

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.10.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.34924 of 2016

and

WMP Nos.30065 & 30066 of 2016

R.Ravikumar Petitioner

vs.

1.Regional Director
Employees State Insurance Corporation
Regional Office
143 Sterling Road
Nungambakkam
Chennai - 600 034

2.Disciplinary Authority/Medical Superintendent
ESIC Hospital, K.K.Nagar
Chennai - 600 078

3.R.Gunasekaran (Inquiry Officer)
Posted at present as
Regional Director
Regional Office
Employees' State Insurance Corporation
No.178, Ansari Duraisamy Nagar
100 Feet Road, Opp. to RTO Mudaliarpet
Puducherry

4.Director of Government Examinations
Director of Public Instructions Campus
Chennai - 600 006

5.Rajagopalachari

Retired Deputy Director, ESIC, Chennai
Plot No.28 (I Floor), Old Door No.4, New No.7
Majestic Colony Main Road
Valasaravakkam
Chennai - 600 087

6.Central Administrative Tribunal

Represented by its Registrar
Chennai

.... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the relevant records of the impugned proceedings pertaining to issue of the order dated 14.7.2015 in O.A.No.310/00005 of 2014 together with the order dated 8.1.2016 in R.A.No.19/2015 in O.A.No.5/2014 by the 6th respondent and quash the same as mala fide, vindictive, arbitrary, discriminatory, unreasonable, lack of application of mind, denial of natural justice, violation of rule of law, abuse of statutory powers by the 1st and 2nd respondents, vitiation of the entire disciplinary proceedings as well as in gross violation of fundamental rights guaranteed under Article 14 of the constitution by way of granting the relief sought in the original application before the 6th respondent.

For Petitioner : Mr.A.Irudayam

ORDER

(delivered by S.MANIKUMAR, J)

On 20.12.2007, the Additional Commissioner and Regional Director Disciplinary Authority, has issued a Charge Memo in No.51-C-12-12/2/96.EQ/Admn, which is extracted hereunder:

"MEMORANDUM

The undersigned proposes to hold an inquiry against Mr.R.Ravikumar, R.K. under Regulation 14 and Para 3 of the Third Schedule of the ESIC (Staff & Conditions of Service) Regulations, 1959 (as amended). The substance of the imputation of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the

enclosed statement of articles of charge (Annexure-I). A statement of the imputations of mis-conduct or mis-behaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-II & IV).

Mr.R.Ravikumar, R.K. is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each articles of charge.

Mr.R.Ravikumar, R.K. is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Regulation 14 and para 3 of the Third schedule of the ESIC (Staff & Conditions of Service) Regulations, 1959 (as amended) or the orders/directions issued in pursuance of the said Regulations the inquiring authority may hold the inquiry against him ex-parte.

Attention of Mr.R.Ravikumar, R.K. is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no employee shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Mr.R.Ravikumar, R.K. is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964, which are applicable to Corporation employee by virtue of Regulation 23 of the Employees' State Insurance Corporation (Staff & Conditions of Service) Regulation, 1959 (as amended).

The receipt of this Memorandum may be acknowledged."

2. Material on record further discloses that an enquiry officer has been appointed and after receipt of notice, for the preliminary hearing, adjournment was sought for, and thereafter, the petitioner has filed W.P.No.17963/2009, to quash the Charge Memo dated 20.12.2007.

3. Writ petition has been transferred to the Central Administrative Tribunal, and re-numbered as T.A.No.30 of 2010. Matter was adjourned on three occasions. There was no representation. Hence on 6.4.2011, the Tribunal in T.A.No.30/2010, passed the following order:

ORDER

(Pronounced by Hon.Mr.K.Elango, Member (J))

When the matter came up for hearing, the counsel for the applicant is not present even after second call. For the last three occasions also, he was absent. Therefore, it seems that he is not interested in pursuing the matter. Hence the TA is liable to be dismissed and it is dismissed for default.

4. Material on record further discloses that, from 2010 to 2013, enquiry was conducted and finally on 31.1.2013, the enquiry officer has submitted his report, stating that out of three charges, levelled against the petitioner, Article of charge No.1 as proved and Articles of charge Nos.2 and 3, as not proved. On receipt of the enquiry report, the disciplinary Authority/Medical Superintendent, ESIC Hospital, K.K.Nagar, Chennai, has disagreed with the findings of the Enquiry Officer, as regards Articles of Charges 2 and 3. He has issued a Disagreement Memo dated 17.12.2013, and sent the same, to the petitioner, along with the enquiry report dated 31.1.2013, seeking for a representation, on the disagreement memo.

5. Being aggrieved by the disagreement memo dated 17.12.2013, the petitioner, has filed O.A.No.310/00005/2014 contending inter alia that the disciplinary authority has not assigned valid reasons, for disagreement, to the findings recorded by the enquiry Officer, on Charge Nos.2 and 3. In the said Original Application No.310/00005/2014, contentions have also been made on the merits of the findings. The petitioner has also contended that enquiry has been initiated, after 20 years from the date of joining on the genuineness of the certificate produced by the petitioner and that there is an inordinate delay, in initiation of the enquiry, and therefore, it is barred by limitation.

6. Before the Tribunal, respondents therein, have submitted that the writ petitioner made an attempt to stall the disciplinary proceedings, by filing a writ petition, in the High Court, and that the same was dismissed by the on transfer. Contention has also been made by the respondents that the petitioner is not permitting the disciplinary Authority to conclude the disciplinary proceedings and filed O.A.No.310/05/2014, to stall the same.

7. Having regard to the rival submissions, vide order dated 14.7.2015 in O.A.No.310/00005/2014, at paragraph No.8, the Tribunal has ordered, as hereunder:

"Since the matter is rested with the disciplinary authority, we are of the view that this Tribunal cannot interdict the disciplinary proceedings. The disciplinary proceedings pursuant to the article of charges are to be allowed to come to logical conclusion. The applicant is at liberty to file his written representation to the memorandum of disagreement, copy of which has been already communicated to him. In the given facts and circumstances, we find that the applicant failed to make out any valid ground to quash the memorandum of disagreement dated 17.12.2013. However we are inclined to grant liberty to the applicant to file his written representation, if not already filed, to the memorandum of disagreement within 2 weeks from today. Accordingly the OA is disposed of."

8. Seeking review of the said order, the petitioner has filed R.A.No.19/2015. Addressing the grounds of review, and taking note of the statutory provisions, Section 22(3) of the Administrative Tribunals Act, 1985, which confers the Tribunal, the same powers vested on the Civil Court, under Order XLVII Rule 1 CPC, the Tribunal, held that there is no error apparent on the face of the record in dismissing O.A.No.310/00005/2014 and, vide order dated 8.1.2016, the Central Administrative Tribunal, Madras Bench, has dismissed R.A.No.19 of 2015 in O.A.No.310/00005/2014.

9. Being aggrieved by the orders made in the Original Application No.310/00005/2014 dated 14.7.2015 and R.A.No.19/2015 dated 8.1.2016, instant writ petition is filed.

10. Though Mr.A.Irudayam, learned counsel for the writ petitioner, has assailed correctness of the above said order, on the grounds that the Tribunal has failed to consider that there is an inordinate delay, in initiating the disciplinary proceedings, and further submitted that when the same was

brought to the notice, the Tribunal failed to advert to the same, with reference to the case laws, and also made submissions on the merits of the challenge, going through the material on record, we are of the view that, once the challenge to the Charge Memo made in W.P.No.17963/2009, has been rejected, whether on merits, or on default, and when the said order made in T.A.No.30 of 2010, remained unchallenged, and reached finality, it is not open to the petitioner, to resurrect.

11. Material on record further discloses that after the dismissal of T.A.No.30 of 2010, the petitioner has also participated in the enquiry from 2010 to 2013, without any demur, on the aspect of delay, till the enquiry officer submitted the report on 31.1.2013. The Enquiry Officer has held that charge No.1, as proved and charge Nos.2 and 3 as not proved. But, the Disciplinary Authority/Medical Superintendent, ESIC Hospital, K.K.Nagar, Chennai, has not agreed with the findings recorded, by the enquiry officer, insofar as charge Nos.2 and 3, is concerned. He has issued a disagreement memo dated 17.12.2013.

12. It is for the Disciplinary Authority either to accept the report or disagree. In case of disagreement, he has to issue notice. Even taking for granted, that the notice of the disciplinary authority does not contain any reasons for disagreement, we are of the view that the delinquent can always take advantage of the same, and make his representation to the disagreement Memo. Action of the disciplinary authority/Medical Superintendent, ESIC Hospital, K.K.Nagar, Chennai, competent to issue the same, cannot be invalidated, on the ground that it does not contain reasons. Findings if any to be recorded, by the disciplinary authority, after considering the representation of the petitioner, on the disagreement notice, can be tested only at that stage of passing final orders. We are of the view that, courts should not, interfere, at each and every stage of the disciplinary proceedings.

13. From the materials on record, it could be deduced though the disciplinary proceedings have been initiated on 20.12.2007, at the instance of the petitioner, there is a litigation, either before the High Court or the Central Administrative Tribunal. It is also noticed that, after the dismissal of the original application No.310/00005/2014 and R.A.No.19 of 2015, the petitioner has submitted a written reply dated 18.1.2016, to the disagreement memo dated 17.12.2013 of the Disciplinary Authority, and that the same has been received on 18.1.2016. Having submitted a reply to the disagreement memo, we are of the view that, it is not open to the petitioner, to approach this court, and simultaneously, challenge the disagreement memo, on

the grounds, that the Tribunal has failed to advert to the aspect of delay.

14. On the aspect as to whether the Tribunal, ought to have exercised, the power of review, we wish to consider a few decisions.

(i) In *Aribam Tuleshwar Sharma v. Aibam Pishak Sharma* reported in AIR 1979 SC 1047, the Supreme Court held that,

"there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(ii) In *Union of India v. Kamal Sengupta* reported in 2008 (8) SCC 612, the Hon'ble Supreme Court, at Paragraphs 14 and 15, held that,

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. The term 'mistake or error apparent' by its very connotation signifies an error which is evident *per se* from the record of the case and does not require

detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

15. Order XLVII Rule 1 of the Code of Civil Procedure also deals with an application for review of judgment and the same is extracted hereunder:

"(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment."

16. On the facts and circumstances of the case and in the light of the above discussions and decisions, when the writ petitioner himself has submitted a reply dated 18.1.2016 to the disagreement memo dated 17.12.2013, the question of finding fault on the Tribunal, in not exercising the powers of review does not arise. In the light of the above decisions, we hold that the powers of review, has been judiciously exercised and we are not inclined to interfere with the orders impugned.

17. While declining to grant the relief sought for, in the instant writ petition, we direct the disciplinary authority/ Medical Superintendent, ESIC Hospital, K.K.Nagar, Chennai/2nd

respondent, to pass orders, on the enquiry proceedings, within two months from the date of receipt of a copy of this order, taking note of our discussions. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The Regional Director Employees State Insurance Corporate, 43, Sturling Road, Nungambakkam, Chennai 34

2. Regional Director
Employees State Insurance Corporation
Regional Office
143 Sterling Road
Nungambakkam
Chennai - 600 034

3. Director of Government Examinations
Director of Public Instructions Campus
Chennai - 600 006

4 Copy to:
The dieciplinary Authority
Medical Superintendent ESIC Hospital
K.K.Nagar, Chennai

MG (CO)
md(3/11/2016)

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W.P.No.34924 of 2016