

(2022) 05 DEL CK 0153

In the Delhi High Court

Case No : Letter Patent Appeal No. 485 Of 2021, Civil Miscellaneous No. 45966 Of 2021

National Insurance Company Limited

APPELLANT

Vs

Devender Malhotra & Ors

RESPONDENT

Date of Decision : 23-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

General Insurance (Conduct, Discipline And Appeal) Rules, 1975 — Rule 22, 22(b), 23, 40

Citation : (2022) 05 DEL CK 0153

Hon'ble Judges : Rajiv Shakdher, J; Talwant Singh, J

Bench : Division Bench

Advocate : Sudhanshu Batra, Zorawar Singh, Arjun Dewan, Pradyuman, Varisha Sharma

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J

1. This writ petition is directed against the judgement of the learned single judge dated 10.11.2021, passed in W.P.(C) No.6318/2013. The learned single judge via the impugned judgment has partially allowed the writ petition filed by respondent no.1. The learned single judge has quashed the order dated 10.10.2012, passed by the Memorial Authority [hereafter referred to as "MA"], to the extent it held that the period for which order of removal from service qua respondent no.1 remained in force, it would constitute a break in service.

2. Besides this, the learned single judge has also directed the MA to reconsider the case insofar as it failed to examine the issues concerning payment of emoluments and treatment to be accorded to the intervening period for which respondent no.1 remained out of service i.e., till the time he was reinstated in service. The MA was, thus, required to examine these aspects in the backdrop of Rule 22 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975

[in short "CDA Rules"].

3. The appellant is aggrieved by the directions issued by the learned single judge insofar as he has set aside the order of MA concerning break in service and remanded the matter for reconsideration under Rule 22, keeping in mind the interpretation accorded by him.

4. The challenge laid before the learned single judge arises in the backdrop of the following brief facts:

(i) Respondent no.1 was inducted into service of the appellant in and about September 1985 in the post of Inspector.

(ii) By dint of his work, he was promoted to the cadre of Administrative Officer.

(iii) However, on 02.01.2007, after having spent nearly 22 years in service, respondent no.1 was served with a charge sheet concerning misappropriation of premium and negligence displayed towards his duty to regulate and monitor the issuance of cover notes by the agents. In this connection, four charges were framed against respondent no.1.

(iv) The Inquiry Officer [in short "IO"] via report dated 15.01.2010 concluded that all charges were proved against respondent no.1. Upon an opportunity being given to respondent no.1 by the disciplinary authority, a reply was filed by him which is dated 20.02.2010. The disciplinary authority, after considering the reply, concurred with the findings returned by the IO and went on to impose upon respondent no.1 a major penalty of removal from service. The order of the disciplinary authority is dated 28.04.2010.

(v) Respondent no.1 preferred an appeal, on 12.05.2010, with the Appellate Authority. The Appellate Authority rejected the appeal, via its order dated 08.09.2010.

(vi) Being dissatisfied, respondent no.1 preferred a memorial dated 10.11.2010 with the Chairman-cum-Managing Director of the appellant i.e., MA. Even while the matter was under consideration before the MA, respondent no.1 had moved this court by way of a writ petition i.e., W.P.(C) No.2597/2012. This writ petition was disposed of on 27.09.2012, with a direction that the MA would dispose of the pending memorial, within 6 weeks, albeit in accordance with the law.

(vii) The record shows that on 10.10.2012, the MA disposed of the memorial preferred by respondent no.1. In short, the MA held that respondent no.1 was negligent in discharging his duties. Having arrived at this conclusion, the MA modified the penalty from "removal of service" to "re-employment" placing him at the initial basic scale of Administrative Officer. The MA, as noted above, went on to hold that the period between the removal of service and reemployment of respondent no.1 shall be treated as a period not spent on duty; which, in effect, constitutes a break in service.

(viii) Respondent no.1, thus, approached this court once again under Article 226

of the Constitution and assailed the inquiry report dated 15.01.2010, the order of the disciplinary authority dated 28.04.2010, the order of the Appellate Authority dated 08.09.2010 as also the order of MA dated 10.10.2012. In particular, mandamus was sought by respondent no.1 to the effect that he should be treated as being on continuous duty without break in service and awarded all consequential benefits.

(ix) As alluded to hereinabove, the learned single judge partially allowed the writ petition.

5. The appellant in appeal assails the judgment of the learned single judge on the following grounds :

5.1. First, the learned single judge, having concluded that no interference was called for qua the findings recorded by the authorities below, could not have interdicted the direction issued by the MA that the period for which respondent no.1 stood removed from service would constitute a break in service.

5.2. Second, the learned single judge failed to appreciate that the substitution of the punishment imposed on respondent no.1 i.e., removal from service with reemployment could only be construed as fresh employment on the terms stipulated in the order of the MA.

5.3. Third, the power exercised by the MA was, in effect, a power akin to mercy and, therefore, the fact that reemployment was not a punishment provided in the CDA Rules, could not be the reason for interfering with the order of the MA.

6. Before we proceed further, it would be relevant to remind ourselves as to what exactly did the MA hold in its order dated 10.10.2012.

6.1. The MA, as adverted to hereinabove, after noting that there were charges concerning misappropriation of the premium received in cash and failure to regulate the activities of the agents, came to a definitive conclusion that respondent no.1 could be held guilty of only negligence in not monitoring the agent. The charge concerning misappropriation did not find favour with the MA.

6.2. This conclusion, it appears, was arrived at by the MA after perusing the material on record which included the inquiry report, the order of the disciplinary authority, the order of the Appellate Authority, as also the replies filed by respondent no.1.

6.3. It is in this context that the MA while exercising the power under Rule 40 of the CDA Rules supplanted the punishment imposed on respondent no.1, which was, removal from service to reemployment.

40. Memorial

An employee whose appeal under these Rules has been rejected by the appellate authority subordinate to the Chairman/Chairman-cum-Managing Director or in whose case such appellate authority has enhanced the penalty on appeal under

Rule 24 or on review under Rule 39(2) may address a memorial to the Chairman/ Chairman-cum-Managing Director in respect of that matter within a period of 6 months from the date the appellant received a copy of the order of such appellate authority

6.4. The MA, while doing so, also issued a direction that the period for which the order passed against respondent no.1 [concerning his removal from service] remained in operation would not be construed as a period spent on service. In other words, this period would constitute a break in service.

6.5. It is important to note that the penalties which could have been imposed on an employee of the appellant, such as respondent no.1, as an outcome of the disciplinary proceedings are prescribed in Rule 23 of the CDA Rules.

6.6. Rule 23 of the CDA Rules prescribes both minor and major penalties. A quick perusal of Rule 23 would show that reemployment in service is not a prescribed punishment. Therefore, the order that the MA passed was, in a sense, *sui generis*.

23. Penalties

Without prejudice to the provision of other rules, any one or more of the following penalties for good and sufficient reasons, and as herein after provided, be imposed by the Disciplinary Authority on an employee who commits a breach of discipline, or who is guilty of any other act prejudicial to good conduct:

Minor Penalties

- (a) Censure.
- (b) Withholding of one or more increments for a specified period.
- (c) 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 company by negligence or breach of orders.
- (d) Reduction to a lower stage in the time-scale for a period not exceeding three years without cumulative effect.
- (e) Withholding of Pension or part thereof for a specified period.

Major Penalties

- (f) Withholding of one or more increments permanently.
- (g) Reduction to a lower service, or post or to a lower time-scale or to a lower-stage in a time-scale
- (h) Compulsory retirement;
- (i) Removal from service which shall not be a disqualification for future employment;
- (j) Dismissal which shall ordinarily be a disqualification for future employment.
- (k) Withholding of Pension or reduction of Pension or part thereof permanently.

Explanation:

The following shall not amount to a penalty within the meaning of this Rule :-

- (i) Withholding of increment of an employee on account of his work being found unsatisfactory or not being of the required standard, or for failure to pass a prescribed test or examination;
- (ii) Stoppage of increment of an employee at the efficiency bar in a time-scale, on the ground of his unfitness to cross the bar;
- (iii) Non-promotion, whether in an officiating capacity or otherwise, of an employee, to a higher post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;
- (iv) Reversion to a lower grade or post, of an employee officiating in a higher grade or post, on the ground that he is considered, after trial, to be unsuitable for such higher grade or post, or on administrative grounds unconnected with his conduct;
- (v) Reversion to his previous grade or post, of an employee appointed on probation to another grade or post, during or at the end of the period of probation, in accordance with the terms of his appointment;
- (vi) Termination of Service –
 - (a) of an employee appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment;
 - (b) of an employee appointed in a temporary capacity otherwise than under a contract or agreement, on the expiry of the period for which he was appointed, or earlier in accordance with the terms of his appointment;
 - (c) of an employee appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and
 - (d) of any employee on reduction of establishment.

7. It is in these circumstances that the learned single judge, in our view, quite correctly, called upon the MA to reconsider the case of the petitioner, in light of the provisions of Rule 22(b) of the CDA Rules.

7.1. The reasons given by the learned single judge, in this regard, in our opinion are both cogent and legally tenable.

7.2. For the sake of convenience, the relevant portion of the impugned judgment is extracted hereafter :

“16. Upon the aforesaid conclusion being reached, the other and related aspect which would then merit consideration would be whether the respondent was justified in denying all emoluments that would have been payable to the petitioner for the period during which the order of removal operated and holding

that the period between removal till employment would constitute a break in service. That question must necessarily be answered bearing in mind the provisions made in Rule 22 which reads as follows: -

“22. Treatment of the period of suspension

When the suspension of an employee is held to be unjustified or not wholly justified, or when an employee who has been dismissed, removed or suspended is reinstated, the Competent Authority, whose decision shall be final, may grant to him for the period of his absence from duty: (a) If he is honorably acquitted, the full pay allowance which he would have been entitled to if he had not been dismissed, removed or suspended, less the subsistence allowance;

(b) If otherwise, such proportion of pay and allowance as the Competent Authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as period spent on duty. In a case falling under clause (b), the period of absence shall not be treated as period spent on duty, but the Competent Authority may, at its discretion, grant leave for the period to the extent admissible to the employee under the rules. Any period of absence which has not been treated as period spent on duty or on leave shall not count as service for any purpose under these rules but will not constitute break in service.

No order passed under this rule shall have the effect of compelling any employee to refund the subsistence allowance payable under rule 21.”

17. A reading of the aforesaid Rule establishes that whenever an employee who has been dismissed or removed is reinstated, the competent authority is firstly obliged to consider whether the delinquent had been honourably acquitted or otherwise. As the Rule prescribes in unambiguous terms, if the delinquent employee is honourably discharged of the allegations leveled, he would be entitled to full pay and allowances which would have been paid but for the fact that the employee had come to be dismissed, removed or suspended. In cases where the employee is ultimately absolved of the charges on the basis of considerations other than merits or where the competent authority comes to conclude that the order of dismissal or removal is liable to be modified, the Rule confers a discretion on the authority to consider and decide how the period of absence from duty is liable to be treated. However, the Rule enshrines a significant restraint on the period of absence being treated as constituting a break in service. This since it provides that in case the competent authority ultimately proceeds to hold any part or the whole of the period during which an order of dismissal or removal operated to be an absence from duty, while it would be open for him to do so, such a decision would not constitute a break in service. To the aforesaid extent, the Court holds in favour of the petitioner and find itself unable to uphold the decision of the first respondent that the period between removal from service till the petitioner came to be reinstated would constitute a break in service. The aforesaid prescription in the order impugned

clearly falls foul of Rule 22 of the 1975 Rules.

18. The Court lastly notes that Rule 22 (b) confers a discretion upon the competent authority to consider the grant of "such proportion of pay and allowances" as also to consider what part of the period during which an order of punishment held the field as being on leave which was otherwise admissible to the employee. The Court is constrained to note that while reinstating the petitioner, the first respondent has failed to accord any consideration to the issue of payment of pay and allowances or a proportion thereof. The authority has additionally failed to examine or deliberate on the question whether the petitioner would be entitled to the grant of any leave that may be otherwise admissible under the Rules for the period in question. Once the respondent came to the conclusion that the order of removal was liable to be set aside and the petitioner reinstated in service, it was clearly incumbent upon the authority to accord due consideration to the terms upon which the petitioner was entitled to be restored in service. To the aforesaid extent, the matter would merit being remanded to the first respondent for consideration afresh."

7.3. A perusal of the aforesaid observations made in the impugned judgment shows that once the MA had concluded that the punishment imposed upon respondent no.1 of removal from service had to be supplanted with reemployment, and, then, the only avenue open to it was to proceed further under Rule 22(b), which inter alia provides that the period, which is, not treated as spent on duty or leave would not count as service for any purpose under the CDA Rules "but will not constitute [a] break in service".

7.4. The learned single judge, in our opinion, therefore, rightly quashed that part of the direction issued by the MA and remanded the matter to MA for reexamination concerning what portion of pay and allowances ought to be paid to respondent no.1 and whether the petitioner would be entitled to the grant of any leave that may be otherwise admissible under the Rules for the period in question.

7.5. Therefore the argument advanced on behalf of the appellant that having accepted the findings of the authorities below, the learned single judge ought not to have interdicted the direction issued by the MA concerning break in service, in our view, is an untenable argument, having regard to the language of Rule 22(b) of the CDA Rules.

8. The other submission advanced on behalf of the appellant that the term reemployment used by the MA should be construed as fresh employment, is misconceived, as that is not what the MA intended. The learned single judge interfered with the MA's order to the extent, that it was not in harmony with the provisions of Rule 22(b) of the CDA Rules. As is evident from a bare perusal of the MA's order, the MA did not apply its mind to the provisions of Rule 22 of the CDA Rules.

9. The other argument advanced before us that the MA was exercising a

munificent power akin to mercy is, once again, an argument, which has no merit. As alluded to above, the MA has been expressly conferred power under Rule 40 of the CDA Rules, which enables a party aggrieved with the order passed by the Appellate Authority to approach the MA for redressal. This is exactly what occurred in the instant case. Since the Appellate Authority had rejected respondent no.1's appeal, it preferred a memorial laying challenge to the same with the MA.

10. Thus for the foregoing reasons, we are not inclined to interfere with the impugned judgment of the learned single judge. The appeal is, accordingly, dismissed.

11. Consequently, the pending application shall stand closed.