Administrative Tribunal
Principal Bench
New Delhi

OA No.2130/2016

Reserved on : 14.05.2018

Pronounced on : 21.05.2018

Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)

Manjeet Singh S/o Darshan Singh,
R/o A-221, Farmers Apartments,
Plot No.8, Sector-13, Rohini,
Delhi-110085,
working as Deputy Director in ESI Corporation,
presently posted at: ESI Hospital,
Okhla, New Delhi. ... Applicant

(By Advocate : Mr. Saurabh Ahuja)

Versus

1. Union of India through
Secretary, Ministry of Labour and Employment,
Department of Labour & Employment,
Government of India, Shram Shakti Bhawan,
New Delhi-110001.

2. Employees' State Insurance Corporation
through its Director General,
Panchdeep Bhawan, CIG Marg,
New Delhi-110002.

3. Chief Vigilance Officer,
ESI Corporation,
Panchdeep Bhawan, CIG Marg,
New Delhi-110002.

4. Joint Director, Vigilance Branch,
ESI Corporation, Panchdeep Bhawan,
CIG Marg, New Delhi-110002.

5. Mr. Nar Singh (Inquiry Officer),
Joint Director, Headquarters Office,
ESIC, Panchdeep Bhawan,
CIG Marg, New Delhi. ... Respondents

(By Advocate : Mr. Murari Kumar)

O R D E R

Justice Dinesh Gupta, Chairman :

The applicant has preferred this OA for the following reliefs:

> "(a) Quash and set aside the impugned memorandum/charge sheet dated 09.09.2015, show cause notice dated 29.07.2015 and order dated 27.01.2016 (mentioned in Para 1 of the OA). And
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> (b) Direct the respondents to accord all the consequential benefits to the Applicant as per law and as per his entitlement (viz. senior time scale w.e.f. 22.03.2015 along with arrears etc.) And
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> (c) Award cost in favour of the Applicant and against the respondents. And/or
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> (d) Pass any other or further order(s) in favour of the Applicant, which this Hon'ble Tribunal may deem fit, just & proper in the above-mentioned facts & circumstances."

2. The facts which emerge from the OA are that the applicant during the course of his duties inspected the books of accounts/records of some firms including one M/s Relaxo Rubbers (ESI code No.11-5514) on 15.07.1999 for the period April, 1997 to March, 1998. Later on, at the instance of the competent authority, the

then Assistant Director, ESIC conducted test verification pertaining to the books of accounts, registers and records of M/s Relaxo Rubbers for the aforesaid period, and on such verification found that the said firm had not entered the wages to the tune of Rs.1,21,55,880/- in their books of accounts and consequently failed to contributeRs.7,90,132/- to the funds of ESI contribution. On the basis of the above mentioned verification/re-verification, the applicant was issued a charge-sheet on 19.09.2006, whereunder one of the charges pertained to the alleged negligence on the part of the applicant to correctly detect the omission of wages by M/s Relaxo Rubbers which led to non-payment of Rs.7,37,930/- towards the ESI contribution. It is also pertinent to mention that M/s Relaxo Rubbers challenged the above order/demand in Employees Insurance Court, and also deposited an amount of Rs.3,90,355/- as security money with the ESI Corporation on 21.11.2004.

3. The applicant refuted the charges levelled against him. The respondents conducted a full-fledged inquiry and came to the conclusion that charge Nos.1 and 2 stood proved. However, charges 3 and 4 could not be substantiated by any evidence and were held as not proved. It is submitted that the inquiry officer proved that an amount of Rs.7,37,930/- did not come under the purview of the ESI contribution. The said inquiry report was accepted by the

disciplinary authority vide its order dated 18.08.2010. The disciplinary authority was of the view that even charge Nos.1 and 2 were not proved, and the applicant was exonerated from all charges levelled against him. It is submitted that the said exoneration of the applicant was on merits and without any condition/contingency.

4. It is further mentioned that after the exoneration of the applicant, the CVC called for the records pertaining to the disciplinary proceedings *qua* the applicant. It is submitted that the CVC upheld the decision of the disciplinary authority vide its letter dated 07.03.2011. In the said letter it is mentioned that the case was examined by the Commission and the Commission in agreement with the disciplinary authority and CVO, ESIC advised closure of the case. Thereafter the competent authority approved promotion of the applicant to the post of Deputy Director (*ad hoc*) vide order dated 24.03.2011.

5. The Employees Insurance Court vide its judgment dated 15.09.2011 quashed and set aside the speaking order dated 14.09.2004 whereby the respondents directed M/s Relaxo Rubbers to pay Rs.7,37,930/- towards ESI contribution, and further directed that the liability of the said firm should be re-assessed with reference to the wages actually paid to the employees which were not entered into

the books of accounts, resulting in loss of contribution by the employer to the ESI funds.

6. Thereafter the accounts of M/s Relaxo Rubbers were verified and upon such verification only an amount of Rs.8,78,905/- was found to be omitted from the books of accounts of the aforesaid firm and a liability of Rs.57,129/- towards ESI contribution was assessed. The firm accepted its liability and paid the same from the amount which was already deposited by it with the respondents.

7. The respondents again issued a show cause notice to the applicant on 29.07.2015 calling upon him to submit his reply against the proposed disciplinary action on the ground that he omitted to detect the liability of M/s Relaxo Rubbers to the tune of Rs.57,129/- towards ESI contribution after re-verification of records by two SSOs for the same period, i.e., April, 1997 to March, 1998. The applicant on receipt of the said show cause notice requested the respondents to grant him extension of time by one month for filing his reply. It is stated that the representation of the applicant was not placed before the competent authority and he was directed vide letter dated 31.08.2015 to submit his reply by 03.09.2015. It is alleged that the letter dated 31.08.2015 was served upon the applicant on 12.09.2015.

8. The applicant thereafter submitted his reply on 15.09.2015 to the aforesaid show cause notice, refuting all the allegations levelled against him therein. The applicant in his reply clearly submitted that it is settled law that once disciplinary proceedings are closed, the Government cannot re-start the exercise in absence of specific power to review or revise vested by rules in the competent authority.

9. The applicant also submitted that it is trite law that second inquiry is not permissible in law on the same set of allegations, provided that the disciplinary authority in the first inquiry has decided the allegations on merits. It is submitted that in the instant matter the respondents in the first inquiry exonerated the applicant from the allegations levelled against him on merits vide order dated 18.08.2010, and, therefore, in view of the above, the action of the respondents in initiating fresh inquiry on the same very charges would tantamount to harassment of the applicant.

10. It is further submitted that the respondents issued charge-sheet dated 09.09.2015 to the applicant without taking into consideration his reply to the show cause notice dated 29.07.2015 in a haste to proceed with the disciplinary proceedings. The applicant challenged the above action of the respondents before the High Court of Delhi in WP(C) No.9684/2015. However, the High Court vide

judgment dated 14.10.2015 was pleased to dismiss the writ petition as not maintainable, and granted liberty to the applicant to approach this Tribunal by filing an OA.

11. The applicant has already submitted his defence statement against the charge memorandum dated 09.09.2015 on the basis of available documents on 02.12.2015, reserving his right to submit a detailed representation on receipt of the listed documents. It is stated that the respondents neither supplied the copies of the listed documents nor passed any order on his defence statement till date. The respondents vide order dated 27.01.2016 have even appointed the inquiry officer. It is also submitted that the said charge-sheet has been issued without waiting/dealing with the reply submitted by the applicant to the show cause notice dated 29.07.2015. When the respondents failed to redress the grievance of the applicant, he had no alternative but to approach this Tribunal through the present OA.

12. Notices were issued to the respondents, who in turn have filed their counter reply. By way of preliminary submission the respondents have contended that while being posted as Insurance Inspector, Delhi Regional Office, the applicant conducted verification of contributory records for the period from June, 1998 to May, 1999 and ledger verification for the period from April, 1997 to March, 1997

in respect of M/s Relaxo Rubber, on 15.07.1999. Subsequent test inspection of the records of the said firm on 23.04.2004 revealed that the applicant had failed to detect the omitted wages amounting to Rs.1,13,52,764/- which attracted a contribution of Rs.7,37,930/- towards the ESI fund. A show cause notice in this regard was issued to the said firm, and a speaking order dated 17.09.2004 under Section 45A of the ESI Act assessing a contribution of Rs.7,37,930/- was passed. It is further submitted that this negligence on the part of the applicant constituted misconduct as the same had caused monetary loss to the respondent Corporation. Accordingly, a charge-sheet for major penalty was issued to the applicant on 19.09.2006 for his above lapse, and a departmental inquiry was conducted consequent upon the denial of the applicant of the charges. Eventually, the applicant was exonerated from the charges levelled against him vide order dated 18.08.2010. The respondents further submit that meanwhile the Employees Insurance Court vide its order dated 15.09.2011 quashed the speaking order under Section 45A dated 17.09.2004 with a direction to re-assess the liability of the employer, and in compliance of the aforesaid order, records of M/s Relaxo Rubber were re-verified by two SSOs on 23.02.2012, wherein they pointed out that the applicant did not take into consideration the amount of Rs.8,78,905/- incurred for omitted wages by the employer for which

the employer was liable to pay ESI contribution of Rs.57,129/-. It is submitted that the applicant had failed to detect and report the above omitted wages during his inspection dated 15.07.1999. Based on the observation slip dated 23.02.2012 issued by the SSOs, the employer vide its letter dated 08.02.2013 accepted the re-assessed liability and requested the ESIC to deduct the amount of contribution of Rs.57,129/- and return the balance amount of Rs.3,33,226/- from out of Rs.3,90,355/- deposited in the ESI Court. Accordingly, the ESIC returned the balance amount, and this way recovered the contribution as payable on the omitted wages. It is alleged that the applicant intentionally or otherwise tried to cause loss to the respondent Corporation despite the fact that the Corporation is a welfare organization and any loss would adversely affect the beneficiary public.

13. The respondents further submit that on considering the above facts it was found that the records of M/s Relaxo rubbers were not properly inspected and had the same not been re-verified by the test inspecting officer and the SSOs, the failure of the applicant to detect and report the omitted contribution to the extent of Rs.57,129/- would have resulted in pecuniary loss to the Corporation. The respondents thus submit that the applicant is responsible for the said lapse or failure to detect and report the omitted wages during his

inspection. Hence a show cause notice was issued to the applicant vide letter dated 29.07.2015. The respondents further submit that the applicant vide his reply dated 20.08.2015 to the show cause notice took the stand that he was exonerated by the disciplinary authority and further sought time of one month to submit his reply. It is then submitted that as the applicant had already availed more than a month's time to submit his reply, his request for further time was not found to have any merits. However, in the interest of justice, the applicant was further allowed three days' time to submit his reply vide letter dated 31.08.2015. It is also submitted that the applicant failed to submit his reply to the show cause notice despite opportunities. Pointing to the contention of the applicant that he was exonerated from the charge by the disciplinary authority, the respondents have submitted that it is evident from the articles of charge that the present charge is materially different from the earlier one whereunder the applicant was exonerated, and, therefore, his contention regarding exoneration was not accepted by the respondents. The respondents have further submitted that as the applicant has failed to file his written statement of defence, the disciplinary authority itself inquired into the articles of charge and appointed an inquiry officer for holding inquiry into the charge. It is stated that the applicant vide letter dated 09.02.2015 raised certain

hyper technical issues and requested for time to file reply to the show cause notice. However, he did not raise the issue of non-supply of documents which he has taken belatedly. The applicant vide his reply dated 09.10.2015 denied the articles of charge and requested for the documents. However, he submitted his reply against the charge-sheet vide letter dated 02.12.2015. It is stated that the reply was examined by the disciplinary authority, however, the same was not found convincing and an inquiry officer was appointed to inquire into the charges. It is submitted that the applicant would have opportunity to defend his case before the inquiry officer and verify the documents sought by him. The respondents further submit that there is no violation of principles of natural justice and ample opportunity to submit reply to the show cause notice has been given to the applicant, and that despite taking time the applicant could not submit his reply.

14. The applicant has filed a rejoinder affidavit reiterating the facts as stated in the OA.

15. Heard the learned counsel appearing for the parties.

16. The only contention of the applicant is that he was exonerated in the first inquiry in which the inquiry officer although held charges 1 and 2 as proved and charges 3 and 4 as not proved,

but the disciplinary authority after considering all the facts and evidence available on record found that all the charges levelled against the applicant were not proved and fully exonerated the applicant. Even this exoneration was further fortified by the advice of CVC which upheld the opinion of the disciplinary authority and the CVO, ESIC, and after that the applicant was even granted promotion. It was only after the ESI Court quashed the speaking order passed by the respondents and directed for re-assessment of the records of M/s Relaxo Rubbers, and on such re-assessment the two SSOs of the respondent Corporation found that the amount which was earlier ascertained by the respondent was not correct and the correct amount was ascertained and the concerned firm was directed to pay the amount of contribution towards the ESI fund, that the disciplinary authority initiated disciplinary proceedings against the applicant afresh. Since the aforesaid firm was closed by that time and a large sum of money was withheld with the respondents, the firm accepted its liability and asked the respondents to adjust the amount which now the respondents were claiming against the firm, and return the remaining balance. On the basis of the said acceptance of the firm, the respondents deducted the said amount and returned the balance. Thereafter a new charge-sheet was issued to the applicant on the basis that the firm M/s Relaxo Rubbers had accepted

its liability, hence the applicant was negligent in verifying records of the said firm.

17. Learned counsel for the applicant further submitted that the article of charge No.3 levelled in the first charge-sheet relates to the verification of M/s Relaxo Rubbers and according to the said charge the applicant had failed to detect and report omitted wages amounting to Rs.1,13,52,764/- which were subsequently detected by the test inspecting officer on 23.04.2004, and the contribution of Rs.7.37.930/- was payable on the said omitted wages. Even though the amount involved was so high, the inquiry officer was convinced that the charge was not proved against the applicant on the basis of documentary and oral evidence available, and exonerated the applicant. The disciplinary authority also accepted the said finding without any disagreement, and the said order of the disciplinary authority was also affirmed by the CVO, ESIC and subsequently by the CVC. It was only when the ESI Court remitted the matter back to the respondents that on re-assessment, an amount of Rs.8,78,905/- on which contribution of Rs.57,129/- towards ESI fund was payable, was found to be omitted from the records of the aforesaid firm. The charge-sheet was issued only on the ground that the firm had accepted its liability. The learned counsel further submitted that the respondents had not taken any action against the earlier SSOs who

wrongly verified the records of the firm in question while computing deficiency to the tune of more than Rupees one crore, while in fact later it was found only to the tune of Rs.8,78,905/- where upon contribution of Rs.57,129/- towards ESI fund was payable, and since the amount was so negligible, the firm accepted its liability, but that would not give any fresh reason/cause of action to the respondents to initiate further inquiry against the applicant.

18. The learned counsel lastly submitted that the present charge-sheet only contains the charge of negligence in verification of records of M/s Relaxo Rubbers, which was also one of the charge in the earlier charge-sheet, and, therefore, there is no legal justification to proceed with the present charge-sheet and the same is liable to be quashed.

19. Learned counsel for the respondents in reply to this argument submitted that in the first inquiry there were four articles of charge, out of which charges 1 and 2 were found proved and charges 3 and 4 as not proved, and that the disciplinary authority exonerated the applicant only on the ground that since the matter pertaining to M/s Relaxo Rubbers was *sub judice* before the ESI Court and the liability had not been finally established, the applicant was exonerated from the article of charge 3. However, it was only when the ESI Court remitted the matter to the respondents and the records

and ledgers of the firm were re-examined and re-verified, that an amount of Rs.8,78,905/- was found to be omitted from the books of accounts of the firm and a liability of Rs.57,129/- towards contribution to ESI fund was assessed. The firm accepted its liability and paid the amount, which, according to the respondents, clearly establishes that had the applicant been vigilant in his inspection, the respondents might not be put to loss of revenue, although it was afterwards the amount was paid by the firm, but the dereliction of duties fastened on the applicant is established and the respondents have every right to issue a fresh charge-sheet showing different sets of amount and the material shown in the subsequent charge-sheet as different from the earlier one.

20. We are unable to accept this contention raised by the learned counsel for the respondents. Undisputedly, the factum of issuance of the first charge-sheet containing four articles of charge, out of which article of charge No.3 pertained to M/s Relaxo Rubbers, which was held not proved, has not been disputed. It is also pertinent to mention that the amount after re-verification was found to be so huge exceeding Rupees one crore and the liability of contribution fastened on M/s Relaxo Rubbers was Rs.7,37,930/-. It is also not disputed that M/s Relaxo Rubbers challenged the said re-assessment before the ESI Court. The disciplinary authority while

accepting the report of the inquiry officer whereby the applicant was exonerated from charge No.3 pertaining to the said firm, nowhere recorded any disagreement with the findings of the inquiry officer. The inquiry officer in a detailed manner substantiated his finding by recording that the re-assessment by the SSOs was against the facts and entries available in the records of M/s Relaxo Rubbers. The disciplinary authority also accepted the same. The order of the disciplinary authority was also affirmed by the CVO, ESIC and the CVC. The respondents have also not disputed the fact that subsequently the applicant was offered promotion. The contention of the respondents that it was only after the matter was remitted back by the ESI Court and on subsequent re-verification, the concealment of payment of wages came to fore and the concerned firm accepted its liability of the amount, that fresh cause of action is available with the respondents to initiate inquiry, is without foundation.

21. From the reading of the order dated 15.09.2011 of the ESI Court remitting back the matter to the respondents, it is evident that the order was not passed on merit but only on the request of the petitioner, as the petitioner was ready for re-assessment of its liability. It is also not in dispute that after re-verification the omitted amount was reduced to Rs.8,78,905/- instead of the amount of more than Rupees one crore, which clearly shows that earlier the

verification by the SSOs was not proper and was without any foundation. The re-assessment by the respondents was accepted by the firm only for the reason that the firm was closed by that time and an amount of Rs.3,90,355/- was held up with the respondents without any interest thereon, and the liability re-assessed by the respondents being only to the tune of Rs.57,129/-, the firm accepted its liability and paid the amount, but that will not give rise to any fresh cause of action to initiate fresh inquiry against the applicant. The contention of the respondents that the material shown in the second charge-sheet is different and the imputation of charges is also on different cause of action is against the facts. A bare reading of both the charge-sheets clearly reveals that in the earlier charge-sheet, article of charge No.3 pertained to M/s Relaxo Rubbers and was for the same period which is mentioned now in the second charge-sheet. The matter pertains to the year 1997-98 verification of records of the aforesaid firm and now the respondents have issued a fresh charge-sheet in 2015 after a lapse of more than 17 years. It will be sheer injustice to the applicant to again put him through departmental proceedings on the same set of facts and evidence which he has already faced and has been exonerated. It is well settled proposition of law that second inquiry on the same charge which could not be proved during the first inquiry is not permissible in law, as held by

the Hon'ble Supreme Court in ***Kanailal Bera v Union of India & others*** [(2007) 11 SCC 517].

22. In view of the above, we find that the OA has merit and deserves to be allowed to the extent that the charge-sheet dated 09.09.2015 is quashed and set aside. The respondents are directed to accord all consequential benefits to the applicant as per law and his entitlement. There shall be no order as to costs.

(K. N. Shrivastava)
Member (A)

(Justice Dinesh Gupta)
Chairman

/as/