
(2011) 08 DEL CK 0205
In the Delhi High Court
Case No : W. P. (C) 4170 of 1999

S.P. Arya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 21, 39, 39(1), 39(4)
Life Insurance Corporation Act, 1956 — Section 49(2)

Citation : (2011) 7 AD 212 : (2012) 132 FLR 134 : (2011) 6 ILR Delhi 808 :
(2011) LLR 1139

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : R.K. Saini and Sitab Ali Chaudhary, for the Appellant; Kamal Mehta,
for R-3/LIC of India and None for R 1/UoI, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The Petitioner challenges an Award dated 16 June 1990 passed by the Central Government Industrial Tribunal ("CGIT") in ID No. 112 of 1990 upholding the validity of the action of Respondent No. 3, Life Insurance Corporation of India ("LIC"), in removing the Petitioner from service with effect from 11 August 1980.

2. The Petitioner joined the services of the LIC on 4 December 1963 as an Office Assistant. The service conditions of the Petitioner were covered by the Life Insurance Corporation of India (Staff) Regulations 1960 ("Staff Regulations") framed u/s 49(2) (b) and (bb) of the Life Insurance Corporation of India Act, 1956 ("LIC Act"). The Petitioner states that he was an active trade union member and the General Secretary of the Meerut Division of the Insurance Employees Union. He was also at one time its President. The Petitioner states that in April 1975 while he was Joint Secretary of the Central Zone Insurance Employees Federation he brought to the notice of the Zonal Manager ("ZM") certain irregularities and abuse of authority by the then Divisional Manager

("DM"). The dismissal of the Petitioner after a show cause notice-cum-charge sheet issued by the DM was revoked in 1977 and the Petitioner was reinstated with consequential benefits. In June 1977, the Petitioner went on a hunger strike protesting against the excesses of the management in suspending a number of other officers and workmen. Subsequently the cases against the workmen were withdrawn. According to the Petitioner the agitation annoyed the management.

3. In 1978 there were massive floods in north India. On account of the management not acceding to the demand of the LIC employees for flood advance, a "work to rule" was observed by the workmen and various unions for two days in the first week of November 1978. The Petitioner states that he played an important role in this agitation as a trade union activist. The Petitioner states that as a result he was arbitrarily transferred from Meerut to Mhow in Madhya Pradesh by an order dated 27 November 1978. Seven employees who happened to be the office bearers of the trade union, excluding the Petitioner, were issued charge sheets on 28 November, 1978 and were placed under suspension. The Petitioner states that he had gone on casual leave in the first half of 27 November 1978 and then from 28 November to 2 December 1978. He claims to have been undergoing medical treatment on account of which he had to get his leave extended. Consequently, he was not able to receive the transfer order and learnt of it from a newspaper report of 13 December 1978 while he was still bedridden. The Petitioner maintains that he was not officially conveyed the orders of the management that he should report for duty at Mhow in Madhya Pradesh. He claims to have been sending the management the medical certificates justifying his seeking leave on medical grounds.

4. The case of the LIC is that the Petitioner did not comply with the repeated orders issued by the Divisional Office at Meerut asking him to join duties at the branch office at Mhow before 30 December, 1978. LIC maintains that the Petitioner came to know of the transfer order on 27 November 1978 itself but left the office by submitting a leave application for half a day thus avoiding service of the transfer order on him. He extended his leave up to 2 December, 1978. However, he kept visiting the office, attending meetings and organising demonstrations. At 4 pm on 29 November 1978 the Petitioner along with an advocate met the DM and pressed him for withdrawal of the transfer order. When the DM did not agree he was threatened with dire consequences including physical injury to him personally and to the members of his family. On the same day at about 7 pm the Branch Manager (C&S) was sought to be manhandled but somehow the situation was averted by the arrival of a police mobile van. Thereafter two communications were sent to the Petitioner's residential address by the LIC by registered post. These were returned by the postal authorities undelivered with the remark "avoided to take". The orders were also displayed on the notice board of the Divisional Office on 2 December, 1978 in accordance with the procedure prescribed in the Staff Regulations. The DM published the information about the transfer of the Petitioner in the daily newspaper. By a letter dated 22 December, 1978 the

Petitioner th was directed to join duty at the branch office at Mhow before 30December, 1978. The same letter made it clear to the Petitioner that if he failed to join as directed he would th expose himself to disciplinary action. This letter was received by the Petitioner on 24December, 1978. However, he did not comply with the order and kept addressing leave th applications to the Divisional Office at Meerut. The DM addressed letters dated 30 th December, 1978 and 25January 1979 directing the Petitioner to address leave applications to the DM at Indore where his services had been transferred. Nevertheless, the Petitioner continued addressing leave applications to the DM at Meerut. Another th registered letter was addressed to the workman on 5February 1979 asking him to join th duty at Mhow. This letter was received by the Petitioner on 9February 1979 but he did not comply with the order. Another letter was issued to them on 21st August 1979 which nd was received by the Petitioner on 22September, 1979 but he continued to defy the orders.

5. Since the Petitioner was pleading illness, the DM at Indore constituted a panel of medical examiners headed by Dr RK Aggarwal of the Medical College Meerut to th examine the Petitioner. By letter dated 15February 1980 he directed the Petitioner to th rd appear before the said panel on 17March 1980. The Petitioner by his letter dated 23 th March, 1980 claimed that he had received the information only on 19March, 1980 and therefore could not appear before the panel. Dr Aggarwal again fixed the date of th medical examination as 11April 1980 and informed the Petitioner of that date both by telegram and by a letter dated 31st March 1980. This was received by the Petitioner, but he challenged the constitution of the panel and refused to appear before it.

6. The ZM by order dated 26April 1980 modified the transfer order and asked the Petitioner to report for duty at Panipat, a place nearer to Meerut. However even this th modified order was not complied with by the Petitioner. By letter dated 15May 1980 the Petitioner was directed to report for duty at Panipat within seven days. He was alternatively asked to get in touch with Dr Aggarwal for medical examination if he was still pleading sickness. The Petitioner did neither. He instead resorted to a hunger strike and submitted a fitness certificate dated 21st May 1980.

7. A detailed order was passed by the ZM on 21st June 1980 concluding that it was not reasonably practicable to follow the procedure laid down in Regulation 39 of the Staff Regulations and to hold an enquiry. He accordingly ordered that a charge sheet-cum-show cause notice should be issued to the Petitioner proposing the penalty of removal from service under Regulation 39 (1) (f). The charge sheet stated that the Petitioner had committed gross breach of discipline, defied office orders, disobeyed lawful orders of competent authorities, knowingly done things detrimental to the interests of the LIC and acted in a manner prejudicial to good conduct thereby violating the provisions of Regulations 21 and 39 (1) of the Staff Regulations. The Petitioner was asked to reply to the show cause notice within ten days. The Petitioner kept seeking time to reply to the show cause

notice which time was extended periodically. Despite numerous rd opportunities the Petitioner did not file any reply. By a letter dated 23July, 1980 he th sought time till 16August, 1980 and asked for a copy of the establishment manual, copies of the circulars regarding transfers and a copy of the report of Dr Aggarwal. These documents were not relevant for the Petitioner to file his reply. Moreover since the Petitioner had not appeared before Dr Aggarwal's panel there was no question of giving him a copy of any report of such panel.

8. By the impugned order dated 11August 1980 the ZM, after discussing the charges and the documents in support thereof, imposed on the Petitioner the punishment of th removal from service under Regulation 39 (1) (f) of the Staff Regulations. On 10October 1980 the Petitioner preferred an appeal against the said order. The Managing Director of LIC, after considering the Petitioner's appeal, dismissed it by a speaking th order dated 20 June 1981. The Petitioner then preferred a memorial to the Chairman on th 8July, 1981 in which he inter alia prayed for a lenient view to be taken and undertook "to completely eschew violence of any sort and intimidating tactics even as part of my association with trade union activities or otherwise." In a further letter dated 23September 1991 the Petitioner tendered his apology for the incident and assured to maintain discipline in the office.

9. Initially, against the order dated 10August, 1980 the Petitioner filed a writ petition in the Allahabad High Court. Against the dismissal of the said writ petition the Petitioner filed a SLP ("SLP") in the Supreme Court. While dismissing the SLP the Supreme Court gave liberty to the Petitioner to seek a fresh reference of the dispute to the Labour Court. It appears that thereafter the Petitioner invoked the processes under the Industrial Disputes Act, 1947 ("ID Act") and a reference th was made to the CGIT. The impugned Award dated 16June 1998 of the CGIT was th challenged in the present petition in which this Court issued rule on 28January 2000. Subsequently, the writ petition was permitted to be amended.

10. Mr RK Saini learned Counsel for the Petitioner first assailed the transfer order dated th 27November 1978 as being mala fide and issued only with a view to punish the Petitioner for espousing the just causes of the workmen. This plea was examined by the CGIT and found to be without substance. The narration of facts shows that the management was in fact not rigid about the place of transfer. After unsuccessfully trying th to get the Petitioner to comply with the transfer order dated 27November 1978 the ZM th issued another order on 26April 1980 asking the Petitioner to report at the Panipat office of the LIC which was nearer to Meerut. This effectively negates the plea that the transfer of the Petitioner was actuated by malice. On the other hand, there was sufficient material on record before the CGIT to show that the Petitioner deliberately avoided th service of the transfer order dated 27November 1978. Later, he kept sending representations to the DM at Meerut and defied the orders of transfer. When a medical board was constituted, the Petitioner failed to appear before it

despite the dates being fixed twice. The Petitioner thus failed to avail of the opportunity to establish his medical condition, which was the principal reason pleaded by him for not complying with the transfer order. When later he was transferred to Panipat he continued to remain absent without justification. He was given one more chance at that stage to get in touch with Dr Aggarwal for medical examination. This too he did not do. In fact he himself produced a fitness certificate and yet did not report for duty at Panipat. This Court finds no error in the analysis of the evidence by the CGIT and its conclusions on this aspect. The Petitioner has been unable to offer any satisfactory explanation for his inability to report for duty, during the period of two years after 27 November 1978, either at Mhow or at Panipat. This brazen defiance of the orders issued to the Petitioner to report for duty was a gross act of indiscipline. The Petitioner had sufficient opportunity even before the CGIT to produce medical certificates to justify his staying away from the enquiry. He appears to have not been successful in proving that case before the CGIT. This Court obviously cannot re-appreciate the evidence. On this aspect the impugned Award cannot be said to be perverse or contrary to the evidence on record.

11. Mr Saini fervently urged that a major penalty like removal of an employee from service could not have been awarded without a proper enquiry. He assailed the order dated 21st June 1980 passed by the ZM opining that it was not reasonably practicable to hold an enquiry in terms of Regulation 39 (4) (ii). Relying on the decisions of the Supreme Court in *U Union of India and Another Vs. Tulsiram Patel and Others*, and *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, it was submitted that the reasons adduced by the ZM for dispensing with the enquiry were not justified or reasonable. He submitted that the ZM had cited the very reasons for removal of the Petitioner from service as the reasons for not holding the enquiry and therefore the requirement of Regulation 39 (4) was not satisfied. Further, it was incumbent on the ZM to consider whether in the circumstances where the Petitioner was unable to report for duty on account of his medical condition, an enquiry could be held even at a later point in time when he was found medically fit. Mr Kamal Mehta learned Counsel for the LIC on the other hand referred to the order dated 21st June, 1980 and the finding of the CGIT thereon and submitted that the ZM was justified in his conclusion that it was not reasonably practicable to hold an enquiry in terms of the procedure under Regulation 39.

12 Regulation 39 of the Staff Regulations reads as under:

Penalties 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] 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 W. P. (C) 4170 of 1999 Page 6 of 9 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.

(2) No order imposing on an employee of any of the penalties specified in Clauses (b) to (g) of sub-regulation (1) supra, shall be passed by the disciplinary authority specified in Schedule without the charge or charges being communicated to him in writing and without his having been given a reasonable opportunity of defending himself against such charge or charges and of showing cause against the action proposed to be taken against him.

(3) The disciplinary authority empowered to impose any of the penalties, (b), (c), (d), (e), (f) or (g) may itself enquire into such of the charges as are not admitted or if it considers it necessary so to do, appoint a board of enquiry or any enquiry officer for the purpose.

(4) Notwithstanding anything contained in sub-regulations (1) and (2) above

(i) where a penalty is imposed on an employee on the grounds of conduct which had led to a conviction on a criminal charge; or

(ii) where the authority concerned is satisfied for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in this regulation; or

(iii) where an employee has abandoned his post, the disciplinary authority may consider the circumstances of the case and pass such orders .

Explanations 1: For the purpose of this regulation, an employee shall be deemed to have abandoned his post if he absents himself from duty without leave or overstays his leave for a continuous period of ninety days without any intimation therefore in writing.

2. All communications under this regulation and copies of orders passed

thereunder may be delivered personally to the employee if he is attending office; otherwise they shall be sent by registered post to the address noted in the service record. Where such communications or copies of orders cannot be served on him personally or by registered post, copies thereof shall be affixed on the notice board of the office in which the employee is employed, and on such affixing such communications and orders shall be deemed to have been properly served on him.

13. The requirement under Clause (2) of Regulation 39 is that before imposing any penalty on an employee under Sub-clauses (b) to (g) of Clause (1) of Regulation 39, which includes removal from service, the employee should be communicated the charges in writing and be given a reasonable opportunity of defending himself against the charges. He has also to be issued a show cause against the action proposed to be taken against him. This in effect would mean two show cause notices; one prior to the commencement of the enquiry and the second prior to the imposition of the penalty. The exception to the above requirement is Clause (4) of Regulation 39, in terms of which the authority can dispense with the holding of the enquiry provided he records reasons in writing that it is not reasonably practicable to follow the procedure under Regulation 39 (1) read with Regulation 39 (2).

14. The narration of events indicates that numerous attempts were made by the LIC to get the Petitioner to comply with its orders of transfer. These attempts for over a period of eighteen months from 27th November 1978 till 21st June 1980 were unsuccessful. The Petitioner was refusing to even submit to any medical examination. The general attitude of the Petitioner was that of defiance. He simply was not prepared to comply with any order whatsoever that was issued by the LIC. The decision to dispense with the holding of an enquiry was not taken in a hurry. It is only after waiting for more than eighteen months and after complete frustration with every attempt at making the Petitioner report for duty that the ZM concluded that it was not reasonably practicable to hold an enquiry. While this also constituted the reason for the Petitioner's ultimate removal from service, it certainly was a valid consideration for the decision to dispense with the holding of an enquiry. Without the participation of the charged employee the holding of an enquiry would be a futile exercise. This Court concurs with the CGIT that the order dated 21st June 1980 passed by the ZM was valid.

15. Mr Saini submitted that the impugned order of dismissal was passed by the ZM whereas the Petitioner's disciplinary authority was the Divisional Manager. The ZM, he pointed out, was the Appellate Authority ("AA"). It is submitted that with the AA himself passing the order of removal, the Petitioner was effectively denied one tier of appeal. Apart from the fact that this plea does not appear to have been urged before the CGIT, this Court finds that against the order of removal the Petitioner preferred an appeal to the Managing Director. It cannot therefore be said that the Petitioner was deprived of any right of appeal. In any event, the Petitioner had a full innings before the CGIT as well. There is therefore

no merit in this submission either.

16. Mr Saini ultimately submitted that the punishment of removal from service was too harsh in the facts and circumstances of the case. This Court is unable to agree. This is indeed an extraordinary case where an employee has defied the orders of transfer as well as the orders to report for duty. He also did not comply with the orders to appear before a medical board to prove his medical condition. Even after proclaiming that he was medically fit the Petitioner continued to defy the transfer order. The LIC obviously was left with no other option but to remove him from service for this gross act of indiscipline. The punishment awarded by the LIC, which has been upheld by the CGIT, does not call for interference.

17. For all the aforementioned reasons this Court finds no ground having been made out for grant of any of the reliefs prayed for by the Petitioner. The writ petition is dismissed, but in the circumstances, with no order as to costs.