

(2017) 03 GAU CK 0017
In the Gauhati High Court
Case No : Case No. WA 355 of 2015

Oriental Insurance Company

APPELLANT

Vs

Bhaktiman Bhattacharjee

RESPONDENT

Date of Decision : 27-03-2017

Acts Referred:

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 26(2)

Citation : (2017) 2 GauLT 421

Hon'ble Judges : Mr. Ajit Singh, CJ. and Mr. Manojit Bhuyan, J.

Bench : Division Bench

Advocate : Mr. S. Dutta, Advocate, for the Appellant; None appeared, for the Respondent

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J.—The point for determination in this intra-Court appeal lies in a narrow compass. We have heard Mr. S. Dutta, learned senior counsel representing the Oriental Insurance Company Limited. There is no representation on behalf of the sole respondent.

2. Facts emerging is that the respondent/writ petitioner was subjected to a departmental proceeding on 4(four) distinct charges as per Rule 25 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (hereinafter referred to as "the Rules"). The allegations pertained to the period 1998-1999 when he had allegedly exposed the company to unwarranted liability by issuing a Policy with effect from 23.02.1998 instead of 20.04.1998 in order to bring an accident involving vehicle No. TR/01/1948 (Truck) within the purview of an Insurance Policy. The said departmental enquiry concluded with the report of the Enquiry Officer dated 13.12.2004 and the respondent/writ petitioner was not found guilty of committing misconduct. The charges so framed were held to be not proved. The disciplinary authority, however, differed with the findings of the Enquiry Officer and to that end issued notice to the respondent/writ petitioner on 21.04.2006 informing that the Enquiry Report was not acceptable to the

disciplinary authority. Representation dated 18.05.2006 was made by the respondent/writ petitioner and eventually by order dated 16.08.2006 the disciplinary authority imposed the penalty of "recovery of Rs.1,00,000/-" on the respondent/writ petitioner. Appeal and review petitions filed thereafter also stood dismissed.

3. Challenge to the impugned actions being made in WP(C) 5450/2009, the same was allowed primarily on two grounds, namely, that the disciplinary authority while disagreeing with the findings of the Enquiry Officer did not comply with sub-rule (2) of Rule 26 of the Rules and that the quantum of recovery was ordered without the disciplinary authority first arriving at a finding of any pecuniary loss suffered by the company. Aggrieved, the present appeal by the Insurance Company is laid.

4. The issue for determination is whether the disciplinary authority had followed the relevant Service Rules and whether right of opportunity of hearing was afforded to the respondent/writ petitioner while disagreeing with the findings of the Enquiry Officer. To this end, it would be most useful to look at the provisions of sub-rule (2) of Rule 26 of the aforesaid Rules. The said provision reads as under:

"26. Action on the Inquiry Report

(1).....

(2)The competent authority shall, if it disagrees with the findings of the inquiry authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."

5. Having regard to the aforesaid provisions, it is seen from the notice dated 21.04.2006 that the disciplinary authority merely asked the respondent/writ petitioner to make representation as the findings of the Enquiry Officer was not found acceptable and was of the view that the respondent/writ petitioner was guilty of the charges. The said Notice dated 21.04.2006, on the very face of it, is contrary to the prescription under sub-rule (2) of Rule 26, in that, there is nothing to demonstrate that reasons had been recorded for disagreeing with the findings of the enquiring authority as well as recording of its own findings on each of the 4(four) charges. This fact alone goes to show that there has been utter violation of the principles of natural justice on the part of the appellant Insurance Company while disagreeing with the findings of the Enquiry Officer.

6. In the case of *Yoginath D. Bagde v. State of Maharashtra and Anr.*, reported in (1999) 7 SCC 739, the Supreme Court observed as follows :

31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and that latter, namely, the disciplinary authority

forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceeding. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution.

35. Since the Disciplinary Committee did not give any opportunity of hearing to the appellant before taking a final decision in the matter relating to the findings on the two charges framed against him, the principles of natural justice, as laid down by a three-Judge Bench of this Court in *Punjab National Bank v. Kunj Behari Misra* referred to above, were violated.

37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of *Punjab National Bank* in which it had been categorically provided, following earlier decisions, that if the disciplinary authority does not agree with the findings of the enquiry officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the disciplinary authority that the findings already recorded by the enquiry officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.

7. The law on the point as to the manner and procedure to be followed while differing with or disagreeing with the findings of the Enquiry Officer is absolutely clear. When an enquiry report is in favour of the delinquent officer and disciplinary authority proposes to differ with such conclusions, it is imperative that the delinquent officer must be given an opportunity of being heard. Mere issuance of a show cause notice would not serve the purpose, in as much as, in a departmental proceeding what is of ultimate importance is the finding of the disciplinary authority and such finding cannot be concluded by wishing away the principles of natural justice. As in sub-rule (2) of Rule 26 of the Rules, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its finding.

8. In the instant case, the appellant Insurance Company clearly flouted the provisions under the Rules and that of the law laid down by the Supreme Court in similar situations. In that view of the matter, this Court has no option but to agree with the findings and the decisions of the learned Single Judge. This appeal therefore fails and is dismissed accordingly. There shall be no order as to cost.