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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH**

O.A. No.060/00841/2014

Decided on: 10.01.2017

**Coram: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

Surinder Kumar Ex-LDC son of Sh. ChirANJI R/o House No. 1634, Adarsh Nagar, VPO Naya Gaon, Tehsil Kharar District SAS Nagar (Pb.)

.....Applicant

Argued by: Mr. Kamaldip Singh Sidhu, Advocate

Versus

1. Union of India through its Director General, employees' State Insurance Corporation, Panchdeep Bhawan, Head Quarters Office, CIG Marg, New Delhi -110002.
2. The Commissioner (P&A) Employees' State Insurance Corporation, Panchdeep Bhawan, Head Quarters Office, CIG Marg, New Delhi -110002.
3. The Regional Director, Employees' State Insurance Corporation, (Ministry of Labour & Employment, Govt of India), 10, B-Radha Bhawan, Shastri Nagar, Jammu (J&K) 180004.
4. Regional Director, Regional Office, employees' State Insurance Corporation, Sector 19-A, Chandigarh.

.....Respondents

Argued by: Mr. K.K. Thakur, Advocate

Order(Oral)

BY HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)

1. The challenge in this Original Application (O.A.), filed by applicant Surinder Kumar s/o Sh. ChirANJI, is to the impugned Show Cause Notice (SCN) dated 23.01.2006 (Annexure A-3), Memorandum/charge-sheet dated 03.12.2008 (Annexure A-5), Final report dated 02.01.2012 (Annexure A-7), Departmental Inquiry report dated 05.03.2012 (Annexure A-9), and penalty order dated 11.05.2012 (Annexure A-12), whereby his services were terminated by the Competent Authority. He has also assailed the impugned

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order dated 12.05.2014 (Annexure A-25), vide which his representation was dismissed by the Insurance Commissioner (P&A).

2. The pith and substance of the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant O.A., and emanating from the record, is that, the applicant, while working as LDC, was stated to have stolen a cheque, and after forging the signature of Medical Superintendent, illegally withdrew an amount of Rs.3.5 Lakhs. Thus, he was stated to have committed fraud, forged the documents and grave misconduct, during the course of his employment.

3. As a consequence thereof, a regular Departmental Enquiry (DE) was initiated against the applicant and he was charge-sheeted as under, vide impugned Memorandum dated 03.12.2008 (Annexure A-5) along with Article of Charges, which is as under:-

"ARTICLE OF CHARGES"

The above said Surinder Kumar, Adhoc LDC, while employed at Regional Office 11-A Extn, Shastri Nagar, Jammu -180004 w.e.f. 01/08/2005 to 24/11/2005 had committed serious misconduct as under:-

1. He with malafide intention stole Cheque with counterfoil bearing No. 065339 from the cheque book of ESI Model Hospital Bari Brahmana thereby manifesting a grave act of dishonesty.
2. He forged the signatures of Medical Superintendent, ESI Model Hospital, Bari Barhmana, to defraud the Corporation.
3. He when presented the cheque in State Bank of India, Bari Barhmana on 24/10/2005 and withdrew Rs.3.5 Lakh (Rupees Three Lakhs and Fifty Thousand Only), perpetrate an act of dishonesty, fraud and forgery.
4. Recovery of Rupees 3.5 Lakh from him by Police which in turn has now been released to Corporation vide order dated 25/11/2005 passed by learned Court of JMIC (MUNSIF), Samba, further corroborate and establish his act of defalcation by impersonation under the deceptive name of Ramesh Kumar.

By his aforesaid act, Shri Surinder Kumar, Adhoc, LDC has exhibited lack of integrity, lack of devotion to duty and an act unbecoming an employee of the Corporation thereby violation of rule 3(i), (ii) & (iii) of CCS (Conduct) Rules, 1964 which are applicable to the employees of the Corporation by virtue of Regulation 23 of the ESIC (Staff & Conditions of Service) Regulations, 1959 as amended from time to time."

4. In pursuance thereof, he filed the reply dated 09.12.2008 (Annexure A-6) to the Memorandum of Charges, which was found to

be unsatisfactory and final departmental proceedings were initiated against him.

5. After following the due procedure, the Enquiry Officer concluded that the applicant has fraudulently withdrawn the amount, after stealing a Cheque and forging the signatures of the then Medical Superintendent, from the account of ESIC Model Hospital, Bari Brahmana on 24.10.2005, vide impugned enquiry report dated 05.03.2012 (Annexure A-9). A copy of the enquiry report was sent to the delinquent, vide memo dated 14.03.2012 (Annexure A-10), to which he filed his objections/written briefs (Annexure A-11).

6. Having completed all the codal formalities, considering the reply and agreeing with the findings of the EO, the penalty of termination of services was imposed on the applicant by the Regional Director (Competent Authority), by means of the impugned order dated 11.05.2012 (Annexure A-12). The representations dated 29.04.2013 and 07.08.2013, requesting for reinstatement into service, moved by the applicant were rejected by Insurance Commissioner (P&A), vide impugned order dated 12.05.2014 (Annexure A-25).

7. Aggrieved thereby, the applicant has preferred the instant O.A., challenging the impugned SCN, enquiry report and orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

8. The case set up by the applicant, in brief, insofar as relevant, is that, the a criminal case was registered against him, on accusation of having committed the offences punishable under Sections 467/468/420/380 IPC, vide FIR No. 84 of 2005 by the Police of

Police Station Bari Brahmana, Jammu. He was arrested, and granted bail on 02.12.2005 by the Criminal Court. He received the impugned SCN and Memorandum of Charges from the Competent Authority, without awaiting the outcome of criminal case. It was alleged that the charges against him were not proved, as his signatures did not tally with the signature on the stolen cheque in question. The departmental enquiry was held simultaneously, on the same set of allegations in criminal case, in which he had already been acquitted, vide judgment of acquittal dated 10.10.2012 (Annexure A-13) by the Sessions Judge, Samba. The representations dated 29.04.2013 and 07.08.2013, given by the applicant after his acquittal, were stated to have been wrongly rejected by the relevant authorities.

9. According to the applicant, there is no evidence on record, of forging, fraud or misappropriation of the amount against him, and he has already been acquitted from the same allegations by the Criminal Court. The enquiry was not conducted in accordance with the relevant rules, insomuch so he was not provided adequate opportunity to produce the defence witness and of personal hearing, which amount to violation of principles of natural justice. The impugned orders (Annexures A-15 & A-25) were termed to be arbitrary, non-speaking, illegal, against the rules and in violation of principles of natural justice, by the applicant. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned SCN, charge-sheet, enquiry report and orders, in the manner indicated hereinabove.

10. Sequelly, the respondents refuted the claim of the applicant, and filed the written statement, wherein it was pleaded that the

applicant, while working as adhoc LDC at Regional Office, 11 A Extention Shastri Nagar, Jammu, with malafide intention stole cheque with counterfoil, bearing No. 065339 from the Cheque book of ESI Model Hospital, Bari Brahmana. He forged the signatures of the then Medical Superintendent of ESI to defraud the Corporation. Then he presented the cheque and withdrew an amount of Rs.3.5Lakhs on 24.10.2005. A written report of stolen cheque was lodged, on the basis of which the above mentioned criminal case was registered against him and during the interrogation, the applicant made disclosure statement and in pursuance thereof, an amount of Rs.3.5Lakh was recovered from his residential house.

11. According to the respondents, criminal proceedings and departmental enquiry are totally different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, and the purpose of enquiry proceedings is to deal with the delinquent departmentally for his misconduct. The acquittal of the applicant from criminal case has got no adverse bearing on the departmental proceedings. It was pleaded that the Competent Authority has duly initiated the departmental enquiry, he was served with the impugned charge-sheet. After taking into consideration his reply to SCN and objections to the enquiry report, the Competent Authority has rightly terminated his services, and representation/appeal preferred by him were correctly rejected by the relevant authorities.

12. Instead of reproducing the entire contents of the reply and in order to avoid the repetition, suffice it to say that virtually acknowledging the factual matrix, and reiterating the validity of the impugned departmental proceedings and orders, the contesting

respondents have stoutly denied all other allegations and grounds contained in the O.A. and prayed for its dismissal.

13. Controverting the pleadings in reply of the respondents, and reiterating the grounds, contained in the O.A., the applicant filed the replication. That is how we are seized of the matter.

14. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that there is no merit and the instant O.A. deserves to be dismissed in the manner and for the reasons mentioned hereinbelow.

15. Ex-facie, the main arguments of the learned counsel that enquiry was not held in accordance with law, there is no evidence on record against him to prove the charges and since the applicant has already been acquitted in the criminal case by the Criminal Court, so the impugned orders passed on the same charges in the departmental enquiry are arbitrary, are not only devoid of merits but misplaced as well.

16. As is evident from the record, the prosecution, in order to substantiate the charges against the applicant in the departmental proceedings, examined Dr. Bhupendra Kumar (PW-1), Sh. Chandan Roy (PW 2), Sh. S. Ghosh (PW-3), Shri Narinder Kumar (PW-4) and Sh. Subhash Chander (PW-5), besides documentary evidence Exhibit P-1 to P-10. All the witnesses have categorically stated and proved the charges against the applicant. Instead of reproducing their statements in entirety, and in order to avoid the repetition, suffice is to say that all the prosecution witnesses have duly corroborated the charges leveled against the applicant on all vital counts, during the course of departmental enquiry. The oral evidence finds further

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corroboration from the documentary evidence, brought on record by the prosecution. Moreover, it stands proved on the record that, in the wake of disclosure statement of the applicant, during the course of investigation of criminal case, an amount in stash of Rs.3.5 Lakh was recovered from his residential house by the police. The recovered amount was released to ECI Corporation, vide order dated 25.11.2005 by the JMIC, Samba.

17. On the contrary, the applicant has defended his case, vide his written briefs dated 17.02.2012 (Annexure A-8), wherein he has denied the charges leveled against him. He requested to defer the departmental enquiry till the conclusion of the criminal case. We have perused the enquiry report and to our mind, the enquiry officer has dealt with the evidences of the parties, in the right perspective and came to a definite conclusion that the charges framed against the applicant stand duly proved in the departmental enquiry.

18. Not only that, having completed all the codal formalities and taking into consideration the evidences on record, and agreeing with the findings of the enquiry officer, the disciplinary authority re-examined the matter and terminated the services of the applicant, vide the impugned order dated 11.05.2012 (Annexure A-12) which, in substance, is as under:-

(Signature)
"I have gone through the report of the Inquiry Officer and representation submitted by Sh. Surinder Kumar, LDC (adhoc), ESIC, Regional Office, Jammu (presently under suspension) and have found that he has committed indiscipline, exhibited lack of integrity, lack of devotion to duty and an act of unbecoming of an official with malafied intentions by presenting a cheque in State Bank of India, Bari Bramhana on 24.10.2005 and withdrew Rs.3.5 lakhs (Three Lakh and Fifty Thousand Only) by forging signatures of the then Medical Superintendent, ESI Model Hospital Bari-Bramhana, Jammu.

The amount was recovered by the Police which was released to the Corporation vide GMIC (MUNSIF) SAMBA order dated 25.11.2005 which further corroborated and established the charges leveled against Sh. Surinder Kumar, adhoc LDC in Memorandum No.

19-C-14/2005/Vig. dated 03.12.2008. Further I have gone through the Memorandum No. 12-A12/15/97-Adm dated 11.11.1997 issued by the then Regional Director, Regional Office, Chandigarh where he was given offer of appointment on adhoc basis as a stop gap arrangement and has found that the applicability of the Employees State Insurance Corporation (Staff and Conditions of Services) regulation, 1959 (as amended from time to time) is not mentioned therein. Secondly, in the Regional Office, Chandigarh Order No. 415 of 1997 dated 28.11.1997 issued under the file no. 12-A/12/15/2/97-Admn, it had been mentioned that the selected adhoc LDCs will have no right to regular appointment in the cadre of LDC from adhoc appointment and their services can be terminated without giving any notice without explaining any reason at any time.

Given that Sh. Surinder Kumar was appointed on purely adhoc basis as stop gap arrangement only without having any right to regular appointment, he must have been terminated right forth rather than placing him under suspension on 24.11.2005. However, now the charges leveled against him have been fully proved after the enquiry. I, Rattan Kumar, Regional Director, as an Appointing Authority designated by Hqrs Office, ESI Corporation vide letter No. C13/17/2/2009-Vig. dated 11.01.2011, hereby terminate the services of Sh. Surinder Kumar, adhoc LDC from the date of this order."

Similarly, the matter was further examined by the Insurance Commissioner while rejecting the representation/appeal of the applicant.

14. Possibly, no one can dispute with regard to the observations of Hon'ble Calcutta High Court in the case of **Md. Afzal Hussain Vs. Coal India Ltd. And Others** 2014 LabLR 1217, Hon'ble High Court of Himachal Pradesh in the case of **Chet Ram Vs. State of Himachal Pradesh and others** 2013 (2) S.C.T. 265, Hon'ble Jharkhand High Court in the case of **Ajay Kumar Nand alias Jai Prakash Mandal Vs. State of Bihar (now Jharkhand) and Others** 2012(LIC 1176, Hon'ble Punjab and Haryana High Court in the case of **Shashi Kumar Vs. Uttri Haryana Bijli vitran Nigam and another** 2005 (1) SCT 576 that if the removal from service was only on the basis of conviction without considering any other material or circumstances, the employee will be entitled to reinstatement on acquittal by the Criminal Court, but to us, the same would not come

to the rescue of the applicant because in the instant case, the applicant was duly charge-sheeted for his illegal action leading to indicated grave misconduct.

20. Meaning thereby, it stands proved on record that the E.O. and Disciplinary authority have rightly appreciated the evidences on record by the parties. There is sufficient material on record to prove the culpability of the applicant. Adequate opportunity was granted to him at every relevant stage. The mere fact that the applicant was acquitted in criminal case by the Criminal Court, vide judgment of acquittal (Annexure A-13) *ipso facto*, is not a ground much less cogent to exonerate him, in the departmental enquiry, particularly when the charges stand duly proved against him, as discussed hereinabove.

21. What cannot possibly be disputed here is that criminal proceedings and departmental enquiry are totally different and have different objectives. The objective of criminal trial is to inflict appropriate punishment on the offender for his criminal act; whereas the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally on the basis of his illegal action leading to grave misconduct. Moreover, the provisions of Evidence Act are not strictly applicable in the departmental enquiry, as are applicable as such in the criminal trial. The criminal case and departmental proceedings operate in distinct jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent. The standard of proof required in those proceedings is also different

than that required in criminal case. While in departmental proceedings, the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. Therefore, it is held that the E.O. and Disciplinary Authority have examined the matter in the right perspective and came to their definite conclusion that the charges leveled against the applicant stand duly proved. The learned counsel for the applicant has miserably failed to point out any procedural illegality and irregularity in the conduct of departmental proceedings.

22. Thus, in the absence of any procedural illegality and irregularity, in conduct of DE, no ground, much less cogent to interfere with the impugned enquiry proceedings and orders is made out, in view of law laid down by Hon'ble Apex Court in the case of **Chairman-cum-Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others** (2009) 15 SCC 620.

23. Furthermore, the jurisdiction of judicial review of this Tribunal in such disciplinary matters is very limited. The Hon'ble Apex Court while considering the jurisdiction of judicial review and rule of evidence in the case of **B.C. Chaturvedi Vs. U.O.I. & Others** AIR 1996 SC 484 has ruled as under:-

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry

has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. **Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H. C. Goel* (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR) : (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

24. Sequelly, the Hon'ble Apex Court in the case of **K.L. Shinde v. State of Mysore**, (1976) 3 SCC 76, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence has ruled as under:-

"9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can reexamine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of

dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case; but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts."

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

25. Therefore, taking into consideration the material and evidence on record and the legal position, as discussed herein above, we are of the considered opinion that the EO has correctly evaluated the

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evidence of the prosecution after affording adequate opportunity of being heard to the delinquent. The DA has rightly imposed the indicated punishment, which was upheld by the Insurance Commissioner (P&A), the Appellate Authority (AA). The DA as well as AA have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. Hence, no interference is warranted in this case by this Tribunal, in the obtaining circumstances of the case.

26. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

27. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed, as such. However, the parties are left to bear their own costs.

(RAJWANT SANDHU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 10.01.2017

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