as

required under the ESI Act. The above analysis shows that Sri C.D. Kalita undertaken private work with M/s. Sudarshan Press, Guwahati and M/s. Assam Industrial Corporation while he was working as a full time ^{employee} in the office of the E.S.I. Corporation, Guwahati without prior approval of the E.S.I. Corporation.

7.

F I N D I N G S

On the basis of documentary and oral evidence adduced in the case before me and in view of the reasons given above, I hold that both the Charges against Sri C.D. Kalita, Assistant, E.S.I. Corporation, North Eastern Region, Guwahati, are proved.

R.N. ANNA

(R.N. ANNA)

INQUIRING AUTHORITY

ANNA

appointed as the Presenting Officer on behalf of the Disciplinary Authority. The Preliminary hearing in the case was fixed - held on 21-2-99 followed by regular hearing on 22/5/00 and 16/6/00.

Before beginning of the formal hearing, a few of the documents submitted by the covered employers in compliance under the ESI Act to the Regional Office, ESIC, Guwahati in which the charged official Mr. C.D. Kalita was suspected to have prepared the related documents in his own handwriting, were collected and sent to the Govt. Examiner of Questioned Documents, Central Forensic Institute, Calcutta along with some of his specimen signatures and additional hand-writings for his opinion. The GED, Calcutta submitted his opinion vide ofr. No. D&B 19/99/1569 dt. 29-6-99 confirming the hand-writings of Mr. Kalita, charged official in the Questioned documents.

(contd) (S-11 to S-28) (S-29 to S-29(1)) (S-30 to S-36(1))
as Q-12 to Q-29, Q-31 to Q-32, A, & A8^R S-1 to S-8 (S-37 to S-40(1))
~~These documents~~ referred to the on -

In the course of regular hearings all witnesses (except Mr. L. Loganathan, Ass'tl. Director) in the charge sheet were

examined. During the course of

Mr. K.C. Ghosh, Ass'tl. Director (Adm)

is confirmed that the challan aspect of Mr. Sudarshan Press, Ghati, marked subsequently as S-17 to S-28 subsequently to employes of Mr. Assam Industrial Corporation, Guwahati (43-1738) - were received & processed in the Insurance Br. of R.O. ESIC, Guwahati. He also confirmed the handwriting/Signature of Mr. C.D. Kalita for the documents marked as S-30 to S-34 and S-37 to S-40(1).

Mr. D.N. Das, Ass'tl. Director (Adm), R.O. ESIC, Ghati also confirmed that the documents marked as S-40, S-40(1) to S-40(4) were written & signed by Mr. C.D. Kalita in his presence for the documents as under - P/

Registered with A.D.

(Confidential)

Employees' State Insurance Corporation

Regional Office: N.E. Region

Bamunisnanda: Guwahati-2

dt. 22-06-00

No. 43.5.11/18/99-Vig (CDK)

To:

Sri: R.N. Manna

Joint Director (DE)(EZ),
(Inquiring Authority)

ESI Corporation, 1st Floor
124 - A.P.C. Road

P.O. Calcutta - 700006

Sub: Written brief of the disciplinary proceeding against

Sri: C.D. Kalita, Asstt. RO, ESIC, Guwahati

Sir,

In pursuance of your order dated 16-06-00
in connection with the disciplinary proceedings against

Sri: C.D. Kalita, Asstt. RO, ESIC, Guwahati, I submit
herewith the written brief in the case.

THE CHARGE IN BRIEF

Sri: C.D. Kalita, Asstt. RO, ESIC, Guwahati
Charge sheeted with violation of Rule 15
(Conduct) Rules 1964 read with Regulation 2

Employees' State Insurance Corporation

of Service) Regulation, 1959 for doing

works with the ESI Covered ent.
Press, Guwahati (Code No. 43-2245)

to 12/97 and with (ii) M/s. Assam S.
(Code No. 43-1738) during the period

respectively while functioning as
Office, ESI, Guwahati.

As such, a formal departmental proceeding was
ordered by the competent Authority to be held against

Sri: C.D. Kalita for his conduct. A formal
departmental inquiry was accordingly held by the
Joint Director, ESIC (DE)(EZ) Calcutta in which I was

Chair

contd - 1

(P.W-3)

Sri D. Bhattacharya, Dy. Director (Finance), RO, ESIC, ¹
Calcutta (Ex- DD(Fu), RO, ESIC, Guwahati) in his deposition
dt. 16-6-00 also confirmed the documents marked S-35
and S-36 are the records of file No. 43-A 28/21/94-95
and 43-F. 23/20/88/Accounts of F&A Br. of RO, Guwahati and
thereon the position marked under Red enclosures at
Page 3, 4 and 5 are written by Sri C.D. Kalita, charged officer
& were ^{anticipated} by him.

The evidence of Sri L. Loganathan, Asstt, GEQD,
Calcutta (P.W-4 of Annexure-IV) was not felt necessary
Subsequently as the charged official (Sri C.D. Kalita)
made his letter dt. 5-11-99 addressing to the
competent Authority has admitted that he had helped
these employers by preparing the above mentioned
ESI records/documents and requested to forgive his
fault his misconducts as ~~misconduct~~ levelled against him.

Sri C.D. Kalita, CO did not produce any witness
in defence of this case.

From the facts disclosed while examining
cited documents in support of the charges and the
adduced by the Prosecution witness corroborating the
facts and circumstances of the case during the course of
hearings, it has been established beyond any reasonable
doubt that Sri C.D. Kalita while functioning as an Asstt.
in ESIC, RO, Guwahati was actually doing part time
Consultancy works with (i) M/s. Sudarshan Press, Gauhati - 2
(Case No. 43-2245) and (ii) M/s. Assam Industrial Corporation, Ghy
(Case No 43-1738) without any permission from the competent
Authority and violated Rule 15 of the cas (Conduct) Rules,
1964 which is applicable to the Corporation employees by
virtue of Regulation 23 of the Employees' State Insurance
Corporation (Salary and condition of Service) Regulations,
1959, as amended and as imputed in the charges.

Yours faithfully,

Copy to:-

(1) Sri C.D. Kalita, Asstt RO ESIC Ghy-2 (C. R. PAUL), DD(Recd)/P.O.
L.C.O. Sri J. Baruah, Deleice Ass'tt (99), ESIC, Ghy
may also be informed/ informed.

The Asstt Director (Admin.), ESIC, RO, Guwahati-2

for information & necessary action.

To
The Joint Director (A.E.) (E.2)
(Inquiring Authority)
E.S.I. Corporation, 1st Floor,
124- APC Road,
CALCUTTA-700006.

Dated the 28th June, 2000.

Subject- Statement of defence on the written
brief of the disciplinary proceedings
against Sri C.D. Kawta, Assistant, P.R.O.
FSIC, N.E. Region, Guwahati.

Sir,

Kindly refer to letter No. 43-111/18/99-
Viz (CDK) dated 22.6.2000 addressed
your esteemed High Office and copy
to me regarding written brief by the
Presenting Officer against the grievances in
proceedings case against Sri C.D. Kawta,
Assistant, Regional Office, FSIC, N.E. Region.
I have to furnish the statement of
defence as under -

That Sir, while acknowledging
the receipt of charge sheet vide letter No.
No. 43-111/18/99-Viz (CDK) dated 22.11.99
regarding breach of the provision of Rule
15 of C.C.S. (Conduct) Rules, 1964, I pray
for 10 days time from 17.11.99 on
25.10.99 for submission of my written
statement of defence, as I was on tour
from 26.10.99 to 17.11.99 for Audit of local
offices. But the prayer has not been

Granted. P2

38/5

accorded to us in our letter No. 43- S. 14/18/99 (CDK) dated 2.11.99, which I received on 5.11.99 at about 5.45 (PM), and replied on the spot. I have stated that I helped the employers for making compliance under the 1st Act and also informed that I have given up the task which deemed to be a violation of Rule 15 of C.C.S. (Conduct) Rules, and requested to forgive me for the misconduct if any. However, Disciplinary Authority proposed a departmental inquiry under your esteemed High Office to enquire into the charge for taking up of Part time consultancy work with ~~both~~ both the concerned employers.

During the preliminary hearing on 25.2.2000 also, I have confirmed the hand writings of challans and Tax Return of ~~Central~~ but contested the charge of taking up Part time consultancy work under employers in question as ~~divided~~ against me.

That Sir, during the first regular hearing on 22.5.2000 the Prosecution witness Sri K. C. Ghosh, Assistant Director (Audit) on query of 'Q-6' Sri C. D. K. Kawala worked for several years under you. Did you find any lapse on his part in official duties or did you have any doubt of his integrity? Answered that - "no lapse noticed during the period in question".

During the second regular hearing on 23.5.2000 the prosecution witness Sri D. N. Das, Assistant Director (Audit) on query of "Q-6" - currently Sri C. D. K. Kawala is working under you as Assistant (Audit) do you find any lapse on his part or any doubt of integrity?" Answered - "No".

During the Third hearing on 16.6.2000 also the prosecution witness Sri D. Bhattacharya, Dy. Director (Finance) on query "No-1" during

Chancery

6/10/00

The service period of Sri C.D. Kulkarni under you did you find any lapses and lack of integrity on the part of Sri C.D. Kulkarni Answer : "No".

That Sir, regarding non production of any witness in defence of my case I have to state that I was asked to submit the additional documents if any during the Preliminary hearing on 21.2.2000. In the mean time two letters were handed over to me by the employers in question for submitting before you of their own, which confirmed my help as and when they approach me for which no payment was made also confirmed that I was never a part time employee of their concerns, which were submitted to your chamber office on 22.3.2000 as per their request which however observed as not applicable by Disciplinary Authority with letter No. 43-S.11/18X COK/DE/CAC/2000 dated 27.4.2000.

The conclusion in support of the charges as levelled against me is based on mere presumption only. That Sir, I have already stated that I helped the employers in question in filling up the challans and done ~~return~~ of Contribution; but mere presence of handwritings in few challans cannot be taken as a conclusive proof for taking Part time consultancy work. During the regular hearing on 22.5.2000, 23.5.2000 and 16.6.2000 no proof could be produced in support of receiving any fee for any work done for the concerned employers for assumed violation of Rule 15(4) of C.C.S. (Conduct) Rule, 1960; rather all the prosecution witnesses confirmed the integrity of mine, as required for a government servant.

Contd. P14

Exhibit

52-A

1. Is such P.I.C. charged as called
against me for taking up of assault
anay who is in the P.D. (or any)
employers is totally baseless and
unfounded which may kindly be
quashed.

Yours faithfully,

(Signature)

(C. D. KALITA)
Assistant (Analyst) / A.O.
P.O. ESIC, Guwahati-21

To
The Regional Director,
E.S.I. Corporation,
Barunimaidan,
Guwahati-21.

Subject: Inquiry Report in the Disciplinary proceedings case
against Shri C. D. Kalita, Asstt. ESI Corporation,
N.E. Region, Guwahati-21.

Sir,

Kindly refer to Regional Office Guwahati Memo. No.
43-S.11/18/99-Vig.(CDK) dated 17.3.2000 on the above subject.

In this connection I have to submit that I have helped both the concerned employers, as and when they approached me for help by filling up of ESI Forms as mentioned in the Charge Sheet dated 20.10.1999. That Sir, I have never received any fee/ remuneration for any kind of help extended to the employers for their regular compliance, under the ESI Act.

That Sir, as per last para at page No. 11 of the Inquiry Report, both the employers vide their letter dated 3.3.2000 not only confirmed my help for regular compliance for the ESI Act but also confirmed my help on their approach in absence of their concerned dealing Assistants, for payment was made to me for such help. During the regular enquiry, for the charges levelled against me on 20.5.2000, 23.5.2000 and 16.6.2000 no proof could be provided in support of receiving any fee or remuneration for any work done for the concerned employers for the validation of Rule 15 of C.C.S.(Conduct) Rules, 1964; rather the witnesses confirmed the integrity of mine, as for a government servant. That Sir, mere extension of employers may not be construed as taking up of work.

That Sir, the findings of the Inquiry Authority in the instant case may kindly be reviewed and exonerate me from alleged charges of misconduct and misbehaviour.

Yours faithfully,

C. D. Kalita
31.8.2000

(C. D. KALITA)
Assistant, R.O. Guwahati

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE : NORTH EASTERN REGION
BAJUNIMHAIDAL :::: GUWAHATI-21.

HO.43-S.11/18/99-Vig.(CDK) Dated : Sept. 12, 2000.

O R D E R

Shri C. D. Kalita, Assistant, Employees' State Insurance Corporation, N. E. Region, Guwahati was issued a major penalty charge sheet vide this office letter of even No. dated 22.10.99 for the following charges :

ARTICLE OF CHARGE : 1.

Shri C. D. Kalita, while functioning as Assistant at Regional Office, ESI Corporation, Guwahati during the period from 07/91 to 12/97, committed gross mis-conduct inasmuch as he himself prepared the records in respect of M/S Sudarshan Press, Code No. 43-2245 relating to ESI matters under his own handwritings which clearly shows that he took up consultancy work with the aforesaid employer during his tenure of employment in ESI Corporation as a full time employee. Thus, taking up of part-time consultancy work with the above employer without prior ^{is required} help to the from the competent authority tantamounts to consultancy work provision of Rule 15 of CCS (Conduct) ^{Authority} which ^{is required} for the guidance of the employer by the competent authority of the concerned Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

ARTICLE OF CHARGE : 2.

Shri C. D. Kalita while functioning as Assistant at Regional Office, Guwahati ESI Corporation, N. E. Region during the period from 11/89 to 04/98 committed gross mis-conduct inasmuch as he himself prepared the records in respect of M/S Assam Industrial Corporation, Code No. 43-1738 relating to ESI matters under his own handwritings

Contd... 2/-

CF/AN

64

which clearly shows that he took up consultancy work with the aforesaid employer during his tenure of employment in ESI Corporation as full time employee. Thus, taking up of part-time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provision of Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the E employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

An opportunity was given to Shri C. D. Kalita for submission of his written statement of defence against the above charges within 10 days from the date of receipt of this charge sheet dated 22.10.99. Accordingly, Shri Kalita has submitted his written statement of defence on 05.11.99 wherein he has tendered an unqualified apology against the charges levelled against him with a request to withdraw the charge sheet as he was helping the employer without any personal interest and remuneration. His apology could not be accepted as the same was unqualified and there was no clear admittance of the charges.

Accordingly, Shri R. N. Hora, Lt. Director, DE/EZ Calcutta was appointed as Inquiring Authority to enquire into the charges framed against Shri Kalita vide this office order of even No. dated 21.12.99. The preliminary hearing in the case was first held on 21.02.2000 followed by regular hearing on 22.05.2000, 23.05.2000 and 16.06.2000 at Calcutta and Guwahati respectively. The Inquiring Authority has submitted his findings vide his report dated 09.08.2000 with the remarks that "Both the charges against Shri C. D. Kalita, Assistant, ESI Corporation, N. E. Region, Guwahati are proved".

Contd :.. 3/-

Editor

On receipt of the inquiry report, another opportunity was given to Shri Kalita to submit his representation, if any, vide this office letter of even No. dated 17.08.2000 and accordingly Shri Kalita has submitted his representation dated 31.08.2000.

In the said representation dated 31.08.2000 Shri Kalita has submitted the following :

i) He helped both the employers in the absence of the dealing assistant, as and when the employers approached him for help to fill up the ESI forms.

ii) He did not receive any remuneration or fee from the employers for the help given by him. No proof in this regard was produced by the prosecution.

iii) All the prosecution witnesses confirmed his integrity.

iv) His extending help to the employers may not be constituted as consultancy work.

I have gone through the case records. The fact that the charge official has written the relevant documents for the employers has not been disputed by him. The quantum of documents and the relevant dates relating to the documents written by him for the employers unmistakably show that he was doing part-time work for the employers. The contention put forth by the defence in the enquiry that this was done ^{due to absence of their dealing Assistant} at the request of the employers is without any convincing evidence. If the employers and the charged official contend that the charge official was in fact requested by the employers to help them in the absence of their dealing assistants and he helped them without any remuneration, the charged official should have produced the relevant employers in

the enquiry so that they can be subjected to cross examination by the prosecution. In the absence of any such action by the defence, the contention of the charged official in this regard can not be accepted. Similarly, his contention that there is no proof to show that he received any money from the employers is to be taken with a pinch of salt. The part-time consultancy is carried out by the official with the sole intention of getting some extra income and therefore, I find no force in this contention. The last contention of the official that the prosecution witnesses had not deposited anything adverse about his integrity is also not relevant to the case. From the case records, it is seen that the witnesses were put question in cross examination whether they found "any lapse and lack of integrity on the part of Siri C. D. Kalita". In reply all the three prosecution witnesses said "NO". The charges against him, however, are specific. They alleged that he indulged part-time consultancy violating Rule 15 of the CCS (Conduct) Rules, 1964. There is no allegation about the violation of Rule 3(1)(i) of the CCS (Conduct) Rules relating to lack of integrity. Therefore, this plea of the official can not be accepted.

In view of the above, I find no force in the contentions. The charge has been held proved by the Inquiry Officer for good and sufficient reasons and therefore, I agree with the analysis and findings of the Inquiry Officer contained in the Inquiry Report.

As per FR-11, the entire time of the official is at the disposal of the Organization which can utilize him in the manner it deems fit. Therefore, he is duty bound to get permission of the competent authority for doing any part-time consultancy work with any other authority or private person. Obviously, the charged official has not taken any such permission and therefore, his act in undertaking consultancy work with the aforesaid two employers squarely violates Rule 15 of

:- 5 :-

the said Rules. As the employers are also target group for serving by the Corporation, any un-natural cohesion between the officials of the Corporation and employers may result in undue harm to the coverable employees and insured persons in the said concern and also to the ESI Corporation. Therefore, such part-time consultancy is to be viewed as serious mis-conduct.

Now, therefore, I Shri D. N. Pegoo, Regional Director, ESI Corporation, N.E. Region in exercise of power conferred upon me by regulation 12 (2) read with fifth schedule of the ESI Corporation (Staff and Conditions of Service) Regulations, 1959 do hereby impose the penalty of "COMPULSORY RETIREMENT".

(D. N. PEGOO)

REGIONAL DIRECTOR.

Regional Director,

ESI Corporation,

Guwahati-21

To
Shri C. D. Malita,
Assistant (Audit)
ESI Corporation, Regional Office,
Guwahati-21.

EDMS

To,

The Hon'ble Director General,
 E. S. I. Corporation,
 Panchdeep Bhawan, Kotla Road,
New Delhi-2.

Dated Guwahati the 19th September, 2000.

Subject: Appeal petition against the Order No. 43-S.11/18/99-
 Vig. (CDK) dated 12.9.2000 issued by the Regional
 Director, Guwahati-21 in respect of C. D. Kalita,
 Assistant (Auditor) of Regional Office, N.E. Region,
E.S.I. Corporation, Guwahati-21.

Respected Sir,

In response to the Order No. 43-S.11/18/99-
 Vig. (CDK) dated 12.9.2000 (copy enclosed as Annexure-1)
 passed by the Regional Director, N.E. Region, E.S.I. Corpo-
 ration, Guwahati-21, imposing the major penalty of COMPULSORY
 RETIREMENT in respect of C. D. Kalita, Assistant (Auditor),
 Regional Office, N.E. Region, E.S.I. Corporation, Guwahati-
 21, I have to submit the following for your kind consideration
 and favourable order.

That Sir, Charge Sheet was issued vide Memo.
 No. 43-S.11/18/99-Vig. (CDK) dated 22.10.99 proposing to hold
 an enquiry under Regulation 14 and para 3 of the Third Sche-
 dule of Employees' State Insurance Corporation (Staff and
 Conditions of Service) Regulation, 1959 as amended, for ~~breach~~
~~misconduct or misbehaviour for breach~~ of provisions of
 Rule 15 of CCS (Conduct) Rules, 1964, which is applicable to
 the employees of E.S.I. Corporation by virtue of Regulation
 23 of Employees' State Insurance Corporation (Staff and
 Conditions of Service) Regulations, 1959 as amended for
 the following two articles of charges.

Article of Charge-1.

Shri C.D. Kalita while functioning as Asstt.
 at Regional Office, ESI Corporation, Guwahati during the
 period from 07/91 to 12/97 committed gross mis-conduct inas-
 much as he himself prepared the records in respect of M/S
 Sudarshan Press, Code No. 43-2245 relating to ESI matters
 under his own handwritings which clearly shows that he took
 up consultancy work with the aforesaid employer during his
 tenure of employment in ESI Corporation as a full-time employee.
 Thus, taking up of part-time consultancy work with the above

employer without prior permission from the competent authority tantamounts to breach of provision of Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

Article of Charge-2

Shri C. D. Kalita while functioning as Asstt. at Regional Office, Guwahati, ESI Corporation, N.E. Region during the period from 11/88 to 04/98 committed gross misconduct inasmuch as he himself prepared the records in respect of M/S ~~Barakha~~ Assam Industrial Corporation Code No. 43-1738 relating to ESI matters under his own handwritings which clearly shows that he took up consultancy work with the aforesaid employer during his tenure of employment in ESI Corporation as a full time employee. Thus, taking up of part-time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provisions of Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

I have furnished reply for the above chargesheet vide my letter dated 5.11.99 stating that I have helped both the concerned employers by filling up of ESI claim form in question and the lone return of contribution as per the request only and also informed that I have given up such kind of help as deemed to have attract misconduct or misbehaviour and requested to forgive me for the alleged misconduct.

However, the Regional Director vide Order No. 4/18/99-Vig. (CDK) dated 21.12.99 appointed Shri R.N. Manna, Director, DE, E.S.I.C. Eastern Zone as the Inquiring Authority and Shri C.R. Paul, Deputy Director (Recovery), Regional Office, Guwahati-21 as Presenting Officer, to inquire into the charge sheet framed against me. I have faithfully attended the departmental enquiry.

Contd. p/3

Adan

The preliminary hearing of the above departmental enquiry was held on 21.2.2000 at Culcutta. In the mean time both the concerned employers furnished their comments on the subject vide M/S Sudarshan Press, Guwahati-21 letter dated 3.3.2000 and M/S Assam Industrial Corporation, Guwahati-21 letter No dated 2.3.2000 (copies enclosed Annexure-II) which have been submitted to the Inquiring Authority as evidence. Both the employers confirmed that I have helped by filling up of some of the challans entirely on their request, as I am known to them and for ~~them~~ such kind of help they never made any payment as fee or remuneration to me, and as such doing of ~~not~~ part time work in their concerns does not arise. Regular hearing was held on 22.5.2000, 23.5.2000 at Guwahati and on 16.6.2000 at Calcutta and recorded deposition of Prosecution Witnesses of Shri K. C. Ghosh, Assistant Director, Shri D.N. Das, Assistant Director and Shri D. Bhattacharjee, Deputy Director (Finance) respectively. The Regional Director Guwahati-21 has kindly consented Shri J. Barua, Insurance Inspector, Guwahati Division I, to act as Defence Assistant. During hearing the Prosecution Witnesses confirmed the handwriting and signature of ~~mine~~ in other official documents and during their deposition all the three Prosecution Witnesses confirmed the integrity and find no lapse on my part in official duties during my tenure of service under them.

As per the Ordersheet of the departmental proceeding, dated 16.6.2000 the Presenting Officer Shri C.R. Paul, Dy. Director, Recovery, vide letter dated 22.6.2000 (copy enclosed as Annexure-III) submitted written brief with the conclusion that - "From the facts disclosed while examining the cited documents in support of the charges and the evidences adduced by the Prosecution witnesses corroborating the facts and circumstances of the case during the course of hearings, it has been established beyond any reasonable doubt that Sri C.B. Kalita while functioning as an Asstt. in ESIC, RO, Guwahati was actually doing part-time consultancy works with (i) M/S Sudarshan Press, Guwahati-21 (Code No. 43-2245) and (ii) M/S Assam Industrial Corporation, Guwahati (Code No. 43-1738) without any permission from the competent Authority and ~~therefore~~ violated Rule 15 of the CCS (Conduct) Rules, 1964 which is applicable to the Corporation employees by virtue of Regulation 23 of the Employees' State Insurance Corporation

(Staff and Conditions of Service) Regulations, 1959 as amended and as imputed in the charges" is unfounded one and based on mere presumption only and as per evidence produced by the concerned employers it has been confirmed that I was never engaged in part time consultancy work. As such, I requested in my statement of defence on the written brief of the disciplinary proceedings vide my letter dated 28.6.2000 (copy enclosed as Annexure-IV) to quash the charges of misconduct.

I am very surprised at the findings of the Inquiring Authority as both the charges levelled against me has been treated as proved on the basis of documentary and oral evidence adduced in the instant case and in view of the reasons stated in the Inquiry Report dated Nil, which is unfounded one and based on mere presumption, as no proof could be produced in support of part-time consultancy work. So, I have requested vide my letter dated 31.8.2000 (copy enclosed as Annexure-V) to review the same to exonerate me from the alleged charges of misconduct.

The Order passed by the Regional Director, No 43-
S.11/12/99-Vig.(CDK) dated 12.9.2000 imposing the a t penalty
of Compulsory Retirement for the assumed violation of provisions
of Rule 15 of C.C. (Conduct) Rules, 1964 was a bolt from the blue.

In view of the facts and submission made by me in the instant case, I felt aggrieved at the Order imposing the major penalty of Compulsory Retirement. Mere presence of my hand-writings in the few challans and only Return of Contributions cannot be treated as a conclusive proof for taking part-time consultancy work. Besides, evidence produced by the concerned employers confirmed that I was never engaged in part-time consultancy work. I am totally innocent and I have not violated the provision of Rule 15 of CCS (Conduct) Rules, 1964.

I, therefore, pray before your esteemed High Office kindly to review the case sympathetically and withdraw the Order passed by the Regional Director, U.C. Region, S.S.I.C. Guwahati-21 vide No. 43-S.11/12/99-Vig.(CDK) dated 12.9.2000 to oblige me for serving the Corporation as a loyal servant.

Yours faithfully,

(*C. D. Kalita*)
1979/2000

(C. D. KALITA)
Regional Office, ESIC
Guwahati-21.

Enccl: As above.

62

- 63 -
- 56 -

X2

Copy to the Regional Director, N. E. Region, E.S.I. Corporation,
Guwahati21, for information and kind perusal.

(C. D. Kalita)

(9.9.2000)

(C.D. KALITA)
Assistant (Auditor) RO: E.S.I.C
(On Compulsory Retirement)
APP/AL/2000

via
major

3

MSW

HEADQUARTERS' OFFICE
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN: KOTLA ROAD: NEW DELHI

No. C-16/14/82/2000-Vig.

Dated: 25.1.2001

ORDER

Shri C.D. Kalita, Ex. Asst., ESIC, Guwahati has filed an appeal dated 19.9.2000 against the order dated 12.9.2000 passed by the Regional Director, Guwahati imposing the penalty of 'compulsory retirement'.

Shri Kalita was issued a major penalty charge sheet on 22.10.99 for doing part time consultancy work with M/s Sudarshan Press (Code No. 43-2245) and M/s Assam Industrial Corporation (Code No. 43-1738) while working at Regional Office, Guwahati.

The inquiry in the case was conducted by Shri R.N. Manna, Jt. Director (DE), EZ, Calcutta who submitted his inquiry report dated 9.8.2000 holding the charges as proved. After considering the representation, submitted by Shri Kalita in response to inquiry report, the Regional Director imposed the aforesaid penalty.

In the present appeal, Shri Kalita has contended that the findings of the inquiry officer are based on presumption and no proof could be produced in support of part time consultancy work. Mere presence of his handwriting in the few challans and returns cannot be treated as a conclusive proof for taking part time consultancy work, he has added. Both the employers furnished their comments on the subject and confirmed that the appellant had helped them by filling up some of the challans on their request as he was known to them and they never paid any fee or remuneration for such help and as such doing of part time work in their concerns does not arise, he has further stated. He has requested to withdraw the penalty order.

The appellant vide his letter dated 5.11.99, submitted in response to charge sheet, admitted both the articles of charge. He also stated in the said letter that he had already given up the task and requested to forgive him for the misconduct. This letter of admission was enough as a proof beyond doubt whereas only preponderance of probability is required to prove the charge. The disciplinary authority has rightly mentioned in the penalty order that the sole intention for doing part time work is to get some extra income. But the persons doing such work cleverly avoid any trace of proof of receiving remuneration etc. So far as the letters given by the concerned employers is concerned, on account of the rapport developed with them the appellant could obtain a letter written the way he wanted. Those letters, therefore, cannot be given credence to.

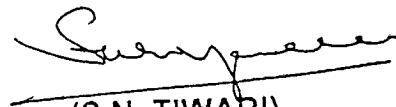
60 रुपये ० दर्शन १८.१. दर्शन दर्शन
दर्शन दर्शन दर्शन दर्शन
पूर्ण १८.१. १८.१. १८.१. १८.१.

In view of the above, I conclude that there is no force in the contentions of the appellant. The charges of indulging in part time consultancy with the two employers have been proved and I agree with the findings of the Inquiry Officer and the Disciplinary authority in this regard.

Shri Kalita is a regular employee of the Corporation and the whole time of the official is at the disposal of the Corporation. The unauthorised part time consultancy is clearly in violation of rule 15 of the CCS (Conduct) Rules, 1964. As the Corporation is serving inter alia the employers, any such part time consultancy is undesirable and serious because the official will be siding with the employer and the interest of the Corporation will be neglected. Therefore, the penalty awarded in the case cannot be found fault with.

However, the official has not come to adverse notice so far and this is the first disciplinary action against him in his entire service from 12.3.79. Therefore, I take a compassionate view in the case and reduce the penalty from compulsory retirement to that of reduction of pay by five stages. The reduction shall be w.e.f. the date of his rejoining duty in terms of this order. The reduction shall be operative for a period of 5 years and the official will not earn increments of pay during the period of such reduction. On the expiry of the penalty period, the reduction will have the effect of postponing the future increments of pay.

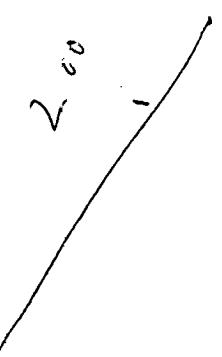
Shri Kalita is accordingly hereby reinstated in service and he shall report for duty before the Regional Director, Guwahati within three days of receiving this order.


(S.N. TIWARI)
ADDL. COMMISSIONER (P&A)

✓ Shri C.D. Kalita,
Ex. Asst.
Guwahati
(Through Regional Director, Guwahati).

Copy to:-

1. Regional Director, ESIC, Guwahati.
2. Dy. Director (Fin.), ESIC, Guwahati.
3. Guard file.
4. Spare copy.


ASST. DIRECTOR (VIG.)

63
30/11/2001

To The Director General (P&A),
E. S. I. Corporation,
New Delhi - 2.

Through the Regional Director, ESIC, Guwahati-21.

Subject: Payment of pay and allowances for the intervening period between Compulsory Retirement and reinstatement in regard of C.D. Kalita, Assistant E.S.I.C.

SIR,

Kindly refer to Hqrs. Office Show Cause Notice dated 14/12/2000-Vig. dated 12.3.2001 regarding the proposal for payment of 50% pay and allowances for the intervening period between compulsory retirement and the date of reinstatement in service of the Corporation.

In this connection I have to state that the findings of the Disciplinary proceedings for the alleged charge of misconduct for violation of Rule 18 of CCS (Conduct) Rules, 1964 are perverse and the penalty of compulsory retirement imposed by the Regional Director is malafide and highly vindictive, due to the audit observations, raised during my discharge of my official duty, for serious financial irregularities and misuse of power, which caused loss of Corporation money for lakhs of rupees. The Appellate Authority however, reduced the penalty to that of reduction of pay by five stages on appeal. The penalty of Compulsory retirement imposed in the instant case is quite inconsistent with that of the charge. For the same type of charge against M.C. Nag, H/C of this region penalty was censured. For his second similar charge, after a duly conducted inquiry, penalty of reduction of pay by two stages has been imposed vide Hqrs. Office Order No. C.14/14/37/2000-Vig. dated 8.12.2000. The penalty imposed for the same charge varied at the hands of different Authorities under the same law Rules and Regulation. So, the penalty of compulsory retirement imposed by the authority is totally biased and discriminatory, which was uncalled-for. Besides, final order imposing the penalty in respect of M.C. Nag was issued on 8.12.2000, as referred above, after 7/8 months of his representation against the Enquiry Report. But, I have furnished my representation against the Enquiry Report on the due date on 31.8.2000 to the Assistant Director, as the Regional Director was on tour, the same was faxed to Hqrs. Office on 1.9.2000 as desired by the Regional Director for obtaining Hqrs. Office approval through K.B. Koiri, (Steno. to Regional Director, Guwahati) who was stationed there at Hqrs. Office for the said purpose and accordingly final order imposing the penalty of compulsory retirement was issued on 12.9.2000 in hottest haste. As a result, I have suffered unbearable mental agony and harassment.

In view of the above I have to state that the proposal to pay 50% of pay and allowances for the above mentioned period is not acceptable to me. In terms of FR 54, I am entitled to get the pay and allowances to which I would have been paid, had I not been compulsorily retired. I, therefore, request your Good Office to consider my case sympathetically to treat the above period as duty for all purposes and oblig.

Yours faithfully,

(C.D. KALITA)
(C.D. KALITA)

Advanced copy to the Director General, ASSISTANT ESIC, M.E.R.
(P&A), New Delhi-2 for kind perusal.

Penalties in different cases are decided, keeping in mind the different circumstances in each case. From the case records, I find that a lenient view has already been taken by reducing the penalty of compulsory retirement to that of reduction in pay by five stages. As per FR 54(5), the intervening period in this case cannot be treated as duty period for all purposes. Therefore, it is ordered that the said intervening period shall be treated as non-duty for all purposes.

Further, as per FR 54(4), full pay and allowances for the intervening period between the compulsory retirement and reinstatement cannot be paid in the case of this type. However, considering the nature of the case, the official has been given necessary relief by reinstating him in service. As of now, 50% of pay and allowances will be appropriate and would meet the ends of justice. Accordingly, it is hereby ordered that ~~or~~ the intervening period between compulsory retirement and reinstatement in service on 2.2.2001 (FN), Shri C.D. Kalita shall be paid 50% of pay and allowances. The payment shall be subject to the provision of FR 54(8).

(P.GANAPATHI SWAMY)
DEPUTY DIRECTOR (VIG.)

For ADDL. COMMISSIONER (P&A)

Shri C.D. Kalita,
Asst.
(Through Regional Director, Guwahati).

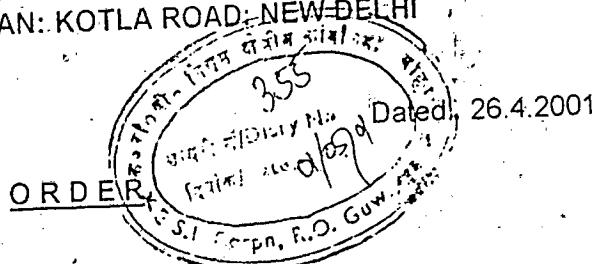
Copy to:-

1. Regional Director, ESIC, Guwahati.
2. Dy. Director (F), ESIC, Guwahati.
3. Guard file.
4. Spare copy

DY. DIRECTOR (VIG.)

HEADQUARTERS' OFFICE
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN: KOTLA ROAD: NEW DELHI

File No. C-16/14/82/2000-Vig.



Shri C.D. Kalita, Asst., ESIC, Assam Region submitted an appeal dated 19.9.2000 against the order dated 12.9.2000 passed by Regional Director, Guwahati imposing the penalty of compulsory retirement. The penalty was imposed after a major penalty action for part time consultancy work with M/s Sudarshan Press (Code No. 43-2245) and M/s Assam Industrial Corporation (Code No. 43-1738) while working at Regional Office, Guwahati. The case of Shri Kalita was considered in appeal and he was re-instated in service vide appellate order dated 25.1.2001.

Subsequently, a show cause notice was issued to the said Shri Kalita on 12.3.2001 proposing to treat the intervening period between compulsory retirement and reinstatement in service as non-duty for all purposes and also to pay 50% of the pay & allowances for the said intervening period. Shri Kalita was asked to show cause as to why the action as proposed should not be taken.

Shri Kalita has submitted a representation dated 21.3.2001 furnishing therein the pleas as under:-

The penalty of compulsory retirement was malafide and vindictive and quite inconsistent with the charge. Further, for the same type of charge, Shri M.C. Nag, Head Clerk was awarded censure and in another similar case Shri Nag was awarded reduction of pay by two stages. The order of his compulsory retirement was issued in haste and was later reduced in appeal to that of reduction of pay by five stages. The proposal of 50% of pay and allowances is not acceptable to him and he is entitled for the pay and allowances to which he would have been but for compulsory retirement. The intervening period should therefore be treated as duty period for all purposes.

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE: NORTH EASTERN REGION
GUWAHATI-21

No. 43-A. 20/11/73/79-Estt.

Dated 2-2-2001

OFFICE ORDER NO 17 of 2001

The penalty of Compulsory Retirement imposed on Sri C. D. Kalita, Assistant, Regional Office, Guwahati from the services of the Corporation from 12-9-2000 (AN) issued vide Regional Office, Guwahati Order No. 43-S.11/18/99-Vig. (CDK) dated 12-9-2000 has been reduced to that of reduction of pay by five stages and Sri Kalita has been reinstated in the services from the date of rejoining vide Hqrs. Order No. C.16/14/82/2000-Vig. dated 25-1-2001.

In pursuance of above Hqrs. order, the basic pay of Sri C. D. Kalita, Assistant has been reduced from Rs. 7075/- to Rs. 6200/- in the scale of Rs. 5500-175-9000/-. The reduction will be effective from 2-2-2001 (FN) on which date Sri Kalita has rejoined his duties at Regional Office, Guwahati. The reduction shall be operative for a period of five years and the official will not earn increments of pay during the period of such reduction. On expiry of the penalty period, the reduction will have the effect of postponing the future increments of pay.

2/2/01
(D.N. REGOO)
REGIONAL DIRECTOR

To

1. Sri C. D. Kalita, Assistant, Regional Office, Guwahati.
2. The Dy. Director (Finance), ESIC, R.C. Guwahati
3. Cashier, Regional Office, Guwahati
4. Office Order Register.

M. D. D.

REGISTERED A/D.
FORM C-11

EMPLOYEES' STATE INSURANCE CORPORATION

NORTH EASTERN : REGIONAL OFFICE

BAMUNIMAI DAN : GUWAHATI-21

No. 43-

Dated

From : The Regional Director.

E. S. I. Corporation,
Guwahati-21

To : Shri

M/s

.....

Subject : Implementation of the E. S. I. Act, 1948-Registration of Employees and Factories/Establishments Under Section 2(12)/1(5) of the E.S.I. Act, 1948 as amended

Dear Sir,

1. I have to inform that Under Section 1(13) of the E.S.I. Act, the Central Government has vide Notification dated made the provisions of the Act, applicable to all factories covered under the Act, within the (area)

2. I have further to inform you that the appropriate Government has extended the provisions of the Act to other establishment Under Section 1(5) of the E. S. I. Act, with effect from vide Notification dated copy enclosed.

3. Under Section 2 A of the Act, such a factory / establishment is required to register itself under the Act, and Chapter IV there of casts a responsibility on the principal employer thereof to ensure its employees and to pay contributions in respect of such employees covered under the Act.

4. On the basis of the particulars in respect of your factory / establishment submitted by you, the report of the Inspection conducted by the Insurance Inspector/ Local Office Manager of your factory establishment on your factory / establishment falls within the purview of Section 2(12)/1(5) of the Act W. E.F In case, however, subsequent facts reveal that your factory / establishment was coverable from a date prior to the date mentioned above you shall make yourself liable to comply with the provisions of the Act, from such earlier date.

5. You are requested to take immediate steps for registration of your employees filling in Declaration Forms and payment of contributions, maintenance of records etc, from the date of coverage of your factory establishment under the Act.

6. For the sake of convenience, your establishment / factory 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

(2)

of the Corporation situated at has been instructed to render necessary assistance to you in connection with registration of your employee. 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.

7. It is requested that publicity may kindly be given to lists of insurance Medical Practitioners/State Insurance Dispensaries, in your factory / establishment to enable your employees to choose their State Insurance Dispensaries / Insurance Medical Practitioner. Required forms etc. may please be collected from the Local Office mentioned above to which all your employees will also be attached.

8. A list of Bank branches who are authorised to accept E.S.I. contributions is enclosed. You may kindly choose one of these branches convenient to you, under intimation to this office and to the concerned branch of the State Bank of India and deposit the E.S.I. dues in that branch only. In case no intimation is received within 15 days of the receipt of this letter, the amount of contribution deposited in one of the specified branch would be considered a Nominated Branch for your factory/establishment.

9. The Corporation officials would be please to render all necessary and possible assistance to you in discharging your duties and obligation under the E.S.I. Act, 1948 and I am confident of prompt and timely compliance with the provisions of the E.S.I. Act and Regulations on your part.

Yours faithfully,

ENCLOSED : as above.

Asstt. DIRECTOR
For Regional Director

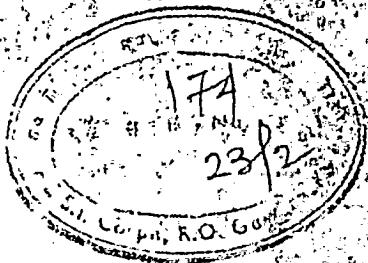
Copy to :—

1. Insurance Inspector.....
2. Local Office Manager

Asstt. DIRECTOR
For Regional Director

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EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN, KOTLA ROAD
NEW DELHI - 110 002



DELEGATIONS OF POWERS

OF

REGIONAL DIRECTORS AT REGIONAL OFFICES / DIRECTORS
JOINT DIRECTORS-IN-CHARGE AT SUB-REGIONAL OFFICES
AND JOINT DIRECTOR (ADMINISTRATION) HQRS.

(Authority : ESIC Hqrs. Letter No. A-38/14/2/95-MSU dated 10th
Feburay 1999.)

Issued by
Director General
ESIC, NEW DELHI

EMPLOYEES STATE INSURANCE CORPORATION
PANCHDEEP BHAVAN, KOTLA ROAD, NEW DELHI

No.A-38/14/2/95-MSU

Dated: 10th February 1999

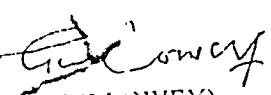
MEMORANDUM

The consolidated delegations of powers of the Regional Directors were earlier reviewed in 1985 and circulated for implementation vide Memorandum No.A-38/14/1/85-O&M dated 23rd July 1985 / 7th August, 1985.

In view of the decision taken in the Regional Directors meeting held on 10 October, 1996, it was decided to overall review the existing delegations of powers of the Regional Directors, Director / Jt.Director-Incharge, SROs and Jt.Director (Administration) Headquarters.

In pursuance of the resolution regarding delegation of powers passed by a Standing Committee at its meeting held on 24th May, 1968, the Director General decided to enhance the existing delegations in respect of certain matters and to delegate some additional powers to the Regional Directors, Director, Jt.Director-Incharge and Jt.Director (Administration) Headquarters. The nature and extent of the enhanced / additional powers delegated is given at Annexure "V".

Receipt of this Memo may kindly be acknowledged.


(G.C.LOWEY)
DIRECTOR(MSU)

Copy to:

1. All Regional Directors.
2. All Directors/Jt.Director-In-Charge SROs.
3. All Jt.Director(Finance)/Dy.Director(Finance).
4. All Jt. Directors (Administration) Headquarters.
5. All Branch Officers at Headquarters Office.
6. All Branches at Headquarters Office.



DESCRIPTION

DE. EXTENT OF POWERS DELEGATED

ii) When the substitute is engaged on daily wage basis he is paid the rates approved by the Local Municipality/State Govt. for that category of staff.

iii) When a substitute is engaged in a leave vacancy exceeding 30 days, he should be appointed in the regular scale.

To engage Part-time Sweeper/Scavengers/Water Carriers for:-

Full powers subject to the condition that part-time Sweeper/Scavengers/Water Carrier is engaged:-

i) Local Offices, Mini Local Offices.

i) Up to a remuneration not exceeding Rs.250/- per month.

ii) Pay Offices/Inspection Offices/MR Offices situated in independent hired buildings.

ii) Up to a remuneration of Rs.75/- per month.

NOTE:- The above rates of remuneration are maximum. The Regional Directors should not allow these rates as a matter of rule or routine unless they are satisfied with reference to the locally prevalent rates, needs, area of the premises etc.

To engage a substitute in the leave vacancy of a Record Sorter-cum-Peel in Local Offices/Mini Local Offices.

Full powers subject to the conditions:-

i) The absence is due to his remaining on EL or CL even for less than ten days and that only one post of Record Sorter-cum-Peel is sanctioned for the Local/Mini Local Office.

ii) The substitute is engaged on daily wages rates approved by the Local Municipality/State Govt. for that category of staff.

AN

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84
 S.NO. / DESCRIPTION OF POWERS

EXTENT OF POWERS DELегATED

✓/19 i) To impose minor penalties specified in clauses (i) to (iv) of Regulation 11 of ESIC staff & conditions of service Regulations.

ii) To impose any of the penalties specified in Clauses (i) to (ix) of Regulation 11 of ESIC Staff and conditions of service Regulations.

iii) The recruitment of substitute will be made in accordance with the instructions issued by the Headquarters Office from time to time.

iv) For periods up to and including 30 days, the substitute is engaged on daily wages rates approved by the Local Municipality/State Govt. for that category of staff. For period exceeding 30 days the substitute may be engaged in the regular scale of pay.

Full powers in respect of Insurance Inspectors/Audit Inspectors/Manager Gr.II/PA/Junior Hindi Translators subject to the condition that the powers shall be exercised in respect of employees in their respective regions/offices.

Full powers in respect of Group 'C' (excluding Insurance Inspector/Manager Gr.II/PAs/Junior Hindi Translators) and Group 'D' employees in their respective regions/Offices.

NOTE 1: The Director General will continue to be the Disciplinary Authority in respect of HCs/Assts. Whose appointments have been made by him or whose appointments have been made before 1-12-80 i.e. prior to the issue of this Office instructions of Memo No.7(3)-1/74.E.1(B) dated 15.11.80, to impose major penalties specified in clauses (v) to (ix) of Regulation 11-ibid.

NOTE 2: This power is not exercisable by the Director/Joint Director in charge of the SRGs.

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6/12/01

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. NO. 361 OF 2001

Shri C.D.Kalita

-Vs-

Union Of India & Ors

-And-

In the Matter of:

Written Statements submitted by
the Respondents

The Written Statements of the above noted respondents
are as follows :

That with regard to the statements made in para 1, the respondents beg to state that the applicant had not taken any permission from the competent authority for doing consultancy work and on the basis of report of enquiry officer, he was awarded the major penalty of compulsory retirement by the Regional Director, Guwahati vide this office order dated 12.9.2000. Further, the appellate authority has taken a compassionate view in the case and reduced the penalty from Compulsory Retirement to reduction of pay by five stages w.e.f. the date of his rejoining duty and the applicant would not earn increment of pay during the period of such reduction as per Hqrs. order no. C-16/14/82-2000-Vig dated 25.1.2001 (copy enclosed) as appeal by the applicant.

Copy of order dated 12.9.2000 is annexed herewith
and marked as Annexure-A.

-2-

2. That with regard to the statements made in para 2,3,4 and 4.1 of the application, the respondents beg to offer no comments.

3. That with regard to the statements made in para 4.2, of the application, the respondents beg to state that the applicant was promoted as Insurance Inspector/Manager Gr.II and was posted at Kolkata on regular basis on the recommendation of DPC as per Hqrs. Office order No. 160 of 1999 issued vide No.A.22(15)-2/98-E.I(A) dated 30.3.99 but the applicant refused to take promotion and continued to serve as Assistant/H.C.

4. That with regard to the statements made in para 4.3, of the application, the respondents beg to state that the applicant was advised/directed to submit a written statement of defence within 10 days as per this office Memo No 99-Vig. (CDK) dated 22.10.99 .

The applicant vide his letter dated 5.11.99 in response to Charge-sheet, admitted both the article charges. He also stated in the said letter that he has given up the part time consultancy mentioned in the and requested to forgive him for the mistake. The said admission was not unambiguous, inquisitor to conduct inquiry in the case.

5. That with regard to the statements made in para 4.4 of the application, the respondents beg to state that the Recovery Officer and the Dy. Director (Recovery) is one and the same post which was held by Sri C.R.Paul who was appointed as

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Presenting Officer and there is no violation of any rules in this regard. As the said Shri Paul is a serving employee of the Corporation, his appoint as Presenting Officer has been validly made as per para 3(4)(c) of the Third Schedule of the ESIC(Staff and Condition of Service) Regulation, 1959.

6. That with regard to the statements made in para 4.5, of the application, the respondents beg to state that Shri Kalita was directed to submit list of defence witness vide order No. 43-S.II/18/CDK/CAL dated 21.2.2001 but he did not furnished the same.

7. That with regard to the statements made in para 4.6, the respondents beg to state that full opportunity was given to the applicant to prove the charge and the charges of part time consultancy with two employers have been held proved by the inquiry officer for good and sufficient reasons.

8. That with regard to the statements made in para 4.7, the respondents beg to state that no irregularities has been committed as alleged by the applicant.

9. That with regard to the statements made in para 4.8 to 4.10, the respondents beg to offer no comments other than what have already made against the foregoing paragraph 1 above.

10. That with regard to the statements made in para 4.11, of the application, the respondents beg to state that the applicant on receipt of the order dated 25.1.2001 duly joined the service on 2.2.2001(FN) and the applicant has been given necessary relief by reinstating him in service and ordered 50%

77
78

-4-

pay and allowances subject to the provision of FR.54(8).

11. That with regard to the statements made in para 4.12, of the application, the respondents beg to submit the comments what have already made against the foregoing paragraph 1 above.

12. That with regard to the statements made in para 4.13, the respondents beg to state that the applicant while functioning as Assistant at Regional Office, Guwahati during the period from November '88 to April, 98 committed gross mis-conduct as he himself prepared the records of the Employer under his own handwriting which clearly shows that he took up consultancy work during his tenure of employment in E.S.I.Corporation as a full time employee. Thus, taking up of part time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provision of Rule-15 of CCS(Conduct) Rules, 1964 which is applicable to the employees of E.S.I.Corporation by virtue of Reg.23 of ESI Corporation(Staff and condition of service) Regulations, 1959 as amended. The misconduct is obvious in view of the judgement dated 19.7.2001 given in similar case (writ petition No.10769 of 2000) by the High Court of A.P. in ESI Corporation Vs G.Venugopal and others. A copy of the judgement is enclosed as Annexure 'B'. Hence, the charges were correctly made.

13. That with regard to the statements made in para 4.14, the respondents beg to submit the comments what have already made against the foregoing paragraph 4.13 above.

14. That with regard to the statements made in para 4.15, the respondents beg to state that appellate authority's order is sustainable which is based on facts as per his own statement.

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15. That with regard to the statement made in para 4.16, the respondents beg to state that it has been proved by the Inquiry Authority that he performed part time job in the above mentioned Companiew which violated the CCS(Conduct) Rules applicable to Govt. employees.

16. That with regard to the statements made in para 4.17, the respondents beg to state that no rules has been violated in issuing the order.

17. That with regard to the statements made in para 4.18, the respondents beg to state that Regional Director is delegated to act as a disciplinary authority to impose penalty which is as per rule. As per the Fifth Schedule of the ESIC(Staff and Conditions of Service)Regulations, 1959,Regional Director is the appointing authority and also a disciplinary authority competent to impose any penalty on the applicant. A copy of the said Fifth Schedule is enclosed as Annexure-C .

18. That with regard to the statements made in para 4.19 of the application, the respondents beg to offer no comments.

19. That with regard to the statements made in para 5.1, the respondents beg to state that as stated in para 4.18. Further, the present penalty has been imposed by Hqrs. which is as per rules.

20. That with regard to the statements made in para 5.2, the respondents beg to state that the applicant was given sufficient opportunities to show cause before issuing the penalty order.

21. That with regard to the statements made in para 5.3, the respondents beg to state that the applicant vide his letter dated 5.11.99 submitted in response to charge sheet admitted both the articles of charges. The letter of admission is enough to act as a proof beyond doubt, whereas only

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preponderance of probability is required to prove the charge and the disciplinary authority has rightly mentioned in the penalty order that the sole intention for doing part time work is to get some extra income and the applicant doing such work cleverly to avoid only trace of proof of receiving remuneration etc.

22. That with regard to the statements made in para 5.4, the respondents beg to state that the comments have already made against the foregoing paragraph 1 & 5.3 above.

23. That with regard to the statements made in para 5.5 and 5.6, the respondents beg to submit the comments what have already made against the foregoing paragraph 1 above.

24. That with regard to the statements made in para 5.7, the respondents beg to state that action has been taken as per the inquiry report which proved the charges of articles which is as per rule.

25. That with regard to the statements made in para 5.8 and 5.9, the respondents beg to submit the comments what have already made against the foregoing paragraph 7 above.

26. That with regard to the statements made in para 5.10, the respondents beg to state that as the penalty has been imposed as per rules, there is no truth in the statement of the applicant.

27. That with regard to the statements made in para 5.11 as already stated in above paras.

28. That with regard to the statements made in para 5.12, the respondents beg to state that as already stated in para 4.13 and 5.3 above.

29. That with regard to the statements made in para 5.13, the respondents beg to state that as already stated in para 4.4.

30. That with regard to the statements made in para 5.14, the respondents beg to state that the disciplinary proceeding, findings and imposition of penalty are as per rules and regulations and as such, sustainable.

31. That with regard to the statements made in para 6.7, 8.1, 8.2, 8.3 beg to state that the applicant has put forth a number of pleas for the first time in this applications which is not permissible in view of the decision of CAT Jodhpur in Rajendra Kumar Pareek Vs Union Of India and Others 2001(3) SLJ 97(CAT). As his pleas are without any force, he is not entitled for any relief.

32. That with regard to the statements made in para 8.4, the respondents beg to state that as stated in para 1 above.

33. That with regard to the statements made in para 8.5, the respondents beg to state that the applicant refused to accept the promotion and for which the immediate juniors of

81-
98

-8-

the applicant has been promoted as Insurance Inspector/Manager
Gr.II.

34. That with regard to the statements made in para 8.6,
8.7 and 9 the respondents beg to offer no comments.

It is, therefore, prayed that
your Lordships would be pleased to
hear the parties, peruse the records
and after hearing the parties and
perusing the records, shall further
be pleased to dismiss the application
with cost.

Verification

-9-

VERIFICATION

I, Shri Debananda Majumdar, Regional
Director, being authorised do hereby solemnly affirm
and declare that the statements made in this written statement
are true to my knowledge and information and I have not
suppressed any material fact.

And I sign this verification on this 3rd day of
December, 2001.

1901
Declarant.

64 (10) 83
HEADQUARTERS' OFFICE
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN: KOTLA ROAD: NEW DELHI

No. C-16/14/82/2000-Vig.

Dated: 25.1.2001

ORDER

Shri C.D. Kalita, Ex. Asst., ESIC, Guwahati has filed an appeal dated 19.9.2000 against the order dated 12.9.2000 passed by the Regional Director, Guwahati imposing the penalty of 'compulsory retirement'.

Shri Kalita was issued a major penalty charge sheet on 22.10.99 for doing part time consultancy work with M/s Sudarshan Press (Code No. 43-2245) and M/s Assam Industrial Corporation (Code No. 43-1738) while working at Regional Office, Guwahati.

The inquiry in the case was conducted by Shri R.N. Manna, Jt. Director (DE), EZ, Calcutta who submitted his inquiry report dated 9.8.2000 holding the charges as proved. After considering the representation, submitted by Shri Kalita in response to inquiry report, the Regional Director imposed the aforesaid penalty.

In the present appeal, Shri Kalita has contended that the findings of the inquiry officer are based on presumption and no proof could be produced in support of part time consultancy work. Mere presence of his handwriting in the few challans and returns cannot be treated as a conclusive proof for taking part time consultancy work, he has added. Both the employers furnished their comments on the subject and confirmed that the appellant had helped them by filling up some of the challans on their request as he was known to them and they never paid any fee or remuneration for such help and as such doing of part time work in their concerns does not arise, he has further stated. He has requested to withdraw the penalty order.

The appellant vide his letter dated 5.11.99, submitted in response to charge sheet, admitted both the articles of charge. He also stated in the said letter that he had already given up the task and requested to forgive him for the misconduct. This letter of admission was enough as a proof beyond doubt whereas only preponderance of probability is required to prove the charge. The disciplinary authority has rightly mentioned in the penalty order that the sole intention for doing part time work is to get some extra income. But the persons doing such work cleverly avoid any trace of proof of receiving remuneration etc. So far as the letters given by the concerned employers is concerned, on account of the rapport developed with them the appellant could obtain a letter written the way he wanted. Those letters, therefore, cannot be given credence to.

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30-1-2001
Advanced copy to the Director General, B.S.I.C., New Delhi-2 for
(P&A), B.S.I.C., New Delhi-2 for
kind perusal.

In view of the above, I conclude that there is no force in the contention of the appellant. The charges of indulging in part time consultancy with the employers have been proved and I agree with the findings of the Inquiry Officer and the Disciplinary authority in this regard.

Shri Kalita is a regular employee of the Corporation and the whole time of the official is at the disposal of the Corporation. The unauthorised part-time consultancy is clearly in violation of rule 15 of the CCS (Conduct) Rules, 1964. As the Corporation is serving, inter alia the employers, any such part-time consultancy is undesirable and serious because the official will be siding with the employer and the interest of the Corporation will be neglected. Therefore, the penalty awarded in the case cannot be found fault with.

However, the official has not come to adverse notice so far and this is the first disciplinary action against him in his entire service from 12.3.79. Therefore, I take a compassionate view in the case and reduce the penalty from compulsory retirement to that of reduction of pay by five stages. The reduction shall be w.e.f. the date of his rejoining duty in terms of this order. The reduction shall be operative for a period of 5 years and the official will not earn increments of pay during the period of such reduction. On the expiry of the penalty period, the reduction will have the effect of postponing the future increments of pay.

Shri Kalita is accordingly hereby reinstated in service and he shall report for duty before the Regional Director, Guwahati within three days of receiving this order.

(S.N. TIWARI)
ADDL. COMMISSIONER (P&A)

Shri C.D. Kalita,
Ex. Asst.
Guwahati
(Through Regional Director, Guwahati)

Copy to:-

Copy 3:
1. Regional Director, ESIC, Guwahati.
2. Director (Fin.); ESIC, Guwahati.
3. Guard file.
4. Spare copy.

ASST. DIRECTOR (VIG.)

No. 111, B. 112/1999-VII, (CDR) Dated 1 Sept. 1999.

O R D E R

Shri C. D. Kalita, Assistant, Employees' State Insurance Corporation, N. E. Region, Guwahati was issued a major penalty charge sheet vide this office letter of even No. dated 22.10.99 for the following charges :

ARTICLE OF CHARGE : 1.

Shri C. D. Kalita, while functioning as Assistant at Regional Office, ESI Corporation, Guwahati during the period from 07/91 to 12/97, committed gross mis-conduct inasmuch as he himself prepared the records in respect of M/S Sudarshan Press, Code No. 43-2245 relating to ESI matters under his own handwritings which clearly shows that he took up consultancy work with the aforesaid employer during his tenure of employment in ESI Corporation as a full time employee. Thus, taking up of part-time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provision of Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulation, 1959 as amended.

ARTICLE OF CHARGE : 2.

Shri C. D. Kalita while functioning as Assistant at Regional Office, Guwahati ESI Corporation, N. E. Region during the period from 11/88 to 04/98 committed gross mis-conduct inasmuch as he himself prepared the records in respect of M/S Asoan Industrial Corporation, Code No. 43-1738 relating to ESI matters under his own handwritings

which is to be done in the interest of welfare of the State and the employees of ESI Corporation as full time employees, thus, taking up of part-time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provision of Rule 15 of CCS (Conduct) Rules, 1961 which is applicable to the employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

An opportunity was given to Shri C. D. Kalita for submission of his written statement of defence against the above charges within 10 days from the date of receipt of this charge sheet dated 22.10.99. Accordingly, Shri Kalita has submitted his written statement of defence on 05.11.99 wherein he has tendered an unqualified apology against the charges levelled against him with a request to withdraw the charge sheet as he was helping the employer without any personal interest and remuneration. His apology could not be accepted as the same was unqualified and there was no clear admittance of the charges.

Accordingly, Shri R. N. Manra, Jt. Director, DE/EZ Calcutta was appointed as Inquiring Authority to enquire into the charges framed against Shri Kalita vide this office order of even No. dated 21.12.99. The preliminary hearing in the case was first held on 21.02.2000 followed by regular hearing on 22.05.2000, 23.05.2000 and 16.06.2000 at Calcutta and Guwahati respectively. The Inquiring Authority has submitted his findings vide his report dated 09.08.2000 with the remarks that " Both the charges against Shri C. D. Kalita, Assistant, ESI Corporation, N. E. Region, Guwahati are proved".

3

On receipt of the inquiry report, another opportunity was given to Shri Kalita to submit his representation, if any, vide this office letter of even No. dated 17.08.2000 and accordingly Shri Kalita has submitted his representation dated 31.08.2000.

In the said representation dated 31.08.2000 Shri Kalita has submitted the following :

- i) He helped both the employers in the absence of the dealing assistant, as and when the employers approached him for help to fill up the ESI forms.
- ii) He did not receive any remuneration or fee from the employers for the help given by him. No proof in this regard was produced by the prosecution.
- iii) All the prosecution witnesses confirmed his integrity.
- iv) Bare extending help to the employers may not be constituted as consultancy work.

I have gone through the case records. The fact that the charge official has written the relevant documents for the employers has not been disputed by him. The quantum of documents and the relevant dates relating to the documents written by him for the employers unmistakably show that he was doing part-time work for the employers. The contention put forth by the defence in the enquiry that this was done at the request of the employers ~~due to absence of their dealing Assistant~~ is without any convincing evidence. If the employers and the charged official contend that the charge official was in fact requested by the employers to help them in the absence of their dealing assistants and he helped them without any remuneration, the charged official should have produced the relevant employee in

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the enquiry so that they can be subjected to cross examination by the prosecution. In the absence of any such action by the defence, the contention of the charged official in this regard can not be accepted. Similarly his contention that there is no proof to show that he received any money from the employers is to be taken with a grain of salt. The part-time consultancy is carried out by the official with the sole intention of getting some extra income and therefore, I find no force in this contention. The last contention of the official that the prosecution witnesses had not deposited anything adverse about his integrity is also not relevant to the case. From the case records, it is seen that the witnesses were put question in cross examination which they found "any lapse and lack of integrity on the part of Shri C. D. Kalita". In reply all the three prosecution witnesses said "No". The charges against him, however, are specific. They alleged that he indulged part-time consultancy violating Rule 15 of the CCS (Conduct) Rules, 1964. There is no allegation about the violation of Rule 3(1)(i) of the CCS (Conduct) Rules relating to lack of integrity. Therefore, this plea of the official can not be accepted.

In view of the above, I find no force in the contentions. The charge has been fully proved by the Inquiry Officer for good and sufficient reasons and therefore, I agree with the analysis and findings of the Inquiry Officer contained in the Inquiry Report.

As per FR-11, the entire time available to the official is at the disposal of the concerned authority which can utilize him in the manner it deems fit. Therefore, his duty is bound to get permission of the competent authority for doing any part-time consultancy work with any other authority or private person. Obviously, the charged official has not taken any such permission and therefore, his act in under-taking consultancy work with the aforesaid two employers squarely violates Rule 15 of

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the said Rules. As the employers are also target group for serving by the Corporation, any unnatural cohesion between the officials of the Corporation and ^{the} employers may result in undue harm to the coverable employees and insured persons in the said concern and also to the ESI Corporation. Therefore, such part-time consultancy is to be viewed as serious mis-conduct.

Now, therefore, I Suri D. N. Pegoo, Regional Director, ESI Corporation, N. E. Region in exercise of power conferred upon me by regulation 12 (2) read with Fifth Schedule of the ESI Corporation (Staff and Conditions of Service) Regulations, 1959 do hereby impose the penalty of " COMPULSORY RETIREMENT".

69/17/2K
(D. N. / PEGOO)

REGIONAL DIRECTOR,

Regional Director,

ESI Corporation.

Guwahati-21

To

Suri C. D. Malita,
Assistant (Audit)
ESI Corporation, Regional Office,
Guwahati-21.

~~up consultancy work with the onesaid employ~~ during his
~~tenure of employment in ESI Corporation as a part-time employ~~
~~Thus, taking up of part-time consultancy wor~~ with the above

To,
The Hon'ble Director General,
E. S. I. Corporation,
Panchdeep Bhawan, Kotla Road,
New Delhi-2.

Dated Guwahati the 19th September, 2000.

Subject: Appeal petition against the Order No. 43-S. 11/
Vig. (CDK) dated 12.9.2000 issued by the Region
Director, Guwahati-21 in respect of C. D. Kalita
Assistant (Auditor) of Regional Office, N.E. Re-
gion, E.S.I. Corporation, Guwahati-21.

Respected Sir,

In response to the Order No. 43-S. 11/18/
Vig. (CDK) dated 12.9.2000 (copy enclosed as Annexure-1)
passed by the Regional Director, N.E. Region, E.S.I. Corp-
oration, Guwahati-21, imposing the major penalty of COMPU-
RETIREMENT in respect of C. D. Kalita, Assistant (Audit-
or) of Regional Office, N.E. Region, E.S.I. Corporation, Guwah-
ati-21, I have to submit the following for your kind consider-
ation and favourable order.

That Sir, Charge Sheet was issued vide M.C.
No. 43-S. 11/18/99-Vig. (CDK) dated 22.10.99 proposing to h-
an enquiry under Regulation 14 and para 3 of the Third S-
chedule of Employees' State Insurance Corporation (Staff and
Conditions of Service) Regulation, 1959 as amended, for ~~xx~~
~~xx~~ misconduct or misbehaviour for breach of provisions of
Rule 15 of CCS (Conduct) Rules, 1964, which is applicable
to the employees of E.S.I. Corporation by virtue of Regulation
23 of Employees' State Insurance Corporation (Staff and
Conditions of Service) Regulations, 1959 as amended for
the following two articles of charges.

Article of Charge-1.

Shri C.D. Kalita while functioning as Ass-
istant Regional Office, ESI Corporation, Guwahati during the
period from 07/91 to 12/97 committed gross mis-conduct in
much as he himself prepared the records in respect of M/S
Suganjan Press, Code No. 43-2245 relating to E.I.I. matters
in his own handwriting which clearly shows that he took
up co-^{OR} ~~OR~~ ^{SHAW} tancy work with the aforesaid employer during his
tenure of employment in ESI Corporation as a full-time emp.
Thus, taking up of part-time consultancy work with the abc

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EMPLOYEES' STATE INSURANCE CORPORATION

'PANCHDEEP' BHAWAN, KOTLA ROAD, NEW DELHI-2.

A-22(15)-2/98-E-I(A)

Dated : 30-02-1999

OFFICE ORDER NO. 160 OF 1999

The Promotions of the following Head Clerks/Assistants to the
of Insurance Inspector/Manager Grade-II etc., is ordered on
lar basis on the recommendations of the Departmental Promotion
ittee :--

NAME S/SHRI	SC_ST	PRESENT PLACE OF POSTING	POSTING NOW ORDERED
M.PRAKASH		KAR	KAR
RAJESHWAR MINJ	ST.	DMD	DMD
GOPAL SINGH		DELHI	DELHI
KHAJAN SINGH		DELHI	DELHI
HIMADRI SEKHAR MUKHERJEE		W.B.	W.B.
A.A. NIKHALE	SC	MHR	MHR
D.A. MOORJANI		MHR	MHR
MANOJ KR. GOSWAMI		W.B.	W.B.
A.K. DEY SARKAR		W.B.	W.B.
SIBIR K. ROY		W.B.	W.B.
HINDOL KR. BOSE		W.B.	W.B.
SOMNATH DAS GUPTA		W.B.	W.B.
M.N.KRISHNA SINHA		KAR	KAR
RABINDRA NATH DAS		KAR	KAR
B.L. NARANG		W.B.	W.B.
M.PARAMESWARAN		DELHI	DELHI
A.G. CHRISTIAN		KERALA	KERALA
V.LAKSHMAN		GUJ	GUJ
MATA PHER	SC	A.P.	A.P.
H.H. BHATT		U.P.	U.P.
C.V. ANTONY		GUJ	GUJ
M.K. SHAH		KERALA	KERALA
S.R. SNAIKH		GUJ	GUJ
M.C. FATEL		GUJ	GUJ
H.L. GADHAI		GUJ	GUJ
SACHINDRA NATH HALDER		GUJ	GUJ
P.P. MEHTA		W.B.	W.B.
D.V. MEHTA		GUJ	GUJ
M.K. KOTHARI (SMT)		GUJ	GUJ
R.M. BHATT		GUJ	GUJ
J.P. DAVE		GUJ	GUJ
J.N. MODI		GUJ	GUJ
N.B. THAKKAR		GUJ	GUJ
M.S. BANDHI		GUJ	GUJ
D.K. BHATIA		GUJ	GUJ
S.K. SONI		GUJ	MHR
N.D. DOSHI		GUJ	MHR
K.U. BHATT (SMT)		GUJ	MHR
R.K. THAKKAR		GUJ	MHR
A.B. BHATIA (SMT)		GUJ	MHR
H.N. THAKKAR		GUJ	MHR
K.M. SHAH		GUJ	MHR
S.V. RANA		GUJ	MHR
K.S. PATEL		GUJ	MHR
D.SADHWANI		MHR	MHR
T.R. BALAKRISHNAN		T.N.	T.N.
K.D. SINGH		P.T.O.	P.T.O.
S.L. GUPTA		U.P.	U.P.
M.SAXENA		T.N.	T.N.
P.MALLESAN		T.N.	T.N.
S.VEDIVAL SUNDERRAJAN			

SL. NO.	NAME S/SHRI	SC ST	PRESENT PLACE OF POSTING (NOW OF POSTING)	ORDERED DATE
52	P.K. ELUMALAI		T.N.	
53	N.GOPALAN		T.N.	
54	A.P. SHARMA		BIHAR	BIHAR
55	R.JESU		KAR	KAR
56	J.S. RANA		PUNJAB	PUNJAB
57	RAJINDER SINGH KOHLI		PUNJAB	PUNJAB
58	T.S. BHATIA		DELHI	DELHI
59	R.D. GUPTA		DELHI	DELHI
60	SHYAM SUNDER		DELHI	DELHI
61	K.K. KHANNA		DELHI	DELHI
62	KIRAN CHAND		DELHI	DELHI
63	B.S. BHALLA		DELHI	DELHI
64	BHAWAN SINGH		DELHI	DELHI
65	G.L. WADHWA		DELHI	DELHI
66	SUSHMA ARORA		DELHI	DELHI
67	V.M. DIMRI		DELHI	DELHI
68	ANIL NAGPAL		DELHI	DELHI
69	KRISHNA BHUTANJ		DELHI	DELHI
70	LALITA BATRA		DELHI	DELHI
71	S.K. SHARMA		DELHI	DELHI
72	RAJ KUMAR-I		DELHI	DMD
73	RADHA MEHTA		DELHI	HORS.
74	DINESH CHANDER		DELHI	HORS.
75	SHASHI GUJALI		DELHI	HORS.
76	KRISHNA KUMAR		DELHI	HORS.
77	K.K. SUMM沃ANI		GOA	HORS.
78	SHASHI KIRAN		PUNJAB	HORS.
79	C.H. VIJAYLAXMI		AP	HORS.
80	ABDUL GAFUOR		AP	HORS.
81	P.V. FRASAD		AP	HORS.
82	P.SATNARAYANA RAO		AP	HORS.
83	ABDUL KALAM		BIHAR	BIHAR
84	PRABHAT KUMAR		BIHAR	BIHAR
85	M.JAYARAJU		KAR	KAR
86	F.C. ILEGAR		KAR	KAR
87	B.RAGHAVA SHETTY		KAR	KAR
88	MAHABOOB SHARIEF		KAR	KAR
89	K.N.NARASIMHA MURTHY		KAR	KAR
90	H.C.SANTHAMANI		KAR	KAR
91	V.SRINIVASA		KAR	KAR
92	B.BHASKARA BHAT		KAR	KAR
93	S.K. SAMBASIVAM		KAR	KAR
94	T.RAJA EKARAN		T.N.	T.N.
95	S.PARIMALA		T.N.	T.N.
96	F.BASHEER AHMED KHAN		T.N.	T.N.
97	S.VASUDEVAN		T.N.	T.N.
98	Y.R. BHATIA		DELHI	T.N.
99	S.PALANI		DELHI	U.P.
100	G.LEELA		T.N.	T.N.
101	M.VISWANATHAN		T.N.	T.N.
102	V.PARVATHI		T.N.	T.N.
103	MADAN MOHAN		T.N.	T.N.
104	ASHA MATHUR (SMT)		DMD	M.P.
105	E.V. NAIK		DMD	U.P.
106	GEETA GUPTA (SMT)		GOA	GOA
107	D.D. MATHUR		RAJ	RAJ
108	SHOBH RAJ		RAJ	RAJ
109	SAT PAL		RAJ	RAJ
110	VINOD CHANDER		DMD	PUNJAB
111	R.K. KAR		DMD	U.P.
112	FUSHPA DE		DELHI	U.P.
113	PRAMILA KELANI		DELHI	U.P.
114	AKHIL KR. JA		DELHI	U.P.

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ME SHRI	SC_ST	PRESENT PLACE	POSTING NOW
		OF POSTING	ORDERED
VINDER KAUR		DELHI	U.P.
DESH TALWAR		DELHI	U.P.
JE SINGH		DELHI	U.P.
RJEET KAUR		DELHI	U.P.
NU ARORA		DELHI	U.P.
INTOSH MEHRA		DELHI	U.P.
ANTA GUPTA		DELHI	H.P.
K. SAINI		DELHI	U.P.
P.S. BAWEJA		DELHI	U.P.
SHESHADRI		DELHI	U.P.
ARSH BALA GROVER		RAJ	RAJ
JWANT SINGH		PUNJAB	PUNJAB
ROJ KHARBANDA		RAJ	RAJ
E. WADHWA		DELHI	PUNJAB
K. BHARGAVA		DELHI	PUNJAB
TISH KUMAR		DMD	U.P.
ASHI SARDANA		DMD	U.P.
K. AGGARWAL		DMD	U.P.
ULAT SINGH		DMD	U.P.
C. MEHRA	PH	DMD	M.P.
C. BHATNAGAR	PH	DMD	M.P.
NESH CHANDER		DMD	M.P.
D. THUKRAL		DMD	M.P.
RAMJEET SINGH		DMD	M.P.
ASHI KHARBANDA		DMD	M.P.
D PRAKASH		DMD	M.P.
BHAN SINGH		DMD	M.P.
LIP SINGH NEGI		DMD	M.P.
K. BHATIA		HQRS	PUNJAB
C. JAIN		HQRS	PUNJAB
K. SHARMA		HQRS	U.P.
N. SHARMA		HQRS	U.P.
TISH PAL		HQRS	PUNJAB
NJANA MASRAJ MRS.		HQRS	M.P.
HAN LAL		HQRS	U.P.
RVNEEN KUMAR		HQRS	MHR
RAJ BHAN		HQRS	MHR
K. BAJAU		HQRS	PUNJAB
K. BURA		ASSAM	ASSAM
DEKA		ASSAM	ASSAM
HAQUE		ASSAM	ASSAM
ALI		ASSAM	ASSAM
K. DAS		ASSAM	ASSAM
VIND LAL		DELHI	PUNE
HINDER BALA		DELHI	PUNE
NJEET KAUR		DELHI	PUNE
HA DUA		DELHI	PUNE
ELAM KHANNA		DELHI	PUNE
K. BHASKAR		DELHI	U.P.
KAM CHAND		DELHI	PUNJAB
ANDER MOHINI		DELHI	PUNE
S. RAWAT		DELHI	U.P.
NIJI LAL	SC.	DELHI	DELHI
ARAN KUMAR		DELHI	PUNE
ILA DEVI		DELHI	PUNE
RMAL KANTA		DELHI	PUNE
1 KISHAN		DELHI	PUNE
IKHA SEN GUPTA		DELHI	PUNE
S. CHOUHAN		DELHI	PUNJAB
MLESH BHATIA		DELHI	PUNE
P. SHARMA		DELHI	PUNJAB
K. DATTA		DELHI	PUNJAB
ILANAND		DELHI	PUNJAB

SL. NO.	NAME S/SHRI	SC	ST	PRESENT PLACE OF POSTING	POSTING NOW ORDERED
178	KANTA GUPTA			DELHI	PUNE
179	BHAG SINGH			DELHI	DELHI
180	R.P. MATHUR			DELHI	PUNE
181	S.S. MUJRAL			DELHI	PUNE
182	J.P. PURI			PUNJAB	PUNJAB
183	NARESH CHANDER	SC		PUNJAB	PUNJAB
184	VIJAY BAKSHI			PUNJAB	PUNJAB
185	J.S. LAKHANPAL			PUNJAB	PUNJAB
186	R.S. BAJWA			PUNJAB	HAR
187	KHARAITI LAL			HAR	HAR
188	UTTAM SINGH			HAR	HAR
189	RAM CHARAN			HAR	HAR
190	VIJAY KUMAR			HAR	HAR
191	JAI PAL SHARMA			HAR	HAR
192	SUBHASH CHANDER			HAR	HAR
193	SHIVA DEVI			HAR	HAR
194	DEVI SINGH			DELHI	PUNE
195	A.K. KHURANA			ASSAM	ASSAM
196	S.K. SARMAH			ASSAM	W.B.
197	P.K. SARMAH			A.P.	A.P.
198	A.V. RAMANA			A.P.	A.P.
199	P.L.N. MURTHY			A.P.	A.P.
200	N.RAJENDRABABU			A.P.	A.P.
201	R.LALITHA			A.P.	A.P.
202	K.A. RAHIM			A.P.	A.P.
203	K.R.M.M. REDDY			A.P.	A.P.
204	P.ESWARA RAO			A.P.	A.P.
205	P.B.K. SARMA			A.P.	A.P.
206	S.GURU			ORISSA	ORISSA
207	G.C. SWAIN			ORISSA	ORISSA
208	R.K. NAYAK			ORISSA	ORISSA
209	N. PARIJA			ORISSA	ORISSA
210	A.B. GHOSH			ORISSA	ORISSA
211	S.K.ROUTRAY			ORISSA	ORISSA
212	H.R. SINGH			DELHI	U.P.
213	KUMAR TAHYALANI			RAJ	RAJ
214	MAN SINGH SHAIKHAWAT			RAJ	RAJ
215	LAL CHAND MAHATHANI			RAJ	RAJ
216	L.N. SAIN			RAJ	RAJ
217	NIRMAL BHARGAV			RAJ	RAJ
218	PAN SINGH			DELHI	NAGPUR
219	MAHESH CHANDER			DELHI	NAGPUR
220	NEELAM OBEROI			HAR	HAR
221	RAJNI SHARMA			HAR	HAR
222	RAJESH CHANDER			HAR	HAR
223	RAM CHANDER			HAR	HAR
224	SATISH KUMAR			HAR	HAR
225	BRAHAM DATT			BIHAR	BIHAR
226	BABAJI TANTI			BIHAR	BIHAR
227	K.LAL			ASSAM	W.B.
228	C.D.KALITA			ASSAM	W.B.
229	S.C. SARMAH	SC		W.B.	W.B.
230	SANTI RANJAN DAS	SC		W.B.	W.B.
231	JATINDRA NATH ROY	SC		W.B.	W.B.
232	BIRENDRA NATH SARKAR	SC		W.B.	W.B.
233	PRABIR KR. BISWAS	SC		U.P.	U.P.
234	ADESH KUMAR			U.P.	U.P.
235	A.U. KHAN			U.P.	U.P.
236	SHIV DUTT SHUKLA			U.P.	U.P.
237	P.C.SHUKLA			U.P.	U.P.
238	LAKSHMI NARAIN	SC		HQRS	HQRS
239	USHA SHARMA			PUNJAB	PUNJAB
240	S.P. BINHA			BIHAR	BIHAR

SL. NO.	NAME S/SHRI	SC_ST	PRESENT PLACE OF POSTING	POSTING NOW ORDERED
304	V.M. PATIL		MHR	MHR
305	P.N. THAKKAR		MHR	MHR
306	J.B. CHOGALE		MHR	MHR
307	C.T. GEORGE		MHR	MHR
308	BRINDHA SUNDRARAJAN.		T.N.	T.N.
309	V. SARASWATHY		T.N.	T.N.
310	P. BHAGYAM	SC	T.N.	T.N.
311	NARAIN PRAKASH		HQRS	PUNJAB
312	E. KALAISELVI	SC	KAR	KAR
313	SHASHI SACHDEVA		DMD	PUNE
314	KHEM CHAND-II	SC	DMD	DELHI
	GOPI RAM	SC	DMD	DELHI
316	RAHUL KUMAR	SC	DMD	DELHI
317	KUNJAMMA PAUL		KERALA	KERALA
318	R. SUKUMARAN		KERALA	KERALA
319	SHARDA SONI		DMD	MHR
320	USHA SHARMA		DMD	PUNE
321	SARLA RASTOGI		DMD	PUNE
322	BHUSHAN KUMAR		PUNJAB	PUNJAB
323	RAJINDER PRASAD SHUKLA		U.P.	U.P.
324	R.L. SHARMA		U.P.	U.P.
325	CH. SRIHARI		A.P.	A.P.
326	P.V.R. RAO		A.P.	A.P.
327	C. NARAYANA		A.P.	A.P.
328	CHANDRA PRAKASH		HAR	HAR
329	KULJEET KAUR		HQRS	PUNE
330	YOGRAJ		HQRS	PUNJAB
331	AJAY PAL SINGH		HQRS	MHR
332	MOHD SADIQ		HQRS	MHR
333	N.D. JACAB		KERALA	KERALA
334	M.P. PILLAI		KERALA	KERALA
335	DEBAKI KUMAR BANERJEE		W.B.	W.B.
336	ATAL KUMAR MANDOL		W.B.	W.B.
337	JAYANTA KR BHATTACHARJEE		W.B.	W.B.
338	SATYA NARAINA BOSE		W.B.	W.B.
339	PRASANTA KR BHATTACHARJEE		W.B.	W.B.
340	SUNIT KR CHATOPADHAYAY		W.B.	W.B.
341	SUBRATA KR SAHA		W.B.	W.B.
342	PHANI BHUSAN SANTRA		W.B.	W.B.
343	HARIDAS TALUKDAR		W.B.	W.B.
344	S. NATH DUTTA		W.B.	W.B.
345	N. RAMACHARNA ACHARY		KAR	KAR
346	B.P. NAIK		KAR	KAR
347	P. GOPALAKRISHNA		KAR	KAR
348	K. RAMAN		KAR	KAR
349	S. THAYUMANAVAN		KAR	KAR
350	S.R. ROTTIMATH		KAR	KAR
351	M.N. BHUJANGARAO		KAR	KAR
352	B.S. PRABHU		MHR	MHR
353	R. FRANCIES THEKKEKARA		KERALA	KERALA
354	T. BHASKARAN		KERALA	KERALA
355	T.P. DIVAKRAN		KERALA	KERALA
356	C.V. PURUSHOTAMAN		KERALA	KERALA
357	P.T. JOSEPH		KERALA	KERALA
358	TAPAN KR MAJUMDAR		W.B.	W.B.
359	ASIT KR BARAL		W.B.	W.B.
360	TAPAN KR ROY CHOWDHURY		W.B.	W.B.
361	ASHOK KR SENGUPTA		W.B.	W.B.
362	SMT. P.R. GUPTA		MHR	MHR
363	K.P. KRISHNAN		MHR	MHR
364	B.N. SHETHY		MHR	MHR
365	K.H. SHAH		MHR	MHR
366	M.R.B. NAIR		M.P.	M.P.

SL. NO.	NAME	SC ST	PRESENT PLACE OF POSTING	NOW ORDERED
241	UMESH MISHRA		BIHAR	BIHAR
242	N. ARUNACHALAM		T.N.	T.N.
243	V. KANNAMMAL		T.N.	T.N.
244	RAJALAKSHMI VENKATARAMAN		T.N.	T.N.
245	I. BASTIN		T.N.	T.N.
246	N. GOPALAN		T.N.	T.N.
247	P. SUNDARI		T.N.	T.N.
248	B. LAKSHMI NARAYANAN		T.N.	T.N.
249	K.R. PADMANABHAN		T.N.	T.N.
250	C.S. SANTHABAI		T.N.	T.N.
251	T. K. MADHAVAN		T.N.	T.N.
252	R. RAJAGOPAL		BIHAR	BIHAR
253	SHARDA PRAEAD		BIHAR	BIHAR
254	V. KARUNAMORTHY		T.N.	T.N.
255	S. ALAGANDRAN		T.N.	T.N.
256	A. ABDUL AZEEZ		T.N.	T.N.
257	R. RADHA		T.N.	T.N.
258	L. V. GEETHA		T.N.	T.N.
259	K. J. ADIMOOLAM		T.N.	T.N.
260	G. PURUSHATHAMAN		T.N.	T.N.
261	E. BALAKRISHNAN		T.N.	T.N.
262	G. RAMABADRAM		T.N.	T.N.
263	T. SAMBASIVA RAO		A.P.	A.P.
264	M. RAMULU		A.P.	A.P.
265	R.K. BHATIA		PUNJAB	PUNJAB
266	P. SINDWANI		PUNJAB	PUNJAB
267	VIJAY KUMAR KALIA		PUNJAB	PUNJAB
268	KALI DASS		PUNJAB	PUNJAB
269	KULWANT SINGH		PUNJAB	PUNJAB
270	LAXMI CHAND		PUNJAB	PUNJAB
271	M.V. SHINDE		MHR	MHR
272	S.D. VEDPHATAK		MHR	MHR
273	GOPAL S. SAWANT		MHR	MHR
274	PADEM SINGH BIST		MHR	MHR
275	A.S. SEWANT		MHR	MHR
276	S.P. BARIKER		NAGPUR	NAGPUR
277	S.S. WADKAR		MHR	MHR
278	K.G.K. MENON		MHR	MHR
279	S.C. SHAH		MHR	MHR
280	A.J. GANDRE		MHR	MHR
281	M.K. WERULKER		NAGPUR	NAGPUR
282	GOUR GOPAL CHAKRABORTY		W.B.	W.B.
283	PREM PRAKASH		HQRS	PUNJAB
284	HARDEEP KAUR BHATIA SMT		HQRS	PUNE
285	B.D. CHATURVEDI		HQRS	MHR
286	LAWRENCE VEIGAS		KAR	KAR
287	A. GANGADHAR		KAR	KAR
288	G.A. KULKARNI		KAR	KAR
289	NIRENDRA KR. SINHA		W.B.	W.B.
290	K.C. AWASTHI		RAJ	RAJ
291	ASHOK P. MALKANI		RAJ	RAJ
292	P.P. MATKER		MHR	MHR
293	M.D. SRIVASTAV		NAGPUR	NAGPUR
294	S.R. RANE		MHR	MHR
295	R.K. PARDEBHI		PUNE	PUNE
296	A.A. SHAIKH		MHR	MHR
297	P.S. SONALKAR		MHR	MHR
298	P.G. MORE		MHR	MHR
299	B.P. SHIRDHANKAR		MHR	MHR
300	A.D. BELVELKAR		MHR	MHR
301	V.G. MATHEW		PUNE	PUNE
302	R.T. SACHDEV		MHR	MHR
303	J.B. SHINDE		MHR	MHR

NAME S/SHRI	SC_ST	PRESENT PLACE OF POSTING	POSTING NOW ORDERED
7 T.M. THOMAS		KERALA	KERALA
8 V.F. SANKARAN	SC	KERALA	KERALA
9 P.M. MENON		KERALA	KERALA
10 K.N. RADHAMANI AMMA (SMT)		KERALA	KERALA
11 P. JANARDHANAN NAIR		KERALA	KERALA
12 P. RADHAKRISHNAN		KERALA	KERALA
13 N.M. JOSEPH		KERALA	KERALA
14 C.M. YESUDASAN		KERALA	KERALA
15 R.V. SAIT		KERALA	KERALA
16 H.S. BHATT		GUJ	MHR
17 S.J. ASSUDANI		GUJ	MHR
18 M.U. AILSINGHANI		GUJ	MHR
19 S.U. KOSHTI		GUJ	MHR
20 M.B. SHAH		GUJ	MHR
21 K.K. GOSWAMI		GUJ	MHR
22 H.M. SHAH		GUJ	MHR
23 BABUBHAI S. SHAH		GUJ	MHR
24 P.S. MISTRY		GUJ	MHR
25 S.V. PILLAI SMT.		GUJ	MHR
26 A.R. KELEKAR		GUJ	MHR
27 V.R. PANDEY		GUJ	MHR
28 P.R. SAROJINI		KERALA	KERALA
29 K.C. MATTAI		KERALA	KERALA
30 T.P. DOMINI		KERALA	KERALA
31 MATHEW GEORGE		MHR	MHR
32 S.C.R. PATHAK		NAGPUR	NAGPUR
33 V.P. MHATRE		MHR	MHR
34 A.A. PALSAPURE		MHR	MHR
35 A. SHANMUGAM	SC	T.N.	T.N.
36 N. GUNASEKARAN	SC	T.N.	T.N.
37 G. MOHAN DASS PILLAI	PH	PUNJAB	PUNJAB
38 MANJULA BALAKRISHNA	ST	KAR	KAR
39 ARVINDA KATTI	PH	KAR	KAR
40 C. RAMACHANDRA	PH	KAR	KAR
41 BANSI LAL GUPTA	PH	PUNJAB	PUNJAB
42 KARNAIL SINGH	PH	PUNJAB	PUNJAB
43 AYODHYA PRASAD	PH	HAR	RAJ
44 ATTAR SINGH	PH	HAR	RAJ
45 SUKHDEV SINGH	PH	PUNJAB	PUNJAB
46 PURUSHOTTAM KUMAR	PH	RAJ	RAJ
47 K.K. BORO	ST	ASSAM	ASSAM
48 AWADHESH KONAR	PH	U.P.	U.P.
49 T.C. BHAGIA	PH	U.P.	U.P.
50 A.P. KARIA	PH	GUJ	MHR
51 L.H. GOL	PH	GUJ	MHR
52 HARI RAM	PH	DELHI	U.P.
53 M.L. HEMBRAUM	ST	BIHAR	BIHAR
54 KRISHNAMOHAN SAREN	ST	W.B.	W.B.
55 SRIPATI LAL BESRA	ST	W.B.	W.B.
56 KANAI LAL HANSDA	ST	W.B.	W.B.
57 S.G. KOLTE	PH	MHR	MHR
58 S.S. BRAHM BHATT	PH	GUJ	MHR
59 T.M. SRINIVASAN	PH	T.N.	T.N.
60 A. THARA BAW	PH	T.N.	T.N.

On their promotion as Insurance Inspector /Manager they will draw the initial pay of Rs.5500/- per month in pay of Rs.5500-175-9000/- or the existing pay, whichever is higher, subject to the ending fixation of pay under the rules, where necessary.

3. The regular promotion of the persons already officiating Insurance Inspector/Manager Grade-II etc., who accepts regular promotion will take effect from the date of issue of this order a others from the date they assume charge of the promoted post.
4. They will be entitled to T.A./D.A., joining time etc., admissible under the rules on transfer where there is change of station.
5. Their promotion(s) have been made on temporary basis and will be subject to such terms and conditions of service as are applicable to similar class of employees as laid down in the Employees' State Insurance (Staff & Conditions of Service) Regulations, 1959, as amended from time to time.
6. They will be on probation for a period of one year from the date of their regular promotion.
7. The acceptance or otherwise of promotion through an unconditional written acceptance/refusal may be obtained in DUPLICATE from the officials within 10 days from the date of receipt of this order, where there is a change in the Region of posting and one copy of the same may be forwarded to the Regional Director where they have been posted for intimating their place of posting with a copy to Hqrs. Office (Estt.Br.I(A)). On receipt of place of posting from the Regional Director, they may be relieved of their duties with the directions to report to their new place of posting.
8. It should be made clear to the unwilling official(s) concerned that if he /she/they does not move to the new place/Region of posting, the order of promotion on regular basis will be deemed to be cancelled and he/she /they will not be considered for regular promotion for a period of one year and he/she/ they will also be passed over resulting in loss of seniority as per rules and the officials promoted prior to the date of their next promotion in this cadre will stand senior to him/her/them.
9. They will receive necessary/training in the Region(s) where they are posted after promotion from the respective Regional Director(s). Training will, however, not be necessary in respect of those who are already officiating /have officiated as Insurance Inspector/Manager Grade-II on adhoc basis.
10. The Insurance Commissioner has also approved the appointment/promotion of these persons as Insurance Inspector under Section 45 of the Employees' State Insurance Act, 1948 for the purpose of that Act within their respective Region(s) of posting.
11. The charge report(s) may be forwarded to all concerned.
(Hindi version will follow)

[Signature]
C. S. MAITRA
JOINT DIRECTOR (ADM.) I(A)
FOR INSURANCE COMMISSIONER

(8)

-91-

NO

Copy To :-

- 9 -

1. The Persons concerned through Regional Directors/ Jt.Director-II /Hqrs./Director (Medical) , ESI Scheme, New Delhi.
2. All the Regional Directors/Director/Joint Director ,S.R.O., Pune/Nagpur/Coimbatore/Madurai/Director(Medical) ESI Scheme, New Delhi/ Medical Supdt. /Director, ESI Hospital, Basaidarapur/Jhilmil/Okhla/Noida/Thakurpukur/K.K. Nagar/Joint Director(Fin.)/ Dy.Director(Fin)/Joint Director-II (Estt.II, Hqrs.)
3. Finance & Accounts Br.III/Cash Branch/Vigilance Branch/Estt.Br.II/PS to all Principal Officers /GPF Section.
4. Personal files.
5. Guard file/Spare copies.
6. Hindi Section for translation.

1 copy received

Suruchi
5/4/22

20 - (19)

EXHIBIT - 1

CONFIDENTIAL/সুরক্ষিত

92

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE : NORTH EASTERN REGION
BAMUNIMAIDAN :::: GUWAHATI-21.

NO. 43-S. 11/18/99-Vig. (CDK)

Dated : Oct. 22, 1999.

M E M O R A N D U M

The undersigned proposes to hold an inquiry against Shri C. R. Kalita.

1. Employees' State Insurance Corporation, N. E. Region under Regulation 14 and Para 3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended. The substance of imputations of mis-conduct or mis-behaviour in support of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure - I). The statement of imputations of mis-conduct or mis-behaviour in support of each the articles of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom the articles of charge are proposed to be sustained are also enclosed in (Annexure - III & IV).

2. Shri C. R. Kalita is directed to submit within 10 (ten) days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri C. R. Kalita is further informed that if he does not submit his written statement of defence on or before the date specified in Para 2 above; or does not appear in person before the Inquiring Authority or otherwise fails to or refuses to comply with the provisions of Regulation 14 read with Para 3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 or the order / directions issued in pursuance of the said Regulation, the Inquiring Authority may hold the inquiry against him ex parte.

5. Attention of Shri C. D. Kalita is invited Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring in Political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri C. D. Kalita is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964 which is applicable to the Corporation employees by virtue of Regulation of 23 of the, Employees' State Insurance Corporation (Staff and Conditions of service) Regulations, 1959 as amended.

6. Receipt of the Memorandum may be acknowledged.

Enclo : As above.

G. H.
(D. N. / PEGCO)
REGIONAL DIRECTOR,

To

Shri C. D. Kalita,
Asstt. General Officer
ESI Corporation, N.E. Region.

*** ***

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST
SHRI C. D. KALITA, ASSTT. ESI CORPORATION, N.E.
REGION, GUWAHATI.

ARTICLE : 1.

Shri C. D. Kalita while functioning as Asstt. at Regional Office, ESI Corporation, Guwahati during the period from 07/91 to 12/97 committed gross mis-conduct inasmuch as he himself prepared the records in respect of M/S Sudarshan Press, Code No. 43-2245 relating to ESI matters under his own handwritings which clearly shows that he took up consultancy work with the aforesaid employer during his tenure of employment in ESI Corporation as a full time employee. Thus, taking up of part-time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provision of Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

ARTICLE : 2.

Shri C. D. Kalita while functioning as Asstt. at Regional Office, Guwahati ESI Corporation, N.E. Region during the period from 11/82 to 04/98 committed gross misconduct inasmuch as he himself prepared the records in respect of M/S Assam Industrial Corporation Code No. 43-1738 relating to ESI matters under his own handwritings which clearly shows that he took up consultancy work with the aforesaid employer during his tenure of employment in ESI Corporation as a full time employee. Thus, taking up of part-time consultancy work with the above employer without prior permission from the competent authority tantamounts to breach of provision of Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the employees of ESI Corporation by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

REGIONAL DIRECTOR.

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1/1/85

manohar

- 23 -

ANNEXURE - II

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STATEMENT OF IMPUTATION OF MISCONDUCT OR
MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF
CHARGES FRAMED AGAINST SHRI C. D. KALITA,
ASSTT. ESI CORPORATION, N. E. REGION.

ARTICLE : 1.

Shri C. D. Kalita while functioning as Head Clerk, Asstt. in ESI Corporation, North Eastern Region during the period from 07/91 to 12/97 undertook consultancy work with M/S Sudarshan Press, Guwahati Code No. 43-2245 during his tenure of employment in ESI Corporation as a full time employee as evident from the facts that he himself wrote under his own handwritings the particulars of ESIC Challans for depositing contribution in ESI Fund Account No. 1 in respect of the above employer for Rs. 1048/- (Challan dated 24.7.91 marked as Q-1, Rs. 1138/- (Challan dated 24.7.91 marked as Q-2), Rs. 1112/- (Challan dated 24.7.91 marked as Q-3), Rs. 1087/- (Challan dated 24.8.91 marked as Q-4), Rs. 1026/- (Challan dated 4.11.91 marked as Q-5), Rs. 1011/- (Challan dated 4.11.91 marked as Q-6), Rs. 6525/- (Challan dated 30.12.97 marked as Q-7), Rs. 3791/- (Challan dated 1.11.97 marked as Q-8), Rs. 2937/- (Challan dated 3.12.97 marked as Q-9) and Rs. 1057/- (Challan dated 27.2.96 marked as Q-11).

The above mentioned documents were submitted by the concerned employer to the office of ESI Corporation Regional Office, Guwahati as required under the provisions of ESI Act, 1948 (as amended). All these documents marked as above were referred to the Govt. Examiner of Questioned Documents, Central Forensic Institute, Calcutta alongwith some specimen hand-writings (marked as S-4 to S-8) and also some admittedly genuine handwritings (marked as A-1 to A-8 and S-1 to S-3) of Shri Kalita for expert opinion. The Govt. Examiner of Questioned Documents vide opinion No. DXB.19/99/1569 dated 29.6.99 confirmed that the documents marked as A-1 to A-7, Q-9 to Q-11, A-1 to A-8 and S-1 to S-8 were all written by one and the same person i.e. Shri C. D. Kalita in ~~in~~ this case.

Contd.. 2/-

Thus it is clearly observed that Shri C.D.Kalita had undertaken consultancy work under M/S Sudarshan Press, Code No. 43-2245 without permission of the competent authority and thus violates Rule 15 of CCS (Conduct) Rules, 1964 which is applicable to the Corporation employees by virtue of Regulation 23 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 as amended.

ARTICLE 2.

Shri C. D. Kalita while functioning as Head Clerk/Asstt. in ESI Corporation, North Eastern Region during the period from 11/88 to 04/90 undertook consultancy work with M/S Asson Industrial Corporation, Guwahati, Code No. 43-1738 during his tenure of employment in ESI Corporation as a full time employee as evident from the facts that he himself wrote with his own handwritings the particulars of ESIC Challan for depositing contribution in ESI Fund Account No. 1 in respect of the above employer for Rs. 1172/- (challan dated 10.12.88 marked as Q-12), Rs. 1189/- (challan dated 19.11.88 marked as a Q-13), Rs. 1127/- (challan dated 9.1.89 marked as Q-14), Rs. 1101/- (challan dated 13.2.89 marked as Q-15), Rs. 1192/- (challan dated 22.4.89 marked as Q-16), Rs. 1112/- (challan dated 17.3.89 marked as Q-17), Rs. 1124/- (challan dated 17.6.97 marked as Q-18), Rs. 827/- (challan dated 9.6.97 marked as Q-19), Rs. 628/- (challan dated 31.7.97 marked as Q-20), Rs. 740/- (challan dated 9.9.97 marked as Q-21), Rs. 784/- (challan dated 27.9.97 marked as Q-22), Rs. 870/- (challan dated 28.10.97 marked as Q-23), Rs. 845/- (challan dated 25.11.97 marked as Q-24), Rs. 846/- (challan dated 28.1.98 marked as Q-25), Rs. 664/- (challan dated 28.1.98 marked as Q-26), Rs. 625/- (challan dated 24.2.98 marked as Q-27), Rs. 840/- (challan dated 22.4.98 marked as Q-28), Rs. 584/- (challan dated 20.3.98 marked as Q-29) and also wrote in his own hand-writings the Return of Contributions in respect of the said employer for the

Contribution Period Ending 1.3.8, as Q-31 & Q-32). The above documents were submitted by the employer to the office of the ESI Corporation, Region, Guwahati as per provisions of ESI Act, 1948 (as amended). These documents marked as Q-12 to Q-29, referred to the Govt. Examiner of Questioned Documents, Central Forensic Institute, Calcutta along with specimen hand-writings (marked as S-4 to S-8) and some allegedly genuine hand-writings (marked as A-8 and S-1 to S-3) of Shri Kalita for examination. The Govt. Examiner of Questioned Documents (Ref. No. ESI/19/99/156) dated 29.6.99 confirmed that the documents marked as Q-12 to Q-29, Q-31 to Q-32 and S-1 to S-8 were all written by one and the same person i.e. Shri C. D. Kalita in this case.

Thus it is clearly observed that Shri C. D. Kalita had undertaken consultancy work under M/S Assam Engineering Corporation, Guwahati Code No. 43-1733 with the competent authority and thus vi. C.G. (Central) Rules, 1964 which is the Constitution of India, 1950, Article 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 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848, 849, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 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1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1

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ANNEXURE - III.

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IX

LIST OF DOCUMENTS BY WHICH THE ARTICLES OF
CHARGES FRAMED AGAINST SHRI C. D. KALITA,
ASSTT. ARE PROPOSED TO BE SUSTAINED.

In respect of M/S Sudarshan Press (43-2245)

Challan dated 24.7.91 (Q-1)
02. " 24.7.91 (Q-2) :
03. " 24.7.91 (Q-3)
04. " 24.8.91 (Q-4)
05. " 4.11.91 (Q-5)
06. " 30.12.97 (Q-7)
07. " 01.12.97 (Q-9)
08. " 3.12.97 (Q-10)
09. " 27.2.96 (Q-11)
10. " 4.11.91 (Q-6).

In respect of M/S Ascom Industrial Corporation,
43-1738.

11. Challan dated 10.12.88 (Q-12)
12. " 19.11.88 (Q-13)
13. " 9.1.89 (Q-14)
14. " 13.2.89 (Q-15)
15. " 22.2.89 (Q-16)
16. " 13.3.89 (Q-17)
17. " 17.6.97 (Q-18)
18. " 9.6.97 (Q-19) S. 17
19. " 31.7.97 (Q-20)
20. " 9.9.97 (Q-21)
21. " 23.9.97 (Q-22)
22. " 28.10.97 (Q-23)
23. " 24.11.97 (Q-24)
24. " 28.1.98 (Q-25)
25. " 28.1.98 (Q-26)
26. " 24.2.98 (Q-27)
27. " 22.4.98 (Q-28)
28. " 23.5.98 (Q-29) S. 18
29. S. 18 RC for CPE 31.3.89 (Q-31 & Q-32) S. 18 (1)

Contd... 2/-

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21/12/95
OTHER DOCUMENTS :

30. Joining report dated nil received on 3.6.88 (A-1)
31. Leave application dated nil (A-2)
32. " " dated 18.8.89 (A-3)
33. " " dated 15.12.88 (A-4)
34. Application for I. E. dated 15.12.88 (A-5)
35. Note sheet page No. 5 of file No. 43-A.28/21/94-95 (A-6)
36. Note sheet page No. 3 & 4 of file No. 43-F.23/20/88-A/CS. (A-7, A-8)
37. Leave application dated 5.12.95 (S-1)
38. " " 9.12.94 (S-2)
39. Letter 7.1.94 (S-3)
40. Specimen handwritings (S-4 to S-8)
(ii) 41. Opinion No. DXB.19/99/1569 dated 29.6.99 given by the GEDD, Calcutta.

21/12/95
REGIONAL DIRECTOR

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28
96
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ANNEXURE-IV.

LIST OF WITNESSES BY WHOM THE ARTICLES OF
CHARGES FRAMED AGAINST SHRI C. D. KALITA,
ASSTT. ESI CORPORATION, N. E. REGION IS
PROPOSED TO BE SUSTAINED.

01. Shri K. C. Ghosh, Asstt. Director.
02. Shri D. H. Das, Asstt. Director.
03. Shri D. Bhattacharjee, Dy. Director(Finan.)
04. Shri L. Logarithan, Asstt. GEOD.

REGIONAL DIRECTOR.

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ENCLOSURE

• 120

To
The Regional Director,
of S.D. Corporation,
Guwahati.

Subject - Prayer for extension of time for
submission of the written statement
for defence.

I have to acknowledge the
receipt of R.O. Memo No. 43-S. 11/10/99
Vig. (CDK) dated 22/10/99.

In this connection I have to
mention that I shall be on tour from 26
to 17.11.99 as per audit programme
audit of local Offices.

I therefore request you to
extend 10 days time from 11/10/99
for submission of the written statement
for defence and oblige.

Yours faithfully

Orakia

25/10/99

CCD. No. 6/99
Assistant R.O.
Guwahati

29/10/99

(24) 47
ORDER SHEET

No. 43-S.11/16/CDK/DE.CAL./2000.

Dated, the 21st February, 2000.

Disciplinary proceedings case against
Sri C.B. Kalita, Assistant, Regional
Office, A.S.I.Corporation, Guwahati.

Order No.43-S.11/18/99-Vig. (CDK) dated 21.12.99
issued by the Regional Director, A.S.I.Corporation
Regional Office, Guwahati, in accordance
Authority under Sub. Part II, para 7
Schedule to the A.S.I.Corporation (Central
Service) Regulation, 1959 was received on 7
Charged Official has been directed to appear
ings on Monday, the 21st February, 2000
attending preliminary hearing and inspection of
documents. He has also been directed to submit
of Defence Assistant, if any, proposed to be
by him so as to reach me before 10th February.

Though the Charged Official failed to submit
last of his witness, but he proposed the name
Sri Jugal Kumar, Insurance Inspector, E.B.I. Corporation
Regional Office, Guwahati as his Defence Ass't. via
letter dt.11.2.2000 enclosing therin a consent letter
dt.11.2.2000 from Sri Jugal Kumar, I.I., E.B.I.
The proceedings were taken up to-day in my office
when the following persons were present:

- 1) Sri T.N. Pathak, Dy. Director
(Int. Secy.), A.S.I.C., Guwahati
- 2) " " " Kalita, Assistant
A.S.I.C., Guwahati

The Charged Official, when questioned
regarding authority, admitted to have received
letter and to have understood the Charged
Bully. He, however, pleaded not guilty and
levelled a protest against him.

The Presenting Officer
and his all listed documents were
tion to the C.O. After the
admitted all the documents
No.11 of A. 1996-1997 and
an acknowledgment was made.

He also admitted that he had a regular reference to 31.3.89
less (Code No.43-2187 and 1/3, and
Code No.43-1738) which are covered in
the Return of Corporation for the period
to 31.3.89 in respect of Establishment.
The C.O. took copies of all
corporate documents and directed to submit
any documents or progress, if any, to
the C.O.

Additional
documents
regular b
corporate
communications

1/1/1
1/1/1
1/1/1

31

11/18/99

98-

The Regional Director,
ESI Corporation,
Ganakhat-21.

Ref: RD Memo. No. 43. S. 11/18/99-Vig(CDR)
Dated 22.10.99.

Kindly refer to RD. Memo. as referred
above dated 22.10.99 regarding article of
charges for misconduct.

While admitting both the article of
charges No. 1 and 2 I have to state that
both the nearby employers requested me
to help them by preparing the ESI challans
and Return of contributions only which are
required for making compliance by the
employers under the ESI Act.

However, I have already given
up the above tasks and I have to
request you kindly to forgive me of
the above misconduct and oblige

Yours faithfully

Chakre

5.11.99

(C. K. Chakre)
Assistant, R.D.
Ganakhat-21.

Annexure 5

99-

IN THE HIGH COURT OF JUDICATURE ANDHRA PRADESH AT HYDERABAD
(SPECIAL ORIGINAL JURISDICTION)

THURSDAY THE NINETEENTH DAY OF JULY
TWO THOUSAND AND ONE

.. PRESENT ..

THE HONOURABLE SRI S.B. SINHA, THE CHIEF JUSTICE

AND

THE HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NO. 10769 of 2000

BETWEEN:

ESI. Corporation rep. by its,
Regional Director, Hill Fort Road,
Hyderabad.

.. PETITIONER

AND

1. Sri G. Venugopal, L.D.C.,
Regional Office, ESI,
Corporation, Hill Fort Road,
Hyderabad.

2. The Central Administrative Tribunal,
rep. by its Registrar, WACA Bhavan,
Hyderabad.

.. RESPONDENTS

Petition under Article 226 of the constitution of India
praying that in the circumstances stated in the Affidavit
filed herein the High Court will be pleased to issue a writ
order or direction particularly one in the nature of Writ of
Certiorari, and quash the order dated 12-4-2000 in O.M. NO.
367/99, after calling for the records from the file of
the Central Administrative Tribunal, Hyderabad Bench.

FOR THE PETITIONER: MR. B.G. RAVINDRA REDDY ADVOCATE

FOR THE RESPONDENTS: MR. D. RAVISHANKAR RAO ADVOCATE

THE COURT MADE THE FOLLOWING ORDER:

.. contd. 2

THE HON'BLE THE CHIEF JUSTICE SHRI S.B. SINHA
AND
THE HON'BLE SRI JUSTICE V.V.S. RAO.

Writ Petition No. 10769 of 2000

JUDGMENT (per THE HON'BLE THE CHIEF JUSTICE)

Although I agree with the opinion of my esteemed brother V.V.S. Rao, J, I would like to add a few words of mine.

The learned Tribunal proceeded on the basis, presumably, having regard to the decisions in A.L. KALRA v. PROJECT & EQUIPMENT CORPORATION OF INDIA LTD¹ and GLAXO LABORATORIES LIMITED v PRESIDING OFFICER, LABOUR COURT². But, one of us – S.B. Sinha, C.J. had the occasion to consider the same in some depth in PROBOR KUMAR BHOWMICK v. UNIVERSITY OF CALCUTTA³ and distinguish A.L. KALRA and GLAXO LABORATORIES cases (supra) stating that it "could not be treated as precedent on the point that the employer in circumstances can proceed against its employee in absence of rule defining and/or specifying misconduct." It was held:

"It is beyond anybody's comprehension that although an employee might have committed a serious misconduct like defalcation, theft, misbehaviour with a lady or similar other matter, he cannot be punished. Recently this Court has come across a case when a Reader of the University has been punished for sexually exploiting a lady research student. Misconduct is a generic term of which the instances of misconduct as may be specified by the employer are their species. . . . Misconduct, *inter alia*, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally."

Samaraditya Pal in his Book "Law relating to Public Service", noticed a contrary decision of a learned single Judge of the Bombay High Court in ABDULLA LATIF SHAH v. BOMBAY PORT TRUST⁴ and at page 717 of the treatise, it was observed:

In view of Sinha, J. of the Calcutta High Court discloses a pragmatic approach based on robust commonsense and is to be preferred to the Bombay view. The Calcutta Court also finds support in principle from a subsequent three Judge Bench Judgment of this Court (B.C. Chaturvedi v. Union of India⁵) where the possession of drug, which was not satisfactorily accounted for, was held TO AMOUNT TO A MISCONDUCT.

¹ AIR 1984 SC 316 (1984) 3 SCC 316

² (1984) 1 LLJ 10 (SC)

³ 1994(2) CLJ 456

⁴ (1992) 1 LLJ 226

⁵ AIR 1996 SC 484 (1995) 6 SCC 749

ALTHOUGH IT WAS NOT AN ENUMERATED MISCONDUCT UNDER THE conduct Rules. And more recently, relying upon the phrase "for good and sufficient reason" which often occurs in the rules, the Supreme Court has held in **SECRETARY TO GOVERNMENT v A.C.J. BRITTO**⁹ that non-specified conduct may also amount to misconduct i.e. the misconduct need not be enumerated in the rules.

Intemperate language used in reply to a charge-sheet may also amount to misconduct. (SYED KHADER MOHIUDDIN v THE CHAIRMAN, TAMIL NADU PSC)¹⁰

Misconduct may be committed outside the place of work e.g. where a bank employee having consumed liquor was in a state of undress and created an ugly scene in public. (THIRUMANGALAM CO-OPERATIVE URBAN BANK LTD. v. ASSISTANT COMMISSIONER OF LABOUR, MADURAI¹¹). But mere passive participation in an illegal strike will amount to misconduct. (CHANGUNABAI CHANOO PALKAR v. KHATAU MAKANJI MILLS LIMITED¹²)

In STATE BANK OF INDIA v T.J. PAUL¹³, the Apex Court held that an act prejudicial to the interest of the bank would include an act, which is likely to cause loss e.g. improper and unauthorized sanction of loan, although no loss has actually been suffered.

In GOVERNMENT OF A.P. v. P. POSETTY¹⁴, it has been held that allegations of illegal detention of certain persons in police custody, their torture etc. by police officer for corrupt motives would amount to misconduct.

Wrongful claim of allowance, willful absence from duty and sexual harassment in working place have been held to be misconduct. (See DIRECTOR GENERAL, INDIAN COUNCIL OF MEDICAL RESEARCH v. ANIL GHOSH¹⁵, UNION OF INDIA v. B. DEV¹⁶ and APPELLATE EXPORT PROMOTION COUNCIL v. A.K. CHOPRA¹⁷).

We may also notice that in N.G. DASTANE v. SHRIKANT S. SHIVDE¹⁸, Thomas, J. speaking for a three Judge Bench noticed the dictionary meaning of 'misconduct' and 'professional misconduct' and held:

rendering abusing the process of Court is guilty of misconduct. When witnesses are present, for examination the advocate concerned has a duty ^{see} that their examination is conducted. We remind that witnesses who come to the Court, on being called by the Court, do so as they have no other option, and such witnesses are also responsible for those who have other work to attend for eking out livelihood. They cannot be

the ESI Corp.

1987) 3 SCC 387

- charge memo date⁸)
- (1) (DB)
- (10) Sn. G. Venug.
- (2000) 2nd at Loca
- (1998) part-time/c
- (1998) 7 Stred un
- (1999) 1 SCC V 59
- 2001 (3) ALD-125 (SC)

THE HON'BLE THE CHIEF JUSTICE
SRI. SATYABRATA SINHA
AND
THE HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 10769 of 2000

Oral order. (Per the Hon'ble Sri. Justice V.V.S. Rao.)

This writ petition is filed seeking judicial review of the order dated 12-4-2000, passed by the Central Administrative Tribunal, Hyderabad Bench (hereinafter called 'the Tribunal'), in OA No. 367 of 1999. By the said order, the Tribunal set aside the order of punishment dated 27-4-1998, passed by the petitioner, whereby and whereunder respondent No. 1 was reverted from the post of UDC Cashier to the post of LDC, and it was further ordered that after a period of five years from the date of the said order, respondent No. 1 be restored to the post of UDC/UDC Cashier, subject to condition that he shall not regain his original seniority, gained in the higher post, prior to the imposition of punishment.

The factual matrix in brief is as follows. The respondent No. 1 was appointed as LDC in the ESI Corporation (hereinafter called 'the Corporation'). He was promoted to the post of UDC Cashier. During the year

while he was working at Hindupur as UDC Cashier, it was alleged that he was rendering part time/consultancy services to M/s. Gajmuk Security Bureau, which is 'an employer', registered with the Corporation under the ESI Act. Respondent No. 1 was, therefore, issued a show cause notice dated 31-1-99, with the following charges:

31.1.94
 UDC Cashier, while he was working at Hindupur, in the year 1990 and 1991, engaged himself in rendering part time/consultancy services to one M/s. Gajmuk Security Bureau, Hindupur, under the ESI Act, under Code No. 53-5857-101.
 Sn. 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.

treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who is present in Court. Seeking adjournments for postponing the examination of witnesses who are present in Court, even without making other arrangements for examining such witnesses is a dereliction of advocate's duty to the Court, as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the Court procedures. Tactics of filibuster, if adopted by an advocate, is also professional misconduct.

In STATE OF PUNJAB v RAM SINGH EX-CONSTABLE¹⁶, the Apex Court held:

Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

registered employers as and when the Act is made applicable to registered employers. In the last paragraph of the said notice it is mentioned that Corporation officials would render all necessary and possible assistance to registered employers in discharging their duties and obligations under the ESI Act, 1948. Respondent No. 1, therefore, contended that by rendering assistance to the employer in question, he has not violated any conduct rules.

After the enquiry report was submitted, the disciplinary authority came to the conclusion that as per Rule 15 of CCS (Conduct) Rules, 1964 (hereinafter called 'the Rules'), read with Regulation 23 of ESI Corporation (Staff and Conditions of Service) Regulations, 1959 (hereinafter called 'the Regulations'), respondent No. 1 has committed misconduct, and accordingly imposed punishment. Against the said order, respondent No. 1 filed appeal before the ESI Corporation, and the same was dismissed confirming the punishment imposed on respondent No. 1 by the disciplinary authority.

Aggrieved by the said order, respondent No. 1 approached the Tribunal by filing OA No. 367 of 1999. Before the Tribunal, respondent

... a government servant shall not engage directly in trade or business or undertake any since respondent No. 1 was writing challans and exten... consultancy services to M/s. Gajmuk Security Bureau, his conduct is per se misconduct attracting the aforementioned provisions.

He would further submit that para 9 of Form C-11, upon which the Tribunal placed reliance, does not mitigate the misconduct alleged against respondent No.1, which is in gross violation of Rule 15 of the Rules.

Sri. D. Ravi Shankar Rao, learned counsel appearing on behalf of respondent No. 1 submits that in the absence of any clear instructions not assist registered employers in filling up challans and other forms, it is open to any employee to help the registered employers in filling up and other forms, and such rendering of assistance does not undertaking of part-time employment by an employee. The short question that falls for consideration by the Court is conduct of respondent No.1 in assisting/helping M/s. Gajmuk

1983 Lab. I.C. 191
2003 (4) ALT 27