

(2022) 07 GUJ CK 0062

In the Gujarat High Court

Case No : R/Special Civil Application No. 21467 Of 2019, Civil Application (For Direction) No. 1, 2 Of 2022

Chandrakant Gokalbhai Patel

APPELLANT

Vs

New India Assurance Co. Ltd

RESPONDENT

Date of Decision : 19-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Conduct Discipline And Appeal Rules, 1980 — Rule 29
New India Assurance Company Limited (Conduct, Discipline And Appeal) Rules, 2014 — Rule 3(1)(i)(ii)(iii)(iv), 4(1)(5)(6)
Motor Vehicles Act, 1988 — Section 147

Citation : (2022) 07 GUJ CK 0062

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : RV Deshmukh, HG Mazmudar, Maulik J Shelat

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. This petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing and setting aside the orders dated 11.03.2019 and 16.05.2017 passed by the respondent Insurance Company whereby the petitioner has been dismissed from service and the order has been confirmed in appeal and also imposing recovery of an amount of Rs.57,46,905/- from the petitioner.

2. Facts in brief are as under:

2.1 The petitioner was serving as a Senior Divisional Manager in the New India Assurance Company Limited at Gandhidham. He has rendered 31 years of service before his date of dismissal. A charge-sheet was issued on 09.03.2016, imputing that the petitioner had settled 10 claim filed in the Lok Adalat during the year 2014-15. Such settlement was done with an ulterior motive and

therefore according to the company, the petitioner was liable to be punished under the Disciplinary Proceedings. On the basis of the charge-sheet so issued, the petitioner responded on 26.03.2016. Final submissions after an inquiry report was furnished on 25.10.2016 by which of the 10 charges, 9 were held to be proved, the petitioner made a representation. Based on the representation, the Assurance Company by an order dated 16.05.2017 dismissed the petitioner from service. An appeal filed against the order of dismissal was also dismissed on 11.03.2019. Hence, the petition.

3. Mr.R.V.Deshmukh learned counsel for the petitioner would submit that reading the charge-sheet would indicate that the allegations in the charge are about negligence, irregularity and procedural lapses etc. No where does the charge-sheet attributes ill motive nor does the inquiry proceedings substantiates the allegation that the cases in the Lok Adalat were settled with an ulterior motive.

3.1 Mr.R.V.Deshmukh would further submit that the petitioner is not guilty of any charges as his role was only to endorse the proposal of settlement placed before him by the Legal Department. In his submission, the settlement was drawn and drafted in consultation with the law officer of the company, the support staff, the panel advocate and the advocate for the claimant. The petitioner was only required to see that the financial limits are not exceeded. There is no allegation that the petitioner had entered into settlements exceeding the financial limits.

3.2 The next submission of the Mr.Deshmukh that looking to the facts of the case and the allegations, the company was required to examine the witnesses like the law officer and the supporting staff, staff of the transport department, the panel advocate and the advocate for the claimant. They being star witnesses and having not been examined, the charges cannot be taken to be proved. Mr.Deshmukh would submit that only two witnesses of the company were examined which had no connection with the incident and therefore, the inquiry officer's report and the findings thereto are based on no evidence.

3.3 Mr.Deshmukh would rely on Rule 29 of the Company's Discipline and Appeal Rules to submit that the said Rule provides for common proceedings where two or more employees are involved. Despite requests being made by the petitioner that if an inquiry had to be held, common proceedings should have been drawn against all the officers of the department was not attended to and therefore on that ground too, the order of penalty is bad.

3.4 Mr.Deshmukh would further submit that as long as there are judicial orders and awards of the Lok Adalat which remain in force and are not reversed by the higher forum, it is improper and illegal on the part of the company to hold an inquiry and punish the petitioner. In support of his submission, Mr.Deshmukh would rely on a decision of the Madras High Court in the case of K.M.Sankarn v. The District Collector and Another dated 30.01.2004.

3.5 Mr.Deshmukh would submit that the respondents have ignored Rule 29 of the Rules. He would further submit that so far as violation of the provisions of Rule

3(1)(i)(ii)(iii)(iv) and Rule 4(1)(5)(6) of the New India Assurance Company Limited (Conduct, Discipline and Appeal) Rules 2014, are concerned, none of those provisions have been violated in any manner whatsoever which can be culled out from reading the allegations in the charge-sheet.

3.6 Mr.Deshmukh would submit that there was absolutely no material available with the authority except bald allegations of misconduct.

3.7 Mr.Deshmukh would further submit that the work performed by the respondent company was a team work and it was so admitted even by the witnesses of the Management viz. Mr.Arunkumar Kashyap who was then the Regional Manager, Legal. Even if therefore, according to the management witness, the nature of work carried out by the petitioner was 'team work' it was not for the company to punish the petitioner alone.

3.8 Mr.Deshmukh would submit that by the impugned orders, the remittance of pension which was being regularly done to the petitioner has been stopped and therefore the order is illegal because it tantamounts to withholding of benefits like pension, gratuity and other benefits without following appropriate procedure.

3.9 Mr.Deshmukh would further submit that even otherwise when the allegations made out in the charge-sheet are read, they would not prima-facie or even otherwise make out a case for the respondent for which the petitioner can be penalized. In other words, the submission of the learned counsel for the petitioner was that if the petitioner has settled 10 claims in the Lok Adalat, merely because of the words "ulterior motives" is used in the charge-sheet that itself would not make it a misconduct on behalf of the petitioner.

4. For the respondent Insurance Company, Mr.Maulik J. Shelat with Mr.H.G.Mazmudar has made the following submissions:

4.1 Inviting the Court's attention to the Discipline and Appeal Rules, Mr.Shelat would submit that reading the Rule would indicate that it is open for an insurance company to initiate disciplinary proceedings when it is found that an employee has failed to maintain absolutely integrity, devotion to duty or done something unbecoming of a public servant and he has failed to confirm to and abide by the Rules. Misconduct is defined in Rule 4 of the Rules which includes several amongst other things acting in a manner prejudicial to the interest of the company. The charges would indicate that 10 claims were settled in the Lok Adalat even knowing fully well that such claims could not have been settled by the petitioner as they were contrary to the Motor Accident Policy and the Booklet. This obviously reflected that the petitioner had acted in a manner prejudicial to the interest of the Corporation and was in loss of Rs.66 lakhs to the Corporation/ Insurance Company.

4.2 Mr.Shelat would further submit that the entire proceedings of the inquiry were held in consonance with the principles of natural justice. A charge-sheet was issued, report of the inquiry was framed after examining witnesses, a copy

of the Inquiry Officer's report was furnished to the petitioner, response was invited and thereafter an order of dismissal was passed.

4.3 Mr.Shelat would take the Court through the illustration of 10 cases which have been listed in the charge-sheet and submit that the petitioner has settled these cases in the Lok Adalat wherein as per the manual/guidelines of the company, such types of cases could not have been settled in the Lok Adalat. The company had no liability in law in all these cases having issued liability only policy and in some cases, the risk was not covered as the passengers traveling in the goods carriage which was statutorily covered under Section 147 of the Motor Vehicles Act. Mr.Shelat would submit that when the petitioner himself was sitting in the Regional Office, Ahmedabad, as Manager Legal, on 29.03.2011, he had advised that these particularly matters could not be settled. Knowing fully well that this could not be done, having entered into a settlement, was prejudicial to the interest of the company, shows that the petitioner failed to live the standards of devotion of duty and therefore also, failed to maintain integrity and therefore, the charge-sheet and the consequential dismissal order was just and proper.

4.4 Mr.Shelat would also submit that the stand of the petitioner that a common proceedings should have been held under Rule 29 of the Discipline and Appeal Rules is also misconceived. The petitioner was well experienced Senior Officer of the company, aware of the manuals and the guidelines and therefore, even if star witnesses as submitted by Shri Deshmukh are not examined, the order of dismissal was just and proper.

4.5 Mr.Shelat would further submit that the petitioner has not examined any witnesses in support of his assertion that he had not committed any misconduct, nor had he brought such witnesses from his side to suggest that there was no misconduct. The departmental proceedings culminated after examining the evidence on record and found that the charges except charge 4 had been proved and based on such charges, it was not unreasonable for the Insurance Company to pass an order of dismissal from service. He would submit that in light of the decisions of the Supreme Court in case of Union Of India & Ors vs P.Gunasekaran reported in (2015) 2 SCC 610 and also in view of the decision in case of State of Karnataka & Anr. v. Umesh reported in 2022 (5) Scale 144, this Court should not sit in judicial review in the departmental proceedings akin to the appellate authority and re-appreciate the evidence on record.

5. At this stage, Mr.R.V.Deshmukh has also relied on the decisions of the Supreme Court in case of Union of India v. J. Ahmed reported in (1979) 2 SCC 286 and in the case of Inspector Prem Chand v. Government of N.C.T. Delhi and others reported in 2007 (4) SCC 566 to submit that when apparently there is no misconduct proved or the charge-sheet does not reflect misconduct or a wrongful misconduct, a departmental proceedings cannot be held.

6. Having considered the submissions made by the learned advocates for the respective parties, it will be in the fitness of things to peruse the charge-sheet in

question which imputes the allegations against the petitioner. The charge-sheet is dated 09.03.2016. Reading the charge-sheet would indicate that it is the case of the Insurance Company - the employer that 10 cases were settled in the Lok Adalat. Such settlement of claims was done deliberately, grossly in irregular manner, ignoring the norms and guidelines of the company and with ulterior motive. The 10 claims that according to the department the petitioner settled before the Lok Adalat were regarding compensation for a tempo carrying a marriage party which tempo was meant for carrying goods and not passengers. According to the employer, the company's manual forbade entering into the settlement. Instances of the 10 claims of settlement in the Lok Adalat have been set out in the charge-sheet and the case of the company is that the company's manual for compromise did not permit such settlement, the petitioner should not have entered into such settlements in Lok Adalat and settled them. Thus in the perception of the company was not only violative of the conduct inasmuch as the petitioner failed to maintain integrity but also committed misconduct that amount to loss to the insurance company. It is at this stage, it would be relevant to consider the response made by the petitioner.

7. It is the case of the petitioner that he was posted as a Senior Manager at Gandhidham to look after various functions of the divisional office in his capacity as a Supervisory and Managerial cadre. He had to monitor premium procurements, new business, renewals, accounts, motor claims etc. As far as the department is concerned, where the claims are processed by way of Court orders and when compromise settlements are entered into, it is his case that work allocation would be assigned to officers by way of office orders and time and again they were guided through mails received from the registered office of the Head office. He would submit that for the 10 charges attributed in the charge-sheet, all these are settled in the Lok Adalat for which the divisional office and the TP department consisted of five officers. Since there were special and legal activities, allocation of work was also carried out. This work was carried out under the supervision of Mrs.Bina Ramnani. Mrs.Lina Nair was working in the department as an Assistant Class-III was retained in the department due to long experience in such department. Such files were then given to the Legal Officer Ms.Shipra Tanvar as she was specially posted to the divisional office to settle maximum claims. The Legal Officer therefore then entered into negotiations with advocates, carried out all the formalities with the advocates, compromised the cases and the petitioner signed the pursis on which it was finally settled. He would therefore submit that since the Legal Officer and other officers were directly a part of the same transaction, to single out the petitioner and penalize him rather than inquire into the role of each of the employee was victimization of the petitioner.

8. What is therefore evident from the nature of duty and the allegations made in the charge-sheet is that in the Lok Adalat the petitioner settled some claims contrary to the policy manual of the Corporation. From the representation made by the petitioner, what is evident is that it was not entirely and solely the

responsibility of the petitioner in settling the 10 claims before the Lok Adalat. It was a joint exercise in which more than one officers were involved in calling out and selecting the matters for which a settlement had to be entered into. Blaming the petitioner solely for the misconduct of having settled the claims in the Lok Adalat would be obviously a case of hounding the petitioner only without involving the other links which were crucial in the chain of transactions which ultimately led to settling of the claims before the Lok Adalat.

9. Perusal of the Inquiry Officer's report would indicate that only two witnesses were examined by the department. The witnesses who examined were one Dr.S.P.Thakur - Manager Vigilance and one Mr.Arun Kashyap - Regional Manager, Ahmedabad (RO). The management witness Dr.S.P.Thakur submitted his written deposition of 11 pages along with the HO circular. This was read out to the PW-1 and was also served to the petitioner. Even the deposition of PW-2 Mr.Arun Kashyap was read out and served on the respective parties. Admittedly though, no defense witnesses were examined, perusal of the inquiry report would indicate that what was discussed by the Inquiry Officer was the brief of the presenting officer and his stand vis-a-vis the charges against the petitioner and the stand of the Charge Officer, petitioner who specifically denied the fact that it was solely done by the petitioner. In fact the management witness had later on admitted that such an exercise was a team work. A question that the Court needs to address is whether it was the petitioner who had been singled out for the purposes of imposing the penalty of dismissal which was so confirmed in appeal albeit without reasons. The analysis and findings of the Inquiry Officer would indicate that it is a case of no evidence. The analysis and findings of the Inquiry Officer indicate that based on the deposition of the prosecution witness and that of the PW-2, the charges levelled against the petitioner except charge no.4 were held to be proved. Admittedly, the Inquiry Officer's report is lacking the necessary ingredient of having even proved the charge on the relaxed standards of "preponderance of probability".

10. Based on the feedback that the petitioner got from his officers in the department viz. the Legal Officer and the other officer, the petitioner signed the pursis of settlement of cases before the Lok Adalat. Such Lok Adalat based on these team works and files and on the basis of the feed-backs of the advocate of the company and that of the claimant entered into settlements and settled these disputes. The question is that can this be said to be the exercise of powers with an ulterior motive or acting without devotion of duty or acting in prejudicial to the interest of the corporation.

11. The reliance placed by Mr.R.V.Deshmukh on the decision of the Madras High Court in the case of M/ s. United India Insurance Co. Ltd. v. T. Apparanantham and Anr. rendered in C.R.P. (PD).No.1881 of 2010 is worth a worthy noting. It was a case before the Madras High Court that once the respondent had filed an MACP claiming certain amounts for injuries. The award was passed. Subsequently then the insurance company came to know that the Lok Adalat

award was passed on a query was raised whether the Deputy Manager of Insurance could have been authorized to ensure into a settlement, it was found that the compromise was entered into the authorization of the office of the Lok Adalat. It was on this ground that the award of the Lok Adalat was challenged by the Insurance Company. The award of the Lok Adalat was set aside albeit while doing so the Madras High Court observed that it is aware that the Lok Adalat award should normally not be set aside but here was a singular case where it should.

12. Adopting the same analogy, what is evident is that after an entire team work was undertaken by the TP department of the insurance company involving the officials named by the petitioner in his representation, the insurance company entered into a settlement claim with the claimants and therefore to attribute ill motives to the petitioner for ulterior motive or holding that the petitioner acted as unbecoming officer of the Life Insurance Corporation is misconceived. It is worthwhile at this stage to reproduce the short gist of the petitioner's representation made at the time when the inquiry with the charge-sheet was given to the petitioner. Even when the petitioner filed his response with the inquiry officer's report, it was his specific case that, he was not the only person responsible for the entire exercise of settlement and the claims entered into with the Lok Adalat. Relevant grounds which the petitioner set out in the memo of appeal deserve to be highlighted:

"3. It may be noted that right from segregation and selection of cases to negotiating the quantum of amount of compensation for cases to be settled before Lok Adalat the entire staff of the Third Party Department of the Div. Office is involved. The Company liability, Negligence and Quantum aspect is decided as per the opinion of the dealing advocate is scrutinized and then finalized after negotiations with the claimants advocate. Such meetings take place in office during office hours. The Third Party Department decides which cases to be negotiated and the quantum is decided in presence of the panel advocate of the Company. The calculation sheet is prepared by the legal Officer. A review sheet is prepared by the legal Officer. A review sheet is prepared for each fit case by the Department.

4. It is pertinent to note that only Compromise purshis (application) of the total number of cases finalized and to be settled before Lok Adalat is submitted to me one day before the Lok Adalat for my signature. The total number of cases settled during my tenure is very large. Almost 761 cases were settled in Lok Adalat. In the year 2015 alone around 450 cases were settled by Gandhidham DO.

5. You will appreciate that it is virtually impossible for me to go through each and every file and ensure that it is fit for compromise in all respect. It is expected that the Legal Officer and other staff of the Third Party Department make proper scrutiny of the cases to be compromised before Lok Adalat as per company's guidelines. I have signed the compromise purses only after recommendations

and signature of the dealing panel advocate who are empanelled to protect interest of the company and paid for this job. No where I have exceeded my financial authority.”

13.The stand of the department therefore that even otherwise the legal officer was penalized by reduction in pay is clearly an afterthought. Perusal of the Inquiry Officer’s report as stated herein above would indicate that it was a case of no evidence. In the well celebrated case of the Supreme Court in the case of Union of India and Another V. V.C.Chaturvedi reported in 1995 (6) SCC 749 considering the limited roll that the Court can undertake of judicial review in the disciplinary proceedings of not even re-appreciating evidence, the Court had held that where it is a case of no evidence, such a departmental proceedings and the consequential order penalty must be quashed and set aside.

14.The case whether the allegations made in the imputation of the charge-sheet would tantamount to misconduct has also been set out in the decision in the case of J. Ahmed (supra) and that in the case of Inspector Prem Chand (supra) which Mr.Deshmukh has relied upon. Misconduct has been defined as making any behavior which is unlawful and which is improperly done, implying a wrongful intention. The findings before the Inquiry Officer nowhere indicate that the petitioner had entered into such settlement with a wrongful intention much less an ulterior motive. There is no allegation to the effect that by virtue of this settlement entered into the Lok Adalat, there was any personal gain to the petitioner. The attribution therefore by the department that the settlement was arrived at with ulterior motives is misconceived. If the settlements were arrived with the claimants it was so done in a team work which was done even by other officers of the transport department which the petitioner has named in his representation and in his appeal. There was no reason why the petitioner should have been singled out.

15.Accordingly the order of penalty of dismissal dated 16.05.2017 and the order so confirmed in appeal dated 11.03.2019 are quashed and set aside. The petitioner is entitled to all consequential benefits viz. terminal benefits as if the order of dismissal was never passed.

16.Petition is allowed. Rule is made absolute accordingly.