



2024:DHC:8054-DB



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

+ **W.P.(C) 1854/2022 & CM APPL. 5325/2022**

DR. PRABAL PALPetitioner

Through: **Mr. Gagan Mathur, Adv.**

versus

**EMPLOYEES STATE INSURANCE CORPORATION &
ORS.**Respondents

Through: **Mr. Satya Prakash, Adv. for R-
1**

**Mr. Anurag Ahluwalia, CGSC with Mr.
Abhay Singh, Adv. for R-2**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% 16.10.2024

C. HARI SHANKAR, J.

1. This writ petition assails an order dated 4 March 2021 passed by the learned Central Administrative Tribunal¹, Principal Bench, New Delhi in OA 3287/2019.

2. By the said OA, the petitioner sought quashing of a charge-sheet issued to him on 11 July 2019. According to the petitioner, the charges did not even amount to misconduct and were actually actuated by *malafides*, as the petitioner had sought to expose wrongdoings in the office of the respondents.

¹ "the learned Tribunal", hereinafter



3. By the impugned judgment, the learned Tribunal has dismissed the petitioner's OA, following the trite principle that ordinarily the court should not interfere with disciplinary proceedings at the stage of chargesheet.

4. Aggrieved thereby, the petitioner has approached this Court by means of the present writ petition.

5. We have heard Mr. Gagan Mathur, learned Counsel for the petitioner, and perused the Articles of Charge and the statement of imputation of misconduct in the charge-sheet issued to the petitioner.

6. There are two Articles of Charge against the petitioner.

7. The first Article of Charge alleges that the petitioner, in violation of Office Memorandum dated 1 November 1999 issued by the Department of Personnel and Training² forwarded a representation dated 21 May 2018 to the higher authorities, bypassing office channels of communication.

8. The second Article of Charge alleges wilful insubordination and conduct unbecoming of an employee of the ESIC, thereby violating Rule 3 (1) (ii) and Rule 3 (1) (iii) of the Central Civil Services (Conduct) Rules, 1964 read with Regulation 23 of the ESIC (Staff and Conditions of Services) Regulations, 1959. This allegation is based on

² "DOPT", hereinafter



the fact that the petitioner refused and deliberately avoided to receive an order dated 7 February 2018 passed by the Directorate General, ESIC in compliance with the directions issued by the Kolkata Bench of the learned Tribunal on 2 November 2017. The Statement of Imputation of Misconduct, insofar as it relates to the second Article of Charge, reads thus:

“Article of Charge-II

Dr. Prabal Pal, Professor in Dentistry while working in ESIC-PGIMS & Medical College, Faridabad has committed misconduct in, as much as, that he refused and deliberately avoided to receive the speaking order dated 07/02/2018 passed by the Director General, ESIC, in compliance to Hon'ble CAT, Kolkata Bench order dated 2/11/2017.

By the aforesaid act, the said Dr. Prabal Pal has exhibited lack of devotion to duty and a conduct unbecoming of a Corporation employee and thereby, violated Rule 3 (I) (ii) & (iii) of the CCS (Conduct) Rules, 1964 with Regulation 23 of ESIC (Staff & Conditions of Services) Regulations, 1959, as amended."

9. While the allegation that the petitioner refused and deliberately avoided to receive the order is itself inherently contradictory, *prima facie*, the Court is not satisfied that, even if, on one occasion, the order was not received by the petitioner, it can be said to constitute wilful insubordination as would justify initiation of disciplinary proceedings or be regarded as conduct unbecoming of an employee of the ESIC. Where the Article of Charge *ex facie* does not constitute a legitimate basis to proceed departmentally against an employee, the Court is entitled to quash it, so as to ensure that the employee is not subjected to needless disciplinary proceedings.

10. We, for the present, do not express any opinion on the first



Article of Charge against the petitioner.

11. We queried of Mr. Satya Prakash, learned Counsel for Respondent 1 ESIC, as to whether the ESIC is willing to restrict its inquiry against the petitioner to the first Article of Charge in the charge-sheet.

12. He is unable to concede to this position without taking instructions.

13. For the aforesaid reasons, we are inclined to modify the impugned judgment of the learned Tribunal by setting aside the pending inquiry against the petitioner insofar as it deals with Article of Charge-II as, in our view, the said Article of Charge even if treated as correct, cannot constitute actionable misconduct on the part of the petitioner. The inquiry would, however, continue with respect to Article of Charge-I. In respect of the said Article of Charge, we are in agreement with the learned Tribunal that, in view of the long line of authorities on the point, including, notably, *UOI v Kunisetty Satyanarayana*³ and *Ministry of Defence v Prabhash Chandra Mirdha*⁴, no case can be said to exist to injunct the inquiry, in respect of the said Articles of Charge, from proceeding.

14. Needless to say, should the decision on the said Articles of Charge be adverse to the interests of the petitioner, his remedies in law would remain reserved.

³ (2006) 12 SCC 28

⁴ (2012) 11 SCC 565



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15. The petition is partly allowed to the aforesaid extent.
16. Pending miscellaneous applications, if any, also stand disposed of.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 16, 2024

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Click here to check corrigendum, if any