
(1993) 11 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2691 of 1992

Jagdishmal Bhansali

APPELLANT

Vs

United India Insurance Co. Ltd. and Another (49)

RESPONDENT

Date of Decision : 03-11-1993

Acts Referred:

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 22, 25(10), 25(9)

Citation : (1995) 2 LLJ 209 : (1993) 2 RLW 228 : (1994) 1 WLC 664

Hon'ble Judges : Jasraj Chopra, J

Bench : Single Bench

Advocate : R.N. Munshi, for the Appellant; M.M. Singhvi, for the Respondent

Judgement

Jasraj Chopra, J.—By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner Jagdishmal Bhansali has challenged the order Annexure 15-B dated December 31, 1990 passed by the Assistant General Manager (Competent Authority); the order Annexure-17 dated April 29, 1991 passed by the General Manager (Appellate Authority); and the order Annexure-19 dated August 19, 1991 passed by the Chair-man-cum-Managing Director of the United India Insurance Co.Ltd on the memorial preferred by the petitioner (Annexure-18)

2. The petitioner was initially appointed as Development Officer in the Union Co-operative Insurance Society Ltd. in the year 1971. Later on, this company merged in the United India Insurance Company Ltd. with effect from May 17, 1971 and the petitioner was given appointment on the post of Inspector Gr-1 in the United India Insurance Company and was posted in the Branch Office of the said company at Jaipur. According to the petitioner; his service career in the United Insurance Company was very good and, therefore, he was promoted as Assistant Administrative Officer vide Order Annexure-3 dated April 23, 1986. He has earned number of commendation and meritorious certificates for his efficient, honest and sincere services.

3. It was submitted that on formation of the Regional Office of the Company at Jaipur in the month of October 1985, Shri Brij Raj was appointed as the First Regional Manager and he was succeeded by Shri G.S. Puri in February 1986. Shri G.S. Puri was much impressed by the petitioner as his work was highly satisfactory. Shri G.S.Puri, Regional Manager, liked him very much and that has incurred him displeasure of the number of colleagues and other Officers in the Division and, therefore, as soon as the new Regional Manager succeeded Shri G.S.Puri, the petitioner was transferred to a far flung place like Jhalawar on August 26, 1987 as Officiating Branch Manager. Thereafter, efforts were made to implicate him in false cases.

4. It was further submitted that on account of the conspiracy, false charges were framed against him and the charge-sheet (Annexure-7) dated September 28, 1988 was served upon him. Three charges were framed against the petitioner. About charge No. 1, a FIR was also lodged but in that matter, the Police submitted its Final Report. It was on account of this Charge No. 1, that the petitioner was suspended but even though as regards Charge No. 1, the Police submitted FR, his suspension was not revoked. Be that as it may, after enquiry, the Enquiry Officer found that charges No. 1 and 2 have not been proved against the petitioner but it was held by the Enquiry Officer that Charge No. 3 has been proved against him. The Enquiry Report submitted by the Enquiry Officer has been marked as Annexure-15C.

5. The charge No. 3 and Article-III of the statement of allegation, which have been framed against the petitioner read as under:-

CHARGE -III

Shri J.M.Bhansali while working as Development Officer under Branch Office, Jaipur during February 1979 had caused the company to issue a post-accident insurance cover for vehicle No. RRL 6825 from February 6, 1979 to February 5, 1980 by misrepresenting facts and placing such materials before the Company, after the vehicle had met with an accident on February 9, 1979.

ARTICLE - III

During 1979, Shri J.M.Bhansali was working as Development Officer under B.P.Jaipur. Bus No. RRL 6825 was owned by Shri Sirajudin. The said Shri Sirajudin's representative had approached Shri J.M. Bhansali, then Development Officer, on February 6, 1979 for covering the TP risk of vehicle RRL 6825 from February 6, 1979 to February 5, 1980 and Shri J.M.Bhansali had calculated the premium to the tune of Rs. 266/- and accepted the premium but had failed to deposit in the office.

On February 12, 1979 Shri J.M.Bhansali had taken DD No. OI 8486 for Rs. 266/- at Jodhpur Central Co-operative Bank, Jodhpur and sent it alongwith a letter addressed to Shri O.P.Duggal, then ABM, BO, Jaipur and the proposal form which he had filed on February 6, 1979 without altering the date of commencement of

risk etc.

The vehicle had already met with an accident on February 9, 1979 at about 8.10 P.M. Shri J.M.Bhansali had misled the company and made the company to issue an antedated cover to vehicle No. RRL 6825

By the above acts mentioned in the Article I to III , Shri Bhansali had contravened Rule 3(1)(i) and (ii) of GI(CDA) Rules, 1975 and committed gross misconduct within the meaning of Rule 4(1)(5)(16) and (21) of GI(CDA) Rules, 1975"

6. The petitioner submitted a reply to the charge-sheet and has prayed that the charge-sheet may be quashed. A special request was also made about it vide Annexure-9 but the charge sheet was not quashed. However, on the basis of Enquiry Report, the Disciplinary Authority punished the petitioner with a penalty of reduction of 2 steps, in the time scale applicable to him permanently. It was further ordered that the period during which Shri J.M. Bhansali was under suspension shall be treated as period "not spent on duty". An appeal was filed against this order and that was also rejected vide order Annexure-17. A Memorial (Annexure--18) was submitted to the Chairman-cum-Managing Director, who vide his order Annexure-19 modified the penalty of reduction of time scale by two steps in the time scale to that of reduction of basic pay by one step in the time scale applicable to him. It was further ordered that in terms of Rule 22(b) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, the suspension period shall be adjusted against the leave standing to the credit of Shri J.M.Bhansali as on the date of resumption of duty by him and for the remaining period of suspension after adjusting the leave to the extent admissible as per rules, 75% of the pay and allowances shall be paid.

7. The petitioner has challenged this punishment, holding of enquiry, Enquiry Report and has further challenged the non- consideration of his case for promotion to the post of Administrative Officer inspite of the completion of the required number of years of service as Assistant Administrative Officer. According to the petitioner, the non-consideration of his case for promotion to the post of Administrative Officer has resulted in double jeopardy.

8. According to the petitioner, a preliminary enquiry was held against him about these very charges and in that preliminary enquiry, he was exonerated of these charges alongwith Shri O.P Duggal, the then Branch Manager and still, this false enquiry was initiated against him on account of malice and conspiracy. He has submitted that the relevant file in which preliminary enquiry was held against him and he has been exonerated of these very charges was withheld and he was not supplied with a copy of that file. Moreover, the charge No. 3 related to the period February 10, 1979 and for such a charge, a preliminary enquiry was held against him along with Shri O.P. Duggal, the then Branch Manager and they were exonerated and thereafter, he was promoted to the post of Assistant Administrative Officer and still, this fresh enquiry has been initiated against him

when the charge itself stands washed off because in the previous enquiry, he was exonerated. As per the petitioner, this charge related to the period February 10, 1979 and this fresh enquiry was initiated against him on August 29, 1988 and, therefore, holding of this enquiry, after the expiry of about 9 years, by itself is the denial of the principles of natural justice. The non-supply of the copy of the file bearing No. 267 of 1979 which related to the holding of preliminary enquiry against the petitioner on the pretext that it has been lost is also violative of the principles of natural justice as on account of the non-supply of this file, the defence of the petitioner has been seriously prejudiced. It was contended that the file has not been lost but withheld.

9. It was submitted that certain witnesses of the Management who were examined during enquiry have categorically stated that the petitioner cannot be held guilty of Charge No. 3, in which he has been accused of being instrumental in getting a post - accident insurance cover issued for Vehicle No. RRL 6825 from February 6, 1979 to February 5, 1980 when the vehicle has already met with an accident on February 9, 1979.

10. A reply to the writ petition was filed on behalf of the respondents. It was contended that the preliminary enquiry was held only for a limited purpose of fixing the responsibility and, therefore, that does not debar the respondent Insurance Company from holding a fresh departmental enquiry against the petitioner. This enquiry was properly initiated against the petitioner and he was put under suspension for valid reasons. The copy of the file was not supplied to him because it was not traceable. According to the respondents, the petitioner was responsible for getting a post-accident insurance cover issued in favour of the aforesaid vehicle and, therefore, he has rightly been held guilty of this charge.

11. It was further submitted that his case for promotion to the post of Administrative Officer could not be considered as per Rules because during that period, he was under suspension and he was on loss of pay and, therefore, he was not entitled to be considered for promotion as per the provisions of Rule 6.1 of the Promotion Policy. It was submitted that Chapter II of the Promotion Policy & Job Rotation and Transfer Policy for Officers issued by the General Insurance Corporation of India, Bombay deals with promotion of Officers to the rank of Manager, Deputy Manager, Assistant Manager and Administrative Officer. Rule 6(1) of the aforesaid Promotion Policy lays down that to be considered for promotion, an Officer should have completed in the existing cadre a minimum three full years from the date of selection to the cadre as on December 31 immediately preceding the year in which the promotions are considered. The period for which an Officer was on loss of pay during his tenure in the cadre, will not qualify for determining the length of service for the purpose of this provision. Thus, the petitioner could not be considered for promotion to the post of Administrative Officer when he has not put in a minimum three full years of service as Assistant Administrative Officer and in computing that period of three

years, that period could not have been considered when the petitioner was under suspension and was on loss of pay and, therefore, he has rightly been denied that promotion.

12. A rejoinder has also been filed in which the contentions raised in the writ petition have been reiterated. A reply to the rejoinder was also filed on behalf of the respondents reiterating the submissions made in reply to the writ petition.

13. I have heard Mr.R.N.Munshi, the learned counsel appearing for the petitioner and Mr.M.S.Singhvi, the learned counsel appearing for the respondents and have carefully gone through the record of the case.

14. As stated above, the petitioner has been exonerated of the Charges No. 1 and 2. However, he has been held guilty of charge No. 3 by the Enquiry Officer. Charge No. 3 has already been quoted hereinabove.

15. It has been contended that the petitioner prevailed upon the respondent Insurance Company to get a post-accident insurance cover issued for Vehicle No. RRL 6825 belonging to one Sirajudin of Sikar for a period of one year from February 6, 1979 to February 5, 1980, although that vehicle had already met with an accident on February 9, 1979 and still an antedated risk cover with effect from February 6, 1979 was got issued.

16. On behalf of the petitioner, it was submitted that a representative of Sirajudin met the petitioner on February 5, 1979 and told him to cover his vehicle. He then filled up the proposal form and asked him to sign but when he was informed that the vehicle belongs to one Sirajjudin, he handed over that form to him to get it signed from Sirajudin and the premium with it. It is alleged that on February 10, 1979 when the petitioner was leaving Jaipur by Bus, at about 2 PM, that representative of Sirajudin came and met him at the Bus Stand and told him to accept the Form and Premium. Thereupon, he telephoned Shri O.P.Duggal, Branch Manager and told him that on account of the marriage of his sister, he is proceeding to Jodhpur and at the Bus Stand, a representative of one Sirajudin came and offered him the form and premium. Shri O.P.Duggal told him that day being Saturday, the Office has already been closed and, therefore, he should take the premium and form with him and remit it from Jodhpur. He then proceeded to Jodhpur and on February 12, 1979, he obtained a Bank Draft of the premium of Rs. 266/- and sent it to Shri O.P.Duggal, which was received in the Office on February 14, 1979. Thereafter, on February 16, 1979, it was ordered that the risk be covered, Actually, the risk note: was issued on February 22, 1979.

17. It was submitted by the petitioner that he never received the premium either on February 5, 1979 or on February 6, 1979. It was actually paid to him on February 10, 1979 when he was about to board the bus. He had no knowledge that the vehicle has met with an accident on February 9, 1979. The fact that representative of Shri Sirajudin came and met him at the Bus Stand on February 10, 1979 with form and premium, was brought to the notice of Shri O.P.Duggal

and Shri O.P.Duggal instructed him to accept that form and premium and send it by Demand Draft from Jodhpur and accordingly, he complied with that direction of Shri O.P.Duggal, Branch Manager. No malafides are involved in the matter. He has submitted that the proposal form and premium was accepted by him at the Bus stand as per the telephonic instructions of Shri O.P.Duggal and he had no knowledge about the vehicle having met with an accident. It was further submitted by the petitioner that the respondent Insurance Company was not obliged to accept the risk coverage from the date of the proposal. The risk can only be covered from the date the premium is paid to it. In this respect, Mr.R.N.Munshi, the learned counsel appearing for the petitioner, has drawn my attention to Section 64VB of the Insurance Act, 1938. Section 64VB(1) provides that no insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. Clause (2) of Section 64VB further provides that for the purpose of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer. Clause (4) of Section 64VB also provides that where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty four hours of the collection excluding bank and postal holidays.

18. Mr.Munshi has, therefore, submitted that from the aforesaid provisions of law, it is clear that the risk cannot be covered till the premium is paid or guaranteed. He has submitted that even if the proposal form was filled in by the petitioner covering the risk from February 6, 1979 to February 5, 1980, the Insurance Company was not at all obliged to issue the insurance cover note with effect from February 6, 1979 because the premium was received by the Insurance Company not earlier than February 14, 1979. The Bank draft itself was obtained on February 12, 1979 and therefore, the risk could not have been covered before February 12, 1979.

19. According to Mr.Munshi, the Development Officer did not issue this cover note. This cover note has been issued by the Branch Office, of which Shri O.P.Duggal was the Branch Manager. He has submitted that on the date this risk cover note was issued, the petitioner was on leave. He has further submitted that when the premium alongwith proposal form was offered to him at the Bus-Stand, he immediately contacted Shri O.P.Duggal Branch Manager and Shri O.P Duggal told him to carry premium alongwith proposal form with him and remit it from Jodhpur through Bank Draft and, therefore, he had no option but to comply those directions of the Branch Manager. However, Mr.Munshi has submitted that the Insurance Company was not at all obliged to issue the insurance cover note

from February 6, 1979. He has submitted that any date which has been filled in the Proposal Form cannot be erased or changed by the Development Officer without the signatures of the proposer. In this respect, my attention was drawn to the General Insurance Manual issued by the respondent Insurance Company, wherein, on page 14, it has been provided in Lesson III (CONTRACTS) as follows:-

"Once the offer is made, the insurers go through the information supplied and decide whether to accept the offer or not. This is the next stage viz., Acceptance. The Acceptance is not effective until communicated to the proposer. Acceptance may be verbal or may be evidenced by the issue of a cover note, or a letter of cover or a certificate of insurance. These are dealt with in the lesson on Underwriting. In our country, as per provisions of the Insurance Act, 1938, an insurer can assume risk only on receipt of the actual premium or a deposit premium or the proposer must furnish a bank guarantee. Thus, a risk can be accepted only as per these stipulations. This would also mean that there cannot be any antedating of cover. It should also be remembered that offer and acceptance must be unqualified.

..... In fact the Insurance Act makes it compulsory that any cover can be commenced only from the time the premium is paid or bank guarantee is provided."

Thus, the Insurance Company can only issue a cover from the date either Bank Guarantee is furnished or from the date, the premium is paid or deposited. Whether proposal is made from a particular date or not is not effective for the risk coverage. The risk cover note is not being issued by the Development Officer but it is being issued by the Branch Office and there cannot be any antedating of the risk coverage and the risk can be commenced only from the time the premium is paid or Bank Guarantee is provided.

20. As stated above, in this case, the Bank Draft was obtained by the petitioner on February 12, 1979 and it was received by the Branch Office on February 14, 1979 and, therefore, keeping in view the aforesaid provisions of Section 64VB of the Act as also the observations made in Lesson III, relating to Contracts in the General Insurance Manual issued by the respondent Insurance Company, which have been quoted hereinabove, the petitioner being Development Officer of the respondent Insurance Company cannot be held responsible for the issuance of ante-dated risk cover note, which was issued with effect from February 6, 1979 to February 5, 1980. The risk cover note is being issued by the Branch Office and for the issuance of this antedated risk cover note, only those persons who are responsible for the working of the Branch Office can be held responsible and not the petitioner. The petitioner could not have changed or erased any date in the Insurance Proposal Form without the signatures of the Proposer. This is clear from the statement of MW-2 Shri Ramdurai (Annexure -13), which has been recorded by the Enquiry Officer during Enquiry. On internal page 8 of that statement (Annexure-13), the following question was asked to the witness:-

"Being well aware of the Rules and Regulations of the Company, kindly answer the following questions:

(a) A Proposal Form is filled by the Inspector and is not signed by any body and it is dated as January 1, 1990 and the period mentioned is December 31, 1990.

(b) The Office concerned where the Development Officer is attached receives the above proposal alongwith a DD dated January 15, 1990 on January 20, 1990.

Kindly let us know as to from which date, the Office will grant cover:

To this question, MW-2 Shri Ramdurai replied as under:

"As per Rules, Insurance from back date is not permissible. Inasmuch as the request was received at the Office on January 20, 1990, it should be commencing from that date. However, the period of postal transit can also be taken into consideration. So, the cover can be given at best from January 18 or 19, 1990. There can be no question of cover w.e.f. January 1, 1990. Since the proposal is unsigned, a fresh proposal is to be obtained from the Insured/ Proposer for our records, meantime taking the request as oral."

This witness was further asked a question that suppose a Demand Draft is dated on a particular date, and a date of the risk period in the proposal column is earlier to date of draft, what will be the effective date for insurance? The witness has replied that it should not be from the date of proposal but from the date of Demand Draft.

21. It is, therefore, clear that no risk could have been covered by the Insurance Company with effect from February 6, 1979. It should have been covered either from the date the Demand Draft was obtained from the Bank or from the date the premium was received in the Insurance Company.

22. My attention was also drawn to the statement of MW-3 Shri Nirankar Singh, Senior Divisional Manager, and one of the persons who held the preliminary enquiry against the petitioner. He was asked a question whether he was one of three members of Enquiry Committee constituted by Shri G.S.Puri, the then Regional Manager, Jaipur to look into the irregular issuance of cover relating to policy No. 24/1/02121 on account of Shri Sirajuddin pertaining to Vehicle No. 6825 alongwith Shri M.K.Roy and Shri A.P. Alexander. The witness has replied in the affirmative. It was further inquired from him that the Committee enquired in detail all the aspects relating to the issuance of cover and came to the conclusion that Shri O.P.Duggal, AAO Branch Office-I, Jaipur, has not followed the Company's procedure in Underwriting a risk and that Shri J.M.Bhansali, Development Officer (at that time) has discharged his duties diligently with devotion and the Committee further exonerated Shri O.P.Duggal in this case. To this, the witness has replied that the enquiry was conducted and basic administrative lapses were noticed for which suggestions were given to be sent to all operating Offices and Shri O.P.Duggal was exonerated. With regard to Shri J.M.Bhansali, it was opined that he ought not to have carried premium with him and sent through a Draft.

Looking to his letter addressed to BO-I, Jaipur, it was also found that he had discussed the matter with Shri O.P. Duggal and as such not found guilty. It was then asked to him to clarify as to whether if a Development Officer fills in the Insurance Proposal Form and mentions the date of risk from February 6, 1979 to February 5, 1980, whether a Development Officer can cause the Company to issue a cover from February 6, 1979 when the premium by way of a Demand Draft dated February 12, 1979 was sent to the Office by post. To this, his reply was that no unless the premium draft is also of the same date. He was further asked a question that if the Office had issued a cover from February 6, 1979 onwards do you think that in any way, the Development Officer concerned is responsible for this, to which, he replied that no, it is an administrative lapse on the part of the Office. This witness was also asked a question as to whether the Development Officers are empowered to alter the proposal Form themselves, to which he replied that, no unless the changes are signed by the Proposer.

23. In spite of this testimony of these two Management witnesses, the petitioner has been held guilty of Charge No. 3. It has been categorically stated by MW-3 Shri Nirankarsingh, Sr. Divisional Manager of the respondent Insurance Company that neither the date in the Proposal can be changed by Development Officer without the signatures of the Proposer nor he can prevail upon the respondent Company to issue a risk cover note from an ante-date, when the premium has been received by the Insurance Company on February 14, 1979 and the demand draft was obtained from the Bank on February 12, 1979. According to him, it is an administrative lapse on the part of the concerned Branch Office and not on the part of the concerned Development Officer.

24. If the petitioner was approached on February 5, 1979 and he filled the Proposal Form from February 6, 1979 to February 5, 1980 the respondent Company was not at all obliged to issue the insurance risk cover note with effect from February 6, 1979 according to Section 64VB of the Act as also certain observations made in the General Insurance Manual issued by the respondent Company, which have been quoted here-inabove. As stated above, the risk can only be covered either from the date the Demand Draft was obtained from the Bank or the premium was paid to the respondent Company or a Bank guarantee was furnished. If anything contrary to it has been done, it has been done by the Branch Office and not by the Development Officer and, therefore petitioner could not have been held guilty of Charge No. 3.

25. Moreover, MW-3 Shri Nirankarsingh has admitted that a three member enquiry committee was constituted to enquire into these charges and the File bearing No. 267 of 1979 pertained to this very enquiry by that Committee in which not only Shri O.P.Duggal but Shri J.M.Bhansali was also called. They were examined and thereafter, they were exonerated. Not only this, after exoneration, the petitioner was promoted as Assistant Administrative Officer and, therefore, earlier lapses stand washed off. It is true that holding of a preliminary enquiry does not preclude the respondent Insurance Company from holding regular

enquiry against an officer. If after the holding of a preliminary enquiry the competent authority feels that the findings of the Enquiry Officer who conducted the preliminary enquiry are perverse and on account of certain reasons, which must be stated in writing, holding of a regular enquiry is a must in the matter, in such a case, a regular enquiry can be initiated.

26. Mr. Munshi has submitted that this regular enquiry has been initiated after the expiry of about 9 to 10 years on such a stale charge when the respondent Insurance Company has not been put to any financial loss and, therefore, holding of this regular enquiry belatedly is violative of principles of natural justice. In support of this submission, he has placed reliance on a decision of their Lordships of the Supreme Court in *Mohanbhai Dungarbhay v. Y.B. Zala* 1990 Lab IC 89, wherein it has been held that the delay in initiating the disciplinary proceedings may itself constitute denial of reasonable opportunity to defend. That was a case in which the enquiry was held after about one and half years and that was treated as denial of reasonable opportunity to defend.

27. My attention was next drawn to a decision of this Court in *Hukumsingh v. State* 1986 (1) JS 460, wherein it has been held that the power to be exercised by an Administrative Officer or an Authority should be exercised within a reasonable time even if no limitation is prescribed for such an action in the Statute or the Rules. That was a case in which the order enhancing punishment was passed after 9 years and, therefore, it was held to be arbitrary and unreasonable. Here, it is a case of initiation of a regular enquiry after the expiry of 9 years and the petitioner has already been exonerated in the preliminary enquiry and he has also been promoted to a higher rank i.e. the post of Assistant Administrative Officer.

28. Mr. Munshi has further placed reliance on a decision of *A.P. Augustine Vs. Supt. of Post Offices*, wherein it has been observed as under:- p. 435

"It cannot be gainsaid that the object of r.9(1) is to enable the department to keep a delinquent employee out of office during the pendency of disciplinary action against him. An enquiry for this purpose should have actually commenced or should have been intended to commence without delay before the employee is put off duty. The employer has no right to keep an employee out of office and deny him salary so long as the *vinculum juris* between them of master and servant continues except for the purpose of conducting an enquiry of that nature or as a punishment imposed on him under the Rules on the basis of an enquiry. Exercise of the power of suspension for any other purpose would be an unauthorised act.

The fact that even after two and a half years the enquiry has not commenced shows that the respondents had no intention of taking any immediate steps in that direction when the petitioner was ordered to be kept off duty. Ex.P. 1 was therefore not an order which was intended to operate in terms of Rule 9(1). To put an employee off duty without any enquiry and payment of salary or

allowances for an unduly long period was malafide and unauthorised act. The subsequent conduct of the respondents has destroyed any semblance of validity in Ex.P.1 as ratified by Ex.R.1. In the circumstances, I declare that these two orders are invalid and of no effect in law.

The employee is accordingly deemed to have been in service at all material times and is thus entitled to whatever benefits, financially or otherwise, which he would have received had it not been for the invalid action taken against him as per Exs. P. 1 and R. 1."

Their Lordships have further observed as under: p. 435:

"While it may be still open to the respondents to conduct an enquiry against the petitioner in respect of the alleged misconduct, I should have thought that any such belated enquiry is unlikely to be fair, for at this distance of time, it would be almost impossible for the employee to defend himself effectively by adducing evidence in regard to matters alleged to have occurred over two and a half years ago and in respect of which he has not yet been informed of the charges and the nature of the evidence relied on against him. His own witnesses may have disappeared on their memory faded whatever evidence that he could have adduced in his favour, had the enquiry commenced promptly, would in all probability have by now vanished. No fair and effective enquiry can be conducted unless it commences within a reasonable time after the incident. To call upon an employee to defend himself at this distance of time is probably to put him at considerable disadvantage and thus deny him the benefits of natural justice."

In that case, the incident was dated May 20, 1981 and the decision was rendered by their Lordships of the Supreme Court on January 4, 1984 and, therefore, it appears that the enquiry must have been commenced even prior to the expiry of three years and still, it has been held to be belated resulting in violation of the principles of natural justice.

29. Reliance was further placed on a decision of their Lordships of the Supreme Court in *The State of Gujarat Vs. Patil Raghav Natha and Others*, That was, of course, a case of exercise of revisional powers for which no limitation is provided but their lordships of the Supreme Court have held that even if no limitation has been provided, the powers must be exercised within few months otherwise it becomes unreasonable.

30. Thus, holding of this belated regular enquiry after the expiry of about 9 years is violative of the principles of natural justice. As stated above, in this case, a preliminary enquiry was held against the petitioner before about 9 years and in that enquiry, he was exonerated and thereafter, the petitioner has been promoted to the next higher rank i.e. the post of Assistant Administrative Officer and this regular enquiry has been initiated against him after the expiry of 9 years without assigning any reasons for revocation of the earlier decision in the preliminary enquiry and, therefore, this belated action is certainly violative of the principles of natural justice. It is a very stale charge which has been raked up on

account of vengeance against the petitioner after the expiry of 9 years. Earlier, when the matter was enquired into, it was held that it is a case of administrative lapse on the part of the Office of the Branch Office and not on the part of the Development Officer and this is what has been stated by MW3 Shri Nirankarsingh, Sr. Divisional Manager of the respondent Company. The respondent Insurance Company has not been put to any financial loss whatsoever by the petitioner. Thus, the entire exercise does not appear to be bonafide and smacks of malafides to punish the petitioner, who was a blue-eyed boy of previous Regional Manager Shri G.S.Puri.

31. In this case, the file pertaining to the preliminary enquiry bearing No. 267 of 1979 was summoned by the petitioner during enquiry but it was not produced on the pretext that it has been lost. M.W.I Shri T.M. Sundara Raja has stated that he has not seen this file whereas the petitioner has filed the letter Annexure-31, which has been written by Shri T.M. Sundara Raja on August 12, 1988 about this very file bearing No. 267/79. By this letter (Annexure-31), the file No. 267/79 was sent by him back to the Head Office. Thus, it is clear that this file No. 267/79 was with Shri T.M. Sundara Raja upto August 12, 1988 and it was sent on that day to the Head Office and, therefore, there is no question of this file being lost. It appears, that this file has been intentionally suppressed by the Department because it is alleged that this file contains the statement of Shri O.P. Duggal, the then Branch Manager that he instructed Shri J.M. Bhansali to take the premium alongwith proposal form with him as the Office on February 10, 1979 has been closed on account of it being Saturday and he was directed to send the premium by Demand Draft from Jodhpur. When such instructions were given by a Branch Manager to a Development Officer, he had no option but to comply with those directions and, therefore, no responsibility can be fixed on the petitioner and he cannot be held guilty of any lapses. Thus, this reasonable opportunity to defend himself has been denied to him by not producing the earlier enquiry file bearing No. 267 of 1989. This was a material document, which could have disclosed that the petitioner was not at all guilty of any lapse and when material document has been suppressed and has not been supplied to him, his defence has been seriously prejudiced and therefore, this enquiry stands vitiated on account of the violation of the principles of natural justice.

32. In this respect, Mr. Munshi has drawn my attention to Rules 25(9) and (10) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (for short "the Rules"), which read as under :-

"25(9). The Inquiring Authority shall ask the Authority in whose custody or possession the documents are kept, for the production of the documents on such date as may be specified.

25(10). The Authority in whose custody or possession the requisitioned documents are, shall arrange to produce the same before the Inquiring Authority on the date, place and the time specified in requisition notice.

Provided that the Authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the Corporation/Subsidiary, In that event, it shall inform the Inquiring Authority accordingly."

Mr. Munshi has further placed reliance on a decision of their lordships of the Supreme Court in *State of M.P. v. Chintamani* AIR 1961 SC 1623, wherein it has been held that the non-supply of the copies of documents to which public servant was entitled is violative of the principles of natural justice and the enquiry stands vitiated.

33. A somewhat similar view has been expressed by their Lordships of the Supreme Court in *State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs.*, That was a case in which copies of the statements of the witnesses recorded in the preliminary enquiry were not furnished and that was held to be a denial of reasonable opportunity to defend.

34. In this respect, Mr. Singhvi, the learned counsel appearing for the respondent Insurance Company has submitted that strict rules of evidence are not applicable to such cases. In support of his submission, he has placed reliance on a decision of their Lordships of the Supreme Court in *K.L. Shinde v. State of Mysore* 1976 (2) SLR 102, wherein it has been held that the departmental proceedings are not strictly governed by the rules of evidence and reliance on the statements of witnesses made before the charge was framed, does not vitiate the departmental enquiry.

35. Reliance was also placed on a decision of their Lordships of the Supreme Court in *Sarin, H.C. v. Union of India* 1976 (2) SLR 248, wherein it has been held that although relevant documents were made available either for inspection or for copies but some documents were not traceable and by non-production of those documents, the prosecution was not to gain with loss of documents rather appellant was to gain and, therefore, it was held that there was no denial of principles of natural justice. As stated above, in this case, non-production of the file bearing No. 267 of 1979 is disadvantageous to the petitioner and not to the Insurance Company. The Supreme Court has already held that if a delinquent is entitled to a copy of a particular document then he should be supplied with that document because non-supply of that document prejudices his defence.

36. Mr. Singhvi has next drawn my attention to a decision of their Lordships of the Supreme : Court in *K.L. Tripathi Vs. State Bank of India and Others*, wherein it has been held as under :-pp.13-14

"The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. The rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the party concerned by

the procedure followed. Neither cross-examination nor the opportunity to lead evidence by the delinquent is an integral part of all quasi-judicial adjudications."

This authority helps the case of the petitioner. He has definitely contended that a preliminary enquiry was held against him alongwith Shri O.P. Duggal, the then Branch Manager and in that enquiry, Shri O.P. Duggal has categorically stated that premium was received by the petitioner on February 10, 1979 and he carried it under his orders, to Jodhpur and remitted it through Demand Draft on February 12, 1979 and, therefore, the petitioner cannot be blamed for it. Therefore, suppression or non-production of file bearing No. 267/79 has prejudiced the case of the petitioner and the action of the respondent Insurance Company in suppressing that file is unfair and unreasonable.

37. My attention was next drawn to a decision of this Court in Ram Swaroop Vs. Works Manager (Loco), wherein the petitioner was refused the supply of a copy of statement, which was not utilised in enquiry. It was held that non-supply of that statement has not caused any prejudice to the petitioner because that statement was not used in the enquiry. As stated above, we are dealing with a case, where the file bearing No. 267 of 1979 is necessary for the defence of the delinquent-petitioner and the petitioner is entitled to get copy of that document as per Rules 25(9) and (10) of the Rules. Thus, Ramswaroop "s case (supra) has no application to the facts of the present case.

38. Mr. Singhvi next placed reliance on a decision of their Lordships of the Supreme Court in Chandrama Tewari v. Union of India 1987 SCC 518. That was a case, in which, their Lordships held that the documents mentioned in the memo of charge were neither relevant to charge nor they were necessary for cross-examination and, therefore, non-referred to nor relied upon by the authorities nor supply of such document was held not to be violative of the principles of natural justice. This authority has no application to the facts of the present case. Here, the documents which have not been supplied to the petitioner are very crucial documents for the defence of the petitioner because by those documents, the petitioner wanted to prove that he is not at fault and, therefore, the non-supply of that document has caused prejudice to the petitioner.

39. Mr. Munishi has placed reliance on a Queen"s Bench decision in Canning v. Farquhar LRQBD Vol -16 (1985-86) - 727, wherein it has been held that a proposal was made to an insurance company for an insurance on the life of the proposer, who made, on a form issued by the Company, statements as to his state of health and other matters, and a declaration that the statements were true and were to be taken as the basis of the contract. The proposal was accepted at a specified premium but upon the terms that no insurance should take effect till the premium was paid. Before tender of the premium, there was a material alteration in the state of the health of the proposer and the company refused to accept the premium or to issue a policy. It was observed that the nature of the risk having been altered at the time of the tender of the premium there was no contract binding the company to issue a policy. Thus where the risk

coverage would be effective from the date the premium is tendered or bank guarantee for the premium is offered and if before that, any change has occurred in the circumstance, the Insurance Company could refuse to accept the risk. If any change has occurred in the circumstance, the Branch Office could refuse to accept that risk because at the time when the premium was received by the Insurance Company, the petitioner, was on leave and, therefore, the Insurance Company could have refused to accept that insurance proposal when it came to know that the vehicle has met with an accident. The petitioner cannot be blamed for that. When the proposal of a person seeking insurance is depending on the payment of the premium then that acceptance of proposal is a counter offer and the proposal turns into a contract only when the premium is paid.

40. In this respect, Mr. Munshi has placed reliance on a decision of the Patna High Court in Smt. Benarasi Debi Vs. New India Assurance Co. Ltd., wherein it has been held that an acceptance by an insurance company of a proposal for life insurance on condition that the first premium thereunder should be paid within 30 days from the date of that acceptance is in law a counter offer to be completed thereafter into contract by the fulfilment of that condition as required thereunder.

41. It was contended by Mr. Singhvi, the learned counsel appearing for the respondent Insurance Company that a finding of fact recorded by the Enquiry Officer cannot be agitated in writ petition. In this respect, reliance has been placed on a decision of their Lordships of the Supreme Court in Bhatnagars and Co. Ltd. Vs. The Union of India (UOI), It is not a case where the finding of fact as such has been challenged. In this case, the finding of fact has been arrived at by misreading the evidence. I have already quoted some extracts of the depositions made by MW.2 Shri Ramdurai and MW 3 Shri Nirankarsingh, which clearly show that the petitioner could not have been held guilty of issuing an ante-dated insurance cover-note. Under these circumstances, the finding of fact arrived at is perverse and deserves to be quashed because it has been arrived at as a result of misreading of the evidence. Thus, Bhatnagar & Co."s case (supra) has no application to the facts of the present case.

42. It is true that the control which can be exercised by the Court over judicial or quasi-judicial tribunals is not in an appellate but supervisory capacity and, therefore, in granting a writ of certiorari, the superior Court does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It can only demolish the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunals. Actually, in this case, this finding is against law and palpably erroneous. No doubt, in arriving at such a conclusion, the quantum of proof is preponderance of probability as held by their Lordships of the Supreme Court in Union of India (UOI) Vs. Sardar Bahadur, but even that preponderance of probability has to be based on legally admissible evidence and not on conjectures and surmises, or misreading and wrong application of

evidence.

43. It is true that scope of this Court while issuing writ of certiorari is very limited and it can only interfere with the decision of the inferior Courts or Tribunals when it is without jurisdiction or in excess of it or where the Tribunal fails to exercise it. The writ of certiorari can also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. However, the jurisdiction of this Court under Article 226 of the Constitution is very wide and not only writ, orders but also directions can also be issued by this Court under Article 226 of the Constitution as held by their Lordships of the Supreme Court in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*,

44. From the aforesaid narration of facts and the discussion of law involved in the matter, it is clear that the allegation on which charge No. 3 is based is a stale allegation and that allegation relates to an act which was performed on February 10, 1979 whereas the chargesheet has been issued to the petitioner in the year 1988 and that itself is violative of the principles of natural justice. Secondly, as per the provisions of Section 64VB of the Act as also certain observations contained in the General Insurance Manual which have been quoted above, the petitioner could not have been held responsible for such a lapse. Thirdly, the matter has been enquired into in a preliminary enquiry and the petitioner has been exonerated in that enquiry and thereafter, he has been promoted to the post of Assistant Administrative Officer and, therefore, initiation of this regular enquiry after the expiry of about 9 years is uncalled for and, therefore, the orders Annexures-15B dated December 31, 1990 passed by the Assistant General-Manager-cum Competent Authority; Annexure-17 dated April 2, 1991 passed by the General Manager (Appellate Authority) and Annexure-19 dated August 19, 1991 passed by the Chairman-cum-Managing Director of the United India Insurance Co. Limited deserves to be quashed. The petitioner is entitled to be reinstated back in service with all benefits to which he is entitled as per relevant rules including consideration for promotion from the date when his juniors were promoted or when he completed 3 years of service as Assistant Administrative Officer. As stated above, the Enquiry Officer has held that charges No. 1 and 2 have not been proved against the petitioner and Charge No. 3 and its finding have been held by me not to have been proved against the petitioner. The petitioner is, therefore, entitled to full benefits of pay for the suspension period. The arrears of the salary of the leave period should be paid to him within a period of three months from today and he should be considered for promotion as Administrative Officer from the date he completes 3 years of service as Assistant Administrative Officer without taking into consideration his suspension period. The order which has been passed by the Chairman-cum-Managing Director about adjustment of his suspension period against leave is also quashed. He is entitled to re-in statement with full benefits of pay, DA, other

allowances and right of consideration for promotion to the higher post.

45. In the result, this writ petition is allowed; the orders Annexures-15B dated December 31, 1990 passed by the Assistant General Manager (Competent Authority); Annexure-17 dated April 2, 1991 passed by the General Manager (Appellate Authority) and the Annexure-19 dated August 19, 1991 passed by the Chairman-cum- Managing Director are hereby quashed so far as they hold the petitioner guilty of charge No. 3 and the petitioner is fully exonerated of charge No. 3. The order Annexure-19 whereby it has been ordered that petitioner's suspension period shall be adjusted against leave standing to his credit on the date of the resumption of duty by him and for the remaining period of suspension after adjusting leave to the extent admissible as per Rules, 75% of the pay and allowances shall be payable to him is also quashed and it is hereby ordered that the petitioner is entitled to re-instatement with full consequential benefits of suspension period as well. The arrears of the salary and all other consequential benefits be paid to him within a period of three months from today and he be considered for promotion to the post of Administrative officer within a period of three months from today from the date he has completed three years of service as Assistant Administrative Officer without taking into consideration the period when he was under suspension or on loss of pay on account of Orders Annexure 15-B, Annexure-17 and Annexure-19.

46. In the facts and circumstances of the case, the parties are left to bear their own costs.

47. The writ petition stands disposed of accordingly.