

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD I
HYDERABAD

ORIGINAL APPLICATION NO.545 of 2008

DATE OF ORDER: 17-11-2008

BETWEEN:

B.Shyam Sunder.

..APPLICANT



AND

1. Additional Commissioner (P&A),
Headquarters Office, Employees State
Insurance Corporation, Panchdeep Bhavan,
CIG Marg, New Delhi.
2. The Regional Director, Regional Office,
Andhra Pradesh, Employees State Insurance
Corporation, 5-9-23, Hill Fort Road,
Hydrabad-500 063.

..RESPONDENTS

Counsel for the Applicant : Mr.K.Sudhakar Reddy
Counsel for the Respondents : Mr.B.G.Ravinder Reddy, SC for ESIC ✓

CORAM:

THE HON'BLE MR.JUSTICE P.LAKSHMANA REDDY, VICE CHAIRMAN
THE HON'BLE MR.R.SANTHANAM, MEMBER (ADMN.)

: ORDER :

(Oral Order as per Hon'ble Mr.Justice P.Lakshmana Reddy, Vice Chairman)

Heard the learned Counsel for the Applicant. The respondents have not filed reply though several chances have been given for filing reply. No representation on behalf of the Respondents. However, we are inclined to dispose of the matter on the basis of the material available on record.

2. The grievance of the applicant herein is that though the reversion period of three years is over he has not been restored to his original post of UDC.

3. The relevant facts in brief are as follows:

The applicant while working as LDC in the office of the respondents was issued with a charge memorandum dated 2.2.2001 for unauthorized absence from duty while he was under orders of promotion and transfer to local office, Visakhapatnam, as UDC. An inquiry was conducted under Discipline & Appeal Rules and the inquiry officer held the charges as not proved. However, the disciplinary authority differed with the findings of the inquiry officer and sent his

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disagreement note on 21.7.2003 to the applicant, which, however, could not be served on the applicant. The disciplinary authority thereafter imposed the penalty of dismissal from service on the applicant on 1.10.2003. The said dismissal order was challenged by the applicant by filing OA.Nos.1177/2000 and 1308/2003 and this Tribunal set aside the dismissal order dated 1.10.2003. The respondents preferred Writ Petition Nos.5877 and 6276 of 2004 against the orders of this Tribunal and the Hon'ble High Court, vide common order dated 15.7.2004, set aside both the orders of this Tribunal as well as the penalty orders imposed on the applicant and gave directions to the respondents to serve the show cause notice on the applicant and that the applicant should submit his explanation to the show cause notice within three weeks thereafter and that the respondents shall pass appropriate orders within a period of three months thereafter. Accordingly, the show cause notice was served on the applicant and after considering the explanation submitted by the applicant, the respondent no.2 imposed the penalty of removal from service on the applicant with effect from 30.11.2004. The applicant submitted an appeal against the penalty order and the respondent no.1, vide its order dated 11.3.2005, reinstated the applicant back into service and ordered for reduction in rank of the applicant from UDC to LDC for a period of three years and placed him at the bottom of the seniority of regular LDCs and further mentioned in the order that after the penalty period is over, he will be considered for promotion through due process. The applicant reported for duty on 24.3.2005 and was posted as LDC, SRO, Vijayawada. Now, the contention of the applicant is that the penalty period of three years expired on 23.3.2008 and the applicant submitted representation for restoration as UDC, but the respondents issued the impugned order dated 12.5.2008 stating that the applicant's case for restoration as UDC has not come up for consideration as per

automatically, and therefore, the respondents ought to have restored back the applicant as UDC on completion of period of three years of punishment, which expired on 23.3.2008, and that the action of the respondents asking him to undergo selection process is totally unjustified and unwarranted. As the penalty imposed is only for a specific period of three years, the applicant has to be put back to his original position without there being any representation from the applicant. The applicant contended that the impugned orders are contrary to law and are liable to be set aside.

4. The respondents did not file any reply though several opportunities were given. However, with the help of the Counsel for the Applicant, we perused the record and the relevant rules relating to penalties.

5. The point that arise for consideration in this application is -

- (i) Whether the applicant is entitled for re-promotion as UDC immediately after the expiry of three years period of punishment of reduction to the lower grade, as contended by the applicant ?; and
- (ii) To what result ?

6. Point No.(i):

It is not disputed that the disciplinary authority imposed punishment of removal from service and the same was altered by the appellate authority. The alteration of punishment reads as follows:

"I, therefore, hereby order to reinstate Shri B.Shyamsunder in service and impose on him the penalty of reduction in rank from UDC to LDC for a period of three years. The period of reduction shall be reckoned from the date of joining duty by Shri B.Shyamsunder as LDC. He will be placed at the bottom of the seniority of regular LDCs and his pay will be fixed in the scale of LDC as if he had not been promoted as UDC. After the penalty period is over, he will be considered for promotion through due process. I further order that the period of unauthorised absence shall be treated as break in service. Shri B.Shyamsunder is directed to report for duty within 7 days from the date of



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receipt of this order at a place to be specified by the Regional Director, Hyderabad.

The appeal is disposed of accordingly."

The said order has not been challenged by the applicant and it has become final.

7. As seen from the impugned order dated 12.5.2008 (Annexure.A-I), the applicant had submitted representation on 17.3.2008, but the said representation has not been filed along with the application. Obviously the applicant must have requested for promotion as UDC from the date of expiry of three years period of punishment. In reply to the same, the respondents gave reply on 12.5.2008 stating that as per the penalty order dated 11.3.2005, the applicant was placed at the bottom of the seniority of regular LDCs and his promotion is to be considered through due process on completion of the penalty period and that though the penalty period is completed by 23.3.2008, his turn for regular promotion to the post of UDC has not come as per the seniority list of regular LDCs and that so far as ad hoc promotion to the post of UDC is concerned, his name was placed before the Committee, which met on 18.4.2008 and the said Committee did not recommend his name. It is this order that is challenged. When the order passed by the appellate authority dated 11.3.2005 (Annexure.A-II) and the impugned order dated 12.5.2008 (Annexure.A-I) are read together, it is clear that the Annexure.A-I order is exactly in terms of the orders of the appellate authority. As already observed supra, the appellate authority's order has become final ^{as} ~~and~~ the applicant never challenged the same. Even, in this application also the said order of punishment is not challenged. As long as the said appellate authority's order, which is a quasi-judicial order, is in force, the respondents are bound to follow the same and the respondents cannot deviate from the orders passed by the appellate authority. In our considered view, the impugned order is strictly in accordance with the appellate authority's order dated 11.3.2005.

8. The learned Counsel for the Applicant vehemently contended that when the period of reduction is specified as three years, no further conditions can be

imposed for restoration and that as per FR 29, immediately after the expiry of period of reduction, the employee shall automatically be restored. It is true that as per FR 29 after the punishment of reduction period is over, he shall be restored back. But, in the instant case, the punishment is not a mere reduction for a period of three years and it goes beyond and certain conditions are imposed even after period of three years for restoration. As seen from Rule 11 (vi) of CCS (CCA) Rules, the disciplinary authority has got power to impose conditions regarding restoration to the grade, post or service from which the delinquent Government servant was reduced. In fact, the said rule says that ordinarily reduction to lower grade is a bar to re-promotion to the Government servant. But the authority has got power to order restoration subject to certain conditions. Here, in the instant case, the appellate authority in its discretion ordered consideration of re-promotion after the period of three years in case he is found eligible after taking bottom seniority in the LDC grade. The period of three years shall mean that even after the applicant has taken bottom seniority in case he gets eligibility for promotion within three years period, he shall not be given promotion as he shall be reverted for a minimum period of three years. Thereafter, if he is eligible in his own turn, he shall be considered for promotion. In view of the Rule 11 (vi), the appellate authority has got power to pass the order of punishment passed in the instant case viz., the applicant shall be placed at the bottom seniority of the regular LDCs and his pay will be fixed in the scale of LDC and if he has not been promoted as UDC, after the penalty period is over, he will be considered for promotion through due process. Therefore, we find no irregularity or illegality in the impugned orders passed by the respondents. We find no merits in the application.

9. In the result, the OA is dismissed being devoid of merits. There shall be no Order as to costs.

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