

(2020) 02 PAT CK 0287

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No 1892 Of 2012

Mithilesh Kumar Sinha

APPELLANT

Vs

New India Assurance Company Limited And Ors

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Citation : (2020) 02 PAT CK 0287

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Mukul Prasad, Durgesh Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and the respondent-Company.

2 The petitioner, while posted as Senior Assistant, was served with a Memorandum of Charges. The same was served on 28.01.2004. The substance of the charges was that the petitioner, in collusion with certain other officers, facilitated an illegal appointment in favour of one Mr Ram Sakal Rai who has misrepresented his name, his father's name, his caste etc. The petitioner, thereafter, was subjected to a disciplinary proceeding based on the same Memorandum of Charges. The Enquiry Report has been submitted by the Enquiry Officer on 23.08.2007.

3 The Disciplinary Authority, purporting to differ with findings of Enquiry Officer, gave the petitioner an opportunity of second show cause. In response to the same, the petitioner has submitted his response to the second show cause notice on 23.06.2010.

4 Learned counsel for the petitioner submits that the entire procedure, adopted by the Authorities in the enquiry, was followed and report had been submitted in his favour. The Disciplinary Authority, purported to differ with the findings of the Enquiry Officer and, as such, before upsetting the findings in his favour, was

obliged under law to give an opportunity to make submissions. Such opportunity, which is contemplated, is in furtherance of natural justice and not an empty formality. Once the response is submitted, the basic requirement is of considering the same. Whether there is any consideration of the response or not can only be manifest from the order passed by the Disciplinary Authority. The Disciplinary Authority, in this case, has passed the order dealing with the petitioner's second show cause which reads as follows:

"I have gone through the Memorandum dated 22.01.2004 and statement of imputation of misconduct issued to Mr M K Sinha very thoroughly and carefully. I have also gone through the Enquiry report dated 23.08.2007 with all related documents and conclude that the charges levelled against Mr M K Sinha have been established. The fact remains that he knowingly played a role in securing a job to Mr Rameshwar Pandit as Ram Sakal Rai.

Therefore, looking to the gravity of misconduct committed by Mr M K Sinha, I am of the opinion that the ends of justice would be met if a penalty of reduction in basic salary by one stage permanently is imposed under Rule No 23 (e) of New India Assurance (Conduct, Discipline and Appeal) Rules, 2003.

Accordingly, I hereby impose the above penalty upon Mr M K Sinha as provided under Rule 23 (e) of New India Assurance CDA Rules 2003, with immediate effect."

5 The petitioner has assailed the findings before the Appellate Authority also. The Appellate Authority has also rejected the appeal of the petitioner under order dated 28.04.2011.

Appellate Authority has ruled as follows:

"Further, the Disciplinary Authority has given reasoning for disagreement with the findings of the Inquiry Officer vide his letter dated 04.06.2010 and contentions in this regard are not correct. Mr Sinha has already raised the aforesaid points in his earlier representations and the same are considered by the respective authorities.

The charges proved are grave in nature and the penalty imposed in my opinion is justified and I agree with the same.

Hence, on overall consideration of all the facts and circumstances of the case, I do not find any reason to differ with the decision of the Disciplinary Authority. I, therefore, reject the Appeal dated 27.10.2010 of Mr M K Sinha and confirm the order dated 13.08.2010 passed by the Disciplinary Authority.

Mr Mithilesh Kumar Sinha be informed accordingly."

6 Thereafter, the petitioner has also preferred a Review dated 07.06.2011 against the order of the Appellate Authority regarding the submission that no reason has been assigned by the Disciplinary Authority and the same has been passed without considering the petitioner's response to second show cause.

7 The Reviewing Authority has, by order dated 21.07.2011, drawn the petitioner's attention to Rule 40 of the CDA Rules that the petitioner may prefer his Memorandum before the Chairman -cum- Managing Director. That remedy, the petitioner has not availed. The petitioner, however, has approached this Court assailing these orders. The submission of the petitioner's counsel that the orders passed by the Disciplinary Authority, Appellate Authority as well as the order passed by the Reviewing Authority on 21.07.2011 show total non-application of mind.

There is no consideration for any of the points raised by the petitioner in his response to the second show cause. The petitioner has submitted a para wise reply to the second show cause notice which required consideration. The consideration was required to be manifest from the order passed by the Disciplinary Authority as well as the Appellate Authority. The facts, however, are to the contrary. Extract of the order of the Disciplinary Authority as well as Appellate Authority has been reproduced hereinabove. The irresistible conclusion is that the same contains no reason for rejecting the petitioner's response to the second show cause. The order manifests total non-application of mind to the petitioner's response.

8 In this connection, this Court would refer to the decision of the Apex Court in the case of Kranti Associates Private Limited & Another -Versus- Masood Ahmad Khan & Others, (2010) 9 Supreme Court Cases 496.

9 The Apex Court has repeatedly reiterated the requirement of assigning reasons so as to obliterate arbitrariness and to ensure fairness in the decision.

10 The learned counsel representing the Company submits that the order has been passed by the Authorities following the due procedure prescribed under the law. The nature of allegations against the petitioner in fact has been dealt with very leniently. There is no legal infirmity.

11 In view of the settled legal position, this Court is of the opinion that clearly, the order suffers on account of non-assigning of reasons and, as such, is contrary to the settled principle of law requiring orders to contain reasons and manifest consideration of the points raised by the delinquent.

12 The two orders passed by the Disciplinary Authority dated 13.08.2010 as well as the order of the Appellate Authority dated 28.04.2011 are hereby quashed.

13 The Disciplinary Authority, may take a fresh decision on the petitioner's response to second show cause after due consideration by a reasoned and speaking order in accordance with law.

14 Petitioner's entitlement will abide by such final decision taken by the Disciplinary Authority which should be taken by the Disciplinary Authority without any undue delay, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

15 Writ petition stands allowed.