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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 4665/2024

Date of decision: 01.04.2024

EMPLOYEES STATE INSURANCE CORPORATION, THROUGH
DIRECTOR GENERAL & ORS. Petitioner

Through: Ms. Amrita Prakash, CGSC with Mr.
Dinesh Soni, SSO.

versus

MS. SARASWATI RAWAT Respondent

Through: Mr. V.K.Singh, Mr. Sourav Singh,
Ms. Yaskshi Rawal, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

REKHA PALLI, J (ORAL)

CM APPL. 19101/2024 -Ex.

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

W.P.(C) 4665/2024 & CM APPL. 19100/2024 -Stay.

3. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 19.09.2023 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 3697/2015. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondent thereby setting aside the disagreement note dated 23.01.2013 alongwith the consequential penalty order dated 01.04.2013 as also the appellate



order dated 05/06.09.2013 and the revisionary order dated 21.07.2014. It may be noted that the learned Tribunal was of the view that since the disagreement note had not been issued by the competent authority, i.e., the Insurance Commissioner but by the Additional Commissioner, the disagreement note as also the consequential penalty order were unsustainable.

4. Learned counsel for the petitioner submits that the learned Tribunal has gravely erred in holding that the Additional Commissioner could not commence disciplinary proceedings against the respondent. As per the Fifth Schedule of the Staff and Conditions of Service Regulations, the Additional Commissioner was the disciplinary authority for imposing minor penalty and was therefore competent to initiate disciplinary proceedings against any employee. Furthermore, as per Rule 13(2) of the CCS (CCA) Rules, 1965, a disciplinary authority competent to impose any of the minor penalties as specified in Rule 11 may institute disciplinary proceedings against any employee. She, therefore, contends that notwithstanding that the Additional Commissioner was not competent to impose any major penalty on the respondent; he was duly entitled to initiate the proceedings for major penalty, which aspect the learned Tribunal has failed to appreciate. She, therefore, prays that the impugned order be set aside.
5. On the other hand, Mr. V.K.Singh, learned counsel for the respondent, who appears on advance notice, supports the impugned order and submits that there is no infirmity in the order passed by the learned Tribunal. He submits that from a bare perusal of the disagreement



note dated 23.01.2013, it is evident that the petitioners had already made up their mind to hold the respondent guilty of the charge despite the inquiry officer having exonerated her. He, therefore, contends that even if the petitioner's plea that the Additional Commissioner was competent to initiate disciplinary action against the respondent were to be accepted, once the disagreement note in itself was faulty, the penalty order was liable to be set aside. He, therefore, prays that the writ petition be dismissed.

6. Having considered the rival submissions of the learned counsel for the parties, especially the plea of the respondent that the disagreement note dated 23.01.2013 based on which the penalty order was passed was not a tentative note but conveyed the final decision of the petitioners to hold the respondent guilty, we may begin by noting the contents of the said disagreement note. The same read as under:

“DISAGREEMENT NOTE ON THE REPORT DATED 11.06.2012 OF I.A. RECEIVED IN CONNECTION WITH MEMO NO. 11-C/11/14/41/2008-VIG. DATED 28.07.2009 ISSUED TO SMT. SARASWATI RAWAT, SOCIAL SECURITY OFFICER

The Charged Official, Smt. Saraswati Rawat, SSO was issued a charge sheet vide above memorandum inter-alia for the following misconduct as per Article of Charge No. 1.

“Article of Charge No. 01

Smt. Saraswati Rawat, SSO while posted in insurance Branch Regional Office has conducted inspection of M/s. G.S.Apparels, ESI Code No. 11-40-81555-198 on 15.02.2008 and 29.02.2008 for the period from July, 2006 to January, 2008 along with LVR for the period from 07/2006 to 03/2007 and failed to detect omitted



wages to the tune of Rs. 1,69,431.75 on which contribution of Rs. 11,013/- was payable.

By her above act she has exhibited doubtful integrity, mala fide intention and lack of devotion to duty.

Thus, by the above said act Smt. Saraswati Rawat, SSO has exhibited doubtful integrity, lack of devotion to duty and conduct unbecoming of Corporation employee thereby violation sub rule (i), (ii) & (iii) of Rule 3(1) of CSS (Conduct) Rule, 1964 read with Regulation 23 of ESIC (Staff & Condition of Service) Regulation, 1959 as amended.”

The findings of I.A. in the misconducts committed by the C.O. are as under:-

“Having thus examined and evaluated all the evidence put forth before the enquiry-documental, oral and circumstantial-it is seen that Article of Charge-I is far from tenable. This is because both the payments to the contractors by the Principal Employer-Rs. 70,362/- to M/s. Balaji Enterprises and Rs. 2,52,383/- to M/s. Sandeep Enterprises cannot be chargeable as omitted wages on the basis of irrefutable records-RO, Faridabad coverage letter (C-11) dated 24.10.2005 for and Hqrs. Office/RO Delhi instructions on job work dated 26.08.2005 & 27.07.2007 respectively.

Similarly, Article of Charge-II is also not sustainable because the sole document-employer's letter dated 05.03.2009 – supporting the charges is too fragile to stand on its own. Besides, it is ensnared in a dubious nexus of fictitious complaints and obnoxious investigations bordering on machinations of unmistakable conspiracy. Hence all the circumstantial evidence interpreted constructively and viewed from the perspective of pre-ponderance of probabilities have only



proved that the charge is anything but proved.”

I have perused the findings of I.O. on Article of Charge No. 01 and tend to disagree with his findings for the following reasons:-

- 1. It is an admitted fact that M/s. Balaji Enterprises was independently covered in Haryana Region under Code NO. 13-32402-101 w.e.f. 29.09.2005. However, that does not necessarily mean that contribution in respect of all the employees of M/s. Balaji Enterprises deployed in the premises of M/s. G.S.Apparels (Principal Employer) during the period in question has been remitted to ESI-Corporation.*

Section 40 of ESI Act places the onus upon the Principal Employer to pay contribution in the first instance in respect of every employee, whether directly employed or through an immediate employer. Further Section 41(1-A) of ESI Act stipulates that “The immediate employer shall maintain a register of employees employed by or through him as provided in the regulation and submit the same to the Principal Employer before settlement of any amount payable under sub section (1).” This issue has also been clarified in Hqrs. Office Letter No. P-12(11)-11/83/05-Rev. II dated 25.10.2007.

However, the Charged Official did not appear to have verified this register and remained satisfied on being informed of the code no. of the immediate employer. The fact that the immediate employer did not pay contribution as required, is evident from the position that the Principal Employer (M/s. G.S.Apparels) chose to pay the contribution on amount paid to M/s. Balaji on the part of the Charged Official as made out in the charge memo.

- 2. As regards the payment made to M/s. Sandeep Enterprises, it appears that the Charged Official has taken upon herself the onus to segregate the wage content*



of the payment made to the party on percentage basis as per Hqrs. Instructions dated 26.08.2005 though point no. 07A of the instruction stipulates as under:

“In the event of non-production of records with bifurcation of wages to coverable employees, contribution is to be assessed on 60% of the total amount paid to such immediate employer as in the case of labour supplying contractors.”

It, is abundantly clear from the above that the instruction/guideline in question is meant for an officer assessing/determining contribution and not for the SSO. SSO is required to intimate the factual position such as the total amount booked under a head, whether the amount includes the material cost or any labour charges was paid, whether labour charges could be segregated etc. However, in the instant case the SSO (C.O.) reported a certain percentage of the amount and not the whole amount paid to M/s. Sandeep Enterprises, which was a mis-conduct on her part.

*In view of the above minute dissertation of the acts of Charged Official, **I conclude that charges of misconduct levelled under Charge No. 1 against the Charged Official stand proved. (emphasis supplied)***

Sd/-

(D.Lahiri)

Additional Commissioner & Regional Director

7. From a perusal of the aforesaid disagreement note, it is evident that the Additional Commissioner of the petitioner/corporation had not only made up his mind to hold the respondent guilty of charge 1 but had also, in no uncertain terms, opined that the charge 1 levelled against her stood proved. In the light of these conclusive findings of the Disciplinary Authority, we find merit in the respondent's plea that such a disagreement note was unsustainable in law and, consequently,



the penalty order dated 01.04.2013 was also liable to be set aside. While issuing a disagreement note, the disciplinary authority is expected to provide only the tentative reasons why it proposes to differ with the view taken by the inquiry officer and take a final decision only after considering the stand of the employee.

8. In this regard, reference may be made to the observations of the Apex Court as contained in paragraph nos. 31 & 52 of it's decision in ***Yoginath D. Bagde vs. State of Maharashtra & Another, (1999) 7 SCC 739***. The same read as under:

“31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of [Article 311\(2\)](#) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not



taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under [Article 309](#) of the Constitution.

52. In the instant case, we have scrutinised the reasons of the Disciplinary Committee and have found that it had taken its final decision without giving an opportunity of hearing to the appellant at the stage at which it proposed to differ with the findings of the Enquiry Officer. We have also found that the complainant's story with regard to the place at which the demand was allegedly made by the appellant was inconsistent. We have also noticed that the trap laid by the A.C.B., Nagpur against the appellant had failed and was held by the Enquiry Officer to be a farce and not having been laid with the permission of the Chief Justice. We have also noticed that there was absolute non-consideration of the statements of defence witnesses, namely, Dr. Naranje and Mr. Bapat, advocate, by the Disciplinary Committee. This factor in itself was sufficient to vitiate the findings recorded by that Committee contrary to the findings of the Enquiry Officer."

9. Applying the dicta of the aforesaid decision to the facts of the present case, we are of the considered opinion that the disagreement noted dated 23.01.2013, which clearly recorded the findings of the Additional Commissioner regarding the guilt of the respondent even



before giving him an opportunity to make a representation was unsustainable.

10. Even though, learned counsel for the petitioner seeks to contend that since an opportunity to represent was granted to the respondent, the disagreement note was only tentative in nature, we are unable to agree. In our view, granting of such an opportunity to the respondent for submitting a representation after conclusive findings of guilt had already been recorded against him in the disagreement note was mere an empty formality. Consequently, both the disagreement note as also the penalty order stand vitiated. Accordingly, without delving into the question as to whether the Additional Commissioner was authorised to issue the disagreement note, we are of the view that no interference is called for in the impugned order passed by the learned Tribunal setting aside the disagreement note as also the penalty order.
11. For the aforesaid reasons, we find no ground to interfere with the impugned order with which we concur for reasons noted hereinabove. The writ petition being meritless is, alongwith the pending application, dismissed.

REKHA PALLI
(JUDGE)

TUSHAR RAO GEDELA
(JUDGE)

APRIL 1, 2024/al