(2013) 02 RAJ CK 0115

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4505 of 1998

Tara Chand Choudhary APPELLANT

Vs

Oriental Insurance Company Ltd. and Others RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2013) 2 CDR 593 : (2013) 3 RLW 2390 : (2013) 3 SCT 830

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : Anil Bhandari and Mr. V.D. Dadhich, for the Appellant; D.R. Lunkar, for the Respondent

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J.—The present petition has been filed under Art. 226 of the Constitution of India for quashing of the order of suspension dt. 8.3.1991 and termination order dt. 31.3.1998 on the ground that impugned orders have been passed by an Authority junior to his Appointing Authority and thus, the impugned orders have not been passed by the authority competent to do so. The petitioner was initially appointed as inspector in the year 1971. This appointment was initially made in the Jupitar General Insurance Company Ltd. and after the merger of the Jupitar General Insurance Company with Oriental Insurance Company under the Oriental Fire and General Insurance Company Limited (Merger) Scheme, 1973, the petitioner came under the control of Oriental Fire and General Insurance Company (now called as Oriental Insurance Co. Ltd.). On account of the merger, categorization Committee was formed and the Committee found that the petitioner should be categorized as Inspector, Grade-II. Subsequently, the petitioner was promoted to the post of Inspector, Grade-I (now designated as Development Officer). This promotion was made w.e.f. 1.1.1977 vide order dt. 17.8.1977. The said order has been placed on record by the petitioner. For the purpose of discipline and conduct in relation to employees working in the Insurance Company, General Insurance (Conduct, Discipline and Appeal) Rules, 1975 have been framed. As per Schedule appended to the Rules, for the employees working in development cadre, Assistant Manager/Deputy Manager is the competent authority for initiating disciplinary proceedings and the appellate authority is the Area Manager/Manager in Regional Office. In the case of the petitioner, the order of promotion to the post of Inspector. Grade-I (designated as Development Officer) was passed on 17.8.1977. The same was issued by promoting authority i.e. Assistant General Manager. As per the administrative set up in the respondent Company, the Regional Manager is one step below the Assistant General Manager.

2. On 24.2.1992, the Regional Manager initiated enquiry against the petitioner on the basis of the charges framed against him and after enquiry, the Enquiry Officer submitted his report to the Regional Manager and on that basis, the Regional Manager passed the order of removal of the petitioner from service under Rule 23 of the Rules of 1975. Admittedly, both the suspension as well as removal orders have been passed by the Regional Manager.

3. Reply has been filed by the respondents. As per the preliminary objections raised in the reply and as contended by learned counsel for the respondents, both the orders of suspension as well termination are appealable under Rule 31 and 40 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. The appeal in terms of Rule 31 is to be examined by an independent Appellate Authority above the Disciplinary Authority and likewise the Memorial would be examined by the Chairman-cum-Managing Director above the Appellate Authority. It was, therefore, contended that the present petition should be dismissed on the ground of alternative remedy. it is further argued that the petitioner was initially appointed by the General Manager of Jupitar General Insurance Company Ltd. and merger of the Jupitar General Insurance company with Oriental Insurance Company under the nationalized Scheme of 1973 came under the control of the Oriental Insurance Company Limited. It is further stated that the General Insurance Rules, 1975 were amended in February 1995 and as per the amended Schedule of the Competent Authorities, the Manager is the Appointing Authority for the cadre of Development Staff and as such, an officer of the rank of Manager can impose the penalty of removal from service. It is further stated that the petitioner''s appointment and subsequent promotion are subject to General Insurance Rules, 1975 and as such, the amendments are applicable to him. It was further stated that the petitioner was appointed by Manager and he has rightly been removed by the Manager of the respondent Company. The order of promotion as Inspector, Grade-I w.e.f. 1.1.1977 was passed on 17.8.1977.

Heard.

4. A perusal of the order dt. 17.8.1977 promoting to the petitioner to the post of Inspector, Grade-I shows that the same was issued by the Assistant General Manager, meaning thereby that the petitioner was appointed on the post of

Inspector, Grade-1 by the Assistant General Manager.

5. As per Schedule of Disciplinary Authorities under Rule 23, the Competent Authority for the employees working in Development Cadre is Assistant Manager and the Appellate Authority is Area Manager. However, as per the Note given under the Schedule, the same is only applicable in all major penalties except the penalty of removal, in which case, the dismissal authority cannot be lower than the appointing authority. The said Note reads as under:-

The Competent authority indicated are for all major penalties except the penalty of removal from service and dismissal which will be an Authority not lower than the Appointing Authority. In such, cases, the next higher Authority will be the Appellate Authority.

6. The argument of learned counsel for the respondents that as per the Amended Schedule of Disciplinary Authorities placed on record as Annexure-R/2 shows that the Appointing Authority in the cadre of Development Officers is Manager and the Appellate Authority is Assistant General Manager does not help. Firstly, the petitioner was promoted in the year 1977. The amended Rules came Into operation in the year 1995. Even as per the Amended Schedule of Authorities Note (ii), the penalty of removal from service and dismissal shall not be imposed by an authority lower than the Appointing Authority. The Note (ii) of Annexure-R/2 is similar to the unamended Rules, which reads as under:-

(ii) the penalty of removal from service and dismissal shall not be imposed by an authority lower than the Appointing Authority. In such cases, the next higher Authority will be the Appellate Authority.

7. In the present case, the Appointing Authority of the petitioner on the post of Inspector, Grade-I is Assistant General Manager. The order of suspension as well as removal was passed by the Regional Manager. Admittedly, the Regional Manager is one step lower than the Assistant Manager. Thus, in the case of the petitioner, the dismissal order has been passed by an Authority lower than the Appointing/ Promoting Authority, which is in violation of both the amended and unamended rules.

8. The second argument of learned counsel for the respondent that the order impugned herein is appealable and therefore, the petitioner should have availed the statutory alternative remedy available to him cannot be sustained in the facts of the present case. As per the Note appended to the Schedule under the Disciplinary Authorities under Rule 23 reproduced above, the next higher authority to the authority which was competent to pass the order of removal will be the appellate authority. In the present case, the order of removal has been passed by Regional Manager which is not a competent authority to pass the order of removal. As per Note to the Schedule reproduced above, the appellate authority will be the next higher authority i.e. Assistant General Manager in the present case. As is evident from the above, Assistant General Manager is his appointing authority and hence also dismissal authority. Accordingly, it cannot be

also be the appellate authority in the case of the petitioner. In view of this anomaly, the petitioner had no choice but to file the present petition. Moreover, the present petition was admitted in the year 2002 after hearing both the counsel for the parties. Thus, to dismiss the present petition on the ground of availability of alternative remedy may not be proper in the facts of the present case. Furthermore, it is pointed out that the petitioner has already attained the age of superannuation on 30.06.2001.

9. Thus, the order of removal has not been passed by the competent authority. In view of the above, the present petition Is allowed. The suspension order dt. 8.3.1991 and the removal order dt 31.3.1998 are quashed with all consequential benefits. All emoluments with consequential benefits shall be calculated and given to the petitioner as expeditiously as possible within two months from the receipt of this order.

