

---

**(1989) 04 MP CK 0006**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 3291 of 1985**

Surjeet Singh

APPELLANT

Vs

New India Assurance Co. Ltd. and another

RESPONDENT

---

**Date of Decision :** 12-04-1989

**Acts Referred:**

Constitution of India, 1950 — Article 226

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 31

**Citation :** (1989) MPJR 534 : (1989) MPLJ 521

**Hon'ble Judges :** Rampal Singh, J; Faizanuddin, J

**Bench :** Division Bench

**Advocate :** D.M. Dharmadhikari, for the Appellant; P.S. Nair, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Faizanuddin, J.

The petitioner who was employed as a Branch Manager in the New India Assurance Company, respondent No. 1 herein, seeks a writ of certiorari under Article 226 of the Constitution of India for quashing the order of his dismissal from service dated 18th March, 1985 (Annexure A) passed by the General Manager of the Company, as well as, the order dated 29th July, 1985 (Annexure B) passed by the respondent No. 2 dismissing his departmental appeal.

At the relevant time the petitioner was serving as Branch Manager in the New India Assurance Company, Bombay, the respondent No. 1, a nationalised Company (hereinafter referred to as "the respondent Company") and was posted at hand. It appears that originally certain complaints were made to the Company against one Dr. R.K. Kaushik a Veterinary Surgeon, Bhopal. Dr. Sattarkar, Veterinary Officer was deputed to investigate into those complaints. During the investigation of reports against Dr. Kaushik, a large number of complaints are said to have been received against the petitioner also which were also investigated and a report was submitted to the General Manager of the Company

stating that the petitioner was involved in cattle claims in respect of non-living owners and non-existing cattle and trying to make money in settlement of claims. Thereafter P.R. Joshi, the Audit Officer of the respondent Company was deputed to make a preliminary enquiry into the alleged involvement of the petitioner in fraudulent cattle claims at the place of his posting at Itarsi, P.R. Joshi made preliminary enquiry against the petitioner and submitted his report dated 3-11-1980 stating that the petitioner was deeply involved in the malpractices alleged against him. After the receipt of report from P. R. Joshi, the Vigilance Officer of the Company, H.C. Gupta was instructed to make further investigation in the alleged involvement of the petitioner in false and fraudulent cattle claims at Itarsi. H.C. Gupta therefore, further investigated into the matter and submitted his report dated 8-1-1982 (Annexure D-3) with the conclusions that a prima facie case was made out against the petitioner and there is substance in the various complaints received against the petitioner and that the petitioner was involved in manipulating alleged fraudulent cattle claims and other matters of malpractices. He, therefore, advised for a regular departmental enquiry.

It was after the aforesaid preliminary enquiry and investigation that a formal charge sheet dated 2-9-1982 (Annexure D) was served on the petitioner and a regular departmental enquiry was held. In substance, the charges against the petitioner were that while functioning as Branch Manager of the Company at Itarsi he failed to discharge his duty as a responsible officer; that he introduced and got appointed one C.S. Bindra as an agent at Itarsi who did not actually function as an agent; but the petitioner himself has been actively canvassing the business and directly or indirectly he has been operating the said Benami agency for bogus cattle insurance with mala fide and dishonest intention, for unlawful personal gains by booking or getting booked business in respect of cattle which were either not in existence and/or which were belonging to persons who were either not living or whose whereabouts were not known or whose bona fides as the owner and in whose name the insurance policy was obtained, were not genuine.

Shri V.M. Puri, Senior Divisional Manager, Lucknow was appointed Enquiry Officer to make an enquiry into the charges levelled against the petitioner as per charge-sheet (Annexure D). During the course of enquiry, besides other documents the preliminary report dated 3rd November, 1980 by P.R. Joshi was taken on record on 23rd August, 1983 when P.R. Joshi was examined as a witness for the Management and the same was accepted as his oral statement in the enquiry. A copy of the said report was also supplied to the petitioner. Similarly the Vigilance Officer's report dated 18th January, 1982 (Annexure D-3) submitted by H.C. Gupta was also taken on record on 21-9-1983 when H.C. Gupta was examined as a witness for the Management and the same was accepted as his oral statement in the enquiry and a copy thereof was also supplied to the petitioner. The enquiry officer as per his report dated 21st February, 1985 (Annexure H) found the charges prima facie established against the petitioner and, therefore, he

recorded a finding of misconduct and guilt against the petitioner. The Enquiry Officer found that the petitioner failed to report various claims to the D.O. and acted arbitrarily in excess of his authority and repudiated cattle claims in violation of standing orders of the Company, The Enquiry Officer also found that agency of C. S. Bindra was directly or indirectly operated as Benami agency by petitioner himself. It was also found proved that the petitioner has been distributing credit of insurance-business amongst various Inspectors through the agency of C.S. Bindra with ulterior motives and mala fide intention for financial gains to himself defrauding the company by getting Lodged bogus insurance claims by booking or getting booked the business in respect of cattle which were either not in existence and/or which were belonging to persons who were either not living or whose whereabouts were not known or whose bona fides as owners in whose names the insurance policies were taken were not genuine.

The Enquiry Officer submitted his report (Annexure H) with his findings to the General Manager who is the competent authority and the competent authority after going through the report accepted the findings recorded by the Enquiry Officer and having regard to the gravity of the charges, awarded the maximum punishment of dismissal of the petitioner from service of the respondent Company by order dated 13th March, 1985 (Annexure A). The petitioner preferred a Departmental appeal before the Chairman-cum-Managing Director of the company, respondent No. 2 herein, under Rule 31 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, but the said appellate authority after considering the submissions made in the memo of appeal and on perusal of the records and findings of the Enquiry Officer, dismissed the appeal which was communicated to the petitioner by order dated 29th July, 1985 (Annexure B). These are the two orders (Annexure A and Annexure B) which have been challenged in this petition on various grounds discussed hereinafter.

Learned counsel for the petitioner first contended that the petitioner was not supplied with a copy of the enquiry report before the impugned order of dismissal was passed which prevented the petitioner from pointing out of the disciplinary authority the errors and defects in the findings recorded by the Enquiry Officer in order to persuade the Disciplinary Authority not to accept the report and such failure to furnish the copy of the report of Enquiry Officer before passing the order of dismissal amounts to denial of reasonable opportunity. This argument was sought to be supported by the decisions of the Supreme Court in *State of Gujarat Vs. R.G. Teredesai and Another*, and *State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another*, . It may be pointed out that both the aforesaid decisions relate to the law as it stood before the 42nd Amendment of the Constitution when under Article 311(2) of the Constitution, it was obligatory on the part of the Disciplinary Authority to give a second notice to the delinquent to show cause for the proposed action which was considered as a part of reasonable opportunity of being heard in respect of the charges proved against the delinquent. Giving of second show cause notice has been done away with by 42nd Amendment of the Constitution made in the year 1977. Both the aforesaid

decisions, therefore, have no application in the instant case in view of the amendment in Constitution, Learned counsel for the petitioner was unable to show us any law or rule which required the Disciplinary Authority to furnish a copy of the report of the Enquiry Officer before inflicting any punishment to the delinquent.

Learned counsel for the petitioner, then relying on the decision in the case of Union of India vs. E Bashyan, AIR 1988 SC 1000, urged that even after the amendment of Article 311 of the Constitution in the year 1977, the principle of natural justice has not been dispensed with and the non-supply of the Enquiry Officer's report would constitute violation of the principles of natural justice which will tantamount to denial of a reasonable opportunity within the meaning of Article 311(2) of the Constitution. The reason for this observation is stated that giving of notice is not limited to the question as to what penalty should be imposed but for the purposes to persuade the Disciplinary Authority which makes up its mind regarding the guilt of the delinquent that such a finding is not warranted in the light of the report of the Enquiry Officer, Their Lordships observed that decision on this point will affect pretty large number of employees in service today as also those who may enter Government service hereafter for times to come and, therefore, directed the matter to be placed before the Hon'ble Chief Justice of India for being dealt with by a larger Bench. Thus in the case of Bashyan (supra), their Lordships have only expressed their opinion and the point is yet to be considered and decided by a larger Bench of the Supreme Court, It may not be out of place to mention here that a larger Bench constituted by 3 Hon'ble Judges of the Supreme Court in the case of Kailash Chander Asthana Vs. State of U.P. and Others, , decided on 5-5-1988, after due consideration of the point in question took a definite view that "question of service of copy of the report arose on account of a right of a second show cause notice to the Government servant before the 42nd Amendment and since present disciplinary proceeding was held later, the petitioner cannot legitimately demand a second opportunity. That being the position the non-service of the copy of the report is immaterial." In view of the aforesaid decision, we do not find any merit in the contention of the learned counsel for the petitioner that there was any denial of reasonable opportunity to the petitioner which vitiated the enquiry proceedings.

Learned counsel for the petitioner while assailing the impugned order dismissing the petitioner from service next contended that the petitioner as a Branch Manager was alleged to have directly or indirectly operating bogus insurance business in the Benami name of agent C. S. Bindra with or without his knowledge and thereby allegedly defrauded the respondent Company, but neither the said agent C. S. Bindra was examined as a witness in the Departmental Enquiry nor any of the alleged bogus policy holders were examined, yet the charge No. 2(a) was held to be proved against the petitioner only after taking into account the ex parte statement of C. S. Bindra dated 19-9-1981 recorded by H. C. Gupta, the Officer, who made preliminary investigation and the vigilance report by H. C.

Gupta, which could not have formed the basis for holding him guilty and, therefore, the enquiry proceedings and its findings were rendered invalid and illegal being against the settled procedure and principles of natural justice. In support of this submission, reliance was placed on *Ramshakal Yadav Vs. Chief Security Officer, Railway Protection Force and Others*, and *Central Bank of India Ltd. Vs. Prakash Chand Jain*, .

A perusal of the Enquiry report (Annexure H) will go to show that though the management sought to examine C. S. Bindra as a witness before the Inquiry Officer, but he did not turn up to make the statement. The Enquiry Officer, therefore, took into account his previously recorded statement dated 19-9-1961 during the course of investigation made by H. C. Gupta against the petitioner. The Enquiry Officer treated the investigation report by H. C. Gupta as oral deposition of Gupta and as the previously recorded statement of C. S. Bindra formed a part of that report, the Enquiry Officer took into account the statement of Bindra while recording his finding on charge No. 2(a) and came to the conclusion that agency of Bindra was directly or indirectly being operated as a Benami agency by the petitioner with or without the knowledge of the said agent.

At the very outset it may be pointed out that now it is well settled that all witnesses on whose testimony the Management relies in support of the charges against the delinquent officer, should normally be examined in his presence in the regular enquiry itself unless there are compelling reasons to bring on record the previously recorded ex parte statements of the witnesses and in the event such previously recorded ex parte statements are taken into account for some reasons, the delinquent officer/workman must be supplied with a copy of such statements and after the witness affirms the truth of having made that already recorded statement, an opportunity is afforded to the delinquent officer to cross-examine the witness or witnesses as the case may be. Then and then alone such a previously recorded statement of a witness can be relied on in the Departmental Enquiry. If the aforesaid procedure is not observed, the procedure will not conform to the requirements of principles of natural justice. See -- *State of Mysore Vs. S.S. Makapur*, ; *Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others*, ; *Khardah Co. Ltd. Vs. Their Workmen*, ; and *State of Uttar Pradesh Vs. Om Prakash Gupta*, (para 12). Similar view was taken by a Division Bench of this Court in *Rajkishore Pandey vs. Rewa Sidhi Gramin Bank*. M.P. No. 333 of 1985 decided on 14-12-1988 ( 1989 MPLJ 530), in which one of us was a Member.

It is also settled law that a High Court, in exercise of its jurisdiction under Article 226 of the Constitution, cannot and ought not sit in appeal over the findings of fact arrived at by the Disciplinary Authority in a properly conducted departmental enquiry but if it is shown that the findings arrived at by competent authority are not supported by any evidence, the High Court would be justified in interfering with such a finding. In the present case before us admittedly in holding the charge No. 2, as established against the petitioner, the Enquiry Officer relied on the previous statement of Bindra recorded ex ports by H. C. Gupta during the

course of investigation of complaints against the petitioner and besides that statement there is no other evidence to support the findings on charge No. 2(a). It is also an admitted fact that the agent Bindra did not appear before the Enquiry Officer to make statement or affirm his previously recorded statement nor the petitioner was afforded any opportunity to cross-examine Bindra on the said already recorded statement. In these circumstances, the Enquiry Officer was not justified at all in taking into account the said previously recorded statement of Bindra in coming to the conclusion that the agency of Bindra directly or indirectly was being operated as Benami agency by the petitioner.

Learned counsel for the respondent Company, however, sought to support the findings of the Enquiry Officer on the aforesaid charge No. 2(a) by contending that in State of Haryana and Another Vs. Rattan Singh, (para 4), their Lordships of the Supreme Court have approved taking into account the hearsay evidence also in Departmental proceedings and, therefore, the Enquiry Officer was justified in taking into account the previous statement of Bindra in support of his conclusions. In Rattan Singh's case (supra) it has been observed that in a domestic enquiry the strict and sophisticated rules of evidence under Indian Evidence Act may not apply. All materials which are logically probative for prudent mind are permissible and there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. But at the same time, the Supreme Court in the same decision has sounded a note of caution also that tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. This position is made more clear in the case of Central Bank of India Ltd. Vs. Prakash Chand Jain, (para 8), where it has been observed that substantive rules which form part of principles of natural justice cannot be ignored by domestic tribunals. One of the basic principles is that the statement made behind the back of persons charged are not to be treated as substantive evidence and this principle cannot be ignored on the mere ground that the domestic tribunals are not bound by technical rules of procedure contained in Evidence Act. This view further finds support from the decision in Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, (para 14).

Since we find that there was no legal evidence before the Enquiry Officer to establish charge No. 2(a) as aforesaid, the question, therefore, arises whether the impugned order will still stand or fall if one of the several charges is not found to be proved. Their Lordships of the Supreme Court had an occasion to deal with a similar situation in the case of The State of Maharashtra and Another Vs. B.K. Takkamore and Others, , where it was held that where the Court was satisfied that the authority would have passed the order even on the basis of the other relevant and existing grounds and the exclusion of irrelevant or non-existing ground could not have affected the ultimate opinion or decision of the authority, then the order has to be sustained. Relying on the aforesaid decision a Division Bench of Himachal Pradesh High Court also took similar view in case of R.S. Mehta vs. New India Assurance Co., 1987 (5) S.L.R. 752. In this case R.S.

Mehta was an employee of the Insurance Company who was charge-sheeted for misconduct on various counts. In the Departmental Enquiry held against him in which the employee was held guilty only under two heads of misconduct, the Disciplinary Authority accepted the report of Enquiry Officer and ordered dismissal of the employee from the service which was further upheld in Departmental appeal also. But on Memorial presented to the Chairman-cum-Managing Director the penalty was converted from dismissal to that of removal from service. The order of removal from service was challenged by the employee in Writ Petition before the High Court of Himachal Pradesh. The High Court found that one of the heads found proved against the employee was not in issue but beyond the scope of the enquiry, still the independent or severable finding relating to the misdemeanour of the employee was not thereby vitiated and, therefore, maintained the order of removal from service. The view expressed was that an administrative or quasi-judicial order based on several grounds, some of which are found to be non-existent or irrelevant, could still be sustained, if the Court is satisfied that the authority would have passed the order on the basis of the other relevant and existent grounds to the exclusion of the irrelevant and non-existent grounds and that such exclusion would not have affected the ultimate decision. We, in the instant case, find ourselves, in respectful agreement to the aforesaid view as in the light of other serious charges Nos. 4 and 5 which stand proved against the petitioner and which shall be discussed hereinafter, the ultimate opinion or decision of the Disciplinary Authority would not have affected or changed even if the finding on charge No. 2 is excluded as not proved because of non-examination of the agent Bindra as a witness by the Management in Departmental Enquiry.

Learned counsel for the petitioner then vehemently urged that the petitioner could not have been held guilty for the other charges which are said to be proved against him on the basis of evidence of Veterinary Doctor who were unworthy of reliance, without independent corroboration as all of them had given the earlier version before P. R. Joshi in the preliminary enquiry under duress and pressure and who in fact had resiled from their earlier statements when they appeared as a witnesses before the Enquiry Officer in Departmental Proceedings. It was urged that in any case the Veterinary Doctors had themselves played the role of an accomplice and the alleged fraud of bogus insurance of cattle would not have been possible without their personal and direct complicity. In support of this argument the decision in the case of B. E. Supply Co. (supra) was sought to be pressed in service.

In order to appreciate the above argument advanced by the learned counsel for the petitioner, we shall now proceed to examine the most serious charges Nos. 4 and 5 in the light of our discussion contained in paragraph No. 13 above. The charges Nos. 4 and 5 levelled against the petitioner were as follows:

Charge No. 4--

That you failed in discharging your duty as a responsible officer in charge of the

Branch; and with main fide and dishonest intention for unlawful personal gains got passed or allowed claims to be passed in respect of non-existent cattle belonging to the persons who were not living and/or whose whereabouts were not known at the address given in the proposal/policy of insurance and/or whose bona fides as owners of the cattle were not genuine. A few relevant cases in respect of such case are cited below with modus operandi adopted by you with ulterior motives.

Charge No. 5--

That you have been instigating the public of Itarsi to contrive bogus insurances with mala fide intentions and to prefer bogus claims on the Company, and thus brought the good name of the Company in disrepute by your nefarious activities and maladministration of the affairs of Itarsi Branch.

A perusal of charge-sheet and statement of allegations (Annexure D) will go to show that detailed instances of bogus Insurance Policies and claims in respect of non-existent cattle belonging to persons who were either not living or whose whereabouts were not known and/or whose bona fides as owners of the said cattle were not genuine have been catalogued.

Here it may be pertinent to point out at the risk of repetition that prior to the regular enquiry, as stated earlier, a preliminary enquiry was made by P. R. Joshi, Audit Officer of the respondent Company and during the course of that preliminary enquiry, the Veterinary Doctors M. K. Shandilya, S.K. Khanna, H. S. Choudhary, M. L. Soni, R. K. Kaushik and P. L. Sharda had given their statements in writing to P. R. Joshi. All the abovenamed Doctors were examined as witnesses for the Management in the regular Departmental enquiry held against the petitioner in which all of them categorically admitted to have given the said statements in writing to P. R. Joshi during the preliminary enquiry but some of them made a departure and tried to wriggle out of these statements by resiling from statements simply to save their own skin and to avoid their own involvement in the fictitious Insurance Policies and bogus claims thereof. The changed version of the Doctors did not appeal to the Enquiry Officer and he placed reliance on their statements made in writing to P.R. Joshi which were admitted to have been made by them. Besides the abovenamed Doctors, some other witnesses, namely, R.S. Narang an Inspector of the respondent Company, as well as P. R. Joshi and H. C. Gupta who had conducted preliminary enquiry and Vigilance enquiry were also examined as witnesses for the Management in the regular Departmental Proceedings who deposed that the Doctors named above and all other persons examined by them had given their statements in writing voluntarily. The petitioner himself did not enter the witness box to deny the allegations and to rebut the evidence adduced by the Management. On overall consideration and evaluation of total evidence, the Enquiry Officer returned the findings on both the charges Nos. 4 and 5 against the petitioner by holding that it was established beyond doubt that the petitioner, with dishonest intention manipulated and maneuvered to obtain Insurance of non-existing cattle



belonging to non-existing persons and also obtained or managed to obtain forged and fictitious post mortem reports to get claims for death of non-existing cattle with ulterior motive in order to share the proceeds of the same so as to cheat and defraud the Company for his personal gains in connivance with the Doctors. On collective reading of the whole evidence placed before us including the statements given by the Veterinary Doctors to P. R. Joshi as well as their statements made before the Enquiry Officer, it cannot be said that there was no evidence at all to support the findings recorded by Enquiry Officer or that the view taken by the Enquiry Officer and accepted by the Disciplinary Authority is not a possible view based on all the material available against the petitioner. In view of the seriousness of the two charges Nos. 4 and 5 which stand established it is difficult to accept that non-proof of charge No. 2 would have, in any manner, affected the ultimate opinion and decision of the Disciplinary Authority regarding the termination of petitioner's service. But the findings on charges Nos. 4 and 5 alone were serious enough to warrant the action taken against the petitioner, as in the interest of affairs of the respondent Company, the petitioner was not a fit person to be retained in service.

It may not be out of place to mention that in Departmental proceedings while considering the question whether or not a delinquent is guilty of any misconduct, it is neither necessary nor expedient to follow the criminal trial rules that an offence cannot be said to have been established unless proved beyond all reasonable doubts to the satisfaction of the Court. As a necessary corollary it, therefore, follows that where there is some evidence which the Enquiry Officer has relied and accepted which may reasonably support the conclusion that the delinquent officer is guilty of the charge, then it is not the function of the High Court to review the evidence and to arrive at an independent finding on that evidence in exercise of its writ jurisdiction under Articles 226/227 of the Constitution. In this regard we are supported by Supreme Court decision in *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, . The same view was also expressed in *J.K Shinde vs. State of Mysore*, AIR 1976 1080 (para 9). as well as by a Division Bench of this Court in *R.C. Ralhan vs. State*, 1988 MPLJ 130.

19. It is also stilled that in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, a High Court cannot sit in appeal over the findings of fact recorded by a competent tribunal in a properly conducted departmental enquiry except when it is shown that the impugned findings were not supported by any evidence. The High Court cannot consider the adequacy of the evidence to sustain the charge. See -- *State of Orissa vs. Murlidhar*, AIR 1963 SC 404 Again in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , it was observed that findings of fact reached by inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected but not an error of fact, however, grave it may appear to be. Similarly in *K.L. Shinde Vs. State of Mysore*, . It was observed that neither the High Court nor Supreme Court can re-examine and re-assess the evidence in writ proceedings. It has

been further observed that, whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which even the Supreme Court cannot embark. In view of the law laid down by the Supreme Court and discussed above, it is not permissible for us to re-examine or reassess the adequacy and sufficiency of the evidence. We find that there is evidence which has been relied on by the Enquiry Officer to support his conclusions on charges Nos. 4 and 5 which have been further accepted by the Disciplinary Authority and looking to the seriousness of the said charges the action taken was fully warranted in which no interference can legitimately be made by this Court in this petition.

It may be mentioned that though in the petition, the order (Annexure B) passed by the appellate authority has been assailed on the ground that it is not a speaking order and therefore, bad in law being without reasons; but during the course of arguments at the Bar learned counsel for the petitioner specifically gave up the said ground and did not press the same at all. No other grounds were pressed.

In the result, the petition fails and the same is hereby dismissed but without any order as to costs. The outstanding amount of security, if any, be refunded to the petitioner.