

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No.3775/2013
MA 2856/2013**

Reserved on: 18.04.2017
Pronounced on: 24.04.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mrs. P. Gopinath, Member (A)**

Mr. M.Simiullah,
S/o (Late) Sr. R. Mohammed Ameer,
Aged 61 years,
Retired Deputy Director,
ESI Corporation,
Regional Office, Bangalore,
Residing at House No. 38,
9th Main, 14th Cross, Sector-6,
HSR Layout, Bangalore
PIN-560102, Karnataka State. Applicant

(By Advocate: Mr. M.D.Jangra)

VERSUS

1. Union of India,
Represented by the Secretary
and the Appellate Authority,
Labour & Employment,
Ministry of Labour and Employment,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-Pin-110001.
2. The Director General & the Disciplinary Authority,
Head Quarters Office,
Employees' State Insurance Corporation,
Ministry of Labour & Employment,
Government of India, Panchdeep Bhawan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi. Pin-110 002.
3. The Director (Vig),
Head Quarters Office,
Head Quarters Office,
Employees' State Insurance Corporation,
Ministry of Labour & Employment,
Government of India, Panchdeep Bhawan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi. Pin-110 002.
4. The Regional Director/Additional Commissioner,
Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour & Employment,

Government of India, Panchdeep Bhawan,
No.10, Binnypet, Near Sirsi Circle,
Binny Fields,
Bangalore-Pin-560023
Karnataka State.

.... Respondents

(By Advocate: Ms. Shruti Munjal)

O R D E R

Mrs. P.Gopinath, Member (A):

The Applicant, a Deputy Director in Employees State Insurance Corporation (For short ESIC), is aggrieved by the impugned Annexure A-1 penalty order wherein he has been awarded a penalty of reduction of pay by one stage for one year with cumulative effect.

2. Applicant argues that while working in Mumbai, there arose an allegation that he conducted a personal hearing and passed an order on 8.05.2000 under Section 45-A of the ESI Act allegedly determining the employers contribution towards ESI as Rs. 58,065/- instead of actual determination of contribution of Rs.9,12,565/- for the period 1/82 to 1/99, thereby causing an alleged loss of contribution to the respondent-organization to the tune of Rs.8,54,500/-.

3. Applicant seeks the relief of quashing Annexure A-1 penalty order and Annexure A-2 appellate order.

4. The respondents argue that the application is hit by delay of 567 days without any bonafide reason or ground.

5. In the condonation of delay application, the applicant argues that he was affected by thyroid disease and problems involving his divorced daughter with a child which disabled him to approach the Tribunal in time to challenge the penalty order. This Bench notes that the

applicant has neither cited the date or period of the two reasons cited as a cause of delay. It would be far fetched to presume that the two reasons cited would cover the entire period of delay of 567 days. Further, the disease cited is not a disabling one which would have delayed filing the OA. This apparently appears to be a case wherein the applicant was sleeping over the matter and approached the Tribunal much after the limitation period. Hence, the OA could be dismissed on the ground of limitation [**D.C.S.Negi Vs. Union of India and Ors** (SLP (Civil) No. 7956/2011, **Ratan Chandra Sammanta Vs. Union of India** (1994) SCC (L&S) 182) and **Bhoop Singh Vs. Union of India and Others** (1992) 3 SCC 136)].

6. We also note that the main reason for challenging the punishment order was that the report of the Inquiry Officer (IO) was disagreed by the disciplinary authority. We perused the disagreement note produced as Annexure A-10 which has been issued by the Director (Vigilance) with the stipulation that the disagreement note has the approval of the Director General. The disagreement note is a very well argued document, wherein the reasons/grounds made out by the Inquiry Authority (IA) for not proving the article of charge are discussed in detail. The disagreement note discusses in detail why the DG disagreed with the IO. The disagreement note takes into consideration that IO has not relied upon the documentary evidence put up before him by the prosecution including physical verification of the records dated 5.1.99 and 25.1.99 which were crucial for such determination in the absence of other records, production of which was avoided by the Employer. The disagreement note also discusses the reasons why the conclusion of not proving the charge was not well

founded. While recording his conclusion, Inquiry Authority has discussed the main argument advance by charged officer (C.O) that Regional Director is not vested with any authority/powers under ESI Act/Rules/Regulations to re-open a 45-A order passed by a quasi judicial authority like charged officer who was delegated the powers by the statute. He has also referred the judgments of Hon'ble High Court of Kerala, Madras and of Supreme Court as well in this regard, but he has ignored the case of the prosecution in this regard by not appreciating the fact that the officer had utterly failed in taking cognizance of the Inspection Reports dated 5.1.99/27.1.99 in which respondent employer himself had admitted the employment of 51 employees whose names were not shown in muster roll. Further there were enough additional documents furnished by complainants to show their employment in company well before January 1998 i.e. the period which was ignored by the charged officer while making assessment. Though it is a fact that there are no express provisions in the Act to re-open the 45-A order as there is no Appellate Authority except that of E.1 Court, yet a subordinate officer like charged officer cannot defy orders or superior Authority on a particular issue even involving quasi judicial action.

7. The Inquiry Authority had stated that he was of the opinion that facts of the case reveal *prima-facie* that charged officer had erred. The complaint signed by 51 employees who had stated categorically that they were employed from 1982 to 1994 was in front of the charged officer but the charged officer decided not to go beyond 1.1.98. There is independent confirmation of this, from the employees sitting outside factory, to the Insurance Inspector. Even then the charged officer

decided not to go beyond 1.1.98 but this is not sufficient to establish the malafide action of the charged officer. This extract of the report, argues disciplinary authority in disagreement note, clearly indicates the ambiguity in findings and conclusions as the Inquiry Authority has expressly confirmed the errors in assessment order and it being in contradiction to the facts and at the same time he concludes otherwise which cannot be accepted. Inquiry Officer has stated- "Many of the other stands taken by the defence are not correct, such as the complainant did not give all required information, evidence of PW-3 was void ab initio, the prosecution wanted to hide the vital point from the eyes of the Inquiry Authority by not making available his personal hearing notes and orders of Regional Director revoking his 45-A orders etc." After these observations, Inquiry Authority stated that- "it is not accurate that complainants did not give required information. The complainants have given the basic details. To call for any further facts or details, to make any investigation and to obtain the full truth, it was the duty of Insurance Inspector and the charged officer himself." These extracts show that the charged officer had neither appreciated the evidence available on the records nor made any attempt to collect other details by thorough investigation to pass a well reasoned Speaking Order and had apparently issued 45-A order not representing the proper facts.

8. The disciplinary authority submits that the Inquiry Officer has failed to appreciate the oral and documentary evidence on record and the conclusion of Inquiry Officer is apparently inconsistent with his own discussion of the facts before him. Hence the Disciplinary Authority has

disagreed with the findings of the Inquiry Officer and held that the Article of Charge-1 is fully proved against charged officer. The conclusion of the Inquiry Officer was held by disciplinary authority in his disagreement note as apparently inconsistent with his own discussion of the facts placed before him. The Inquiry Officer had neither appreciated the evidence available on record nor made any attempt to collect other details by a thorough investigation to pass a well reasoned speaking order. The disagreement note produces extract of the inquiry report to indicate ambiguity in finding and the conclusion as the IO expressly confirmed the errors in the assessment order and the same being in contradiction to the facts of the case.

9. In view of the detailed disagreement note recorded by the disciplinary authority which was issued by the Director (Vigilance), but which clearly states that the same has been issued with the approval of the Director General, we hold that this cannot be cited as a reason to set aside this document. This is not a case where the report of the Inquiry Officer was not considered or studied in detail or the reasons not recorded for disagreeing with the same.

10. Under Rule 15 (2) of the CCS (CCA) Rules the disciplinary authority has been vested with the power to record its reasons for disagreement. Since the respondent organization had received a complaint placed at page 47 of the OA signed by 51 workmen of Sainath Trading Corporation, an enquiry to establish the contents or otherwise of the said complaint had to be made. It was not as if the disciplinary authority's move to disagree was based on absence or lack

of evidence. The applicant's argument in Annexure A-7 that the factory was closed on the date the complaint officer visited the factory, and based on the evidence on record the issue of non coverage of employees by ESIC was decided, is not acceptable.

11. The respondent organization is one which provides insurance to labour and workers in the organized and unorganized sector among the small and large industrial factory organizations. Persons working in such organizations have no other form of security or insurance and ESIC is the organization which would ensure that such persons are adequately provided with insurance cover to meet adverse visitations.

12. The Apex Court in a plethora of judgments has held that the Tribunal generally should not interfere in the orders passed by the disciplinary authority unless found arbitrary, in violation of statutory rules, mala fide, or under the garb of colourable exercise of power or issued by incompetent authority.

13. We hold that the penalty order has been issued after considering the enquiry report, studying the same and issuing a detailed and well argued disagreement note. The penalty order discusses the charges raised, followed by factual position inclusive of the arguments raised in a disagreement note and arrives at a conclusion of penalty of reduction of pay by one stage for one year with cumulative effect. The punishment imposed is not one which would shock an ordinary person. The appellate order is also a detailed one and arrives at a conclusion based on merits of the case. Thus, both on the ground of limitation and merit, the OA is liable to be dismissed. Ordered accordingly.

(Mrs. P. Gopinath)
Member (A)

(Justice Permod Kohli)
Chairman