



5. Director General, ESIC  
ESIC HQ Office,  
Panchdeep Bhavan,  
CIG Road,  
New Delhi-110002. ... **Respondents**  
**(By Advocate Shri V.D.Vadhavkar)**

**Reserved on : 08.06.2017**

**Pronounced on : 26.07.2017**

**ORDER**

**Per : A.J. ROHEE, MEMBER (J)**

The applicant aggrieved by the order imposing punishment of removal from service, approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs :-

"(a) The Application be allowed

(b) The Charge sheet, the order of penalty, the order on appeal and the order on revision petition, all being devoid of logic and justice, be quashed and set aside.

(c) The Respondents be directed to re-instate the Applicant from the date of his removal and allow him all consequential benefits including back wages with interest, increments leave, seniority, compensations etc. He should also be allowed to retain the quarter allotted to him till his retirement.

(d) Any other relief that the Lordships consider appropriate in the interest of justice".

**2.** The applicant is postgraduate and in pursuance of the advertisement issued by the Employees State Insurance Corporation (hereinafter referred to as ESIC), he applied for the post of Insurance Inspector/Superintendent/Branch Manager (Gr.-I) (Now designated as Social Security Officer (SSO) in the year 2006. He was selected and was appointed on the said post on 23.10.2008. He was placed on probation. However, on 4.9.2012 the applicant was served with a Memorandum/Charge Sheet (Annexure-A-1) by respondent No.4 the Disciplinary Authority alleging that he has deliberately suppressed the fact of his previous employment with Indian Oil Corporation Ltd. (for short, IOCL) and that he was dismissed therefrom after holding the disciplinary inquiry.

**3.** The applicant contested the inquiry and denied the charge that there is suppression of any material fact by him and according to him he has disclosed the fact of the previous employment in the application form

itself by annexing a separate sheet under the column "Experience". Not convinced with reply one Shri Narsing was appointed as Inquiry Officer on 4.10.2012 under the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, CCS (CCA) Rules) vide Annexure-A-5. The said Inquiry Officer was re-appointed on 5.6.2013 (Annexure-A-6) under the provisions of Employees' State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959 (for short, ESIC Regulations).

**4.** During the course of inquiry the applicant submitted list of witnesses and also sought copies of certain documents vide application dt. 8.8.2013 (Annexure-A-8). However, copies of only five documents were supplied to him. When the inquiry was fixed on 8.1.2014 it is stated that the applicant could not attend on said date of hearing since he fell sick and was advised to take rest for one day vide Medical Certificate dt. 9.1.2014 (Annexure-A-9) issued by the ESIC Medical

Hospital. Although the Inquiry Officer was appraised about fact of applicant's illness, the Inquiry was illegally closed without giving opportunity to applicant to lead evidence in defence and without putting mandatory questions to him. A report dt. 28.3.2014 (Annexure-A-14) was then submitted to the Disciplinary Authority. It was then served on the applicant to which he submitted a representation dt. 14.6.2014 in which findings recorded by the Inquiry Officer were denied. However, the R-3 did not find favour with the representation and by rejecting it, passed the impugned order dt. 3.2.2015 (Annexure-A-2) imposing penalty of removal from service.

5. The applicant preferred appeal dt. 2.3.2015 to R-5 challenging the order passed by the Disciplinary Authority. However, it was rejected vide impugned order dt. 15.7.2015 (Annexure-A-3). The applicant again preferred Revision Petition on 29.10.2015 to the Chairman Standing Committee, ESIC (not joined as party respondent in OA) challenging the orders passed

by the Disciplinary Authority and Appellate Authority. However, it met with the same fate, since vide impugned order dt. 16.3.2016 (Annexure-A-4) it was dismissed. Thereafter, the present OA is filed on 22.3.2016.

**6.** The reliefs sought in OA are based on the following grounds as mentioned in paragraph No.5 of the O.A. The same are reproduced here in verbatim for ready reference :-

5(a) The case has been handled by the Respondents ab initio in an arbitrary and illegal manner. There was no requirement of any experience for recruitment as Insurance Inspector/Superintendent/Branch Manager (GR II) (now called SSO). In spite of that, the Applicant had submitted his experience and at no stage hid the fact of his appointment in the IOC.

5(b) The dismissal imposed by the IOC was not a bar on recruitment in ESIC. The rules shown by the Respondents, only speak of the penalty of dismissal imposed by the ESIC on its own employees and not by any other

organisation like IOC.

5(c) The grounds on which the Applicant was arbitrarily dismissed was not related to any corruption or moral turpitude. The IOC authorities violated the Rules of Natural Justice wantonly and the whole issue is before the Hon'ble Bombay High Court and the Applicant is sure that he would finally come out successful in the Writ Petition.

5(d) The Applicant had not hidden any fact from the Respondents. The total facts were given by the Applicant in the attestation form as well as the application form. It is clear that unless the police verification was done, the Applicant would not have been retained by the Respondents in service for over six years and would not have treated him to have been deemed permanent as no extension was made in the original period of probation of the Applicant with the Respondents. However, the Respondents did not produce the attestation form and police verification report during the inquiry causing great failure of Natural

Justice prejudicing the interest of defence of the Applicant.

5(e) The inquiry has been conducted in a totally biased manner prejudicing the Rules of Natural Justice. The inquiry has been conducted ex-parte when the Applicant was sick as certified by the Medical authorities. The inquiry is therefore totally vitiated as held by the Hon'ble Courts.

5(f) The inquiry was also vitiated by non observing the rule 14 (18) of CCS (CC&A) Rules, 1965 or equivalent provision in the ESIC Regulation.

5(g) The Appellate and the Revisional Authorities have mechanically upheld the order of the Disciplinary Authority blatantly ignoring the legal and factual points raised by the Applicant in his representation against the IO's report, the Appeal and the Revision Petition.

5(h) The respondents have been pressing for vacating the Government quarter by the Applicant without even invoking the

provisions of Public Premises (Eviction) Act, 1971.

5(j) The Hon'ble Tribunal in its order on 17 Nov 2015, in OA No 630 of 2015, gave liberty to the Applicant to approach the appropriate forum if is aggrieved by the order of the Revisional Authority. The Respondents therefore are bound to allow the Applicant reasonable time to Approach the Hon'ble Tribunal before ordering him to vacate the accommodation allotted to him. It is humbly submitted that the Applicant is suffering from Physical Handicap (with 50% disability, due to Hemiparesis). In the event of his eviction from the accommodation allotted to him, it will be nearly impossible for him to stay in Mumbai to pursue this present Original Application.

7. On notice, the respondents appeared and by a common reply dt. 9.11.2016 resisted the OA by denying all the adverse averments, contentions and grounds raised therein. It is not disputed that in pursuance of the advertisement issued, the applicant applied and

was selected for the post of Insurance Inspector/Manager Grade II/Superintendent (Now designated as SSO) in the office of the respondents. Till the applicant was removed from service, he was working on the said post. It is stated that while submitting the application form the applicant did not mention anything against the column "Experience" in it regarding his previous employment. He has also submitted a declaration that information furnished by him in the application form is true, complete and correct to the best of his knowledge and belief. On his selection applicant accepted offer of appointment and was then posted in Sub-Regional office, ESIC, Thane, where he reported for joining on 23.10.2008.

**8.** It is stated that (IOCL), Western Region, Mumbai vide letter dt. 13.6.2011, in response to letter dt. 8.6.2011 issued by Sub-Regional Office, Marol informed that the applicant was in employment of the IOCL from 17.11.1999 to 20.4.2005 and he ceased from said

service since dismissed vide order dt. 14.4.2005. This fact was then brought to the notice of R-4, for taking further necessary steps. A responsible officer was then deputed to the office of IOCL, Western Region, Mumbai for confirmation of the above factual position and for collecting the necessary documents regarding applicant's employment in IOCL and his dismissal from said service. It was revealed that the applicant while working with IOCL was served with charge sheets dt. 12.7.2001, 14.11.2003 and 19.2.2004 in which punishments were imposed upon him. In a disciplinary proceedings vide order dt. 14.4.2005 in respect of charge sheet dt. 14.11.2003, the applicant was dismissed from service. It is stated that the applicant had deliberately suppressed the fact of previous employment and dismissal from service. It is stated that before initiating departmental proceedings against the applicant, he was served with show cause notice dt. 16.1.2012. In response to it vide letter dt. 10.4.2012 the

applicant submitted that the alleged dismissal from IOCL is sub-judice before the Hon'ble High Court of Bombay in a Writ Petition preferred by him. Since the reply was not convincing he was charge sheeted with the Memorandum dt. 4.9.2012 (Annexure-A-1) and since the applicant denied the charges levelled against him, regular departmental inquiry was held.

**9.** Though the Disciplinary Proceedings was held strictly in accordance with CCS (CC&A) Rules and the ESIC Regulations, it cannot be said that the punishment imposed is bad or illegal. The Appellate Authority and Revisional Authority have also considered all the grounds raised by the applicant and passed reasoned orders before rejecting the appeal and revision preferred by him.

**10.** It is stated that the applicant has falsely stated that he disclosed information about his previous employment with IOCL and dismissal therefrom and is trying to mis-lead this Tribunal, since he himself has admitted that he left the column of experience in the

application form as blank. It is denied that he annexed a separate sheet with the application form giving details of his previous employment. In view of the deliberate suppression of previous employment and dismissal therefrom, which fact was subsequently revealed, appropriate legal action was taken against the applicant. The O.A., is therefore, liable to be dismissed.

**11.** It is stated that no grounds are made out for setting aside any of the impugned orders passed by Disciplinary Authority, Appellate Authority and Revisional Authority. On account of the applicant's abrupt absence from inquiry proceeding after initially attending it, the Inquiry Officer was constrained to close the inquiry and hence for absence of applicant the mandatory questions could not be put to him. No request was subsequently made by the applicant to allow him to take part in the inquiry. In such circumstances of the case, there is no substance in the OA and hence it is liable to

be dismissed.

**12.** It is stated that the applicant first submitted an unsigned list of 56 documents to be provided to him and cited five defence witnesses without giving the custodians of the documents and relevance of the witnesses to the case. Hence, the Inquiry Officer as per the provisions of the ESIC Regulations rejected the said request. When the inquiry proceeded further the applicant again submitted list of 142 additional documents and cited 9 defence witnesses without giving their relevance to the case. The request of the applicant was, however, examined and as recorded in the daily order sheet dt. 12.8.2013 and supplementary order sheet dt. 16.9.2013, out of 142 documents asked for by the applicant, the Inquiry Officer found 15 documents relevant to the case and hence submitted its copies to the applicant. It is denied that copies of only two documents were supplied to the applicant. The request for examination of defence witnesses was disallowed in absence of any

relevant factor disclosed by the applicant.

**13.** During the inquiry proceedings of 2.12.2013 the applicant was directed to submit his defence statement. He accordingly submitted it on 6.12.2013 and desired to examine himself as defence witness, since all the earlier defence witnesses named by him were not approved. Thereafter, the Inquiry Officer fixed 2.1.2014 as the date for recording statement of the applicant. But he applied for adjournment vide letter dt. 31.12.2013, his request was allowed and inquiry was adjourned to 8.1.2014 for recording statement of the witnesses, and it was made clear that last opportunity was granted to the applicant and he was also cautioned that in case he again remained absent on the adjourned date i.e. 8.1.2014, the proceedings would be held ex-parte.

**14.** On the adjourned date of hearing i.e. on 8.1.2014 it is stated that the applicant although appeared started raising irrelevant issues regarding supply of documents and

defence witnesses. The Inquiry Officer called upon the applicant to give his statement as defence witness. However, he refused to make any statement. The Inquiry Officer then started putting mandatory questions to the applicant as required by CCS (CCA) Rules. However, he again did not answer and in the middle of the proceedings, he left abruptly. This was recorded in the proceedings of 8.1.2014 and in absence of the applicant, the Inquiry Officer was constrained to close the inquiry.

**15.** It is stated that the applicant faced serious charges while in previous employment in the nature of committing serious mis-conduct of indulging in wilful insubordination, disobedience of lawful orders of the superiors, righteous/dis-orderly/indecent behaviour in the office premises etc. and hence he was dismissed from service. No case is made out for interference with any of the orders lawfully passed by all the three competent authorities. It is also stated that the applicant failed to

submit the attestation form duly filled in by him inspite of repeated directions.

**16.** It is stated that the applicant was permitted to retain the Government Accommodation allotted by ESIC itself for one month after his dismissal from service. However, he continued to occupy it in pursuance of the protection extended to him by this Tribunal. After decision of the Revisional Authority, it was obligatory for the applicant to vacate the quarter. However, he failed to do so and illegally asserted that he cannot be directed to vacate the quarter for not invoking the provisions of Public Premises Eviction Act, 1971. It is thus, obvious that the applicant any how intends to drag this issue and to retain quarter illegally. The O.A. is, therefore, liable to be dismissed.

**17.** The applicant then filed rejoinder on 16.11.2016 and denied all adverse averments and contentions raised by the respondents in their reply. It is stated that since the space in the application form regarding experience was

insufficient, the applicant had annexed a separate sheet giving its details. However, through oversight failed to mention in the blank space that he has attached a separate sheet regarding experience. As such lapse can safely be ignored and the respondents are now deliberately suppressing this fact. It is also stated that experience was not a mandatory requirement for appointment in ESIC and hence the same can be ignored for this reason also

**18.** It is stated that the applicant has submitted the attestation form duly filled in giving information regarding his previous employment and it was submitted before he was allowed to join. Hence, it cannot be said that there was suppression of any information. All material information by the applicant regarding his previous employment was given. The respondents are also aware of the fact that the applicant has applied for transfer of his GPF account from IOCL to ESIC and consequently about his previous employment.

**19.** The respondents contentions in the

charge sheet that the applicant is disqualified for appointment as per provisions of Rule 11(ix) of CCS (CC&A) Rules is not correct, since that is applicable to the Government employees. His employment in either IOCL or ESIC cannot be termed as Government employment and hence even if the applicant is dismissed from the previous service, there is no bar for considering him for appointment in ESIC.

**20.** It is stated that it was brought to the notice of the Inquiry Officer that the applicant was sick and hence inquiry should not have been closed behind the back of the applicant.

**21.** The respondents, then filed reply to the rejoinder on 1.3.2017 and denied the averments made in the rejoinder by the applicant and reiterated the grounds stated in the reply. Copies of correspondence with IOCL are also produced on record. It is stated that IOCL and ESIC both are the Government Corporations and function under the supervision of the concerned Department and hence it cannot

be said that its employees are not in government service and hence provisions of Rule 11 (ix) of CCS (CC&A) Rules are not attracted.

**22.** The respondents again filed additional reply regarding non-payment of due rent/licence fee by the applicant since he has not vacated the government accommodation provided to him by ESIC. The O.M. dt. 4.6.2013 issued by Government of India, Ministry of Urban Development, Directorate of Estates is also produced in this behalf.

**23.** On 8.6.2017 when the matter was called out for final hearing, we have heard the applicant and Shri Anupam Chattopadhyay, learned Advocate for him and the reply arguments of Shri V.D.Vadhavkar, learned Advocate for the respondents.

**24.** We have carefully perused the entire pleadings of the parties and various documents produced on record by them in support of their rival contentions.

**25.** We have also sought the original record concerning the inquiry proceedings and

also the record relating to recruitment cell including advertisement and application form submitted by the applicant for the post of SSO. We have carefully gone through the said record.

**FINDINGS**

**26.** The only controversy involved for resolution of this Tribunal in the present OA is whether the impugned orders passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority imposing punishment of removal from service on the proved mis-conduct is liable to be set aside as illegal, improper or incorrect on various grounds raised by the applicant.

**27.** To begin with, as stated earlier, it is not disputed that the applicant was previously in employment of IOCL and from the official correspondence with the said authority it transpired that he was dismissed from service on proved misconduct in a disciplinary proceeding. Thereafter, the applicant applied for the post of SSO and was selected. He continued to work on the said post till he was

removed from service by the impugned order passed by the Disciplinary Authority.

**28.** The main allegation against the applicant is that he has deliberately suppressed the fact of his previous employment with the IOCL in the application form itself and further since he was dismissed from the said establishment is disqualified for appointment in ESIC.

**29.** In this respect the two Articles of Charges levelled against the applicant are reproduced here for ready reference :-

"1. that, he had deliberately concealed the fact of his employment in Indian Oil Corporation Ltd. (IOCL) from 17.11.99 to 20.4.05 while submitting application for the post of Insurance Inspector/Manager Grade-II/Superintendent (Now Social Security Officer) in Employees State Insurance Corporation, although, he had signed the declaration that the information furnished by him in the application form is true, complete and correct to the best of his knowledge and belief and thereby he misled the Corporation.

2. that, he had deliberately suppressed the fact that he was dismissed from the services of Indian Oil Corporation Ltd. vide order dated 14.4.05 to gain employment for the post of Insurance Inspector/Manager

Grade-II/ Superintendent in Employees  
State Insurance Corporation  
unlawfully".

**30.** So far as the first charge is concerned, it is obvious from perusal of the advertisement produced by the applicant on record vide (Annexure-A-13) that Column No.13 thereof is styled as "Experience" and the following information is sought in a tabular column in it :-

"13. Experience

Sl. No.	Name & full address of employer	Designation /duties of post	Scale of pay	Period of Employment	
				From	To

**31.** It is thus obvious that although past experience as Social Security Officer is not sought, the experience acquired by the applicant through any previous employment is in fact sought. The previous employment may pertain to service rendered in Central or State Government or even in private establishments. This information was necessary in order to ascertain if the candidate who applied for the

post of SSO in ESIC is serving elsewhere or has already served and has left that job or dismissed or removed therefrom. There may be instances that the candidate was removed or dismissed from previous employment after holding inquiry against him. It is then for the ESIC to consider, even inspite of such dismissal/ removal the candidate should be given appointment, if found eligible and selected.

**32.** The original application form submitted by the applicant in pursuance of the advertisement issued for appointment in ESIC shows that in column No.13 under the caption "Experience" he has not mentioned anything in the said column nor it is mentioned therein that a separate sheet giving details of his previous employment is attached. Had he annexed any separate sheet he would have defenitely mentioned in the columns of para 13 of the application form clarifying this point. In absence of it, it cannot be said that he has in fact disclosed the information regarding his

previous employment or that the respondents have deliberately not produced the separate sheet annexed by the applicant along with his application form. Hence, it can safely be said that the Inquiry Officer and all the authorities were right in holding that the applicant had deliberately suppressed the fact of his previous employment with IOCL, since he failed to mention anything about it in application form.

**33.** During the course of argument, the learned Advocate for the applicant submitted that the applicant has forwarded the attestation form and mentioned the fact of his previous employment in it. However, the copy of the attestation form submitted by the applicant is not produced on record by the respondents. It appears that the prescribed attestation form was supplied to the applicant after he joined the service and although he rendered service of about 6 years with ESIC till he is removed from service, the report of Police Verification and antecedents of his

character is not obtained by the respondents. In any case, the applicant does not appear to have satisfactorily completed the probation period, even after rendering of 2 years service awaiting the police verification report. As such, his services could have been terminated on that count although it cannot be said that he failed to submit the attestation form. However, the respondents thought it appropriate to hold a regular departmental inquiry against the applicant before any action on the charges levelled is taken against him for the said misconduct. As such no adverse inference can be drawn against the respondents.

**34.** For the sake of argument, even if it is presumed that in the attestation form applicant has furnished the details of his previous employment, still it was on a subsequent occasion and in the application form itself in para No.13 that he should have made disclosure of this fact, which he failed to do. Hence it is obvious that all the three authorities in their detailed and reasoned order are justified in

holding that the Charge No.I stands proved.

**35.** So far as this aspect of the case is concerned, the applicant submitted that he applied for transfer of his GPF Account from IOCL to ESIC and hence the respondents were well aware about his previous employment and otherwise he would not have applied for such transfer. However, this was again subsequent to joining ESIC and not earlier. In fact, when the applicant was dismissed from IOCL, there is no question of transfer of his GPF account to ESIC where on joining a separate GPF account might have been allotted to the applicant. Hence, simply because the applicant applied for transfer of GPF account from IOCL to ESIC it cannot be said that there was no deliberate suppression of the fact of his previous employment at the initial stage when he submitted prescribed application form to the ESIC for his appointment to the post of SSO. In any case, it can safely be said from the material produced on record that the charge sheet was properly instituted against the

applicant and that due procedure was followed by the Inquiry Officer while holding the inquiry and finding that both the charges levelled against the applicant stand proved.

**36.** Further, perusal of the original inquiry proceedings show that on behalf of the Department one Shri Arun Kumar, Additional Commissioner was examined who deposed that the application form submitted by the applicant was devoid of the information relating to his previous experience. Another witness Shri Deepak Joshi, Director confirmed the issue of relied upon documents from which it is obvious that due procedure was followed as far as the applicant was concerned and full opportunity was given to defend him. PW-3 Shri Mahendra Kumar, Dy. Director was also examined from which it is clear that the applicant appeared for the written test and interview and confirmed the contents of verification slip. PW-4 Shri Raju K.Choudhary, Dy. Director confirmed that he has collected the documents from IOCL regarding previous employment of the

applicant and his dismissal therefrom. Both being the official documents it was not necessary to examine the disciplinary authority who imposed the penalty of dismissal and also for the reason that the applicant himself has admitted the fact in the OA that he was dismissed from service which is still sub-judice before the Hon'ble High Court in the Writ Petition.

**37.** Thus perusal of the record clearly reveals that due procedure was followed by the Inquiry Officer and this fact is elaborately considered by the Disciplinary Authority and the authorities above him. It is the settled legal position that so far as challenge to the orders passed by the authorities in disciplinary proceedings is concurred, this Tribunal is not expected to re-appreciate the evidence. It is only required to be considered if full opportunity is given to the delinquent employee to defend him and prescribed procedure is followed while conducting the inquiry.

**38.** Perusal of the record shows that on

both the counts there is no room for doubt that there was violation of any prescribed rules while conducting the inquiry or while imposing the penalty. As stated earlier, subsequent disclosure of fact regarding previous employment in attestation form will be of no consequence, since the said information should have been disclosed at the first instance when the application form was submitted by the applicant, which contains a specific column for making such disclosure, which the applicant has failed to do as stated earlier. In such circumstances of the case, it can safely be said that the findings recorded by Disciplinary Authority, Appellate Authority and Revisional Authority in a reasoned and speaking order holding the applicant guilty of deliberate suppression of material fact regarding his previous employment and also about his dismissal from service cannot be said to be illegal, incorrect or improper in any manner, whatsoever, so as to exercise power of judicial review vested in this Tribunal for setting

aside the same.

39. During the course of arguments the learned Advocate for the applicant relied upon recent decision rendered by Hon'ble Supreme Court on 21.7.2016 in **Avtar Singh v. Union of India & Ors., SLP (C) No.20525/2011** on the issue of suppression of information or submitting false information in the verification/attestation form and after considering number of decisions reconciled them as far as possible, which is summarised as under :-

"30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and

circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him".

**40.** It is obvious that the said decision

pertains to suppression of information regarding criminal prosecution or conviction in the attestation form and as such it cannot be said that the issue regarding suppression on material fact while submitting the application form was directly involved in it. The fact, however, remains that there should be full and truthful disclosure of the information in the prescribed columns while submitting application form for appointment on any post particularly while securing Government job. As stated earlier, since the material fact regarding previous employment and dismissal from service while working in IOCL is suppressed by the applicant while submitting the application form, it cannot be said that the respondents were wrong in passing the order of removal from service. This is so, because failing to disclose material facts/information in the application form itself has serious implications, pertaining to the honesty and integrity of the candidate. It is further obvious that non-disclosure of previous

employment and dismissal therefrom was made solely with a view to secure job in ESIC. Hence, both the charges levelled against applicant are rightly held to be proved by all the authorities. As such, no adverse inference can be drawn against the respondents when they have taken a decision to initiate a regular departmental proceedings against the applicant, (although he was a probationer) and to complete the same as per rules and then to pass appropriate order. Considering the nature of the charges levelled against the applicant, it cannot be said that the penalty imposed is disproportionate in any manner whatsoever.

**41.** It is also submitted by the learned Advocate for the applicant that the documents asked for were not supplied to the applicant by the Inquiry Officer. However, perusal of the record clearly shows that the applicant has initially asked 56 documents and then 142 additional documents most of them were rightly held to be irrelevant and the one which were relevant to meet the charge were rightly

supplied to the applicant. In this respect, the learned Advocate for the respondents has rightly placed reliance on the decision of the Hon'ble Supreme Court in **State of Tamil Nadu v. Thiru K.V.Perumal and Ors. (1996 (2) SCC 113)**, in which it is specifically held that authorities are bound to supply only relevant documents and not each and every documents asked by the delinquent officer/employee. It is the duty of the delinquent officer/employee to point out how each and every document is relevant to the charge or inquiry being held against him and how non-supply of documents will prejudice his case. There is nothing on record to show that any relevant document was not supplied to the applicant and that non-supply of other documents asked resulted in causing prejudice to him.

**42.** The record shows that in respect of the proceedings which took place on 8.1.2014 before the Inquiry Officer in which it is stated that applicant raised irrelevant issues and when the Inquiry Officer called upon the

applicant to give his statement as defence witness, he refused to do so and while the former started putting mandatory questions to him, the applicant did not answer and in the middle of the proceedings he left. In the rejoinder, there is no specific denial to the above averments and it is only stated that the respondents have failed to justify the decision of the Inquiry Officer to hold ex-parte inquiry. It is also stated that it was brought to the notice of the Inquiry Officer that the applicant was sick and this fact was also corroborated by the Medical Officer of ESIC and still the inquiry was held ex-parte. It is, however, obvious from record that applicant attended the inquiry on 8.1.2014, but declined to take effective part for no valid reasons.

**43.** It is thus obvious that the applicant has admitted his presence before the Inquiry Officer and he took part in the proceedings held on 8.1.2014. However, on account of his untoward attitude of raising irrelevant issues and declining to examine him as a witness and

then refusing to answer mandatory questions put to him, there was no other alternative left with the Inquiry Officer, but to close the inquiry for taking further steps in the matter. In such circumstances of the case, it cannot be said that there is any violation of the provisions of CCS (CC&A) Rules since mandatory questions on conclusion of evidence adduced by departmental witnesses could not be put to applicant for his fault, it can't be said that it resulted in causing any prejudice to the applicant or that there is any violation of rules. As such, the Inquiry Officer, Disciplinary Authority, Appellate Authority and Revisional Authority cannot be said to be at fault in holding the applicant guilty of the charge.

**44.** It is obvious from record that 8.1.2014 was the last date of hearing of inquiry which was fixed for recording statement of the applicant as the sole defence witness and for putting mandatory questions to him. However, on that day, as stated earlier, on

account of applicant's untoward attitude Inquiry Officer could not complete the said formality and hence the inquiry proceedings were required to be closed, which was followed by submission of Inquiry Report to the Disciplinary Authority.

**45.** If according to applicant he was really sick on 8.1.2014 and was unable to move on medical advice, he could have met the Inquiry Officer immediately on the next day to appraise him about the illness and should have made a request to permit him to give his statement as a witness. In case, any such request was made, but was not favourably considered by the Inquiry Officer, in that event it was open for the applicant to approach the Disciplinary Authority who would have issued appropriate directions to the Inquiry Officer. Since the applicant failed to take any steps, adverse inference will have to be drawn against him that he deliberately did not take part in the proceeding on 8.1.2014.

**46.** During the course of arguments it was

submitted by learned Advocate for the applicant that experience as SSO was not desired as per advertisement nor it was essential for appointment to the post of SSO with the respondents. He further submitted that in view of this experience acquired could be ignored and it was not necessary for the applicant to make mention about his previous employment in the application form. We are not at all impressed with the above submission which is devoid of any substance for the simple reason that specific information was sought in the application form itself regarding the previous employment although under the caption of "Experience". Hence, it cannot be said that it was not at all necessary for the applicant to disclose about his previous employment in the application form. Failing to do so, amounts to deliberate suppression of material fact of previous employment to get a government job. Thus it can safely be said that the applicant must have been under apprehension that in case he discloses the fact of previous employment

including that of dismissal therefrom, perhaps his application would not be considered by the respondents. However, in this respect, it may be stated that had the applicant made disclosure of his previous employment and dismissal therefrom, still it was open for the respondents to consider his candidature and if found fit, to give him appointment, especially when there was no charge of mis-conduct involving acceptance of bribe or indulging in malpractices against applicant by IOCL. However, failing to disclose the material information in the application form itself goes against the applicant and hence it cannot be said that the finding recorded by the Inquiry Officer and also the authorities higher to him holding the applicant guilty of mis-conduct is in any manner illegal, arbitrary, incorrect or improper which is needs to be quashed by exercising the power of judicial review vested in this Tribunal. We make it clear that we do not find the impugned orders are in any manner arbitrary, illegal or unreasonable to hold that

the applicant is guilty and to impose punishment of removal from service.

**47.** During the course of arguments, learned Advocate for the applicant submitted that applicant was not allowed to engage defence assistant from outside ESIC since he could not get it therefrom. There is, however, nothing on record to show that any specific request was made by the applicant to the Inquiry Officer during the course of inquiry to permit him to engage defence assistant from outside ESIC. Had any such request been made, the Inquiry Officer would have definitely considered it. In this OA, it cannot be said that any prejudice has been caused to the applicant since he could not engage any employee of ESIC as defence assistant to defend him in the course of inquiry. On the contrary, he preferred to defend himself since cross-examined the departmental witnesses. We therefore, reject the contention of the learned Advocate for the applicant in this behalf.

**48.** During the course of arguments the

learned Advocate for the respondents submitted that the applicant signed a declaration in the application form for appointment in ESIC to the effect that the information given therein is true. However, it is obvious from record that the applicant has deliberately failed to disclose the information regarding his previous employment in the column of "Experience". It is thus obvious that the applicant has given a false declaration and for this reason also the OA is liable to be dismissed.

**49.** During the course of the arguments, the learned Advocate for the applicant further placed reliance on the Full Bench decision rendered by Patna Bench of CAT in **B.M.Singh and ors. v. Union of India and Ors.** in O.A. Nos.13 to 19/1987 decided on 12.4.1987 and submitted that the inquiry proceedings should have been dropped. However, careful perusal of the said decision reveals that it pertains to Rule 12(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 regarding dismissal from service after dispensing with the departmental inquiry

i.e. without holding any departmental inquiry. The same is not the case here, since although it appears that the applicant was still a probationer when the disciplinary inquiry was initiated against him, his services were not terminated for not satisfactorily completing the probationary period or without dispensing with the departmental inquiry and it was done only after holding regular departmental inquiry against him. Hence, it cannot be said that any relief can be granted to the applicant on the basis of the aforesaid decision of Patna Bench.

**50.** During the pendency of the OA, interim protection was granted to the applicant from being evicted from the official accommodation provided to him by the respondents. However, now since the OA is being dismissed, the applicant will not be entitled to further protection.

**51.** In the result, we do not find any merit in the present O.A. Consequently, the O.A. stands dismissed. Hence, there is no question of reinstatement of the applicant.

**52.** It is, however, needless to say that in case the Writ Petition pending in the Hon'ble High Court challenging the order of dismissal passed by IOCL authorities is allowed, the applicant will get the necessary relief of reinstatement in IOCL. In the present O.A. he is not entitled to any relief.

**53.** In the facts and circumstances of the case, parties are however, directed to bear their own costs of this O.A.

**(Ms.B.Bhamathi)**  
**Member (A)**

**(A.J. Rohee)**  
**Member (J)**

B.