(1998) 03 CAL CK 0004

In the Calcutta High Court

Case No : M.A.T. No. 204 of 1998

Life Insurance Corporation of India APPELLANT

Vs

Pradip Kumar Das RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1998) 2 ILR (Cal) 157

Hon'ble Judges : Satyabrata Sinha, J;Dibyendu Bhusan Dutta, J

Bench : Division Bench

Advocate : Subrata Roy and Dilip Kumar Kundu, for the Appellant; R.N. Das, for the Respondent

Final Decision : Allowed

Judgement

Satyabrata Sinha, J.—This appeal is directed against a judgment and order dated January 8, 1998 passed by a learned single Judge of this Court in Company No. 15536(W) of 1989 whereby and where under the said learned Judge held:

It appears to me upon consideration of the judgment of the criminal Court, as well as, the perusal of the report of the Enquiry Officer that there are other officials in the said Branch who were also equally responsible for such loss. In my view pecuniary loss of the Corporation was not due to intentional act and misconduct of the Petitioner but it was his negligent act and that can be termed as lack of devotion to his duty and rather irresponsible way of discharging his duty. In my view the punishment imposed upon the Petitioner is too harsh and the same is disproportionate to the charges levelled and proved against him. Moreover the relevant Rules does not permit two major penalty at a time for the same misconduct. Therefore, I cannot uphold the impugned portion of the punishment of removal from services and the same is set aside. I hold that the punishment of recovery of the lost amount is sufficient and appropriate to mitigate the situation. Therefore, I set aside and quash the said punishment of removal from services. Accordingly the Petitioner shall be reinstated in his services. But he shall be paid 50% of his arrears of salary from the date of removal and till! date of reinstatement. The Corporation shall be at liberty to deduct the said amount Rupees 1,30,057.33p. from Petitioner if not done. I also direct the Corporation to make further enquiry investigation against the other Officials who were acting at the said office on the relevant date and who were involved in the process of entrustment of money to the Petitioner and also for deposit the same into the bank. In my view the responsible officer cannot shirk of their responsibilities and liabilities. The writ Petitioner shall be allowed to resume his duty at Office where from he was removed from his services.

2. Shorn of all unnecessary details the fact of the matter may briefly be noticed:

The first Respondent was acting as a Sepoy. On March 27, 1987 he was entrusted to carry a bag containing a cash of Rs. 1,30,057.33p. and by cheques for a sum of Rs. 69,530.81 p. for the purpose of depositing the same in Bank. It is alleged that the Petitioner lost the said bag along with other bearer cheques. The Petitioner was prosecuted on the charge of defalcation of the said amount. He was also charge-sheeted on February 16, 1988 in terms whereof he was levelled with the following charges:

1) That on March 27, 1987 at or about 11.40 A.M. you received against acknowledgment in the Daily Cash Balance Book dated March 27, 1987, from the Cashier of the Burdwan Branch Office, a sum of Rs. 1,30,057.33p. in cash and a further sum of Rs. 69,580.81 p. by cheques for the purpose of depositing the money into Bank. Besides, you also received three other cheques for Rs. 6,732.65p. for depositing into Bank and another two bearer cheques worth Rs. 13,418.89p. for withdrawal of money from Bank, as detailed in the annexure hereto. But shortly thereafter you reported loss of the cash and the cheques as aforesaid from your custody thus causing financial loss to the Corporation.

2) That after receipt of the cash and the cheques as above, you left the cash counter with the cash and the cheques without waiting for any officer to accompany you as an escort and you also did not inform [he Officer of the Cash, Department of your such departure nor did. you approach either the officer of the Cash Department or the Senior Branch Manager for allotment of an escort as above.

Before the learned trial Judge the following contentions of the Petitioner were rejected:

1. The charge sheet had not been issued by a competent person.

2. The Petitioner was denied of an opportunity of being heard by way of non-supply of documents.

3. Refusal to be represented by a lawyer was bad in law.

4. In view of acquittal in the criminal case, the punishment imposed upon him was wrong.

3. In relation to the contention that the punishment imposed upon the Petitioner removing him from service could not be sustained on the ground that during pendency of the writ application he had been acquitted by the criminal court, the learned trial Judge observed:

In the judgment it has been observed and further findings to that effect that the Petitioner was negligent in preventing and/or securing the said bag containing cash and cheques. It has been further fact finding that no misappropriation could be attributed to the Petitioner but at the most there was negligent and rash act and conduct on part of the writ Petitioner. In the charges of the disciplinary proceedings levelled against the Petitioner are lack of devotion and integrity in discharging his duty, not of misappropriation of the money. Therefore, in both the proceedings the origin and/or genesis may be one but the cause of action are different.

The cases cited by Mr. Das based on the selfsame charges and in those cases the delinquents were re-instated.

4. The learned trial Judge further accepted that the findings of the enquiry officer as regards charge No. 1 was correct. However, so far as the finding of the enquiry officer as regard charge No. 2 whereby the first Respondent was exonerated but the disciplinary authority has disagreed with the finding, the learned trial Judge held that the same cannot be sustained. However, it appears that the learned trial Judge has not discussed the issue upon giving detailed reasons therefore.

5. Mr. Subrata Roy, the Learned Counsel appearing on behalf of the Appellant, inter alia, submitted that the learned trial Judge has clearly erred in arriving at the aforementioned finding in view of the fact that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot substitute the penalty. Reliance in this connection has been placed on Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, and Union of India and Anr. v. B.C. Chaturvedi 1995 (6) S.C.C. 750. The Learned Counsel submits that L.I.C. (Staff) Regulations, 1960 of the Appellant-Corporation empowers the disciplinary authority to impose two major punishments and thus, the finding of the learned trial Judge to the contrary must be held to be incorrect in law.

6. Mr. R.N. Das the Learned Counsel appearing on behalf of the first Respondent accepted that the disciplinary authority could impose more than one major punishment. The Learned Counsel, however, submitted that keeping in view the nature of the misconduct alleged as against the writ Petitioner the learned trial Judge cannot be said to have exceeded his jurisdiction inasmuch as the Petitioner has been found not guilty in the criminal case. As regard effect of the judgment of acquittal Mr. Das contended that the court is entitled to take into consideration the effect of the judgment passed in a criminal case and in support of his aforementioned contention reliance has been placed on FCI vs Suraj Bhan, 1995 (4) SCC 446

7. It is beyond any cavil of doubt that despite pendency of a criminal proceeding and despite acquittal therein the employer on the self-same charges can initiate a departmental proceeding. Misconduct of an employee and criminal charges stand on different footings. The extent of onus of proof in two proceedings are also different in so far as in a criminal proceedings the prosecution must prove the charges against the accused beyond all reasonable doubt, whereas in a disciplinary proceedings the charges of misconduct can be proved on the basis of preponderance of probability. The provisions of Indian Evidence Act are applicable in a criminal case whereas the same do not apply in a departmental proceedings.

8. In Nelson Motis Vs. Union of India and another, the Apex Court has held:

So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the Appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the'' departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case.

9. In view of the findings of the learned trial Judge himself, acquittal in a criminal case has got nothing to do with the result in the disciplinary proceedings.

10. It is, therefore, not correct to contend that in view of the judgment of acquittal in a criminal case, the order of punishment imposed upon the Petitioner, was bad in law.

11. In Food Corporation of India and Anr. v. Suraj Bhan (Supra) the Supreme Court was considering a case where a departmental proceeding was set aside and the delinquent officer was directed to be promoted. The Apex Court held that such a direction was not proper as upon quashing the disciplinary proceeding, the High Court could, have only directed that the delinquent officer should be considered for promotion.

12. There may be cases where a departmental proceeding was initiated only on the ground that he has been prosecuted and when such prosecution fails, the departmental proceeding may also come to an end. But where a departmental proceeding independent of the criminal proceeding, had been initiated in view of the decision referred to hereinbefore, despite acquittal in a criminal case, the punishment imposed in. a departmental proceeding would not fall automatically.

13. As indicated hereinbefore, there is no dispute that in view of Reg. 39 of the Life Insurance Corporation of India (Staff) Regulations, 1960, the disciplinary authority was entitled to impose any one or more of the penalties specified therein which includes recovery from pay or such other amount as may be due to

him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders and removal from service which shall not be a disqualification for future employment.

14. The learned trial Judge, in fact, on the face of his judgment arrived at contradictory findings. If the Petitioner was not guilty of commission of any misconduct, he could not have been punished at all. However, the learned trial Judge himself upheld the punishment of recovery of the amount and further directed that he shall only be entitled to 50% of the arrears salary. in that view of the natter there cannot be any doubt that the Petitioner could have been inflicted with the punishment.

15. In so far as this Court''s jurisdiction to interfere with an order of punishment is concerned, the law is no longer res Integra. The Apex Court in a latest decision in Union of India and another Vs. G. Ganayutham (Dead) by LRs., while dealing with the question as to whether the doctrine of proportionality would also be a. ground for judicial review clearly came to the conclusion, upon considering the relevant laws prevailing in England and India, that the Court can interfere with a punishment only on the ground of ''Wednesbury Unreasonableness''. The learned trial Judge had not arrived at a finding to the effect that the punishment inflicted upon the first Respondent attracts the principle of Wednesbury unreasonableness i.e. perverse or that no reasonable man could have inflicted the said punishment.

16. In Associated Provincial Picture Houses Ltd. v. Waynesburg Corporation 1948 (1) K.B. 223 the Court of Appeal held:

It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the Court can interfere.

17. In C.C.S.U. v. Minister for Civil Service 1985 A.C. 374 wherein Diplick, LJ, held:

By ''irrationality'' I mean what can by now be succinctly referred to as ''Wednesbury unreasonableness'' (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948) 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

18. In Source Book on Public Law by Helin Fenwick & Gavin Phillipson (1st Edn.), the learned Authors states:

It must be stated at the outset that some confusion exists as to whether this Is a kind of mixed-bag category, which encompasses a number of diverse matter such as improper considerations, basing a decision on no evidence, etc. or properly speaking is only pure unreasonableness. Indeed, this may be because, in fact, unreasonableness or irrationality as a wholly separate head arguably has no independent conceptual life, and, unless made more substantive in its scope, may as well be subsumed into illegality, a point returned to below.

Such is not the position here.

19. In State of U.P. and others Vs. Nand Kishore Shukla and another, the Apex Court held that the court will normally not interfere with the quantum of punishment particularly when removal does not cast stigma on delinquent in the following terms:

It is settled law that the Court is not a Court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant based upon the proved misconduct against the Government servant. Its proportionality also cannot be gone into by the Court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the Respondent to disable him to seek any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order.

20. In the instant case, one of the two charges has been proved. The said charge by itself, in our considered opinion, was sufficient to impose the punishment upon the Petitioner.

21. For the reasons aforementioned the judgment and order passed by the learned trial Judge cannot be upheld which is set aside accordingly. The appeal is allowed but in the facts and circumstances of this case there will be no order as to costs.

Dibyendu Bhusan Dutta, J.

22. I agree.

