$~2.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 11809/2018

EMPLOYEES STATE INSURANCE CORPORATION

..... Petitioner

Through: Ms. Anita Thakur, Adv.

versus

MANJEET SINGH ..... Respondent

Through: Mr. Saurabh Ahuja, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **26.11.2018**

C.M. No. 45757/2018

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 11809/2018 & C.M. No. 45756/2018

1. The petitioner has preferred the present writ petition to assail the order dated 21.05.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 2130/2016, preferred by the respondent. The Tribunal has allowed the said original application and quashed and set aside the charge sheet dated 09.09.2015 issued to the respondent. The petitioner has been directed to accord all consequential benefits to the applicant as per law and his entitlement.

2. The incident in respect whereof the respondent was charge sheeted

was of 15.07.1999. The petitioner conducted an inquiry against the respondent in 2006 in respect of four charges.

3. The respondent was found not guilty on all charges and was exonerated on 18.08.2010. The CVC also concurred and gave its opinion that no case is made out against the respondent, in March 2011. Once again the respondent was sought to be charge sheeted in 2015 vide the impugned charge sheet. Consequently, he approached the Tribunal.

4. A perusal of the impugned order shows that the Tribunal has undertaken the exercise of comparing charge three in respect of the earlier charge sheet with the present charge framed against the respondent and has found that they both pertain to the same alleged misconduct. The justification offered by the petitioner for initiation of the fresh departmental proceedings has also been examined and rejected. We may quote the relevant extract from the impugned order which reads as follows:

> *"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 chargesheet 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 reassessment 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 chargesheet 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]."

5. From the above, it would be seen that the respondent was sought to be charge sheeted in respect of the same incident. His exoneration in the first round has attained finality and, thus, it was not open to the petitioner to issue another charge sheet to him on the same allegation. The justification offered by the petitioner for initiating the fresh inquiry has been examined and rightly rejected.

6. In our view, the respondent has suffered enough, since he faced the inquiry from 2006 onwards till his exoneration. The respondent has already superannuated in the meantime.

7. We are, therefore, no inclined to interfere with the impugned order.

8. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 26, 2018

N.Khanna