

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 050/00919/2014

Reserved on- 21.02.2018.

Date of pronouncement 26.02.2018

CORAM

Hon'ble Shri A.K. Upadhyay, Member [A]

Hon'ble Shri J.V. Bhairavia, Member [J]

1. Sudhir Ranjan Kumar Son of Shri Kumud Ranjan Kumar Resident of Village-Akhitiyarpur Sehan, Post -Sehan P.S- Goraul, District- Vaishali-844122 (Bihar).
2. Kundan Kumar Son of Shri Rajendra Prasad Yadav, Resident of Village-Dwarika Post- Simari P.S. Simari Bakhitiyarpur District- Saharsa-852127 (Bihar)

.....Applicant

By Advocate : Shri M.P.Dixit

Versus

1. The Union of India through the Director General, Employees State Insurance Corporation Panchdeep Bhawan, C.I.G. Road, New Delhi-110002.
2. The Joint Director (Recruitment), Employees State Insurance Corporation, Panchdeep Bhawan, C.I.G. Road New Delhi-110002.
3. The Additional Commissioner and the Regional Director, Employees State Insurance Corporation Regional Chief Panchdeep Bhawan, Ashram Road, Ahmedabad-380014.
4. The Regional Director, Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan Ashram Road, Ahmedabad-380014.
5. The Deputy Director, Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan Ashram Road, Ahmedabad, 380014.
6. The Joint Director I/C Employees State Insurance Corporation, Sub-Regional Office, Vadodara ESI Corporation, Varodara (Gujrat).

.....Respondents

By Advocate: Shri S.K. Bijpuria

ORDER

Per Jayesh V. Bhairavia, M [J]: The applicants (2 in number) are aggrieved by the termination orders dated 28.10.2014 (Annexures A/6 series) and, as such, prays for the following reliefs:-

“[8.1] That your Lordships may graciously be pleased to quash and set aside the impugned orders dated 28.10.2014 as contained in Annexure A/6 series issued by Respondent no.5.

[8.2] That your Lordships may further be pleased to direct the Respondents to allow the applicants to continue in service without any disturbance and they may be allowed to draw their regular salary beyond the date of their termination with arrears and interest thereon.

[8.3] That the Respondents be further directed to grant all consequential benefits including arrears of salary etc.

[8.4] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicants.”

2. The applicant no.1 & 2 were appointed to substantive post of Multi Tasking Staff (MTS), in Employees State Insurance Corporation vide office order dated 09.07.2012 and 03.08.2012 respectively and were placed on probation for a period of two years from the date of their joining, and their services under the Corporation were liable to be terminated during the temporary tenure by one month notice in writing from either side. Furthermore, their above appointments were subject to correctness of identity, records and information supplied by the concerned persons. It is further stipulated in the appointment order that the Corporation reserves the right to terminate the services of the person appointed without assigning any reason, if the identity, records and information supplied by the person are found to be false/incorrect. (Annexure A/2 & A/3 refer). The applicants have accepted the appointment unconditionally and accordingly the appointments were approved by the respondent no.5. vide order no. 238 of 2012 dated 06.08.2012. (Annexure A/3 refers).

3. The applicants have submitted that they have received show cause notices dated 16.6.2014 (Annexure A/5 series) issued by the respondent no. 4, in which both the applicants were charged with impersonation on the basis of inquiry report of finger print examiner. It was alleged that the applicants have committed a grave misconduct by procuring impersonation and taking assistance of unfair and fraudulent means in the recruitment procedure for getting employment in the ESI, which is not only against CCS (CCA) Conduct Rules, 1965 but also a criminal offence under various provisions of IPC/Cr.P.C. Therefore, the applicants were called upon by the respondent no.4 to submit their explanations/reply in writing within seven days to show cause as to why their services should not be terminated

with immediate effect and the pecuniary losses occurred to the Corporation must not be levied and recovered from them. (Annexure A/4 series refers).

4. In response to the said show cause notice dated 16.06.2014, the applicants have submitted their replies dated 27.6.2014 (Annexure A/5 series), denying the averment of show cause notice and stated that they have not committed any misconduct nor taken assistance of any unfair and fraudulent means in the recruitment procedure for getting employment in ESIC. The applicant no.2 additionally stated that he produced his specimen signature and thumb impression in his reply to show cause to prove his innocence for ready reference. It is further contended by the l/c for the applicant that without affording any opportunity to the applicants, the respondents had issued termination order dated 28.10.2014 under Rule 6 (3) of the E.S.I Corporation (Staff & Conditions of Service) Regulation, 1959. (Annexure A/6 series).

5. The learned counsel for the applicants further submitted that the applicants were appointed on 3.8.2012 and 09.07.2012 respectively on probation for two years and after completion of two years of service, the orders of termination were issued on 28.10.2014. therefore their service cannot be considered on probation and they are required to be regularised, the regular employees and without following the due procedures of law i.e. appropriate departmental inquiry / proceedings under the provisions of Regulation 1959, the services of the applicants ought not to have been terminated.

It is further contended that an identically situated employees of the Corporation, namely, one Rupesh Kumar and others were also alleged to have committed misconduct of impersonation, and they were also terminated vide order dated 28.10.2014 by the same respondents. The said Shri Rupesh Kumar had filed an OA 772 of 2014 before this Tribunal and the said OA is pending for adjudication; therefore, this OA is also required to be heard together with the said OA.

The learned counsel for the applicant submits that the termination order is stigmatic in nature, because it was passed without following the principles of natural justices as well as without conducting a thorough departmental inquiry. Therefore, it is required to be quashed and set aside.

6. The respondents, in response to the notice, have filed a detailed written statement and denied all the contentions of the applicants. The learned counsel for respondents contended that the appointment of the applicant were conditional. The said appointment were subject to verification of their records and if adverse report received in that case the service of the applicant would be terminated. It is contended that on suspicion about their identity and subsequent enquiry report, examination of (comparing Thumb Impression taken at the time of examination(s) of the neutral invigilator and the thumb impression taken at the time of pre-appointment formalities in respect of the applicants) in respect of both the applicant the reports submitted by CFSL, CBI, New Delhi which reveals that the applicants had taken assistance of another unidentified persons, who impersonated the applicants during the examination to secure their selection on the basis of merit, thereby committing an act of fraud not only against the Corporation but also against the public in general. Therefore, the respondents have decided to terminate the services of the applicants. However, notwithstanding the above, show cause notices were issued to them, but the replies furnished by the applicants were not satisfactory and there is no other contrary proof to the CFSL report. Therefore, under the provisions of Regulation, 1959, the services of the applicants were ordered to be terminated. (Annexure R/1 to R/9 collectively).

It is further contended that the termination order is a simpliciter termination and as per the Regulation 11 of ESIC 1959 the termination of temporary employee is not amount to a penalty and therefore, the termination order cannot be termed as stigmatic or punitive. The learned counsel for the respondents has placed reliance on various judicial pronouncement of Hon'ble Apex Court as stated in their written argument and submitted that a probationer cannot automatically acquire the status of a permanent member of service, no automatic confirmation after expiry of period of probation. The service of the applicant were never regularised as permanent and therefore, the applicants are not entitle of any protection or Article 311 of Constitution of India. It is submitted that the applicant are not entitled for any relief.

7. It was brought to the knowledge of this Tribunal that vide order dated 9.12.2015, this Tribunal had already dismissed OA 772 of 2014 of similarly placed

employee and had held that the doctrine of natural justice cannot be imprisoned with the strait jacket of a rigid formula. It is also contended by the I/c for the respondents that the aforesaid order of this Tribunal was confirmed by the Hon'ble Patna High Court vide order dated 19.1.2017 in CWJC No. 4397 of 2016.

8. Heard the parties and perused the records and considered the submissions.

9. In the present case, it reveals from the records that the appointment of the applicants were temporary and is subject to the condition that the respondent corporation reserves the right to terminate the service of the persons (applicants herein) appointed without assigning any reason, if the identity, records and information supplied by the applicants is found to be false/incorrect. The report of the finger print examination by CFSL and the enlarge copy of the thumb impressions on the admit card, attendance sheet and OMR sheet and the specimen left and right thumb impression taken at the time of pre-appointment formalities, it is sufficiently established that the fact that thumb impression taken in three documents at the time of examination of the applicants are different from the sample thumb impression of the applicants taken at the time of pre-appointment formalities.

It is apt to notice that the said report of CFSL is strong evidence that impersonation has taken place and the persons taking the test were different from the applicants and subsequently secured the appointment, for this conduct of the applicants, their services were bound to be terminated by the employer.

10. It is also noticed that identically situated employees were ordered to be terminated by the respondents on the same and identical misconduct of impersonation and their termination order was upheld by this Tribunal vide order dated 09.12.2015 in OA no. 772/2014. The said order was confirmed by the Hon'ble High Court, Patna in CWJC No. 4397/2016 vide order dated 19.01.2017. The said judicial pronouncement squarely applies to the facts and circumstances of the present case of the applicant. The termination order cannot be termed as stigmatic/punitive. The action of the respondents cannot be said to be in violation of principle of natural justice nor it is in violation of Article 311 of Constitution of India.

The decisions of termination of the respondents is based on cogent reason and in accordance with terms & conditions of appointment orders.

11. In view of the above discussion, the applicants are not entitled for any relief as sought in this O.A. The impugned order dated 28.10.2014 does not call for any interference. In the result, this OA, being devoid of merit, is dismissed with no order as to costs.

(J.V. Bhairavia) M [J]

(A.K. Upadhyay] Member [A]

/mks/

