
(2015) 08 KAR CK 0041
In the Karnataka High Court
Case No : W.A. No. 4214 of 2011 (S-DE)

National Insurance Co. Ltd.

APPELLANT

Vs

C.K. Shamanna

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Citation : (2015) 4 AKR 753

Hon'ble Judges : Vineet Saran and B. Manohar, JJ.

Bench : Division Bench

Advocate : L. Govindaraj, for the Appellant; T. Rajaram, for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J.—This writ appeal is filed by the National Insurance Company challenging the order of the writ Court whereby the punishment of reduction of basic pay by three stages permanently awarded against the respondent-employee has been reduced to reduction of basic pay by one stage permanently. Brief facts of the case are that the writ petitioner/respondent herein (Sri. C.K. Shamanna) was an employee of the appellant/National Insurance Company Ltd. In the year 1999, when he was Senior Assistant in the Company, a charge-sheet was given to him on 20.12.1999, which was with regard to diversion of some insurance commission during the period 1996-1999 to the account of an Insurance agent. Four charges were framed against the employee. On enquiry, three charges were partially proved and one charge was found not proved. On the basis of the said enquiry report, vide order dated 18.1.2002 passed by the Disciplinary Authority, punishment of reduction of basic pay by three stages permanently was awarded. Challenging the said order, an appeal was preferred, which was dismissed on 23.8.2002. A memorial filed by the employee was also rejected on 7.12.2002. In the meantime, after 28 years of service, the employee sought voluntary retirement under the Voluntary Retirement Scheme of the Company, which was granted to him on 5.3.2004.

2. Challenging the order of punishment, which was confirmed in the appeal, the respondent/writ petitioner filed W.P. No. 33602/2004, which has been partly allowed by order dated 28.3.2011 and the punishment of reduction of basic pay by three stages permanently has been reduced to reduction of basic pay by one stage permanently. Aggrieved by the said order, this intra-court appeal has been filed by the Company.

3. We heard Sri. L. Govindraj, learned counsel for the appellant as well as Sri. T. Rajaram, learned counsel for the respondent and perused the records.

4. The submission of the learned counsel for the appellant is that three out of four charges were proved against the employee. The charges related to the writ petitioner - employee having fraudulently collected the insurance proposal forms submitted by individuals who had directly approached the company for insurance and entered the agency code of Sri. R.K. Dhananjay, Commission Agent, with an intention to cheat the Company. The contention, thus, is that the punishment awarded by the Disciplinary Authority was fully justified as the employee had been found to have cheated the Company for an amount of Rs. 22,371.91 between the years 1996-1999. It has been submitted that the punishment awarded cannot be said to be disproportionate to the three charges proved against the employee and the writ Court has wrongly interfered by reducing the punishment. In support of his submission that the High Court should not re-appreciate the evidence adduced before the Enquiry Officer as if it was an Appellate Authority, learned counsel for the appellant has placed reliance on a decision of the Apex Court in the case of Union of India (UOI) Vs. P. Gunasekaran, .

5. Per contra, learned counsel for the respondent has submitted that since none of the charges were fully proved against the writ petitioner - employee, in the facts and circumstances of the case, reduction of punishment by the writ Court was perfectly justified.

6. Having heard the learned counsel for the parties and considering the facts and circumstances of the case, we are of the opinion that no interference is called for in this appeal.

7. From the records, it is clear that the Enquiry Officer did not find any of the four charges proved against the employee. Three charges were only partially proved, which also, we find, were based on circumstantial evidence. Charge No. 3, which was the most serious charge against the employee, was found to be not proved. In our opinion, in the absence of any charge having been fully proved against the employee, the punishment of reduction of basic pay by three stages permanently has rightly been held by the writ Court to be disproportionate to the charges levelled against the appellant, where three charges were only partially proved and the main charge had not been proved. The decision of the Apex Court in the case of Union of India (UOI) Vs. P. Gunasekaran, was on the facts where High Court had acted as Appellate Authority in the disciplinary proceedings by re-

appreciating the evidence adduced before the Enquiry Officer. In the present case, we do not find that the High Court has re-appreciated the evidence, but has only, after accepting the finding recorded by the Enquiry Officer, held that the punishment was disproportionate to the charges levelled against the employee. Accordingly, we find that the ratio of the said judgment of the Apex Court would not apply to the facts of the present case. The disproportionality of the quantum of punishment can always be looked into by the writ Court, without re-appreciating the evidence recorded by the Enquiry Officer. In the present case, even if the findings recorded by the Enquiry Officer are accepted, we are of the opinion that the punishment, which has been awarded is disproportionate as the main charge No. 3 was found not proved and the other charges were only partially proved. As such, we do not find any good ground to interfere with the judgment and order passed by the learned single Judge, whereby the punishment awarded to the employee has been suitably reduced.

Appeal is dismissed. No order as to costs.