

(2015) 09 GAU CK 0012
In the Gauhati High Court
Case No : Writ Petition (C) No. 1126 of 2014

Pradip Kumar Hazarika

APPELLANT

Vs

New India Assurance Company Ltd. and Others

RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 5 GLT 32

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : H.K. Mahanta, P. Dutta and D. Barua, for the Appellant; S. Dutta and N. Modi, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J—By filing this petition under article 226 of the Constitution of India petitioner seeks quashing of order dated 15-06-2012 passed by the Manager, New India Assurance Company Limited, North Eastern Regional Office, Guwahati imposing the penalty of removal from service on the petitioner as well as order dated 24-01-2013 passed by the appellate authority and the order dated 06-11-2013 passed the Chairman-cum-Managing Director of New India Assurance Company Limited upholding the penalty imposed on the petitioner. Petitioner further seeks a direction to the respondents for his re-instatement in service with all consequential benefits.

2. Facts of the case may be briefly noted.

3. At the relevant point of time petitioner was serving as an Assistant in the New India Assurance Company Limited ("respondent company" hereafter). A memorandum dated 01-09-2010 was issued to the petitioner by the Manager of the respondent company acting as the disciplinary authority. Petitioner was informed that while he was working as Collective Cashier during the period from 02-09-2009 to 31-12-2009, he had committed serious irregularities in terms of

the New India Assurance Company Limited (Conduct, Discipline and Appeal) Rules, 2003. He was accordingly informed that a domestic enquiry for imposing major penalty was proposed. Three charges were framed against the petitioner which are as under:--

"(1) Sri Pradip Hazarika, SR. No. 29695, Assistant while working as a Collective Cashier at GDO-III, Guwahati during the period of 02-09-2009 to 31-12-2009 deliberately and with malafide intention, in gross violation of the Company's set Rules and Regulations has misappropriated Company's money i.e., premium amount by not depositing the money in Bank, and thus utilized the money for his own interest.

(2) Sri Pradip Hazarika, SR No. 29695, Assistant, GDO-III, Guwahati while working as a Collective Cashier has committed serious irregularity and violated the Company's norms in late deposition of Cash Premium in the bank under collection A/c 9100 maintained with Bank of India Guwahati Branch.

(3) Sri Pradip Hazarika, SR No. 29695, Assistant GDO-III, Guwahati while working as a Collective Cashier deliberately and with malafide intention has misappropriated the Company's money by not depositing the cash premium within the stipulated time of the Company. The amount of money misappropriated by Mr. Pradip Hazarika is Rs. 2,65,289/- as per the Bank Reconciliation Statement for the month December 2009 to GDO-III, Guwahati."

4. Specific instances of misconduct and list of documents were enclosed to the memorandum dated 01-09-2010.

5. Petitioner submitted his written statement of defence on 22-09-2010 denying the charges brought against him. He stated that he had not misappropriated the premium money deposited by the policy holders. There was delay in depositing the premium amount which was explained as due to technical problem.

6. It appears that the explanation given by the petitioner in his written statement was not accepted by the disciplinary authority and it was decided to hold enquiry into the charges framed. Enquiry Officer was appointed to conduct the enquiry and a Presenting Officer was also appointed to present the case of the disciplinary authority in the enquiry.

7. On conclusion of the enquiry, the Enquiry Officer submitted his report dated 31-01-2011 to the disciplinary authority. The charge of misappropriation was held to be not proved but the charge of late deposit of premium amount was held to be proved. Thus charge Nos. 1 and 3 were held to be not proved while charge No. 2 was held to be proved.

8. The disciplinary authority issued notice to the petitioner on 05-12-2011 informing him that from the record and evidence he was found guilty of all the 3 charges as specified in the charge-sheet but the Enquiry Officer made contradictory observations holding charge Nos. 1 and 3 as partially proved. Petitioner was given second opportunity to defend himself and to explain as to

why he should not be held guilty of all the three charges.

9. In response to the aforesaid notice petitioner submitted his reply on 14-03-2012 supporting the findings of the Enquiry Officer in respect of charge Nos. 1 and 3 and reiterating that he had not committed any misappropriation. Regarding charge No. 2, petitioner questioned the finding of the Enquiry Officer and contended that he could not be held responsible for late deposit of premium money due to technical failure.

10. Thereafter the impugned order dated 15-06-2012 was passed by the disciplinary authority imposing the penalty as mentioned above.

11. Petitioner submitted appeal before the Chief Regional Manager on 27-07-2012, who as the appellate authority dismissed the appeal and confirmed the penalty imposed vide his order dated 24-01-2013.

12. Thereafter, petitioner submitted a memorial dated 06-03-2013 before the Chairman-cum-Managing Director of the respondent company against the penalty imposed. Agreeing with the disciplinary authority and the appellate authority, the Chairman-cum-Managing Director vide his order dated 06-11-2013 rejected the memorial.

13. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

14. Contending that he did not misappropriate any money of the respondent company and thereby he did not commit any misconduct within the meaning of the New India Assurance Company Limited (Conduct, Discipline and Appeal) Rules, 2003 (2003 Rules), petitioner has questioned the legality and validity of the penalty imposed. It is contended that all the authorities had acted mechanically while dealing with the case of the petitioner. Penalty imposed has been assailed as being harsh and disproportionate.

15. Respondents have filed a common affidavit. Stand taken in the affidavit is that petitioner could not deposit the premium amount timely and had deposited the same after four months which amounts to temporary misappropriation. It was only when misappropriation was detected through bank reconciliation statement that petitioner deposited the money. Thus he failed to maintain absolute integrity and devotion to duty. As per the 2003 Rules, premium amount collected should be deposited within the next working day. Since the charge of temporary misappropriation of respondent company's premium amounts was grave and serious in nature, the penalty of removal from service is adequate and reasonable. Refund of misappropriated amount cannot absolve the petitioner of the lapses committed by him. Therefore the charge of temporary misappropriation against the petitioner which comes within the purview of misconduct stood proved which justifies imposition of the penalty.

16. In his reply affidavit petitioner has reiterated the averments made in the writ petition and has further stated that throughout his service career he never did

anything which could be remotely termed as detrimental/prejudicial to the interest of the respondent company. He however admitted delay in timely deposit of premium money. It is further stated that the punishment of removal from service is too harsh and shockingly disproportionate.

17. Mr. Mahanta, learned Counsel for the petitioner submits that intention of the petitioner was not malafide. There was no intention on the part of the petitioner to misappropriate premium money of the respondent company. There was however delay in deposit of the premium money. This charge of delay in deposit of premium money has been held proved by the Enquiry Officer. However, the other two charges relating to misappropriation which are the main charges, were held to be not proved by the Enquiry Officer. The disciplinary authority completely misread the enquiry report by holding that charge Nos. 1 and 3 were partially proved by the Enquiry Officer which is contrary to the record. Thereafter petitioner was asked to submit his explanation again. Learned Counsel for the petitioner submits that this procedure adopted by the disciplinary authority is contrary to law and on this count itself impugned order of penalty is liable to be set aside. He further submits that penalty of removal from service is grossly disproportionate in the facts and circumstances of the case. He also submits that the appellate authority and the Chairman-cum-Managing Director failed to consider this aspect of the matter and mechanically rejected the appeal and memorial of the petitioner. Therefore this Court should intervene in the matter and grant adequate relief to the petitioner.

18. Mr. S. Dutta, learned Senior Counsel appearing for the respondents on the other hand submits that when petitioner had admitted to temporary misappropriation, Enquiry Officer was not justified in recording the finding that the charge of misappropriation was not proved. Therefore disciplinary authority was justified in not accepting the enquiry report and rightly gave a second chance to the petitioner to explain his stand. Disciplinary authority was justified in holding the petitioner guilty of all the charges. He submits that when misappropriation or even temporary misappropriation is proved, no leniency can be shown. Therefore, disciplinary authority was justified in imposing the penalty of removal from service which cannot be said to be shockingly disproportionate to the gravity of the misconduct. Petitioner was given reasonable and adequate opportunity to defend himself. In such circumstances no interference is called for. In support of his submissions, learned Senior Counsel for the respondents has placed reliance on the following decisions:--

"1. Union of India (UOI) Vs. Parma Nanda, AIR 1989 SC 1185 : (1989) 42 ELT 320 : (1989) 58 FLR 934 : (1989) 2 JT 132 : (1989) 2 LLJ 57 : (1989) 1 SCALE 606 : (1989) 1 SCALE 605 : (1989) 2 SCC 177 : (1989) 2 SCR 19 : (1989) 2 UJ 97

2. Additional District Magistrate (City) Agra Vs. Prabhakar Chaturvedi and Another, AIR 1996 SC 2359 : (1996) 1 JT 207 : (1996) 1 LLJ 811 : (1996) 1 SCALE 202 : (1996) 2 SCC 12 : (1996) 1 UJ 280

3. Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, (1996) 3 AD 34 : AIR 1996 SC 1249 : (1996) 73 FLR 1429 : (1996) 3 JT 96 : (1996) LabIC 1056 : (1996) 2 SCALE 698 : (1996) 2 SCC 714 : (1996) 2 SCR 827 : (1996) 1 UJ 799

4. State of U.P. and others Vs. Nand Kishore Shukla and another, (1996) 3 AD 317 : AIR 1996 SC 1561 : (1996) 3 JT 551 : (1996) 2 LLJ 672 : (1996) 3 SCALE 69 : (1996) 3 SCC 750 : (1996) 3 SCR 219 : (1996) 2 UJ 471

5. Sudhir Vishnu Panvalkar Vs. Bank of India, AIR 1997 SC 2249 : (1997) 5 JT 307 : (1997) 2 LLJ 299 : (1997) 4 SCALE 66 : (1997) 6 SCC 271 : (1997) SCC(L&S) 1662 : (1997) 2 UJ 200

6. Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, AIR 2005 SC 584 : (2005) 3 ESC 338 : (2005) 104 FLR 291 : (2005) 1 JT 70 : (2005) 1 LLJ 730 : (2004) 10 SCALE 590 : (2005) 10 SCC 84 : (2005) SCC(L&S) 567 : (2005) 2 SLJ 117 : (2005) 1 UJ 430

7. Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai, AIR 2006 SC 3522 : (2006) 1 CTC 348 : (2006) 108 FLR 940 : (2006) 1 LLJ 826 : (2006) 1 SCALE 546 : (2006) 2 SCC 255 : (2006) SCC(L&S) 265 : (2006) 1 SCR 540 : (2006) 2 SLJ 158 : (2006) AIRSCW 701 : (2006) 1 Supreme 360

8. Ram Saran Vs. I.G. of Police, CRPF and Others, AIR 2006 SC 3530 : (2006) 108 FLR 1171 : (2006) 2 JT 267 : (2006) 2 SCALE 131 : (2006) 2 SCC 541 : (2006) SCC(L&S) 351 : (2006) 1 SCR 1102 : (2006) 2 SLJ 408 : (2007) AIRSCW 1011 : (2006) AIRSCW 740 : (2006) 1 Supreme 633

9. (2007) 15 SCC 775 Narendra Nath Bhalla v. State of Uttar Pradesh and others"

19. Submissions made by learned Counsel for the parties have been considered. Also perused the materials on record, including the record produced by Mr. Dutta.

20. The three charges framed against the petitioner have been noted. Charge Nos. 1 and 3 relate to misappropriation of cash premium money amounting to Rs. 2,65,289/- whereas charge No. 2 relates to late deposit of the said cash premium amount. The particulars of the premium amounts are as under:--

In the article of charges Annexure-B to the memorandum dated 01-09-2014 it was stated that the said amount was utilized by the petitioner for the treatment of his sister-in-law and thus he had misappropriated the respondent company's money.

21. Having noticed the charges as above the findings of the Enquiry Officer may now be adverted to. In respect of charge Nos. 1 and 3 which relate to misappropriation of premium money of the respondent company, the Enquiry Officer held the two charges as not proved and recorded a categorical finding that the petitioner did not misappropriate the premium money received. Relevant portion of the report of the Enquiry Officer reads as under:--

"I have gone through the entire record, the evidences and the written brief submitted by both the parties. So far the charges of misappropriation of Company's money i.e. premium amount the delinquent allegedly not deposited during the period of 02-09-2009 to 31-12-2009 as mentioned in charge No. 1, PW2 Sri Sanjib Paul stated that he was not aware about non deposit of premium due to system failure. He further stated that premium was deposited by delinquent Pradip Hazarika lately by 21-01-2010. PW 1 Sri Biswajit Deb stated that he detected about non deposit of daily cash to Bank after doing Bank reconciliation. Thereafter he reported it before the competent authority. He also stated that the amount not deposited was related to cash only and cheque were timely deposited. He further stated that after reconciliation of Bank statement of collection account he found shortage of an amount of Rs. 265289/-. He further stated that on 02-09-2009 out of total collection of Rs. 36290/- the delinquent deposited Rs. 27104/- on 04-09-2009 and the rest amount of Rs. 9186/- deposited on 21-01-2010. He also stated that amount of Rs. 17321/- collected on 30-09-2009, the delinquent deposited on 21-01-2010. He further stated that on 07-10-2009, the delinquent received Rs. 65075/- and not Rs. 65078/- as stated in the charge sheet was deposited on 21-01-2010. He further stated that on 30-12-2009 an amount of Rs. 82905/- was collected by the delinquent which was deposited on 01-01-2010 and on 31-12-2009 a sum of Rs. 8033/- was collected which was deposited on 02-01-2010.

In cross examine, he stated that due to failure of network system, the RA-16 could not be generated on those days.

Thus from the evidence of PW 1 and 2 and the exhibits it appears that the delinquent Pradip Hazarika has collected the Premium/money in the name of the Company but those were not deposited in time. The alleged misappropriation as mentioned in charge No. 1 is not proved. Late deposit of the premium without assigning any reason is a violation of set rules of the company.

So far the charge No. 2 is concerned from the evidence of PW 1 & 2 and the documents exhibited mentionable Ex 1, 2, 3, 4 & 5 it appears that the delinquent after receiving the premium in the name of the Company did not deposit in the Bank in time. However from the cross examination of PW1 Sri Biswajit Deb it appears that due to failure of network RA-16 could not be generated for some days which resulted in late deposit of premium received.

From the above it is apparent that Sri Pradip Hazarika assigning any reason delayed in deposit of the premium he received from Insured. Therefore this charge stands proved.

So far the charge No. 3 is concerned from what has been discussed in charge No. 1 and findings therein, it is concluded that delinquent Pradip Hazarika did not misappropriate the premium/money received from the Insured but deposited premium/money in Bank late without assigning any reason or intimation to the authority for any existing obstacles which invites penalty for failing to maintain

devotion to duty and accordingly contravene the relevant rule."

22. Thus in so far charge No. 2 i.e. late deposit of premium money is concerned, the same was held to be proved.

23. The disciplinary authority in his notice to the petitioner dated 05-12-2011 stated that though he was found guilty of all the charges from Sl. Nos. 1, 2 and 3 as specified in the charge-sheet, the Enquiry Officer made contradictory observations and held charge Nos. 1 and 3 as partially proved. Petitioner was given a second opportunity to submit explanation as to why he should not be held guilty of all the charges as in Sl. Nos. 1, 2 and 3.

24. Thus from the above communication of the disciplinary authority, two things are noticeable. Firstly, disciplinary authority held that contrary to the record the Enquiry Officer recorded finding of partially proved in respect of charge Nos. 1 and 3. Secondly, disciplinary authority did not agree with such finding of the Enquiry Officer and taking the view that all the three charges against the petitioner stood proved, gave him a second opportunity to explain his position vis-?-vis the charges.

25. It is true that disciplinary authority is not bound by the report of the Enquiry Officer. Finding of the Enquiry Officer is not final. It is only his view. Ultimate decision is that of the disciplinary authority. However, when the disciplinary authority delegates conduct of enquiry into the charges against the delinquent to a third person i.e. the Enquiry Officer, he may either agree with the findings of the Enquiry Officer or he may disagree with the findings of the Enquiry Officer. In this case, we are concerned with the second scenario. Question for consideration is as to what is the procedure to be followed when the disciplinary authority does not agree or disagree with the findings of the Enquiry Officer and proposes to impose penalty by holding the delinquent guilty. This question was gone into by the Hon'ble Supreme Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, (1998) 6 AD 220 : AIR 1998 SC 2713 : (1998) 2 CTC 742 : (1998) 5 JT 548 : (1998) LabIC 3012 : (1998) 2 LLJ 809 : (1998) 4 SCALE 608 : (1998) 7 SCC 84 : (1998) SCC(L&S) 1783 : (1998) 1 SCR 22 Supp : (1999) 1 SLJ 271 : (1998) AIRSCW 2762 : (1998) 6 Supreme 486 . In the said case, after considering various decisions, the Apex Court held that 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 reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Enquiry Officer will have to be furnished to the delinquent who may thereafter submit his response. It is after considering all the materials including the record of enquiry, enquiry report and the response of the delinquent that the disciplinary authority should take its final decision.

26. The view taken by the Apex Court in Kunj Behari Misra (supra) has been consistently approved and followed in subsequent decisions of the Apex Court

including in the case of S.P. Malhotra Vs. Punjab National Bank and Others, (2013) 9 AD 205 : AIR 2013 SC 3739 : (2013) 138 FLR 780 : (2013) 9 JT 309 : (2013) 14 JT 388 : (2013) LabIC 4097 : (2013) LLR 897 : (2013) 9 SCALE 113 : (2013) 7 SCC 251 : (2013) 7 SCC(L&S) 673 : (2013) 4 SCT 135 : (2013) 3 SLJ 115 where it has been held that not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes prejudice to the delinquent and would be per se violative of the principles of natural justice. In that case, the decision of the Single Bench of the High Court quashing the dismissal order on the above ground, which was overturned by the Division Bench of the High Court, was restored. A Single Bench of this Court in WP(C) No. 2840/2006 (Nani Gopal Palit v. State Bank of India) decided on 06-03-2014 held that since the disciplinary authority disagreed with the enquiry findings, he was duty bound to record reasons for his disagreement. But in that case, while differing with the enquiry findings, the disciplinary authority failed to disclose any reason. Holding that an illegal procedure was followed which vitiated the major penalty of reduction in the pay-scale imposed on the delinquent, the same was quashed.

27. Rule 26 (2) of the 2003 Rules also provides that if the competent authority disagrees with the findings of the enquiring authority on any article of charge, it shall record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. Therefore, even this Rule requires recording of reasons by the competent authority in case of disagreement with the findings of the Enquiry Officer. Now, following the Supreme Court decision in S.P. Malhotra (supra), copy of the recorded reasons for disagreement from the enquiry report would have to be furnished to the delinquent to enable him to submit his response which should be considered by the competent authority before taking finding decision.

28. Thus from the above it is quite evident that in case the disciplinary authority disagrees with the findings of the Enquiry Officer that a particular charge against the delinquent has not been proved, he has to record his reasons for such disagreement which has to be communicated to the delinquent to enable him to make a representation to meet the reasons for such disagreement. Failure to follow this procedure would be per se violative of the principles of natural justice and would cause prejudice to the delinquent. It would be an illegal procedure and would vitiate the decision making process.

29. Having noticed the legal position as discussed above, the procedure adopted by the disciplinary authority may be examined. From the communication dated 05-12-2011 it is quite evident that the disciplinary authority did not record its reasons for disagreeing with the findings of the Enquiry Officer as regards charge Nos. 1 and 3, which are the main charges. This fundamental lapse by the disciplinary authority has been further compounded by wrong recording of the findings of the Enquiry Officer as regards charge Nos. 1 and 3 by the disciplinary authority. The Enquiry Officer gave the clear finding that charge Nos. 1 and 3

were not proved. This has been misread and mis-recorded by the disciplinary authority as partially proved. Therefore, such misrecording by the disciplinary authority of the findings of the Enquiry Officer regarding charge Nos. 1 and 3 is contrary to the record and is thus perverse.

30. From the above, it is quite evident that the disciplinary authority followed an illegal procedure which has completely vitiated the decision making process. Such illegality is further compounded by mis-recording of the findings of the Enquiry Officer in respect of charge Nos. 1 and 3. Therefore, the penalty imposed which flowed from such a flawed procedure cannot be sustained and is liable to be interfered with.

31. At this stage, it may be mentioned that the decisions relied upon by Mr. Dutta have been duly considered but those decisions are not on the above issue and therefore would not be attracted to the facts and circumstances of this case.

32. Before concluding, there is one more aspect which needs to be mentioned. Petitioner was charged with misappropriation of premium money as per charge Nos. 1 and 3 which was held to be not proved by the Enquiry Officer. On the basis of the materials in the enquiry including the evidence adduced by the witnesses on behalf of the disciplinary authority i.e., PW 1 (Shri Biswajit Deb) and PW 2 (Shri Sanjib Paul), the Enquiry Officer gave the categorical finding that there was no misappropriation of premium money but late submission of the same, the major amount by just 2/3 days. [At this stage it may be pointed out that the above two witnesses were introduced during the enquiry though in the list of witnesses in support of charges framed against the petitioner annexed to the charge-sheet as Annexure-D, it was remarked "Nil". This was also a procedural impropriety]. Discarding the report of the Enquiry Officer, disciplinary authority held the charge of misappropriation to be proved. When same has been put to challenge by the petitioner before this Court by way of the present writ petition, stand taken by the respondents in the counter affidavit is that petitioner was guilty of temporary misappropriation. But this was not the charge framed against the petitioner. It is a settled proposition that the charge framed against the delinquent should be specific. Even Rule 25(3) of the 2003 Rules says that the competent authority is required to frame definite charges in a case proposing major penalty. As noticed above, petitioner was charged with misappropriation and not temporary misappropriation.

33. Be that as it may, in view of the decision taken in paragraph 30 above, further dilation on this aspect may not be warranted.

34. Accordingly and in view of above, impugned order dated 15-06-2012 is set aside and quashed. Petitioner shall be re-instated in service forthwith. However, regarding charge No. 2, the Court leaves it to the discretion of the disciplinary authority to impose a lesser/minor penalty if it is considered necessary. Consequential benefits due on reinstatement would be subject to such lesser/minor penalty if imposed. Writ petition is allowed but without any order as to

cost.

35. Record produced by Mr. Dutta is returned back.