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

Date of decision: 15.02.2022

+ **W.P.(C) 15018/2021, CM Nos. 47432/2021 & 47433/2021**

DS BHANDARI

.....Petitioner

Through: Mr. Gautam Narayan, Advocate.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr Rakesh Kumar, Standing Counsel
for UOI/R-1
Mr Shlok Chandra, Standing Counsel,
ESIC with Ms Mansie Jain.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened via video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (ORAL):-

1. This writ petition is directed against the order dated 04.05.2021, passed by the Central Administrative Tribunal [in short “the Tribunal”] in O.A. No. 1885/2021.

1.1. The Tribunal, *via* the impugned order, granted six months to the new Inquiry Officer [‘IO’] to conclude the disciplinary proceedings.

2. The petitioner, being aggrieved, has approached this Court.

2.1. The matter came up for the first time before us, on 03.01.2022. On that date, Mr Shlok Chandra had entered appearance on behalf of respondent no.2 i.e., Employees' State Insurance Corporation (ESIC).

2.2. In the course of the hearing, there were two aspects which came to fore qua the matter in hand: One, as to the timeframe that should be set



down for completion of the enquiry. Second, as to whether the new IO would conduct a *de novo* enquiry as against a further enquiry into the matter.

2.3 These two problems emerged on account of the fact that the earlier IO, via his report dated 28.05.2019, had not reached a definitive conclusion with regard to the charges levelled against the petitioner.

3. It is in this context that we had asked Mr Chandra to place before us the enquiry report prepared by the earlier IO, albeit, in a sealed envelope.

3.1. Mr Chandra has placed before us a copy of the enquiry report dated 28.05.2019 prepared by the earlier IO.

3.2. Having perused the same, it is quite clear that the IO, in sum, was concerned with the fact that the principles of natural justice had been infringed. This is evident from the following concluding paragraphs of the enquiry report dated 28.05.2019:

"However, it may be mentioned here that the Inquiry Officer can inquire into the truth of the imputations of misconduct only if relevant documents and material prosecution witnesses are produced during the Inquiry. It also leads to natural justice and affords reasonable opportunity to the charged official to defend himself against the charges. However, in this case, there are grave lacunae and procedural defects in drafting and preparation of the chargesheet as mentioned above. Particularly, the relevant documents were not produced nor the relevant PWs were cited. Accordingly, the CO gets deprived of an opportunity to defend himself against the charges levelled. Resultantly, it defeats the purpose of natural justice. In view of the above, the undersigned is not in a position to give a finding on the truth of the imputations of misconduct or otherwise.

Under these circumstances, it would be in the fitness of things that the CO is afforded the rightful opportunity by making him available the copies of relevant documents on



the basis of which he has been charge sheeted. These are the ECS statements, vouchers, bills, cashbooks and other such documents which are purported to have been actually utilised by the said UDC for committing such a huge fraud. Further, it is desirable that CO gets to cross-examine the relevant witnesses who dealt with the above-said documents and not merely those who conducted an administrative enquiry while basing it on tables/statements made and extracts taken by others, even though prepared from the relevant documents.

At the same time, the gravity of the fraud which runs into many crores calls for a proper inquiry based on the relevant oral and documentary evidence that may bring the guilty to books and save the innocent from any stigma."

[Emphasis is ours.]

4. Having regard to the aforesaid, and given the fact that no conclusion was reached concerning the charges framed against the petitioner, we are of the opinion that if a copy of the earlier enquiry report is handed over to the petitioner, the case of respondent no.2/ESIC would not get marred. As a matter of fact, it would rather lend greater clarity to the new IO as to how to progress the enquiry.

5. That being said, the petitioner is right that the timeframe of six months granted by the Tribunal works to his detriment.

5.1. In this behalf, Mr Chandra has submitted before us that the Court can fix a reasonable time frame, if not six months, for conclusion of the enquiry.

6. This apart, the other aspect over which there has been some amount of debate and argument is: whether parties should be allowed to tender additional evidence in the form of documents and witness testimony(ies).

6.1. After some arguments, counsels are agreed that, apart from the



material which is already on record, both sides should be permitted to tender additional evidence, both in the form of documents and witness-testimony(ies), albeit with liberty to both sides to cross-examine the witness(es) who tender their testimony.

7. Thus, in our view, the writ petition can be disposed of with the following directions: -

- (i) The respondent no.2/ESIC will furnish a copy of the enquiry report dated 28.05.2019 to the petitioner.
- (ii) The new IO will conclude the enquiry proceedings, within four months. For this purpose, parties will appear before the new IO on 25.02.2022, at 11:00 A.M. The new IO will endeavour to conclude the enquiry within four months, commencing from 25.02.2022.
- (iii) The new IO will take into account the material already placed on record. Furthermore, both sides will be given opportunity by the new IO, to place additional evidence on record for progressing their respective cases, both in the form of documents as well as witness-testimony(ies).
- (iv) Needless to add, if a witness-testimony is put on record, the opposite side will have the right to cross-examine the witness.
- (v) Parties will act based on the digitally signed copy of this judgment.

7.1. It is ordered accordingly.

8. We may note that the although the counter-affidavit of respondent no.2/ESIC dated 14.02.2022 was not available on our record, the same was screen-shared by Mr Narayan in the course of the hearing. For the purposes of good order and record, Mr Chandra will ensure that the counter-affidavit



is placed on the court record.

9. The hard copy of the enquiry report dated 28.05.2019 prepared by the earlier AO has been returned to the Registry. The Registry will scan and upload the same in case file so that it forms part of the record.

10. Consequently, pending applications shall stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

FEBRUARY 15, 2022/mr

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