(2012) 04 CAL CK 0098

In the Calcutta High Court

Case No : Writ Petition No. 26371 (W) of 2008 with CAN No. 3560 of 2009

Siddheswar Majumdar APPELLANT

Vs

Senior Divisional Manager, Asansol Division, LICI and Others RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 39, 39(1)
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (2012) 134 FLR 732

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Murari Mohan Das, for the Appellant;Arijit Chowdhury and Mr. Dilip Kr. Kundu, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—The Petitioner, Siddheswar Majumdar, prays for an Order commanding upon the Respondents to withdraw the charge-sheet dated 22.12.2007 (Annexure P-3); the Enquiry Report dated 21.7.2008 (as contained in Annexure P-5) and restraining the authorities from passing any Order of Penalty as specified under Regulation 39(1)(a) to (g) of the L.I.C. Staff Regulations by either relying upon the said charge-sheet or the said Enquiry Report. The short facts of the case are that the Petitioner, while working on the Post of a Peon in the Asansol Branch of the Life Insurance Corporation of India, was served with a notice dated 18.9.2007 informing him that a Complaint in the form of an F.I.R. had been lodged against him sometime in November, 2006 by one Samai Majhi before the learned Additional Chief Judicial Magistrate, Asansol under Sections 420, 120B of the Indian Penal Code and the case was pending.

2. In the said Complaint, Majhi had alleged that he had a Policy No. S/460029998 which had matured on 28.7.2004. The Policy showed particulars of a loan to the extent of Rs. 35.826/- which Majhi, however, never received and on investigation it was revealed that the Petitioner had unauthorizedly taken hand

delivery of the loan Cheque on 3.10.2002 thereby defalcating the amount in question.

3. It was also alleged that on an earlier occasion also, the Petitioner had got himself involved in a similar misconduct of taking unauthorised delivery of Cheques of Policy Holders. Those Policy Holders had complained that they had not received the Cheques and, therefore, a Vigilance case, being Vigilance Case No. 9449, had been registered and the Disciplinary Authority, after finding him guilty, had imposed the penalty of "reduction of basic pay to the minimum of the scale" in terms of Regulation 39(1)(d) of the LIC of India Staff Regulations, 1960.

4. The Petitioner was asked to submit an explanation within 10 days. By a subsequent letter dated 30.11.2007, the Senior Divisional Manager, LIC-I, Asansol Division, requested the Petitioner (Annexure P-2 at page 41) to disclose the name and Code Number of the Agent who had acted as a mediator between Samai Majhi and the Petitioner and also to explain as to why had he taken hand delivery of the loan Cheque directly without obtaining any authorisation from the Policy Holder.

5. This letter dated 30.11.2007 was in reply to the Petitioner''s letter dated 27.10.2007 (Annexure P-1 at page 40) wherein, he had stated that he had wanted to help the Policy Holder when he had approached him (the Petitioner) to expedite receipt of payment. According to the Petitioner, the Policy Holder was accompanied by an Agent who was known to him but he did not know about the encashment of the payment which came to his notice only after an F.I.R. had been lodged.

6. By a subsequent letter purporting to be in reply to the letter dated 30.11.2007, the Petitioner wrote to the Senior Divisional Manager informing him that the name and Code Number of the Agent who had acted as a mediator between him and Samai Majhi was Ashish Lal whose Code No. was 686/487/46G. He further stated that he had taken hand delivery of the Cheque to help the Policy Holder and also on the request of the said Agent and on good faith, he did not get a written authority from the Policy Holder. This letter dated 28.12.2007 is Annexure P-2 at page 42.

7. It is, thereafter, that the impugned charge-sheet dated 22.12.2007 was issued vide Annexure P-3 at page 43 of the writ petition.

8. In reply to the same, the Petitioner sent a letter to the Senior Divisional Manager on 4.1.2008 wherein he stated that the loan Cheque of Samai Majhi being cheque No. 338481 for a sum of Rs. 35,840/- was encashed from his account. He also stated that the Petitioner had already explained that he had handed over the cheque to the Agent who had requested him to take delivery of the same and since the Petitioner had an account in the Head Post Office, Asansol, he had put his signature as one of the introducers of Samai Majhi in order to open an account.

9. The Petitioner has, however, stated that he was neither the beneficiary nor perpetrator and that there was a misunderstanding between the Agent and Samai Majhi for which he had become a victim. Thereafter, the Petitioner filed Written Submissions in relation to the Vigilance Case. It appears that thereafter on 21.7.2008, the Enquiry Report was forwarded to the Petitioner. On 21.8.2008, the Petitioner protested to the said Enquiry Report vide his letter addressed to the Senior Divisional Manager as contained in Annexure-P/6.

10. Thereafter, a show-cause Notice was issued to the Petitioner on 2.9.2008 whereby and where under, he was directed to show-cause, within 15 days, as to why he should not be held guilty and as to why the proposed penalty of "Removal from services of the Corporation" be not imposed upon him. In the background of the aforesaid facts and grievances, the Petitioner has filed this Writ Petition before this Court.

11. Mr. Murari Mohan Das, learned Counsel appearing for the Petitioner has submitted that the charge-sheet shows that the Respondents had already decided to impose the penalty. According to him, such an exercise was, therefore, a complete eye-wash and, therefore, the charge-sheet itself cannot be held to be sustainable as the Respondents had already made up their mind to remove the Petitioner from service.

12. According to him, Regulation 39 of the LIC Staff Regulations indicates the punishments and, therefore, by referring to Regulation 39(1)(a) to (g), was itself an example to show that the Respondents had made up their mind. Regulation 39(1)(a) to (g) reads as follows:

"39. (1) Without prejudice to the provisions of other regulations, [any one or more of] the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed [by the disciplinary authority specified in Schedule I] on an employee who commits a breach of regulations of the Corporation, or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct:

(a) censure;

(b) withholding of one or more increments either permanently or for a specified period;

(c) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders;

(d) reduction to a lower service, or post, or to a lower time-scale, or to a lower stage in a time-scale;

(e) compulsory retirement;

(f) removal from service which shall not be a disqualification for future employment;

(g) dismissal."

(Quoted)

13. Learned counsel for the Petitioner has submitted that the Petitioner had merely wanted to help the Policy Holder in opening the account and the said Policy Holder i.e. Samai Majhi was not even examined. The Petitioner has further stated that from the findings of the Enquiry officer, it will appear that there is no positive finding as to whether, the Petitioner had actually withdrawn the amount.

14. In the opinion of this Court, the submissions on behalf of the Petitioner are totally misconceived. In a case of Satya Ranjan Dhar Vs. Life Insurance Corporation of India and Others, , it has been held at page 1008 that mere proposal of several punishments, major or minor, in the charge-sheet will not by itself indicate that the disciplinary authority was biased or prejudiced against the delinquent. Moreover, in the charge-sheet itself, it is to be noticed that it uses the words that "any one or more" of the penalties that could be imposed upon him if he was unable to dispel the case made out in the Enquiry Report.

15. Moreover, it appears that the Petitioner was served with a second show-cause notice being the show-cause notice issued on 2.9.2008 wherein the disciplinary authority, while merely referring to the provisional proposal of punishment, had given an opportunity to the Petitioner to show cause as to why he should not be held guilty of the charges, but instead of facing and replying to the same, he has filed this Writ Petition.

16. Another important aspect that cannot be lost track of, is that the Petitioner seems to be a habitual offender in such matters. This would be evident from the letter dated 18.9.2007 written by the Senior Divisional Manager and addressed to the Petitioner, which has been brought on record vide Annexure P-1 at page 38 of the writ petition and in which FIR No. 278/2006 has been referred to.

17. Bias of the Enquiry Officer or bias of the authorities cannot be allowed to be accepted at this stage when the Petitioner has faced the entire enquiry.

18. Another important aspect is the non-chalant manner in which the Petitioner had named one Ashish Lal as the mediator by his letter dated 20.12.2007. However, from the Enquiry Report, it is evident that such an Agent was never in existence and when this was pointed out to the Petitioner, he chose not to comment on the same till close of regular hearings. This would be evident from paragraph 1 at internal page 7 of the Enquiry Report. In view of the facts and circumstances, this Court is not inclined to interfere.

The Writ Petition is accordingly Dismissed. There shall, however, no Order as to Costs.

In view of the aforesaid Judgment, CAN 3560 of 2009 is allowed and the interim

Order dated 25.9.2008 granted earlier, is hereby vacated giving liberty to the Respondents to pass final Orders in the Disciplinary Proceedings.

Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.

