

(2019) 08 DEL CK 0098

In the Delhi High Court

Case No : Civil Writ Petition No. 3007 Of 2008

S.D.Singh

APPELLANT

Vs

United India Insurance Co. Ltd

RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 141, 226, 227

General Insurance (Conduct, Discipline And Appeal) Rules, 1975 — Rule 23(g), 25

Citation : (2019) 08 DEL CK 0098

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Avadh Kaushik, Robin Singh, Pankaj Singh Thakur, K.L.Nandwani

Final Decision : Dismissed

Judgement

C. Hari Shankar, J

1. These proceedings owe their origin to Memorandum, dated 6th June, 2003 (hereinafter referred to as "the charge-sheet"), issued to the petitioner by the Assistant General Manager and disciplinary authority, United India Insurance Co. Ltd. (the respondent herein, though impleaded in the name of its Chief Regional Manager), proposing to initiate an inquiry, against the petitioner, under Rule 25 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (hereinafter referred to as "the CDA Rules"), and calling on the petitioner to submit his response thereto.

2. The charge-sheet contained four Articles of Charge, against the petitioner, numbered Articles of Charge 1 a) to c), and Article of Charge No. 2. Article 2, of the Articles of Charge, stands dropped, and no further reference, thereto, is required, therefore, to be made.

3. Articles 1 a) to c), of the Articles of Charge, dealt with the period 1999-2000, during which the petitioner had settled certain allegedly bogus claims for cattle insurance. A brief reference, to these three sub-Articles of Charge, may be

provided thus:

(1) Article 1 a) related to Cattle Policy No. 045631, favouring Parveen Singh. This policy was admittedly settled, by the petitioner, in favour of Parveen Singh, resulting in the issuance, to him, of cheque No. 430041, dated 23rd June, 2000, for Rs. 12,000/-. Regarding this claim, it was alleged thus:

(a) The petitioner had "caused the issuance" of the said policy, through the Development Officer D. K. Aggarwal, against payment of cash premium of Rs. 600/-, through an agent, Farukh Khan. It was alleged that D. K. Aggarwal had deposited the said pre-signed policy with Farukh Khan, as per the instructions of the petitioner.

(b) The period covered by the policy was altered, in the policy, from 7th January, 2000 to 6th January, 2003, to 27th February, 2000 to 26th February, 2003.

(c) The animal, covered by the said policy was shown, in the policy, as financed by the U. P. Sehkari Gramin Vikas Bank. However, the said Bank confirmed that the animal had neither been financed by it, nor was intimation of death given by the said Bank. It was, therefore, alleged that the inclusion of the name of the Bank, in the policy, was done in order to show existence of Bank finance to a non-existent animal, so as to get the policy underwritten.

(d) In the claim intimation letter, the date of death of the animal, covered by the policy, was altered to 17th March, 2000, by the Veterinary Surgeon, allegedly to facilitate coverage of the animal by the policy.

(e) The cheque, whereby the claim amount was disbursed by the respondent, initially reflected the name of the payee as "U. P. Sehkari GraminVikas Bank, A/c Parveen Singh". The name of the payee was, thereafter, altered to "L. D. Bank, A/c Parveen Singh" and, again, thereafter, to "A/c Parveen Singh, S/o Darshan Singh". It was finally, therefore, issued in favour of "A/c Parveen Singh, S/o Darshan Singh", and the amounts covered thereby were withdrawn by Parveen Singh, through the Punjab National Bank, Moradabad Gate.

(f) Thus, it was alleged, the petitioner had approved a bogus cattle claim for Rs. 12,000/-, resulting in undue financial loss to the respondent.

(2) Article 1 b) covered a similar policy, No. 43941, for the period 27th October, 1999 to 26th October, 2000. The policy was issued in favour of "Punjab National Bank, Salempur A/c Mahesh Chaudhary". Two cattle claims, under the said policy, were settled, by the petitioner, vide cheques dated 8th May, 2000 and 29th January, 2001, each for Rs. 8000/-. In respect of this policy, it was alleged as under:

(a) The petitioner had "caused issuance" of the policy, through Yogesh Kumar Sharma, Development Officer.

(b) The Punjab National Bank confirmed that the animals, allegedly covered by the said policy, were neither financed by it, nor was intimation of the death given

by the said Bank. As such, the inclusion of the Bank's name in the policy was done in order to reflect the existence of Bank finance, to non-existent animals, so that they could be conveniently underwritten.

(c) The name of the payee in the claim cheque was altered to "Mahesh Singh", and was validated by the petitioner. The amount of the cheque was, ultimately, credited into the Savings Bank account of "Mahesh Singh", who was not connected to the insured animal in any way.

(d) Thus, it was alleged, the petitioner approved these bogus cattle claims, resulting in undue financial loss, to the respondent, of Rs. 16,000/-.

(3) Article 1 c), similarly, dealt with Policy No. 043940. The policy covered the period from 27th October, 1999 to 26th October, 2000, and was issued in the name of Punjab National Bank, A/c Smt. Kalawati, W/o Shri Mishri Singh", on payment of premium of Rs. 1000/-, and covered two she-buffaloes. The claim was settled by two cheques, for Rs. 8000/- and Rs. 10,000/-, in favour of "Punjab National Bank A/c Smt. Kalawati", respectively, which were credited into the Savings Bank account of Smt. Kalawati. Again, in respect of this policy, too, it was alleged as under:

(a) The inclusion of the name of the bank, in the policy, was only done in order to reflect financing of the animals by the Bank, so as to get the policy underwritten. The Bank, for its part, confirmed that the said animals had not been financed by it, and that it had not provided any intimation of the death.

(b) The insured person, i.e. Smt. Kalawati, had neither obtained any loan from the said Bank for these animals, nor had the Bank issued any Demand Draft towards the premium. The Demand Draft, whereby premium, for the policy, was paid, was, it was revealed, purchased against cash.

(c) These two animals, too, therefore, appeared to be non-existent.

(d) The petitioner had, therefore, it was alleged, approved two bogus cattle claims, resulting in undue financial loss to the respondent, to the extent of Rs. 18,000/-.

4. The charge-sheet also had, annexed thereto, a list of documents, and a list of witnesses, whereby the charges, against the petitioner, were proposed to be proved.

5. The petitioner responded, to the aforementioned charge-sheet dated 6th June, 2003, vide letter, dated 11th August, 2003, in which it was averred thus:

(i) As Branch Manager, the petitioner never caused issuance of any cattle policy. Issuance of cattle policies were always effected by the Development Officer, or by the Agent or Assistant of the respondent. As such, the allegation that the petitioner had "caused" issuance of the policies, to which the charge-sheet alluded, was baseless.

(ii) Farukh Khan had never worked as an agent of the respondent, during the period in issue.

(iii) Specifically, in respect of the three policies, relating to which individual sub-Articles of Charge had been issued, it was submitted as under:

(a) With respect to Cattle Policy No. 045631, covered by Article 1 a) of the Articles of Charge,

(i) the alteration, in the policy, of the period covered by it, from 7th January, 2000 to 6th January, 2003, to 27th February, 2000 to 26th February, 2003, was also done by the Development Officer D. K. Aggarwal, and not by the petitioner, who could not, therefore, be blamed therefor,

(ii) the petitioner had no knowledge of the said alteration, nor was he involved, in any way, therein,

(iii) such policies were regularly issued by the Development Officer, as per the prevalent practice in the Branch,

(iv) though the petitioner had, undoubtedly, settled the said cattle claim, for Rs. 12,000/-, he did so, on the basis of the appropriate recommendation on scrutiny by the Assistant and AAO,

(v) the change of the date of death of the animal, in the Veterinary Surgeon report, had been effected by the Veterinary Surgeon, and no blame could be attributed to the petitioner therefor; indeed, the same date of death, i.e. 17th March, 2000, was reflected in the investigator's report, the claim note, the claim form and the banker's death confirmation certificate, with the investigator mentioning, further, the post-mortem date of the animal as 18th March, 2000, which was also countersigned by the same Veterinary Surgeon,

(vi) these dates had been scrutinised by the Senior Assistant, who had prepared the claim note, and indicated that the animal had, in fact, died on 17th March, 2000,

(vii) all requisite formalities had, therefore, been completed, before the claim was settled by the petitioner, and

(viii) the name of the payee was first reflected, in the claim cheque, by including the name of the Bank; however, later, at the request of the bank, the name of the bank was removed, and the said change was countersigned not only by the petitioner, but also by another representative of the respondent, as there was a specific letter, of the bank, requesting that its name be not reflected in the claim cheque.

(b) With respect to Cattle Policy No. 43941, covered by Article 1 b) of the Articles of Charge,

(i) this policy, too, had been issued, not by the petitioner, but by the Development Officer Yogesh Kumar Sharma,

(ii) the name of the bank was reflected as "M/s PNB" in the policy itself, and that the allegation of inclusion of the name of the Bank was without basis,

(iii) though it was alleged that the Bank had confirmed that these animals had never been financed by it, the documents provided to the petitioner indicated that payment discharge vouchers were signed both by the insured person, i.e., Mahesh Chaudhary (who signed as Mahesh Singh), as well as by the bankers,

(iv) the bankers had confirmed that Mahesh Chaudhary and Mahesh Singh were one and the same person, which was why, after obtaining confirmation from the bank, the name of the payee was changed, on the body of the cheque,

(v) this change was countersigned, not only by the petitioner, but also by another authorised signatory of the respondent, which bore out its veracity,

(vi) the crediting of the said cheque, into the Savings Bank account of the payee, instead of the loan account of the payee, was not the responsibility either of the respondent or of the petitioner, and

(vii) the allegation that the claim was against "non-existent she-buffaloes" was also unsubstantiated by any evidence; neither was there any evidence to the effect that the animals had not died, as claimed.

(c) Similarly, with respect to Policy No. 043940, constituting subject matter of Article 1 c) of the Articles of Charge, it was submitted that

(i) the allegation that the claim covered non-existent animals was not supported by any material evidence,

(ii) the allegation that the name of the Bank had been included, in the policy, in order to make it appear that the animals had been financed by the Bank, was also without substance, as the bankers had signed the claim disbursement voucher and the cheques were issued in favour of "PNB A/c Kalawati", and were deposited by the insured person in the Punjab National Bank,

(iii) the nature of the account, in which the cheque was deposited, was irrelevant, and did not constitute any part of the responsibility of the respondent, or of the petitioner as the Branch Manager, and

(iv) the health certificate, issued by the Veterinary Surgeon, issued at the time of taking of the policy, too, indicated the name of the Bank and the existence of the buffaloes.

6. In view of these submissions, the petitioner urges that he was being unnecessarily targeted, and that no misconduct could be attributed to him. He also sought certain documents, in order to substantiate the points raised by him in his defence.

7. Predictably, a disciplinary inquiry commenced, culminating in the issuance, by the Inquiry Officer (hereinafter referred to as "IO") of his Inquiry Report dated 19th September, 2005. The IO held Article 2, of the Articles of Charge against

the petitioner, not to have been proved, but opined that, while Articles 1 a) and b) were fully proved, Article 1 c) was partly proved, in that the allegation of financial loss of Rs. 18,000/-, having been caused to the respondent, was not established.

8. The IO addressed, first, in his Inquiry Report, the submission, of the petitioner, that the insurance policies were not issued by him, but by the Development Officer. He rejected this contention by placing reliance on the depositions, during the Inquiry proceedings, of the two Development Officers, i.e., D. K. Aggarwal and Y. K. Sharma, deposing as MW-1 and MW-3, respectively. The said Development Officers testified that they had issued the policies in question under the instructions of the petitioner, MW-1 going to the extent of alleging that the petitioner had even threatened him. The IO found that "this serious aspect" had "gone uncontested" by the petitioner. He, therefore, found, further, that the petitioner "was in a position to influence the underwriting of the cattle policies through the Development Officers Shri D. K. Aggarwal (MW1) and Sh. Y. K. Sharma (MW3) although he himself was more competent than they were". He further relies on the testimony, in cross-examination, of MW-1, that it was under the instructions, and the threat of the petitioner, that he had handed over the blank pre-signed policies to Furkan Ali (who, according to the IO, was wrongly referred to, in the charge-sheet, as Farukh Khan). The cross-examination of MW-1, by the Defence Assistant who appeared on behalf of the petitioner, the IO holds, amounted to indirect admission, by the petitioner, of the fact "that one point of time, he had given such instruction". Holistically viewed, the IO holds, it could "be concluded that CO could cause the issuance of these Policy cum schedules mentioned in Article 1 a, b & c".

9. Proceeding therefrom, the observations and findings of the IO, may be enumerated thus:

(i) The petitioner had admitted, in his statement of defence, dated 5th April, 2005, that, though he had noticed the alteration of dates in the policy, and in the claim intimation letter, he did not question the same, as they had been submitted for approval after endorsement by the AAO, who found them to be in order. This signified deliberate silence, on the part of the petitioner, regarding the alteration of dates.

(ii) The evidence of the various witnesses further indicated that, at the time of signing of acceptance advices (which signified the acceptance of risk by the respondent, and was the final word on the underwriting of any risk), the underlying documents were attached to it. Thus, the petitioner, by signing the acceptance advice, dated 28th February, 2000, overlooked the alterations deliberately, in the policy, and got the risk underwritten.

(iii) The evidence of MW-1 and MW-3 also established that due underwriting procedures were not being followed while insuring cattle. It was also clear that, at the time of acceptance, no verification was done to ascertain as to whether

the animal being insured was financed by the bank, or not.

(iv) The date of receipt of the claim intimation letter revealed that the date of receipt had been altered from 25th February, 2000 to 25th March, 2000. Similarly, in the post-mortem report too, the date of death, and the date of post-mortem had been altered from 17th February, 2000 to 17th March, 2000. It was obviously impossible for a certificate, dated 29th February, 2000, to specify the date of death of the animal as 17th March, 2000. The alteration of dates had, therefore, been effected, in the claim documents, in order to bring them within the already altered policy period.

(v) The submission that the animal was in existence, however, was correct, in view of the health certificate issued by the Government doctor.

(vi) On the question of financing of the animal by the bank, it was clear that the bank's interest, in the policies, was not being verified at the time of underwriting thereof. Exhibit 4, the letter received from the bank, clarified that the bank had neither advanced any loan to the insured person nor had it signed the claim intimation letter or received the claim cheque. This was also proved by the deposition of MW-6, B. K. Mishra.

(vii) It was an admitted position that the claim cheque, which was originally made payable to "U. P. Sehkari Gramin Vikas Bank A/c Parveen Singh S/o Darshan Singh" was altered, twice, and was ultimately made payable to "Parveen Singh S/o Darshan Singh", into whose account the payment had finally been credited. That no norms had been followed, for making the said alterations, was clear from the depositions of MW-4, DW-4 and the petitioner himself, though they said that this was the practice being followed in the respondent-organisation. The claim cheques were delivered by the petitioner himself, in violation of the cheque delivery norms. As such, there was total collapse of the system, so far as the issuance, and the delivery, of the claim cheques, were concerned.

(viii) Article 1 a), of the Articles of Charge against the petitioner, therefore, stood proved.

(ix) Apropos Article 1 b) and c), the IO held thus:

(a) It had already been observed, by the IO, that the norms for underwriting were not being followed, while accepting the cattle business.

(b) The letter from the bank (Exhibit 15) indicated that the premium amount of Rs. 2,100/- was paid by way of demand draft, obtained from PNB, Salempur against payment of cash, by Mahesh Singh. The intention, from the very beginning was, therefore, to show that the bank had financed the animals and had paid the premium. The bank, however, clarified, vide its letters (Exhibit 16 and Exhibit 29) that it had not financed the cattle.

(c) MW-3 had deposed that he had never verified the interest of the bank, in the

animals, and used to fill up the policy on the basis of the health certificates and premium brought by Furkan, the contact of the petitioner.

(d) Thus, the animals were gotten insured, under Policies 043940 and 043941, as if they were financed by the bank, whereas, so far as the bank was concerned, these animals were non-existent.

(e) By signing on the relevant acceptance advices (Exhibit 9 and Exhibit 20) and, thereby, accepting the business, the petitioner also accepted the responsibility for the underwriting.

(f) In view of the Health certificates, post-mortem report and statements given by the Veterinarians, however, the existence of the animals stood proved.

(g) Investigation, in all these cases, was heavily belated. It was the petitioner who had deputed DW-6 to investigate the cases, and had received the investigation reports. The petitioner had himself, therefore, contributed to the belated investigations and allowed delayed submission of reports, without any questions being asked.

(h) Though the deaths of the animals had taken place on 21st October, 2000 and on 25th October, 2000, at the same place, DW-6 had undertaken the verification once on 7th November, 2000 and again on 5th January, 2001. It was not clear why both verifications had not been conducted on 7th November, 2000.

(i) The statements of the Veterinary doctors, as collected by DW-6, were undated in all cases.

(j) In view of these discrepancies, the fact that the reports were stereotyped, and investigation was incomplete, it was not possible to place any reliance on the reports submitted by DW-6.

(k) D.K. Garg (DW-4) deposed that he had endorsed the recommendation for payment in only one case. He also affirmed that he had not verified the aspect of bank interest, and had seen the various documents, such as the Post Mortem report, the Veterinarian certificate, the investigation report, and the annexures thereto, before recommending the claim. The other two claims had, therefore, been approved directly, by the petitioner.

(l) All claim forms were undated.

(m) As such, the petitioner had directly settled the claims, ignoring the various discrepancies and shortcomings therein, which raised doubts about the genuineness thereof. Clearly, he had not scrutinised the claim files with the requisite degree of care.

(n) The submission, of the petitioner, that alterations on the cheques had been made on the request of the bank, was belied by Exhibit 29, which revealed that the bank had issued no such letter. DW-4, who was the second counter-signing authority to the said alterations, and who had initially supported the version of

the petitioner, later deposed that the alteration was carried out under the instruction of the petitioner.

(o) Though the documents, in all cases, referred to "Mahesh Chaudhary", the claim cheque payment was made to "Mahesh Singh". As such, the petitioner had effected payment to a person other than the insured.

(p) In the case of Policy No. 043940, however, as the animals were in existence and their deaths had been proven on record, there appears to be no undue financial loss to the respondent.

10. The aforesaid Inquiry Report was forwarded, by the disciplinary authority, to the petitioner, calling for his response thereto.

11. The petitioner submitted his representation, challenging the findings of the IO, to the extent they were not favourable to him, vide communication dated 30th January, 2006. Among the various points raised by the petitioner, in the said representation, the following may be noted:

(i) The IO had failed to appreciate the fact that none of the documents, containing any alterations, had been prepared and/or signed by the petitioner.

(ii) As the period of insurance, as entered on the policy documents, had been written by the Development Officer at the time of taking of the policy, and the date of death of the animals was not contrary to the report of the concerned invigilators, the petitioner had no option but to approve the claims.

(iii) The petitioner had approved the claims, on the basis of the documents enclosed therewith. For example, in the case of Policy No. 045631, there were as many as 14 documents, in the face of which it was not possible to reject the claim.

(iv) The IO had also ignored the fact that MW-1 had, in his examination-in-chief, deposed that the said Policy No. 045631 had been sent to the office on 27th February, 2000, and that the cutting on the policy had been verified at the time of the commencement of the risk itself. Similarly, he had ignored the deposition, of MW-1, that there were exhaustive discussions, regarding the cuttings, the name of the Bank and the description of the cattle, at the time of issuance of the said policy, which were found to be correct.

(v) MW-6, who was the Vigilance Officer, had agreed, in his examination-in-chief, that Mahesh Chaudhary and Mahesh Singh were the same person, by deposing that the demand draft, for payment of the premium, for the policy, had been purchased by Mahesh Singh. He had also testified that the claim cheque had been issued to Mahesh Chaudhary @ Mahesh Singh, which implied that they were one and the same person.

(vi) Insofar as the issue of delay and investigation, regarding the deaths of the animals, was concerned, in all cases, post- mortem was conducted on the very same day, but, as they had died in rural areas, investigation was, at times,

delayed.

(vii) The IO had not given due weightage to the fact that the petitioner had not issued any of the policies, and was not responsible for the issuance thereof.

(viii) The recommendation of the policies was also justified by the Health Certificates, which had been issued by Government Veterinary doctors and had, therefore, to be believed.

The petitioner also referred to various paragraphs, from his defence briefs, as well as various parts of the depositions of witnesses, both of the Management and of the Defence which, according to him, had not been taken into account by the IO. For these reasons, he prayed that the proceedings against him be dropped.

12. Vide Office Order dated 22nd May, 2006, the disciplinary authority, after considering the findings of the IO, as well as the points raised by the petitioner by way of objection thereto, concurred with the findings of the IO and, consequent upon, imposed, on the petitioner, the penalty of "removal from service which shall not be disqualification for future employment", under Rule 23(g) of the CDA Rules. It was also directed that the period, during which he had remained under suspension, would be treated as "period not spent on duty". The observations/findings, of the disciplinary authority, as contained in the said Office Order dated 22nd May, 2006, may be reproduced, in extenso, as under:

"Article 1(a)

1. A scrutiny of the daily order sheet of the preliminary inquiry held on 03.03.2004 revealed that the inspection of documents was completed by Shri S.D. Singh and he has nowhere raised the issue of requirement of defence assistant for the said purpose. In any case copies of the documents were given to the defence and no prejudice was caused in this regard. A Defence assistant was available to Shri S.D. Singh throughout the regular hearing and it is not clear as to what he means that he was not given opportunity to defend through a Defence assistant.

2. From the Inquiry records, it was found that six (including himself) defence witnesses were allowed and produced in the Inquiry. As regards the documents, the Inquiring authority also allowed certain documents which were found to be relevant to the Inquiry from the defence side.

3. Non-production of Shri Farukh Khan in the inquiry does not ipso facto mean that he is a non-existing person. The existence of Shri Farukh Khan and the role he played in the impugned transactions have been adequately brought out in the depositions of the Management witnesses especially MW1, MW3 and MW4. As the listed witnesses have sufficiently elaborated on the role of Shri Farukh Khan, it was not felt necessary to produce him in the inquiry as no significant value addition was expected from his deposition. Further, Shri Farukh Khan being an Associate of the delinquent Official who was also involved in the said transaction

alongwith the Delinquent Official, inasmuch as the Development Officer was instructed to make over the pre-signed blank policies to Shri Farukh Khan.

Be that as it may, nothing prevented Shri S.D. Singh to produce the said Shri Farukh Khan as his witness in the Inquiry. Here again, Shri S.D. Singh probably felt convenient not to bring Shri Farukh Khan as his witness for reasons best known to him.

Having not produced Shri Farukh Khan as his witness, Shri S.D. Singh cannot now raise issue about his identity/existence at this stage.

4. Chief examination is not required to be taken in a question-answer form and thus no prejudice has been caused to the delinquent official.

5. As a prudent Officer, if he was not involved in the fraud, Shri S.D. Singh ought to have taken strict cognizance of the apparent contradictions/ inconsistencies/ alterations relating to the various critical aspects of the underwriting and claim and should have attempted a reconciliation of the same. He ought to have gone into the details of what exactly happened both at the underwriting stage and claim processing stage to know the facts behind the impugned claim transaction. Not doing so, displays mens rea in his act of approving the said fraudulent claim, especially in the light of his forceful instructions to the Development Officer to port with a pre-signed blank policy to be given to an unauthorised person. The role of Shri S.D. Singh in the fraud right from underwriting stage to claim approval is clear.

6. It is not for the Presenting Officer to ensure appearance of Defence witnesses. Once a witness has been approved by the Inquiring authority as an additional/ defence witness, it is for the delinquent official to mobilise such witness.

7. The issue of the said animal being alive and its death was not the one at stake. But the issue was one of illegality/fraud in showing Bank finance on the same, fraudulent alterations made on the underwriting and claim documents, to which Shri S.D. Singh was not able to give a proper and clear explanation.

8. Nothing significant is found in his point which affects the conclusions of the Inquiring authority.

9. These are precisely the documents which were utilised to show the fraudulent nature of the claim and Shri S.D. Singh does not show anything significant against the conclusion of the Inquiring authority by raising this point.

10. The various questions and answers cited by Shri S.D. Singh as pointers for the failure of the Inquiring authority to consider are rather vague and thus lack clarity. He does not show any logical correlation between such identified questions and answers of different witnesses and how non-consideration of the same have impacted the conclusion of the Inquiring authority relating to the same.

Article I (b) and (c)

1. The various questions and answers cited by Shri S.D. Singh as pointers for the failure of the Inquiring authority to consider are rather vague and thus lack clarity. He does not show any logical correlation between such identified questions and answers of different witnesses and how non-consideration of the same have impacted the conclusion of the Inquiring authority relating to the same.

2. The Inquiring authority in his report has examined the depositions of the various witnesses not only in a per se manner but also weighed the same in the holistic manner, before arriving at his conclusions. While the Development Officer could have given in writing this aspect at the time of underwriting, yet this does not in any manner affect the outcome of the inquiry.

3. This point does not impact the conclusion of the Inquiring authority nor does it have any relevance to the charge framed against Shri S.D. Singh.

4. A perusal of the Inquiry report reveal that all the pleadings in the written briefs were duly examined by the Inquiring authority before reaching his conclusions.

5. These are precisely the documents which were utilised to show the fraudulent nature of the claim and Shri S.D. Singh does not show anything significant against the conclusion of the Inquiring authority by raising this point.

Thus, I find that there are no merits in the points raised by Shri S.D. Singh so as to affect/alter the findings of the Inquiring authority relating to Article 1(a), 1(b) and 1(c). As a Branch Manager, Shri S.D. Singh was expected to maintain the highest standards of probity and protect the financial interest of the Company. Instead it was found that he actively participated in perpetrating fraud against the Company in the impugned underwriting and claim transactions, by instructing his subordinates to do unauthorised acts like handing over pre-signed blank policies to unconnected persons, overlooking alterations relating to critical aspects in underwriting and claim documents, causing unauthorised alterations, approving and paying fraudulent/ bogus claims etc. A Branch Manager is expected to discharge fiduciary responsibilities vested with him by the Company and while so engendering fraudulent underwriting through unauthorised means and approving and paying fraudulent/ bogus claims overlooking obvious discrepancies/ deficiencies/ contradictions/ overwritings as detailed in the Memorandum of charges and brought out in the subject inquiry proceedings only show the extent to which Shri S.D. Singh caused harm to the Company by compromising its financial interest and causing undue financial loss to the extent of Rs.46000/-to the Company with a corresponding undue financial gain to the Insured."

Opining, therefore, that, under the circumstances, retaining the petitioner "in the services of the Company would be extremely deleterious to the interest of the Organisation", the disciplinary authority imposed the penalty of removal from service, as noted hereinabove, "considering the acute gravity of misconduct

committed by him".

13. The petitioner appealed, against the aforesaid Order, dated 22nd May, 2006, to the appellate authority who, vide order dated 17th August, 2007, rejected the appeal. The following passages, from the order of the appellate authority, merit reproduction:

"I have independently and in detail perused the memorandum dated 6/6/04, reply dated 11/8/03, Inquiry report dated 19/9/05 alongwith the detailed proceedings, representation dated 1/2/06 of Shri S.D. Singh, the order dated 22/5/06 of the Disciplinary Authority, the appeal dated 14/8/06 preferred by Shri S.D. Singh and other relevant records. As regards the points raised by Shri.S.D. Singh in his appeal, I give below my observations:

a) Regarding point nos. 1, 2, 3 & 4: It has been proved from the letter dated 10/4/02 of the U.P.S.G. Vilas Bank Ltd. that there was no bank finance for the animal as the letter confirms that 'no loan has been disbursed to the above farmer' who is the insured under the policy no. 045631. The above mentioned letter dated 10/4/02 is found as issued in reply to the letter sent by Shri B.M. Kakkar requesting the bank to confirm whether the cattle was financed by the bank. The letter purportedly issued by the bank requiring correction in the cheque was not admitted in the enquiry as it was only a photocopy and cannot be relied upon and moreover in the light of letter dated 10/4/02 issued by the bank, it can be found that the letters mentioned in the appeal are not genuine. Further the claim intimation letter purportedly written on 18/3/2000 is found as received on 25/2/2000. Further the date of death of the animal has been altered from 17/2/2000 to 17/3/2000. The claim intimation letter has been received by Shri S.D. Singh on 25/2/2000. But this date has been altered to 25/3/2000 so as to suit the altered date of death of the animal. The claim file shows date of death has been tampered in other documents like Veterinary Certificate and Post Mortem Certificate. The tampering is so apparent that the Post Mortem Report is found as initially dated as 29/2/2000 and it has been altered to read as 29/3/2000. Hence it is very clear that the animal died on 17/2/2000 itself and not on 17/3/2000 as the certificate dated 29/2/2000 cannot state the date of death as 17/3/2000. Similarly, since the death intimation letter has been found and received on 25/2/2000 by Shri S.D. Singh, the death of the animal cannot be on 17/3/2000 and similarly the date of letter cannot be 18/3/2000 because it is impossible that a letter dated 18/3/2000 can be received on 25/2/2000. Hence it is very clear that the claim intimation letter purportedly issued by the bank is not a genuine one and further the animal was not in existence on 27/2/2000 which is the commencement date of the policy which also again proved as an altered date. Hence even though bank finance was not required for underwriting cattle insurance, as claimed by Shri S.D. Singh it was fraudulently shown as financed by bank by including the name of the bank in the policy so that the underwriting can be done, as in the normal course of bank finance the non-existence of animal will not be doubted. The letter seeking confirmation from the bank issued by Shri

B.M. Kakkar, BM specifically sought under point no. 1 to confirm whether the death intimation forwarded was duly signed by the bank. But the death intimation /copy of death intimation was not enclosed for their perusal. Hence the bank has replied under point no.1 in their letter dated 10/4/02 that death certificate has probably not been signed by any of the bank employee.

A perusal of both the letters together shows that the bank's letter only means death intimation mentioned under point no. 1 has not been signed by any of the bank employee though the word death certificate is wrongly mentioned. Since the intimation/copy was not enclosed for their perusal, they used the words 'probably' not been signed by any of the employee.

b) The point no. 5 raised by Shri S.D. Singh is not sustainable as it is well proved in the inquiry that only at the instance of Shri S.D. Singh, Shri D.K. Agarwal handed over pre-signed policies to Shri Furkhan Ali and it was very well established that the above named Shri Furkhan Ali was introduced by Shri S.D. Singh and it was got confirmed through his own defence witnesses apart from the evidence adduced by the management.

c) Point no. 6: The statement dated 10/4/02 of Shri D.K. Aggarwal was marked as Ext-6 and Shri D.K. Agarwal was examined as MW. It is found as stated by Shri D.K. Agarwal that the policy was sent to Shri S.D. Singh on 27/2/00.

d) Point no.7: The charge levelled against Shri S.D. Singh that he caused issuance of the cattle policies and hence the argument that the policy was signed by Shri Y.K. Sharma will not affect the findings of the Inquiry authority or the order of the Disciplinary Authority as it is well proved that Shri Furkhan Ali was introduced by Shri S.D. Singh and he procured cattle business which were underwritten through the Development Officers as he was not an agent of the company and further that the policies in question were underwritten under the instructions of Shri S.D. Singh. These charges proved, stands unchallenged during the cross examination of the witness by the defence.

e) As regards point no. 8, it is seen from the records of the inquiry proceedings that six witnesses were examined on the defence side and further it is seen that some of the witnesses which include the veterinary surgeon were not allowed for the reason that the witnesses were not properly identifiable. Moreover, even though adequate opportunity was given to him, Shri S.D. Singh did not produce the doctor who performed the postmortem of the animal in claim under Article I (a).

Hence the argument that IO disallowed the prayer without any reason is not sustainable.

(f) Point no.9: It has been established in the enquiry that the animals in claims mentioned under Article 1 (b) & (c) were not financed by bank. Bank has confirmed vide their letter Ext. 15, 16, 29 that they have not raised advance to the insured mentioned in the above claim and the claim cheques have been

credited in the SB A/c of the insured. In the above claim, the premium was given by way of DD of Punjab National Bank, Salempur that the bank has confirmed vide Ext. 15 that the DD was purchased by Shri Mahesh Singh against tender of cash. Thus, it is proved that the intention from the beginning was to show that the bank has financed the animals and that the bank has paid the premium. As it is well established that there was no bank finance, the manner in which the counter signature of the bank (purportedly) was obtained is best known to the insured. The ear tagging is also not a conclusive one. It has been found from the proceedings of the enquiry that Shri Furkhan Ali used to bring the health certificate alongwith premium. The health certificate bears the tag no. before the receipt of the same by the BO.

Hence the same cannot be relied upon to confirm the death of the animal. Similarly the claim from and claim intimation letters etc. cannot be relied upon to prove the death of the animal.

g) Point no.10: The IO has discussed in detail regarding the report of the investigator. Further the IO has pointed out so many discrepancies and other valid reasons for not relying upon the report of the investigator apart from the reason of inordinate delay in investigation and submission of reports. The deposition of the investigator also shows that he has not verified the bank interest either from the bank or from the insured and according to the investigator, his investigation was based on the statements given by the veterinary doctors, neighbours and the insured. The veterinary doctor's statement were undated and the statements allegedly taken from the neighbours were admittedly written by himself. Hence basic factors on which the investigation report lying themselves were found as very weak and unreliable.

h) Point no. 11: As a responsible officer, Shri S.D. Singh is bound to go through various documents involved in these claims and hence he cannot evade from his responsibility taking the defence that he relied on his subordinate officers.

i) Point no.12: The motive is understood that the premium was found receipted only on 28/2/2000 and hence the period of insurance was altered from 7/1/2000 to 6/1/2003 to 27/2/2000 to 26/2/2003 in order to cover the altered date of death i.e. 17/3/2000. It may not be possible to have a direct witness to forgery and tampering. But from various circumstances and evidences it is proved that Shri Furkhan Ali was introduced by Shri S.D. Singh and the policies were issued under instruction of Shri S.D. Singh and insurance was accepted and the claim was approved by Shri S.D. Singh despite material and apparent alterations in various claim documents. Above all, the date of receipt of the claim intimation letter has been changed from 25/2/2000 to 25/3/2000 so as to match the altered date of death i.e. 17/3/2000. The claim intimation letter has been received and acknowledged by Shri S.D. Singh and had the date of death of animal been on 17/3/2000, Shri S.D. Singh and had the date of death of animal been on 17/3/2000, Shri S.D. Singh would not have written the date of receipt as 25/2/2000. This would show the animal died prior to 25/2/2000 i.e. on

17/2/2000 and not on 17/3/2000.

j) Particulars

k) Actual date

l) as altered by Shri S.D. Singh

m) Date of death of animal

n) 17/2/2000

o) 17/3/2000

p) period of insurance of policy

q) 07/1/2000 r) 06/1/2003

s) 27/2/2000) Premium receipted only on t) 26/2/2003) 28/2/2000.

u) Date of intimation of claim at office

v) 25/2/2000

w) 25/3/2000

From this stage document in claim intimation letter itself, it is clear that Shri S.D. Singh is aware of the alterations. Had he not been aware of the alterations, he would have questioned the officials who processed/recommended the claim. Instead, he approved the claim and now is deliberately shifting the burden on the persons who processed/recommended the claim taking the defence that he simply relied on them.

j) Point no. 13: The letters issued by the bank were given in reply to the letter issued by the BM, Bulandshahar. These letters were addressed to the BM and the BM was cited as a witness and was subjected to cross-examination. In the cross-examination the defence had nowhere challenged the genuineness or authenticity of these documents. Moreover, these are not statements collected by the investigator as alleged by Shri S.D. Singh but there are documents given by the bank under their seal and signature after verifying the records confirming that as per their records no bank finance was done for the insured in the impugned claim.

k) Point no. 14, 15, 16 & 17: It was proved in the inquiry that the policies in the impugned claim were issued under forceful instruction of Shri S.D. Singh and it was fraudulently misrepresented in the health certificate, policy document etc. that there were bank finance in respect of the animals covered under the subject insurance. Further it was proved that the claim amounts were gone to the S/B account of the insured and not to any loan account. As per the bank records, bank finance and the existence of animals were disproved. The defence has not made any attempt to cite the owners of the animals in question to prove that the animals were in existence. Since the veterinary doctors who prepared the

certificates were not examined, the same cannot be relied upon especially when there were fraudulent misrepresentation in the Health Certificates regarding bank finance and alteration in the post mortem reports. Further all the post mortem reports are undated and the names of the doctors who conducted the post mortem are not clear in the reports. Hence the best available way open to the defence was to cite the owners of the animals and it appears that they had not attempted to the same. Moreover, even though adequate opportunity was given to him, Shri S.D. Singh did not produce the doctor who performed the post mortem of the animal in claim under Article 1(a). Further the CSO did not furnish the correct name and address in an identifiable manner of the doctors who conducted the post mortem of other animals. Since the identity was vague, EO could not allow the request. In brief, the existence and death of the animal has not been proved in the enquiry.

Further, the fact that Shri S.D. Singh deliberately did not take cognizance of the material alteration and the nature of alteration in the claim intimation letter regarding the date of receiving of the letter etc. would naturally lead to the conclusion that Shri S.D. Singh was very well aware of these fraudulent alterations. Otherwise had he been innocent he would have gone into the details of underwriting and claim processing aspects. Shri S.D. Singh by stating in his appeal as mentioned under point no. 16 that there are some underwriting lapses, is trying to dilute the fact of fraudulent and material alterations. Similarly, it is stated that bank interest was wrongly mentioned whereas it was proved that the same was done deliberately and fraudulent in order to cheat the company. Examination of the enquiry report alongwith relevant records would show that the conclusion of the EO & Disciplinary Authority are not on mere surmises or suspicions but it is well found on oral, documentary and circumstantial evidences.

l) Point no. 18 & 19: As per the policy and other claim documents, the name of the insured is Shri Mahesh Choudhary and not Shri Mahesh Singh. MW1, the investigating officer in his chief examination says that the bank confirmed that the draft was purchased by one Shri Mahesh Singh. He has not confirmed anywhere Shri Mahesh Singh and Shri Mahesh Choudhary are one and the same person. Further Shri S.D. Singh claimed that he had made the alterations on the basis of request letter from the bank but the bank had confirmed vide Ext. 29 that they have not issued any such request letter as claimed by Shri S.D. Singh. Even assuming that Shri Mahesh Singh and Shri Mahesh Choudhary are one and the same person, the charge proved against Shri S.D. Singh that he had approved bogus claims and caused financial loss to the company stands unaffected.

In view of the foregoing, the points raised by Shri S.D. Singh lack merit. On a perusal of the papers relating to the subject disciplinary proceedings, it is observed that the Inquiring Authority has conducted the inquiry as per the prescribed procedure giving all reasonable and adequate opportunity to Shri S.D. Singh to not only rebut the evidence in support of the charges but also put up his

side of the case. I also observe from the records relating to the subject proceedings that the findings of the Inquiring Authority are justified and in order based on evidence on record. Similarly, I find that the order of the Disciplinary Authority is well reasoned and logical and the penalty imposed on Shri S.D. Singh is reasonable and commensurate with the gravity of misconduct committed by him."

14. Aggrieved, the petitioner has invoked the jurisdiction of this Court, under Article 226 of the Constitution of India.

Rival Submissions

15. Arguing for the petitioner, Mr. Avadh Kaushik has advanced the following submissions:

(i) None of the charges had actually been proved in the inquiry proceedings.

(ii) Examination-in-chief of the Bank Manager, U. P. Gramin Sehkari Vikas Bank Ltd., Bank Manager, PNB Salempur and the Veterinary doctor who had performed the post-mortem of the dead animals, was not allowed as they had "not been properly identified and are vague". This was entirely unjustified; the said witnesses had specifically been denoted, by the petitioner, by reference to the designations, and it could not be said that the request for allowing them to be led as defence witnesses was vague. Had the evidence of the Bank officers been taken on record, the petitioner would have been able to prove that they had actually sanctioned loan for the capital.

(iii) The punishment imposed on the petitioner was disproportionate to the charges found proved against him, especially as there was no allegation of any ulterior motive, on the petitioner's part. Neither was it alleged that the petitioner was in conspiracy with any other officer.

(iv) The issuance of the policies was the responsibility of the Development Officers, against whom no proceedings had been conducted. The petitioner had, therefore, been singled out for disciplinary action.

(v) The death certificates, and post-mortem reports of the cattle, had been produced.

16. The finding, of the disciplinary authority, that the petitioner was guilty of misconduct was, therefore, Mr. Kaushik would seek to submit, unsustainable on facts and in law.

17. Arguing per contra, Mr. Pankaj Singh Thakur, drew pointed attention to the fact that the petitioner was guilty of having cleared as many as six bogus claims for capital insurance. He pointed out that the matter had been examined, in detail, by the IO, the disciplinary authority, as well as the appellate authority, and submitted that no case, for interference with these findings, could be said to have been made out. He highlighted the fact that it was an admitted position that the petitioner had not taken any steps, even though he had noticed the

alterations in the policy documents. Drawing attention to the manner in which the proceedings had been conducted, and due and complete compliance, with the principles of natural justice, having, according to him, been ensured therein, Mr. Thakur would request that the writ petition be dismissed.

Analysis and Conclusion

18. In order to appreciate the scope and ambit of the jurisdiction, of this Court, under Article 226 of the Constitution of India, while examining a challenge, laid by an officer to disciplinary proceedings, and to the punishment meted out to her, or him, as a consequence thereof, one need only refer to the following passages, from *Central Industrial Security Force v. Abrar Ali*, (2017) 4 SCC 507:

"13. Contrary to findings of the disciplinary authority, the High Court accepted the version of the respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the disciplinary authority that the unit had better medical facilities which could have been availed by the respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamounts to reappraisal of evidence. It is settled law that reappraisal of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India.

14. In *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721, this Court held as follows: (SCC p. 587, para 7)

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, *Union of India v. G. Ganayutham*, (1997) 7 SCC 463, *Bank of India v. Degala Suryanarayana*, (1999) 5 SCC 762 and *High Court of Judicature at Bombay v. Shashikant S. Patil*, (2000) 1 SCC 416)"

15. In *Union of India v. P. Gunasekaran*, (2015) 2 SCC 610, this Court held as follows: (SCC pp. 616-17, paras 12-13)

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

(Emphasis supplied)

19. So fossilized, indeed, have these principles, with passage of time, become, that any transgression thereof, by a writ court, would amount to a direct affront

to Article 141 of the Constitution of India.

20. Viewed in the backdrop of these principles, this Court is unable to find any justifiable ground to interfere, with the decision of the disciplinary authority, or of the appellate authority. Pain has been taken, to reproduce, in extenso, the observations and findings of the disciplinary and appellate authorities, as these demonstrate, unequivocally, that all relevant factors have been taken into account, not only by the IO, but, again, by the disciplinary authority and, yet again, by the appellate authority. Even if, therefore, there were any infirmities in the manner in which the proceedings were conducted by the IO, as Mr. Kaushik has sought to demonstrate, these infirmities, if any, cannot result in vitiating the ultimate outcome thereof, as the matter has been holistically seen, after the submission of the Inquiry Report and the representation, of the petitioner, thereto, both by the disciplinary authority and the appellate authority.

21. None of the limited grounds, on which, in such cases, writ courts could interfere, can be said to have been made out in the present instance. This Court does not, therefore, find it appropriate to enter into the factual niceties of the allegations against the petitioner, nor into the individual findings, thereon, by the IO, the disciplinary authority or the appellate authority. Suffice it to state that this court does not espy any ground to interfere there with.

22. Neither does this Court find substance, in the submission, of Mr. Kaushik, regarding the proportionality of the punishment imposed on the petitioner. "Deliberate" transgression, by the petitioner, of the prescribed procedure, and allowing, by the petitioner, of claims which, on their face, were not in order, has not only been alleged, but has been found to have been proved and established, at several successive stages. The submission, of Mr. Kaushik, that there is no allegation of "ulterior motive", colouring the petitioner's actions cannot, therefore, be accepted. Suffice it to state that the punishment imposed on the petitioner cannot be said to be so disproportionate, to the charges found to have been proved, as to shock the conscience of the court.

23. No case, therefore, can be said to have been made out, as would warrant interference, by this Court, with the decision of the disciplinary authority, as upheld by the appellate authority.

24. The writ petition is accordingly dismissed, with no order as to costs.