

(2023) 05 GAU CK 0009

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 8697 Of 2018

Ajit Kumar Bhattacharjya

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Citation : (2023) 05 GAU CK 0009

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : R Sarma

Final Decision : Allowed

Judgement

1. Heard Mr. R. Sarma, learned counsel appearing for the writ petitioner. Also heard Mr. S. Nath, learned counsel appearing for the respondent Nos.2 to 6. Mr. S. S. Roy, learned Central Govt. Counsel is present on behalf of respondent No.1.

2. The writ petitioner herein is an employee of the Life Insurance Corporation of India (LICI) and is posted as Record Clerk in the Finance & Accounts department of the Divisional Office of the LICI situated at Panbazar, Guwahati. Aggrieved by the order dated 05.07.2016 issued by the Manager (P & IR) i.e. respondent No.6 imposing the penalty of "reduction to minimum of the time scale of pay as applicable to his cadre" and also "for recovery of Rs.1,91,000/-" upon the petitioner, the instant writ petition has been filed.

3. The facts of the case, in a nutshell, are that, while serving as a Record Clerk in the Finance & Accounts department in the Divisional Office of the LICI at Guwahati, a disciplinary proceeding was initiated against the petitioner on the basis of charge-sheet dated 15.12.2014 levelling the single charge of failure to maintain absolute integrity and devotion to duty. An Enquiry Officer was appointed to go into the charge brought against the petitioner, whereafter, report dated 18.04.2015 was submitted by the Enquiry Officer by holding that the charge leveled against the delinquent officer is partially established. Not being

satisfied with the said report of the Enquiry Officer, the Disciplinary Authority i.e. the respondent No.4 had issued a show cause notice dated 13.06.2016 upon the petitioner informing that he intends to differ with the finding of the Enquiry Officer on the basis of evidence taken on record and the facts and circumstances of the case. The petitioner submitted his show cause reply on 23.06.2016. Thereafter, the respondents had issued the impugned order dated 05.07.2016 imposing the penalty upon the petitioner as noted above.

4. Mr. Sarma, learned counsel for the petitioner submits that after submitting his second show cause reply on 23.06.2016, the petitioner was waiting for an opportunity of personal hearing in the matter. However, no such hearing was given to the petitioner. Instead, the Disciplinary Authority straightway went on to impose the penalty upon the petitioner by differing with the findings of the Enquiry Officer, taking a different view in the matter without even hearing the version of the petitioner. By taking a plea that the Disciplinary Authority was bound to give an opportunity of hearing to the petitioner, failing which, the impugned order of penalty dated 05.07.2016 would stand vitiated in the eye of law, Mr. Sarma has relied upon the decision of the Supreme Court rendered in the case of Punjab National Bank and others. Vs. Kunj Behari Misra reported in (1998) 7 SCC 84 and seeks quashing of the order of penalty on such count.

5. Mr. S. Nath, learned counsel for the respondents, on the other hand, submits that law permits the disciplinary authority to take a different view in the matter based on the evidence available on record and thereby differ/disagree with the findings of the Enquiry Officer. Therefore, the recourse adopted by the respondent Nos.4 and 6 cannot be faulted on the ground of procedural irregularity. Mr. Nath has, however, submitted in his usual fairness that no personal hearing was given to the petitioner before issuing the impugned order dated 05.07.2016.

6. The issue as to whether, a personal hearing to the delinquent officer is mandatory if the disciplinary authority wants to differ with the finding of the Enquiry Officer, came up for consideration before the Supreme Court in the case of Kunj Behari Misra (supra) wherein the following observations have been made in paragraph 17 :-

"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (supra) quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its

findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiry officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority."

7. From the law laid down in the case of Kunj Behari Misra (supra) it is apparent that it was mandatory on the part of the Disciplinary Authority to give a personal hearing to the writ petitioner before differing with the finding of the Enquiry Officer. By not giving such an opportunity of hearing to the petitioner, the authorities have acted in a manner which has lead to violation of procedural safeguard and thus they acted in contravention of the principles of natural justice. If that be so, the impugned order dated 05.07.2016 cannot be sustained in the eye of law. However, since the impugned order has been assailed only on procedural grounds, it would be open for the authorities to pass a fresh order after giving an opportunity of personal hearing to the petitioner.

8. This writ petition is, therefore, being hereby disposed of by setting aside the impugned order dated 05.07.2016, by clarifying that it would be open for the respondent Nos.2 to 6 to proceed against the petitioner de novo, from the stage of receipt of second show cause reply dated 23.06.2016. The Disciplinary Authority may issue fresh orders on the question of penalty to be imposed upon the petitioner, if any, after hearing him. Until such time, the above exercise is completed, no further coercive action be taken against the petitioner.

The writ petition stands allowed to the above extent.

There would be no order as to cost.