

CENTRAL ADMINISTRATIVE TRIBUNAL  
JABALPUR BENCH, JABALPUR

OA No.653/2001

Indore, this the 20th day of July, 2004.

CORAM

Hon'ble Mr.M.P.Singh, Vice Chairman  
Hon'ble Mr.Madan Mohan, Judicial Member

Murari Thakur  
S/o Late Shri Munshilalji  
Office Superintendent  
Finance Branch, Regional Office, ESI  
Corporation, Panchdeep Bhavan, Indore  
R/o C-5, Panchdeep Nikunj,  
Nandanagar, Indore.

...Applicant

(By advocate Shri D.M.Kulkarni)

Versus

1. Director General  
ESI Corporation  
Panchdeep Bhawan, Kotla Road  
New Delhi.
2. Additional Commissioner (P&A)  
Panchadeep Bhawan, Kotla Road  
New Delhi.
3. Regional Director  
ESI Corporation  
Panchdeep Bhawan, Nandanagar  
Indore 452 012.

...Respondents

(By advocate Shri Vivek Saran)

O R D E R (oral)

By Madan Mohan, Judicial Member

The applicant seeks the following reliefs:

- (i) To quash and set aside impugned orders Annexure A-1 & A-2.
- (ii) Direct the respondents to pay arrears of salary for the period of punishment and give the applicant proper placement in seniority after his promotion since 1997 as consequential relief.

2. The brief facts of the OA are as follows:

The applicant was issued a minor penalty chargesheet dated 25.2.93. Subsequently the minor penalty was converted into a major one on 7.6.1995 i.e. after more than two years. No show cause notice was issued to the applicant consequent upon the comments made by the inquiry officer on 24.3.95. The following charge was included in it:



"He continued to take leave after time and submitted false charge report on 23.10.92 though he remained absent and had taken illegal benefit of his absence from 23.10.92 to 27.10.92."

The applicant was not informed of the context of the objections taken by the former enquiry officer which required illegal modification in the fresh charge sheet. The enquiry officer had no jurisdiction to raise any objection regarding the contents of the charge sheet. The applicant submitted protest application on 14.9.95 raising these objections to the disciplinary authority but to no avail. The applicant demanded additional documents for defence purpose which were considered relevant and allowed by the inquiry officer (A-8). But documents at Sl.Nos.2 to 5, 10,13,14,16 & 17 were not made available. Not only this, but the disciplinary authority misled the inquiry officer by informing that these documents were weeded out whereas in fact the list of documents weeded out (Annexure A-9) showed that the records pertaining to 1991 and 1993 were destroyed and the documents demanded by the applicant were pertaining to the year 1992, the relevant period of the charge sheet. Moreover, the documents in question were relating to second half of 1992 and charge sheet was issued in Feb.1993. Thus it was for the disciplinary authority to keep the relevant record safe in custody for making easy access of the same when required. Since the documents were adequate proof of innocence of the applicant, they were deliberately withheld causing prejudice to the applicant. Relying on unlisted documents furnished to inquiry officer by the disciplinary officer without showing them to the applicant on the pretext of office secrecy was arbitrary, unfair and bad in law. The documents in question, though demanded, were not shown to the applicant declaring them as confidential. Protest lodged by the applicant vide letter dated 27.1.99 to inquiry officer is annexure A-10.



The disciplinary officer amended the charge sheet after a period of more than two years and three months after its issue, that too, after adding one more charge without giving opportunity to the applicant to show cause. The impugned order withholding one increment for one year was passed by disciplinary authority vide A-1. The appeal preferred by the applicant (Annexure A-12) was turned down vide order dated 26.2.01 (Annexure A-2). Serious irregularities and errors have been committed by the inquiry officer and the disciplinary authority and the decision arrived at by both the authorities is bad in law. Hence the OA was filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that conversion of major charges from minor charges was illegal as no show cause notice for converting the same was given to the applicant. This vitiates the said enquiry. The enquiry officer appointed during the minor peantly proceedings had no right to pass order recommending addition of charge covering minor penalty into major one. The documents relied upon and demanded by the applicant were not furnished to him nor instructions given to him. Destruction of documents was deliberately done with ulterior motives. The applicant was not given a personal hearing by the appellate authority. The appeal was decided *suo-motu* by pre-judging the case causing prejudice to the applicant. The second charge was related to taking illegal benefit of his absence from 23.10.92 to 27.10.92. This period was already regularised by sanction of leave and therefore the charge ~~dis~~ <sup>labor</sup> not sustain. Hence the impugned orders are illegal and liable to be quashed.

4. In reply, it is argued on behalf of the respondents that the applicant had been given an opportunity of hearing in compliance of the principles of natural justice but the



applicant did not avail the opportunity so given to him and did not submit his explanation to any of the allegation levelled against him. While serving the charge sheet to the applicant on 7.6.95 the applicant had been given 10 days' time to submit his reply. The applicant was misrepresenting the facts before the Tribunal as the charge sheet issued for minor penalty was not converted but it was instead revised to incorporate the requirement for conducting the departmental enquiry as per the procedure laid down in Rule 16(b) of CCS (CCA) Rules. The disciplinary authority was competent to modify the charge sheet. Copies of all relevant documents were given to the applicant and also during the enquiry, all documents were provided to the applicant. The applicant had filed a list of additional documents which were 17 in number, out of which the documents at Sl.No.15 were not allowed by the enquiry officer and that documents at Sl.No.7 and 12 should be available with the charged official hence not necessary. Rest of the documents to be shown for the defence by the presenting officer was ordered. Since being old records documents at Sl.Nos. 4,5,13,14,16 and 17 were not made available and documents at Sl.No.2,3 and 10 were weeded out, inspection could not be allowed. It is not, mandatory to show unlisted documents to the delinquent official. No irregularity or illegality was committed by the respondents while passing the impugned orders.

5. After hearing the learned counsel for both parties, we find that the respondents issued the first charge sheet on 25.2.93 (Annexure A-3) and subsequently another charge sheet was issued on 7.6.95 (Annexure A-4). After perusal of the records, it seems that the enquiry officer had made the modification which was not required. It seems that the enquiry officer travelled beyond his jurisdiction. The copies of the documents were deliberately withheld by the enquiry officer causing prejudice to the applicant. No satisfactory explanation was given to the applicant by the respondents in that regard.



6. We are convinced with the arguments of the learned counsel for applicant that the copies of the relevant documents were not given by the respondents to the applicant and, therefore, the applicant could not defend his case satisfactorily. Hence the applicant was apparently prejudiced by the non-furnishing of the relevant documents by the respondents.

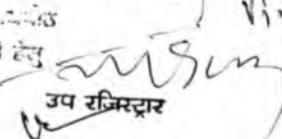
7. Considering all the facts and circumstances of the case, we are of the opinion that the impugned orders passed by the respondents are not in accordance with law and the procedure laid down. Hence the OA is allowed and the impugned orders passed by the disciplinary authority dated 11.4.2000 (Annexure A1) and the order passed by the appellate authority dated 26.2.01 (Annexure A2) are quashed and set aside. The respondents are directed to pay arrears of salary for the period of punishment and give the applicant proper placement in seniority after his promotion since 1997 as consequential relief.

No costs.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

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प्रकाशन सं. ओ/न्या..... जगतपुर, दि.....  
प्रियोगिति अधिकारी -  
(1) रमेश, बाबू यायानी, निवास, जगतपुर  
(2) आमिर, बाबू यायानी, निवास, जगतपुर  
(3) प्रदीप, बाबू यायानी, निवास, जगतपुर DM Kulkarni  
(4) विवेक, बाबू यायानी, निवास, जगतपुर Vivek Saran  
राघवा एवं आवश्यक कार्यालयी हेतु   
उप सचिव  
उप सचिव

*Issued on  
25/9/08  
by*