CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH, GWALIOR.

O.A. No. 304/2003

and

O.A. 310/2003

Gwalior this the 14th day of July, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. ANAND KUMAR BHATT, MEMBER (A)

OA No.304/2003

Vishnu Priyesh Bansal
S/o Late Shri Nemichand Bansal
aged 45 years, Occuptation: Service
R/o Aditya Nagar,
Morar, Gwalior (MP). ..Applicant

OA No.310/2003

Bhagwan Das Menani
S/o Late Shri Khem Chand Menani
aged 45 years
Occupation: Service
R/o 70-B, Govindpuri
Thatipur, Gwalior (MP). ..Applicant

By Advocate: Shri D.P. Singh.

Versus

1. ESI Corporation through
Director General of ESI
Corporation, Kotla Road,
Panchdeep Bhawan,
New Delhi.

2. Director of Administration,
ESI Corporation,
Pachdeep Bhawan,
Kotla Road,
New Delhi.

3. Additional Commissioner (P&A)
ESI Corporation,
Panchdeep Bhawan,
Kotla Road,
New Delhi.

4. The Regional Director,
ESI Corporation,
Panchdeep Bhawan,
Nanda Nagar,
Indore. ..Respondents

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (J)

By this common order we will decide two OAs bearing 304 and 310 of 2003. In OA No.304/2003 the applicant has a grievance that he has been treated in a discriminatory manner when the impugned order of punishment dated 3.12.1993 has been passed against him whereby he has been reduced to the lower post of Lower Division Clerk until he is found fit by the competent authority to be restored to the higher post. In OA No.310/2003 the applicant has been reduced to the minimum of the pay scale of Lower Division Clerk.

2. Facts common to both the OAs are that both the applicants were proceeded departmentally on an allegation that payment of sickness benefit has been obtained by some fake and fictitious person in the name of Babu Lal from ESI Corporation during the period when Shri Babu Lal was on duty vide order dated 18.7.88. A charge-sheet was issued to the effect that the applicant while working as UDC in the local office of ESIC during 21.6.1985 to 31.5.87 deliberately failed on 12.8.1987 to make proper identification of the insured person and verification of the signature of the insured person Shri Babu Lal on which an enquiry was held and the applicant was awarded punishment. The applicant challenged the same before this Tribunal by filing OA No.359/1995 which was heard and decided along with OA No.563/1995 filed by the other applicant Shri B.D. Manani, applicant in OA No.310/2003. The court after hearing the parties allowed the OAs. The punishment awarded to the applicants were quashed and respondents were directed to reconsider the quantum of punishment awarded to the applicants within a period of 2 months, as the court found that the punishment was too harsh.

3. After the OAs were allowed the present impugned order was passed wherein the punishment awarded to the applicants have been maintained despite the fact that the court had ordered to reconsider their punishment.

4. Both the applicants challenged the same and it is pleaded that the disciplinary authority have passed the impugned order without following the directions given by the Tribunal and the representations made by the applicants against quantum of punishment has been rejected without following the observation and without application of mind. It is also submitted that similar treatment has not been offered to the applicants as the applicants have been discriminated in the matter of awarding of punishment also, hence it is prayed that the same be quashed.

5. We have heard the learned counsel for the applicants and have given our thoughful consideration to the matter involved.

6. At the outset we may mention that though the Tribunal vide their earlier order had observed that the punishment awarded to the applicants pricks the conscious of the Tribunal and directed the respondents to rehear the matter on quantum of punishment but we may point out that merely by giving this direction the court had not directed the respondents to reduce the punishment or to give any other punishment other than the one which has already been awarded.

7. It is a well settled law that the awarding of punishment is the domain of the disciplinary authority or the appellate authority. The Tribunal while exercising the power of judicial review cannot fix the quantum of punishment and only

in rarest of rare cases where the punishment awarded by the authorities is disproportionately harsh and pricks the conscious of the Tribunal, only then the Tribunal can quash the punishment and direct the respondents to reconsider the case. The same was done in the case earlier when the applicants approached the Tribunal earlier. But vide impugned order the respondents have considered the representation of the applicants and after going through the facts the respondents have given the reasonings as to why the punishment is being awarded to these applicants and also with regard to the quantum of the punishment which has been awarded to the applicants.

8. So on going through the same we find that the reasons given by the disciplinary authority are quite justified and same do not call for any interference. Accordingly, the OAs are dismissed in limine.

Sd/-

(ANAND KUMAR BHATT)
MEMBER (A)

Sd/-

(KULDIP SINGH)
MEMBER (J)

Rakesh

TRUE COPY
17-7-03
Court Officer,
Central Administrative Tribunal
Jabalpur Bench Jabalpur

cc

To Sh. D. Mahashwari
Adv
Gwl

Issued
on 22.7.03
BB