

Director General, Esi & Anr vs T. Abdul Razak Etc on 8 July, 1996

Equivalent citations: 1996 SCC (4) 708, JT 1996 (6) 502, AIR 1996 SUPREME COURT 2292, 1996 (4) SCC 708, 1996 AIR SCW 2891, 1996 LAB. I. C. 2037, (1996) 6 JT 502 (SC), 1996 (6) JT 502, (1996) 3 SERV LJ 71, (1996) 4 SERV LR 508, (1996) 89 FJR 619, (1996) 2 CURLR 619, (1996) 2 LAB LJ 765, (1996) 2 LAB LN 506, (1996) 4 SCT 272, 1996 SCC (L&S) 1061

Author: S.C. Agrawal

Bench: S.C. Agrawal, G.T Nanavati

PETITIONER:

DIRECTOR GENERAL, ESI & ANR.

Vs.

RESPONDENT:

T. ABDUL RAZAK ETC.

DATE OF JUDGMENT: 08/07/1996

BENCH:

AGRAWAL, S.C. (J)

BENCH:

AGRAWAL, S.C. (J)

NANAVATI G.T. (J)

CITATION:

1996 SCC (4) 708 JT 1996 (6) 502

1996 SCALE (5) 113

ACT:

HEADNOTE:

JUDGMENT:

THE 8TH DAY OF JULY, 1996 Present:

Hon'ble Mr.Justice S.C.Agrawal Hon'ble Mr.Justice G.T.Nanavati M.Chandrasekharan, Additional Solicitor General, V.J.Francis, P.I.Jose, Adv and Amlan Ghose, Advs. with him for the appellants J U D G M E N T The following Judgment of the Court was delivered:

Director General, ESI & Anr.

V. T. Abdul Razak [WITH CIVIL APPEAL NO. 3953 OF 1988, CIVIL APPEAL NO. 1913 OF 1989 AND SPECIAL LEAVE PETITION (C) NO.13126-27 OF 1996 {C.C. NO. 368/1996}] J U D G M E N T S.C. AGRAWAL.J. CIVIL APPEALS NOS. 3952/1988, 3953/1988 AND 1913/1989 These appeals directed against the judgment of the Central Administrative Tribunal, Bangalore Bench (hereinafter referred to as 'the Tribunal') dated January 29, 1988 raise a common question relating to the validity of Rule 16(2) of the Employees' State Insurance (Central) Rules, 1950 (hereinafter referred to as 'the Rules') and Regulations 12(2) and 13(1) of the Employees' State Insurance Corporation (Staff and Condition of Service) Regulations, 1959 (hereinafter referred to as 'the Regulations').

The Employees' State Insurance Corporation (for short 'the Corporation') is a statutory corporation established under the provisions of the Employees' State Insurance Corporation Act, 1948 (hereinafter referred to as 'the Act'). Under Section 16 of the Act the Director General of the Employees' State Insurance Corporation (for short 'the Director General') is the Chief Executive Officer of the Corporation and is one of the Principal Officers, Section 17 of the Act makes provisions with regard to staff other the Principal Officers. In sub-section (2) of Section 17 it is provided that the Corporation shall, with the approval of the Central Government, make regulations regarding the method of recruitment, pay and allowances, discipline, superannuation benefit and other conditions of service of its members of its staff Section 94-A, wherein provision had been made for delegation of powers, provides that the Corporation, and subject to the regulations made by the corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such Conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation Sub-section (1) of Section 95 of the Act empowers the Central Government to make rules not inconsistent with the Act for the purpose of giving effect to the provisions thereof, Under clause (d) of sub-section (2) of section 95 such rules may provide for the power and duties of the principal officers and the conditions of their service. Sub-section (1) of Section 97 empowers the Corporation to make regulations not inconsistent with the Act and the rules made thereunder for the administration of affairs of the Corporation and for carrying into effect the provisions of the Act. Under clause (xxi) of sub-section (2) of Section 97 such regulations may provide for the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of officers and servants of

the Corporation other than the principal officer.

The Rule have been framed by the Central Government in exercise of the powers conferred by Section 95 of the Act. Rule 16 relation to the powers and duties of the Director General is as under :-

"Rule 16. Powers and duties of the Director General.-(1) The powers and duties of the Director General shall be-

(i) to act as the Chief Executive officer of the Corporation;

(ii) to co-ordinate, supervise and control the work of the other Principal Officers;

(iii) to convene, under the orders of the Chairman, meetings of the Corporation, the Standing Committee and the Medical Benefit Council in accordance with the Act and the Rules and to implement the decisions reached at the meetings;

(iv) to enter into contracts on behalf of Corporation in accordance with the Act or the Rules or Regulations made thereunder, or the general or special instructions of the Corporation or the Standing Committee;

(v) to furnish all returns and documents required by the Act or the Rules to the Central Government and to correspond with the Central Government and the State Governments upon all matters concerning the Corporation;

(vi) to undertake such other duties and to exercise such other powers as may from time to time be entrusted or delegated to him. (2) The Director General may, with the approval of the Standing Committee, by General or special order, delegate any of his powers or duties under the rules or the Regulations or under any resolution of the Corporation or the Standing Committee, as the case may be, to any person subordinate to him. The exercise or discharge of any of the powers or duties so delegated shall be subjected to such restrictions, limitations and conditions, if any, as the Director General may, with the approval of the Standing Committee impose."

The Regulations have been made by the Corporation in exercise of powers conferred by sub-section (1) of Section 97 read with clause (xxi) of sub-section (2) and sub-Section (2-A) of the said Section and sub-section (2) of Section 17 of the Act. The Regulation apply to every whole-time employee of the corporation other than the principal officers appointed under Section 16 of the Act. The Regulations contain provisions regarding appointment, probation, termination of service, pay, leave, provident fund, age of retirement, pensionary benefits, control and discipline, suspension, penalties, etc, Regulation 12 which relates to disciplinary authorities provides as follows:-

"Regulation 12. Disciplinary Authorities- (1) The Director General may impose any of the penalties specified in regulation 11 on any employee.

(2) Without prejudice to the provisions of sub-regulation (1) but to the provisions of sub-

regulation (3), any of the penalties specified in regulation 11 may be imposed on any employee by the appointing authority or the authority specified in this behalf by a general or special order of the Director General .

(3) Notwithstanding anything contained in this regulation, no penalty specified in clauses (v) to

(ix) of regulation 11 shall be imposed by any authority subordinate to the appointing authority.

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

Regulation 13 which make provision for the authority who can institute disciplinary proceedings reads as under:-

"Regulation 13. Authority to Institute Proceedings- (1) The Director General or any other authority empowered by him by general or special order may:

(a) institute disciplinary proceeding against any employee;

(b) direct disciplinary authority to institute disciplinary proceeding against any employee on whom that disciplinary authority is competent to impose under these regulations any of the penalties specified in regulation 11.

(2) A disciplinary authority competent under these regulations to impose any of the penalties specified in clauses (i) of regulation 11 may institute disciplinary proceedings against any employee for the imposition of any of the penalties specified in clauses (v) to (ix) of regulation 11 notwithstanding that such disciplinary authority is not competent under these regulations to impose any of the latter penalties."

In view of the powers conferred under Regulation 12(2), the Director General made an order dated May 10, 1974 in the following terms:-

"OFFICE ORDER NO 181 OF 1974 In exercise of the powers conferred by regulation No 12(2) of the Employees, State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959, the Director General hereby delegates powers to the Officers specified in Schedule-I to impose minor penalties specified in clauses (i) to (iv) of Regulation 11 in respect of employees specified in Schedule- II on condition that the powers shall be exercisable in respect of the employees in their respective regions/offices.

This office order supersedes all previous order on the subject without prejudice to any action taken or proceedings initiated in exercise of the powers conferred by the said orders.

SCHEDULE-I

1. Regional Directors.
2. Director (Medical), Delhi.
3. Administrative Officer, establishment branch (II) at Headquarters Officer.

SCHEDULE-II

1. Head Clerks Assistants/Managers Grade-III, Personal Assistants.
2. Insurance inspectors/Audit Inspectors/Manager grade-II"

The said order was modified by order dated April 9, 1981 which reads as under:-

"Officer Order In exercise of the powers conferred by Regulation No. 12(2) of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959, the undersigned hereby delegates powers to the Regional Directors/Director (Medical) Delhi/Administrative Officer-II to impose any of the penalties specified in clauses (i) to (ix) of Regulation 11 ibid on class III (excluding Insurance Inspectors/Managers Grade-II/Audit Inspectors and personal Assistants) and class IV employees, in their respective regions/offices. In cases of Insurance Inspectors/Managers Grade-II/Audit Inspectors and Personal Assistants, the powers already delegated by the Director General vide office order No. 181 of 1974 dated 10.5.1974 to all Regional Directors/Directors (Medical) Delhi/Administrative Officer II to impose only minor penalties as specified in Clauses

(i) to (iv) of Regulation 11 ibid shall be exercisable by them. The powers delegated by the Director of 1974 dated 10.5.1974 circulated under No. 166(1)-2/73-EI will thus stand modified to the extent above.

It is circulated that Director General will continue to be the disciplinary authority in respect of Head Clerks/Assistants/Manager Grade III, whose appointments have been made by him/or whose appointments have been made before 1.12.1980 i.e. prior to the issue of this office Memorandum No. 7(3)-

1/74 EI (B) dated 15.11.1980 to impose major penalties specified in clauses (v) to (ix) of Regulation 11 ibid.

This order modified all previous orders on the subject without prejudice to any action taken of proceedings initiated in exercise of the powers conferred by the said orders."

The Standing Committee had earlier passed a resolution dated may 24,1968 in the following terms:

"Resolved that notwithstanding any restrictions imposed earlier, the Director General may delegate any of his powers under the Rules, or the Regulations or under any resolution or the Corporation and the Standing Committee, as the case may be, to and the Standing committee, as the case may be, to any officer subordinate to him, subject to such restrictions,, limitations and conditions, if any, as the Director General may impose form time to time."

T. Abdul Razak (respondent in Civil Appeals Nos 3952 of 1988 and 3953 of 1988) was employed as Insurance manager Gr.II/Inspector with the Corporation, Disciplinary proceedings were initiated against him by the Regional Director of Karnataka Region on the basis or Memorandum dated October 20, 1983. In the Said proceedings after holding an enquiry an order was passed by the Director General on March 6, 1987 imposing the penalty of reduction in rank to post of Head Clerk/manager Gr.III for a period of one year. The said respondent filed an application (Application No.473 of 1987) before the Tribunal assailing the said respondent by the Regional Director of Karnataka Region on the basis of another Memorandum dated January 23, 1985. A writ Petition was filed by the said respondent in the Karnataka High Court challenging the said memorandum and the competence of the Regional Director to initiate the disciplinary proceedings. The said writ petition was subsequently transferred to the Tribunal and was registered as Application No. 1678 of 1986.

P.K. Philip (respondent in Civil Appeal No. 1913 of 1989) was employed as Manager Gr.II. Disciplinary proceedings were initiated against him by the Regional Director on the basis of Memorandum dated July 18/25, 1986. The said respondent filed and application (Application NO. 474 of 1987) before the Tribunal challenging the very initiation of said proceeding against him by the Regional Director.

All the three petitions, namely, Application NO. 1678 of 1986 and Application NO. 473 of 1987 filed by T. Abdul Razak and Application No 474 of 1987 filed by P.K. Philip have been disposed of by the Tribunal by the impugned judgment dated January 29, 1988 whereby the Tribunal has struck down Rule 16(2) of the Rules in its entirety, the words "or the Authority specified in this behalf by a general or special order of the Director General " in Regulation 12(2) and the words "or any other authority empowered by him by general or special order may" in Regulation 13(1) of the Regulations. The resolution of the Standing Committee of the Corporation dated May 24, 1968 as well as order dated May 10, 1974 and April 9, 1981 passed by the Director General have also been quashed. The Tribunal has also quashed the memoranda dated October 20, 1983, January 21, 1985 and July 18/25, 1986 regarding initiation of disciplinary proceedings against both the respondents by the Regional Director of Karnataka Region as well as the order of punishment dated march 6, 1987 passed by the Director General against the respondent. T. Abdul Razak.

The Tribunal has held that there was delegation of the powers of the Corporation to the Director General and it was not permissible in law for the Director General to further Delegate the said powers to the Regional Director. In taking the said view the Tribunal has proceeded on the basis that the powers of the Corporation have been delegated to the Director General under Section 94-A of the Act and since Section 94-A does not make provision for further delegation by the Director General of the power so delegated the resolution of the Standing committee dated May 24, 1968 as well as Rule 16(2) and Regulations 12(2) and 13(1) by empowering the Director General to specify any other person to exercise the said powers permit sub-delegation by the delegate of the power delegated to him which is not permissible in view of the well known principle delegatus non potest delegare, The Tribunal has placed reliance on the decision of Karnataka High Court in *The Employees State Insurance Corporation, Bangalore v. Shoba Engineers, Bangalore & Ors.*, 1982 (44) FLR 100. construing the provisions of Section 94-A of the Act.

At the outset, it may be stated that in the applications that were filed by the respondents the challenge was mainly to the memoranda dated October 20, 1983, January 21, 1985 and July 18/25, 1986 regarding initiation of disciplinary proceedings by the regional Director and the order dated March 6, 1987 passed by the Director General imposing the penalty of reduction in rank on respondent, T. Abdul Razak. The order dated March 6, 1987 was passed by the Director General himself who was the disciplinary authority and it is not open to challenge on the ground of delegation of powers by the Director General, The validity of the said order was challenged on the basis that the Regional Director was not competent to initiate the disciplinary proceedings in which the order was passed. The Tribunal was, therefore, primarily concerned with the validity of three memoranda referred to above regarding initiation of disciplinary proceedings by the Regional Director. In this Context, it may be mentioned that no order of the Director General delegating his powers regarding initiation of disciplinary proceedings under Regulation 13(1) had been placed before the Tribunal. The two orders of the Director General dated May 10, 1974 and July 18, 1981 which were under challenge, had been passed under Regulation 12(2) whereby the Director General had delegated the power to (iv) of Regulation 11 in respect of certain categories of employees specified therein on the officers specified therein. Therefore, in so far as the validity of the memoranda respondents is concerned the question regarding delegation of powers by the Director General did not arise for consideration and the Tribunal was not required to deal with the question regarding validity of Rule 16(2), Regulations 12(2) and 13(1), the resolution of the Standing Committee dated May 24, 1968 and the orders of the Director General dated May 10, 1974 and April 9, 1981. With regard to initiation of disciplinary proceedings by the Regional Director, We, we find that the legal position is well settled that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings can be initiated by any superior authority who can be held to be the controlling authority who may be an officer subordinate to the appointing authority, [See :

State of Madhya Pradesh v. Shardul Singh 1970 (1) SCC 108; *P.V. Srinivasa Sastry v. comptroller & Auditor General*, 1993 (1) SCC 419; and *Inspector General of Police & Anr. V. Thavasiappan*, 1996 (2) SCC 145]. The Regional Director, being the officer in charge of the Region, was the controlling authority in respect of the respondents. He could institute the disciplinary proceedings against the respondents even in the absence of specific conferment of a power in that regard, The memoranda dated

October 20, 1983, January 21, 1985 and July 1825, 1986 regarding initiation of disciplinary proceedings against the respondents by the Regional Director, therefore, do not suffer from any legal infirmity and the applications filed by the respondents before the Tribunal are liable to be dismissed. But since the Tribunal has pronounced upon the validity of Rule 16(2), Regulation 12(2) and 13(1), the resolution of the Standing Committee dated may 24, 1968 and orders dated may 10, 1974 and April 9, 1981 passed by the Director General it becomes necessary to examine the correctness of the decision of the tribunal in that regard.

The law is well settle that in accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication, [See : Halsbury,s Law of England, 4th Edn, Vol, 1 para 32 p, 34; Craies on Statute Law, 7th Edn p. 346; The Barium Chemicals Ltd, and Anr v. The company Law Board and Others, 1966 supp. Scr 311, At p. 330, and Sahni Silk Mills (P) Ltd. and Anr. v. Employees' State insurance Corporation, 1994 (5) SCC 346, at pp. 350-351].

In Sahni Silk Mills (P) Ltd. and Anr, V, The Employees' State Insurance Corporation (Supra) this Court has approved the decision of the Karnataka High Court in The Employees' State insurance Corporation, Bangalore v. Shoba Engineers, Bangalore and Ors. (supra). It has been held that parliament while introducing Section 94-A in the only conceived direct delegation by the corporation to different officers or authorities subordinate to the Corporation and their is no scope for such delegate to sub-delegate that power, by authorizing any other officer to exercise of perform the powers so delegated. The Tribunal has, therefore, rightly held that Section 94-A does not specifically provide that an officer or authority subordinate to the corporation to whom the power has been delegated by the corporation an in his turn, Authorise any other officer to exercise that power or function, But the question that arises is whether Rule 16(2) of the Rules and Regulations 12(2) and 13(1) of the Regulations relate to exercise of powers or functions of the Corporation or the Standing Committee delegated to the Director General by the Corporation or the Standing committee under Section 94-A of the Act. In order to answer this question, it is necessary to make a distinction between a power conferred on the Director General Under a rule made in exercise of Rule making power under Section 95 or under a regulation made in exercise of power to make regulations under Sections 97(2)(xxi) and 17(2) of the Act and a power or function or the Corporation or the Standing Committee which is delegated to the Director General under Section 94- A. A rule or a regulation made in exercise of a power conferred by a statue being in the nature of subordinate legislation is statutory in character while a resolution of a Corporation or a Standing Committee is purely administrative in nature. Therefore, the power conferred on the Director General under a rule or a regulation is in the nature of a statutory power that has been conferred independently on the Director General. It cannot be regarded as delegation or powers and functions of the Corporation or the Standing Committee under Section 94-A of the Act, Section 94-A speaks or 'powers and functions are other than the powers that are conferred independently on the Director General under the Rules or the Regulations.

On that view of the matter Regulations 12 and 13 must be construed as conferring independent powers on the Director General and it cannot be said to be the powers and functions of the Corporation or the Standing Committee that have been delegated to the Director General by the Corporation or the Standing committee under Section 94-A. Regulation 12(2) which empowers the Director General to specify by General or special order the authority which can act as a disciplinary authority and Regulation 13(1) which authorises the Director General to empower by general or special order any other authority to institute disciplinary proceedings against an employee, cannot be regarded as empowering further delegation by the Director General of powers delegated to him. The Tribunal was, therefore, in error in striking down the words "or any other authority specified in this behalf by a general or special order of the director General " in Regulation 12(2) and the words "or any other authority empowered by him by general or special order may" in Regulation 13(1) on the view that they permit further delegation by the Director general or the powers delegated to him which is impermissible. The decision of the Tribunal in this regard cannot be upheld and the offending words in Regulations 12(2) and 13(1) must be treated as a valid conferment of power on the Director General to delegate his powers under the said Regulations. The order dated May 10, 1974 and April 9, 1981 were passed by the Director General exercise of the powers conferred on him under Regulation 12(2). By the said orders the Director General Delegated the powers to impose minor penalties specified in clause (i) to (iv) of Regulation 11 in respect of certain categories of employees and the officers specified in the said orders. Since the offending part of Regulation 12(2) has been found to be valid the said orders dated May 10, 1974 and April 9, 1981 must be held to have been validity issued in exercise of under Regulation 12(2).

Rule 16(2) and the resolution of the Standing Committee dated May 24, 1968 go together. Under Rule 16(2) the Director General has been empowered to delegate any or his powers or duties under the Rules or the Regulations or under any resolution or the Corporation or the Standing Committee, as the case may be, any person subordinate to him. For the purpose of such delegation it is necessary for the Director General to obtain the approval or the Standing committee. Resolution of the Standing Committee dated May 24, 1968 accords such approval to the Director General. The power of delegation under Rule 16(2) can be divided into tow parts; one relating to delegation of the powers or duties under the Rules or the Regulations and the other relating to the powers and duties under any resolution or the Corporation or the Standing Committee. Insofar as the powers or duties under the Rules or the Regulations are concerned, the conferment on the Director General the power to delegate the same is not violative of the principle of sub-delegation as indicated earlier because the said powers and duties are in the nature of independent statutory powers conferred on the Director General under the Rules or the Regulations. No infirmity can, therefore, be found either in Rule 16(2) or in the Resolution of the Standing Committee dated May 24, 1968 empowering the Director General to delegate any of his power or duties under the Rules or the Regulations. The Position is, however, different in respect of the powers and duties conferred on the Director General under any resolution or the Corporation or the Standing Committee, The conferment or such powers or duties under a resolution of the Corporation or the Standing Committee could be by way of delegation of the powers or the Corporation or the Standing Committee under Section 94-A of the Act and empowering the Director General to further delegate the said powers or duties would amount to sub-delegation or a power delegated to him which is impermissible in view of the law laid down in Sahni Silk Mills (supra). Rule 16(2) and the Resolution or the Standing Committee dated

may 24, 1968, to the extent they empower the Director General to further delegate the powers or duties delegated to him by the Corporation or the Standing Committee under a resolution referable to Section 94-A, have to be held to be invalid.

For the reasons aforementioned, the impugned judgment of the Tribunal is set aside insofar as it strikes down the words "or any other authority specified in this behalf by a general or special order of the Director General" in Regulation 12(2) and the words "or any other authority empowered by him by general or special order may" in Regulation 13(1) of the Regulations and quashes the orders dated May 10, 1974 and April 9, 1981 passed by the Director General, the memoranda dated October 20, 1983, January 21, 1985 and July 18/25, 1986 and the order dated march 18, 1987. Rule 16(2) and resolution of the Standing Committee, to the extent they empower the Director General to delegate the powers or duties delegated to him under any resolution of the Corporation or the Standing Committee referable to Section 94-A, are invalid but the rest of the said Rule and the resolution are valid. As a result, The applications filed by the respondents before the Tribunal are dismissed. The appeals are disposed of accordingly. But in the circumstance there is no order as to costs. SPECIAL LEAVE PETITION (CIVIL NO 13126-27 OF 1996 {C.C. NO.368/1996} Delay condoned.

The petitioner had moved the Central Administrative Tribunal, Ahmedabad Bench for Quashing the disciplinary proceedings initiated against him by the Regional Director and the order of compulsory retirement passed in those proceedings . The competence of the Regional Director initiate the disciplinary proceedings was challenged by the petitioner by relying on the decision of the Tribunal in the case of T. Abdul Razak. The Tribunal has negatived the said contention. Since we have set aside the said decision of the Tribunal in the case of T. Abdul Razak, we find no merit in this petition and the same is accordingly dismissed.