
(2006) 03 DEL CK 0216
In the Delhi High Court
Case No : Writ Petition (C) 7820 of 2004

Shri V.K. Jain

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 25

Citation : (2006) 88 DRJ 749 : (2006) 3 RCR(Civil) 297

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : B.K. Pal, for the Appellant; Mamta Mehra, for the Respondent

Judgement

S. Ravindra Bhat, J.—In this petition under Article 226 of the Constitution of India, two orders, dated 18.10.2000 and 24.10.2001, issued by the first respondent (hereafter called the "Company") have been questioned.

2. It is the common case of parties that pursuant to a charge sheet issued, a departmental enquiry was instituted into an incident which is alleged to have occurred on 03.07.1997, the petitioner was asked to answer to the charges. An Enquiry Officer appointed for the purpose, after hearing the parties and considering the materials, submitted his report on 10.12.1999. The petitioner was suspended from the services and later, the disciplinary authority issued the penalty of censure.

3. The Enquiry Officer held that all the five charges were not proved. By the order dated 19.06.2000, the Manager of the Company, in exercise of his powers under Rule 25 of the General Insurance (CDA) Rules 1975, imposed the penalty of censure. The petitioner appealed against the order. His grievance was that the company should not have imposed any penalty, without giving him an opportunity as the Enquiry Officer had exonerated him. By the order dated 18.10.2000, the appeal was rejected and the subsequent memorial preferred by the petitioner, was also rejected by the Chairman-cum- Managing Director on

24.10.2001.

4. The learned Counsel for the petitioner submitted that the impugned orders were issued without authority of law and were arbitrary. He contended that once the Enquiry Officer found that the petitioner was not guilty of the charges, the respondents were under a duty to issue a separate Show Cause Notice and give further opportunity in the event of their disagreeing with the findings of the Enquiry Officer.

5. Learned counsel for the petitioner relied upon the judgment of the Supreme Court reported as Punjab National Bank v. Kunj Bihari Mishra 1998 (7) SCC 14 and Yoginath D. Bagde v. State of Maharashtra 1997 7 (SCC) 739 to contend that wherever the competent authority wishes to differ with findings of the Enquiry Officer, it is under a duty to indicate the points of difference through a suitable disagreement memo/note, issue Show Cause Notice and give proper opportunity to the official. He submits that this procedure was not followed, resulting in arbitrariness.

6. Learned counsel for the petitioner submitted that although the question of wrongful withholding of promotion had been raised in the writ petition, that issue would not be pressed at this stage and he sought liberty to do so in other proceedings, in case the grievance with regard to proper procedure was accepted.

7. Learned counsel for the respondents reiterated the contentions in the counter affidavit and submitted that there was no need to grant personal hearing for imposition of a minor penalty of censure. It was contended that since the disciplinary authority satisfied itself on the basis of all materials, such as article of charges, reply to charge sheet, deposition of witnesses, it came to an independent conclusion that the petitioner was guilty of a minor misconduct warranting imposition of censure. It was also contended that since Principles of Natural Justice had been followed at each and every stage of the enquiry proceedings, the question of granting further opportunity after submission of enquiry report did not arise.

8. The Supreme Court in the judgment reported Kunj Bihari Mishra held (and as subsequently followed in other judgments,) that where the employee is exonerated in a departmental enquiry by the duly appointed Enquiry Officer and the competent or disciplinary authority wishes to disregard the findings and arrive at, independent conclusions contrary to those of the Enquiry Officer, but adverse to the employee, it has to necessarily (and as a matter of law,) furnish fresh opportunity to the employees after issuing a separate Show Cause Notice indicating briefly the terms of disagreement with the findings recorded in the enquiry. In this case, the procedure adopted by the management was to hold a full fledged enquiry into the charges, with a view to impose a major penalty. The Enquiry Officer recorded that the charges leveled, were not proved. In stead of issuing Show Cause Notice, the respondent straightaway imposed a minor penalty.

9. I am of the opinion that the impugned orders imposing the penalty of censure is contrary to the law laid down by the Supreme Court in Kunj Bihari Mishra's case. Once the management was of the opinion that the allegations warranted investigation and a report after a full fledged enquiry, and obtained findings of the Enquiry Officer, it could not have side stepped the procedure, more so when the Enquiry Officer exonerated the petitioner. Having chosen to hold a full fledged enquiry which led to the petitioner's exoneration, it was open to the disciplinary authority to record contrary findings in accordance with law as laid down in Kunj Bihari Mishra's case. It could not, however, have changed the procedure with a view to impose some other penalty and set up that as a defense for not following the law declared by the Supreme Court.

10. In view of the above findings, the impugned orders are hereby quashed. The respondents are, however, at liberty to proceed further with the departmental proceedings after issuing a notice of disagreement and giving suitable opportunity to the petitioner to answer a Show Cause Notice on the basis of such disagreement. The final order shall be passed at the earliest and in any case not later than three months from today.

11. Liberty is reserved to the petitioner to approach the court in respect of any grievance after the issuance of the final order. In such an event, it is also open to him to raise the other contentions pleaded in this case.

Rule made absolute in the above terms. No costs.