

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23977 of 2019

-
1. Shailendra Kumar Choudhary, Son of Late Krishna Deo Choudhary, resident of Village and P.O.- Bodhi Bigha, Ram Ghat, P.S. Chandi, District- Nalanda (Bihar).
 2. Amrendra Kumar Ram, Son of Jagdish Ram, resident of Village- Tikari Tola (Shahduplepur), P.O. Pratappur, P.S. Hussainganj, District- Siwan. (Bihar).

... .. Petitioner/s

Versus

1. The Employees State Insurance Corporation through the Director General, Employees State Insurance Corporation, Panchdeep Bhawan, CIG Road, New Delhi- 110002.
2. The Joint Director, (Recruitment), Employees State Insurance Corporation, Panchdeep Bhawan, CIG Road, New Delhi- 110002.
3. The Additional Commissioner and the Regional Director, Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, Ashram Road, Ahmedabad (Gujrat)- 380014.
4. The Regional Director, Employees State Insurance Corporation, Regional Officer, Panchdeep Bhawan, Ashram Road, Ahmedabad (Gujrat)- 380014.
5. The Deputy Director, Employees State Insurance Corporation, Regional Officer, Panchdeep Bhawan, Ashram Road, Ahmedabad (Gujrat)- 380014.
6. The Joint Director I/C, Employees State Insurance Corporation, Sub-Regional Office, ESI Corporation, Vadodara (Gujrat)- 395001.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 22790 of 2019

Dhrambir Kumar son of Ramkrishna Prasad resident of Village- Sumka, P.O. Amraura, P.S. Tharthari, Nalanda.

... .. Petitioner/s

Versus

1. The Employees State Insurance Corporation through the Director General, Employees State Insurance Corporation, Panchdeep Bhawan, CIG Road, New Delhi- 110002.
2. The Joint Director (Recruitment), Employees State Insurance Corporation, Panchdeep Bhawan, CIG Road, New Delhi- 110002.
3. The Additional Commissioner and the Regional Director, Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, Ashram Road, Ahmedabad (Gujrat)- 380014.
4. The Regional Director, Employees State Insurance Corporation, Regional Officer, Panchdeep Bhawan, Ashram Road, Ahmedabad (Gujrat)- 380014.
5. The Deputy Director, Employees State Insurance Corporation, Regional



Officer, Panchdeep Bhawan, Ashram Road, Ahmedabad (Gujrat)- 380014.

6. The Joint Director I/C, Employees State Insurance Corporation, Sub-Regional Office, ESI Corporation, Vadodara (Gujrat) 395001.

... .. Respondent/s

Appearance :

((In Civil Writ Jurisdiction Case No. 23977 of 2019)

For the Petitioner/s : Mr. Sanjay Kumar, Advocate

Mr. Amresh Kumar, Advocate

For the Respondent/s : Mr. Sudhir Kumar Bijpuria, Advocate

Mr. Anil Kumar Gupta, Advocate

(In Civil Writ Jurisdiction Case No. 22790 of 2019)

For the Petitioner/s : Mr. Sanjay Kumar, Advocate

Mr. Amresh Kumar, Advocate

For the Respondent/s : Mr. Sudhir Kumar Bijpuria, Advocate

Mr. Anil Kumar Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-02-2023

In these two writ petitions, the petitioners have assailed the order(s) of the Central Administrative Tribunal, Panta Bench, Patna (for short 'CAT') dated 01.08.2019 passed in O.A. No. 050/00326/2019 and O.A. No. 050/00555/2018, respectively.

02. Brief facts of the case(s) are that the petitioners were appointed as Multi Task Staff (MTS) vide Appointment Letters/Memos dated 09.07.2012 and 13.06.2012, respectively. Their services were confirmed on 28.01.2016 and further they have earned promotion to the post of Lower Division Clerk on 28.10.2016. In this backdrop, it is learnt that Respondents



noticed that petitioners' selection and appointment to the post of MTS was under cloud to the extent that they were involved in impersonation. In this regard, it is learnt that a committee was constituted and the committee had submitted report to the extent that petitioners were involved in impersonation in so far as their appointment to the post of MTS was concerned. Show-cause notice(s) dated 05.02.2019 and 19.02.2019 respectively, were issued to the petitioners- Shailendra Kumar Choudhary and Amarendra Kumar Ram, for which, they submitted their replies. In their replies, they had requested for furnishing documents including copy of the CFSL report. On 06.03.2018 show-cause notice was issued to petitioner-Dhrambir Kumar, for which, he also submitted his reply. In his reply, he had also requested for furnishing documents including copy of the CFSL report, however, the same was rejected on 02.04.2018. In the result, petitioner-Dhrambir Kumar submitted his second reply to the show-cause notice. Taking note of replies of the petitioners, concerned authority proceeded to terminate the services of the petitioners-Shailendra Kumar Choudhary on 28.02.2019, Amarendra Kumar Ram on 20.03.2019 and Dhrambir Kumar on 21.05.2018.

03. Feeling aggrieved by the order(s) of termination, petitioners invoked remedy before the CAT under Section 19 of



the Central Administrative Tribunal Act, 1985 in filing O.A. No. 050/00326/2019 and O.A. No. 050/00555/2018, which were dismissed on 01.08.2019, hence the present writ petition(s).

04. Learned counsel for the petitioners submitted that alleged impersonation has been taken note of and proved behind the back of petitioners in an inquiry stated to have been conducted by a Committee. It is further submitted that the petitioners were confirmed employees in the post of MTS on 28.01.2016. Thereafter, they were promoted to the post of LDC on 28.10.2016. Therefore, they were regular holders of the post in the Employees' State Insurance Corporation and they have a lien in the post of LDC. They are governed by Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 (for short 'Regulations, 1959'). In terms of Regulation 3-Application read with Regulation No.11-Penalties like minor and major penalties and Regulation No.12-Disciplinary Authorities and other Regulations of Regulations, 1959 is applicable to these petitioners having regard to the fact that they were appointed to the post of MTS followed by confirmation and promotion to the post of LDC. Aforementioned Regulations have not been followed before ordering termination. It is also submitted that Regulation 6-Termination of Service of an employee of the Insurance Corporation is not warranted in the



present petition, for the reasons, that the petitioners were confirmed employees and they were promoted to the post of LDC. At the best Respondents should have resorted to invoke Regulation No. 11 of Regulations, 1959 while holding departmental inquiry and imposition of any of the penalties either minor or major penalty. However, Disciplinary Authority has not resorted to or adhered to the aforesaid provisions of law. These legal issues have not been appreciated by the CAT while passing impugned order(s) rejecting petitioners' O.A. No. 050/00326/2019 and O.A. No. 050/00555/2018. Hence, order(s) of the CAT dated 01.08.2019 and order(s) of termination of the petitioners dated 28.02.2019, 20.03.2019 and 21.05.2018, respectively, are liable to be set aside while allowing the writ petition(s).

05. *Per-contra*, learned counsel for the Respondents resisted the aforesaid contention and submitted that the petitioners were not confirmed in the cadre of MTS. In the absence of confirmation in the post of MTS, Authority has rightly invoked Regulation-6 in terminating the services of petitioners. It is further submitted that the petitioners have committed impersonation in the process of selection and appointment to the post of MTS, therefore, their appointments are not legal, in the result, they cannot be subjected to



disciplinary proceedings under Regulation, 1959. In support of the aforementioned contentions, learned counsel for the Respondents relied on the following three decision(s): (i) ***R. Vishwanatha Pillai v. State of Kerala and Ors***, reported in, ***(2004) 2 SCC 105***, (ii) ***Bank of India and Anr. v. Avinash D. Mandivikar and Others***, reported in, ***(2005) 7 SCC 690*** and (iii) ***Director, Ministry of Coal and others v. Bimlendu Kumar***, reported in, ***(1997) 2 SCC 217***. Thus, it is contended that petitioners have not made out a case, so as to interfere with the order(s) of termination and order(s) of CAT dated 01.08.2019.

06. Heard the learned counsels for the respective parties.

07. Undisputed facts are that petitioners were initially appointed against MTS posts vide Appointment Letters/Memos dated 09.07.2012 and 13.06.2012, respectively. Petitioners' services were confirmed on 28.01.2016 and later on they were promoted to the post of LDC. Learned counsel for the Respondents disputed that petitioners were confirmed. It is to be noted that in the absence of confirmation in the post of MTS, the petitioners were not eligible to be promoted to the post of LDC, on the other hand, they were promoted to the post of LDC on 28.10.2016 and it is not disputed by the respondents, so also the respondents have not withdrawn the promotion order dated



28.10.2016 even to the stay.

08. It is relevant to reproduce certain provisions of the Regulations, 1959. Regulation 3-Application of Regulations, 1959 reads as under:-

“3. Application- These regulations shall apply to every whole-time employee of the Corporation, other than the Principal Officers appointed under Section 16 of the Act:

Provided that a Government servant or an employee of a local authority, whose services have been or may be obtained on deputation by the Corporation, may be governed by such terms and conditions as may be settled by the Director General in consultation with the Government or the local authority concerned;

Provided further that an employee appointed on contract or tenure basis may be exempted from these regulations to such extent and subject to the submission of a report to the Standing Committee.”

09. Reading of the aforesaid provision, it is crystal clear that the service conditions of the petitioners like appointment, confirmation and promotion would fit into the



Regulation No. 3. In other words, petitioners were governed by Regulations, 1959.

10. Learned counsel for the Respondents submitted that Regulation 5 relating to probation is attracted in the present case and so also Regulation 6-Termination of Service. But both the regulations are not attracted for the simple reason that petitioners have passed that stage, since the petitioners were appointed to the post of MTS vide Appointment Letters/Memos dated 09.07.2012 and 13.06.2012, respectively and their services were confirmed on 28.01.2016 and they were promoted to the post of LDC on 28.10.2016. Question of probation and termination are attracted only in cases of temporary employees or probationary employees. The petitioners are permanent employees, once they were confirmed in the initial post and further they were promoted to the post of LDC. It is necessary to reproduce Sub-Regulation (9) of Regulation 5-Probation and it reads as under:-

“(9). Confirmation of an employee will be made only once in his service and will be in the regular in the entry grade. An employee shall be confirmed in the post after he has satisfactorily completed his period of probation, and his case has been considered



by the DPC and has been cleared form all angles.”

11. Even reading of the aforesaid Sub-Regulation, it is crystal clear that Regulation No.5-Probation, is not attracted as on the date of the termination of the petitioners.

12. It is also relevant to cite Regulation No. 12-Disciplinary Authorities. Sub-Regulation (3) reads as under:-

(3) Notwithstanding.....

EXPLANATION- Where an employee holding a post of any class is promoted, whether on probation or temporarily to the post of next higher class, he shall be deemed for the purpose of this regulation to hold the post of such higher class.”

13. In the light of dates and events, service condition of the petitioners as on the date of termination read with Regulations, 1959, we are of the view that before termination of the petitioners’ services, Respondents should have resorted to Regulation- 11 and 12. In other words, domestic inquiry should have been held while initiating inquiry proceedings.

14. Even assuming that Service Regulations, 1959 is not attracted for the argument’s sake, still the official respondents have denied principles of natural justice to the



petitioners while denying in not providing CFSL report and other documents, despite there was a demand by them against show-cause notice(s). In other words, in their communication dated 02.04.2018, they are claiming privilege to the extent of Director's permission, Judicial Forum and Investigating Officer, if they intent, in that event, such documents could be provided. At the same time, no efforts have been made by the official Respondents to the extent that there was a demand of certain documents by the petitioners and it was placed before the Director to the extent whether such documents could be provided to the petitioners or not? On the other hand, concerned authority has taken a decision not to provide such of those documents which have been demanded by the petitioners and which are cited in the committee report.

15. Learned counsel for the Respondents cited three decisions, namely, ***R. Vishwanatha Pillai v. State of Kerala and Ors.*** (supra), ***Bank of India and Anr. v. Avinash D. Mandivikar and Others***, (supra) and ***Director, Ministry of Coal and others v. Bimlendu Kumar*** (supra). All these three decisions are hereby distinguished with reference to facts of the case(s) in hand. It all depends on relevant Regulations. In the present case, the petitioners were governed by Regulation, 1959 with reference to the status as on the date of termination read with Regulation No.



3-Application of Regulations, 1959. Therefore, Respondents cannot proceed with short cut method of holding inquiry through a committee and petitioners were not permitted to participate before the committee to have their say. Moreover, order(s) of termination is not a speaking order (Annexure P/5 to the Original Application), in so far as petitioner- Shailendra Kumar Choudhary is concerned, which reads as under:-

“

No.37.A.16.17.2.2018-Estt.

Date:28.02.2019

ORDER

The reply give by Shri Shailendra Kumar Choudhary, LDC (appointed as MTS in 2012) to the Show Cause Notice dated 05.02.2019 has been considered and found not satisfactory by the Regional Director. Being the case of impersonation which is proved beyond doubt, it becomes immaterial whether the employee has completed probation or not because he is deemed not to have been appointed at all. Hence completing probation does not vest any legal right to such employee.

It is concluded that he has obtained appointment by impersonation and therefore by fraudulent means and hence on this ground as well as, as per provision of Rule 6(3) of the E.S.I. Corporation (Staff & Conditions of Service) Regulation 1959, the Regional Director has ordered the termination of Shre Shailenra Kumar Choudhary, LDC (appointed as MTS in 2012) S/o Shri Kirshan Deo Choudhary from the services of ESI Corporation with immediate



effect.

*The issues with the approval of
Regional Director.*

*Sd/-
(D. K. Chourasia)
Deputy Directory
For Regional*

Directory

To,

*Shri Shailendra Kumar Choudhary,
LDC (appointed as MTS in 2012)
S/o Shri Krishan Deo Choudhary
ESI Corporation Sub Regional Office,
Vadodara-Gujrat.*

.....
”

16. Reading of the aforesaid termination order, it is evident that there is no application of mind by the Deputy Director or Regional Director while ordering termination. It is to be noted that order of termination is a subject matter of judicial review. In such an event, he should have passed speaking order to the extent of considering contentions of the respective parties. At this stage, it is necessary to take note of the Apex Court decision in the case of ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan***, reported in, (2010) 9 SCC 496, Para-47 reads as under:-

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions



affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a



requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up



precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

17. The Apex Court in the case of ***Nair Service Society v. Dr. T. Beermasthan***, reported in, (2009) 5 SCC 545 in Para-48 held as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

18. The aforesaid decision in the case of ***Nair Service Society v. Dr. T. Beermasthan*** (supra), is attracted in the present case in order to distinguish the cited decisions on behalf of Respondents. Thus, Respondents have not made out a case to contend that there was no confirmation, therefore, Regulation-5 and 6 are attracted. On the other hand, having regard to the status of the petitioners that they were promoted to the post of



LDC, the respondents have not taken any steps to revert them to the post of MTS before terminating their services. In fact, the contention of the respondents are that petitioners were not confirmed and it cannot be appreciable for the reasons that petitioners were promoted. The CAT has failed to take note of whether Regulations, 1959, is attracted in the case(s) in hand or not and it is a legal issue. Therefore, the petitioners have made out *prima facie* case, so as to interfere with the order of termination and the order of the CAT.

19. In the light of these facts and circumstance, orders dated 28.02.2019, 20.03.2019 and 21.05.2018, respectively, are set aside, so also order(s) of CAT dated 01.08.2019 passed in O.A. No. 050/00326/2019 and O.A. No. 050/00555/2018.

20. The concerned Respondent is hereby directed to extend all monetary benefits to the petitioners during the intervening period from the date of their termination from service till date, reserving liberty to the concerned Respondents to resort to disciplinary proceedings under Regulation-11 read with 12 and any other Regulation of Regulations, 1959. Such departmental inquiry shall be initiated and completed within a period of six months from the date of receipt of this order.

21. The writ petitions stand allowed.

22. At this stage, learned counsel for the Respondents



contended that order dated 28.01.2016 vide Annexure- P/3 is not a confirmation order. If it is not confirmation order, there was no point in considering the petitioners' name for promotion to the post of LDC, therefore, the contention of the Respondents that petitioners were not confirmed employee, cannot be appreciable. Accordingly, the aforesaid contention of the respondents, is hereby rejected.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/Daya-

AFR/NAFR	
CAV DATE	NA
Uploading Date	15.02.2023
Transmission Date	NA

