
(1991) 02 P&H CK 0129
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3232 of 1981

Narinder Mohan Arya

APPELLANT

Vs

The United India Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 21-02-1991

Acts Referred:

Constitution of India, 1950 — Article 226

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 37, 37(2), 40

Citation : (1991) 99 PLR 516

Hon'ble Judges : M.R. Agnihotri, J

Bench : Single Bench

Advocate : J.L. Gupta and Summant Batra, for the Appellant; H.L. Sibal and R.C. Dogra and R.M. Suri, for the Respondent

Final Decision : Allowed

Judgement

M.R. Agnihotri, J.—In this petition under Article 226 of the - Constitution, the short point involved is whether reasonable opportunity to defend was afforded to the petitioner before removing him from service and as to whether the orders passed by the punishing, appellate and revisional authorities are well reasoned speaking orders, or only cryptic and non-speaking ones.

2. The petitioner joined as an Agent in (sic) Central Insurance Company in 1958. In 1963 he passed the examination for Inspectors in General Insurance and thereafter joined the All India General Insurance Company In 1964, he joined the British India General Insurance Company Limited, New Delhi, and was posted at Hissar as Inspector. He continued there upto 1973, when the 1 ritish India General Insurance Company Limited was merged along with various other companies to form the United India Fire and General Insurance Company Limited in accordance with the provisions of the General Insurance Business (Nationalisation) Act, 1972.

3. In 1976, while the petitioner was working as Inspector Grade-II, he issued some marine cover notes on 21st October. 1976. The goods covered by one of

the aforesaid cover notes, which were transported by road and unloaded at the godown of M/s Milap Transport Company, Gaziabad, caught fire in the godown. A claim for compensation in respect of these goods was made to the Insurance Company. When the payment was not made, on 6th June, 1977, the insured Transport Company served a legal notice claiming compensation from the Insurance Company. On receipt of that notice, the Insurance Company placed the petitioner under suspension vide its order dated 11th June, 1977. The charge-sheet was served on the petitioner in January, 1978, to which the petitioner submitted his reply on 25th January, 1978. However, on 12th August, 1978, a disciplinary inquiry was initiated against the petitioner which was completed by the Inquiry Officer on 18th December, 1978. The Inquiry Officer in his report dated 5th May, 1979, held that the charges were established against the petitioner, and on 24th July, 1979, the Divisional Manager of the Insurance Company, vide his order Annexure P 6, awarded the punishment of removing the petitioner from service. The petitioner preferred an appeal against this order on 28th August, 1979, but the same was rejected on 29th September, 1980, with the observation that there was no reason to interfere with the orders of the competent authority. This decision of the appellate authority was intimated to the petitioner vide communication dated 15th October, 1980, Annexure P. 8. Though both the aforesaid impugned orders, original as well as appellate, are not speaking orders and in the absence of that it is not possible to gather as to what actually weighed with the authorities while passing these orders, yet from the inquiry report it is clear that the Insurance Company was under the impression that the petitioner had ante-dated the cover note in order to help the insured Transport Company.

4. In the meantime, the Transport Company filed a civil suit against the Insurance Company which was decreed by the Subordinate Judge 1st Class, Hissar, on 7th October, 1980. According to the judgment of the learned Subordinate Court, it was found that the plea of the Insurance Company regarding ante-dating the cover note was not correct. The petitioner thereupon submitted a memorial to the Chairman-cum-Managing Director of the Insurance Company on 15th November, 1980, relying on the findings of the Civil Court, but the memorial was rejected on 5th March, 1981. This decision was communicated to the petitioner vide letter dated 23rd April, 1981, Annexure P 11. Feeling aggrieved, the petitioner has approached this Court for the quashing of the aforesaid orders of his removal from service, Annexure P. 6, the appellate order dismissing the appeal, Annexure P. 8 and the order rejecting the memorial, Annexure P. 11.

5. After hearing the learned counsel for the parties, I find that the impugned orders are not tenable in law. Even though these orders proceed on the assumption that these are in agreement with the findings of the Inquiry Officer, yet no reasons whatsoever have been disclosed for rejecting the submissions and the stand taken by the petitioner. Once the Civil Court had found as a fact that the plea taken by the Insurance Company for non-suiting the claim of the

Transport Company was not correct and the suit had been decreed by giving a firm finding in favour of the petitioner, it was the duty of the Insurance Company to reinstate the petitioner by accepting the appeal/memorial against the order of his removal from service. It would be relevant to reproduce para 20 of the judgment of the Civil Court, which judgment has been upheld in appeal also, hereunder:-

"20. In view of my discussion above, I hold that a valid contract of insurance was entered into between the plaintiff and defendant No. 1 through defendant No. 2 through cover note 0964? dated 21-10 1976, Ex P. 10, and it had not been obtaining by plaintiff firm in collusion with defendant No. 2 after the destruction of the goods through fire. Accordingly, both these issue are decided in favour of the plaintiff and against contesting defendants."

This judgment being inter parties, the Insurance Company is bound by the same. Apart from this, if there were some other matters (which in fact there were none), which the authorities considering the appeal and memorial thought relevant and adequate enough to uphold the removal of the petitioner from service despite the decision of the Civil Court, the authorities were duty bound to disclose the same and incorporate them in their orders. This was the requirement of Rules 37 and 40 of the General Insurance (Conduct, Discipline and Appeal) Rules. 1975. Rule 37(2) of the said Rules, which deals with consideration of appeals, lays down that it is the duty of the appellate authority to consider "whether the findings are justified and whether the penalty imposed is excessive, adequate, or inadequate and pass orders setting aside, reducing, confirming or enhancing the penalty". Same is the object of providing a statutory forum for addressing a memorial to the Chairman-cum Managing j Director against an order passed by the appellate authority. Since the impugned orders do not show proper application of mind and are just cryptic and non-speaking, running counter to the findings of the Civil Court, they are liable to be struck down by a writ of Certiorari, I

6. Consequently, I accept this writ petition and quash the impugned order of removal of the petitioner from service dated 24th July, 1979, (Annexure P. 6), the order of the appellate authority communicated on 15th October, 1980 (Annexure P. 8) and the order rejecting the memorial communicated vide letter dated 23rd April, 1981 (Annexure P.6) Resultantly, the petitioner is declared to be continuing in service and entitled to all the consequential reliefs by way of arrears of salary, allowances, etc along with benefits of seniority, promotion, etc. to whom. tie would have been entitled had he not been suspended and removed from service in pursuance of the impugned orders The petitioner shall also be entitled to the costs of this writ petition which are quantified at Rs. 1,000/-.