

(2017) 05 GAU CK 0009
In the Gauhati High Court
Case No : 62 of 2014

United India Insurance Co. Ltd. & Ors.

APPELLANT

Vs

Tarani Kanta Kakati

RESPONDENT

Date of Decision : 03-05-2017

Acts Referred:

Citation : (2017) 05 GAU CK 0009

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : DIVISION BENCH

Advocate : S. Dutta, R. Mazumdar

Final Decision : Allowed

Judgement

1. This intra-Court appeal at the instance of the United India Insurance Company Ltd. is preferred against the Judgment & Order dated 07.01.2014 passed in WP(C) 5428/2006.
2. We have heard Mr. S. Dutta, learned counsel for the appellant as well as Mr. R. Mazumdar, learned counsel representing the sole respondent/writ petitioner.
3. Facts giving rise to the institution of the writ petition was that the sole respondent/writ petitioner while serving as an Assistant Cashier in the Panbazar Branch of the appellant company was proceeded against in a departmental proceeding. He was served with the charge Memo dated 10.12.2003 on allegation of misappropriation of Rs. 58,372.00, which he did not deposit into the Company's account. He was also charged with tampering and manipulation of entries to facilitate the act of misappropriation. Pertinent to note, the sole respondent/writ petitioner admitted his guilt and during the disciplinary proceeding he had deposited the aforesaid amount into the account of the Insurance company. On the basis of the report of the Enquiry Officer, penalty was imposed by the disciplinary authority by Order dated 19.05.2005 removing him from service with a stipulation that the same shall not operate as a disqualification for future employment. The appeal filed by the sole respondent/

writ petitioner was also dismissed by the appellate authority vide Order dated 17.05.2006.

4. The writ petition was allowed and while doing so the learned Single Judge observed as follows: "While misappropriation is a serious charge and the delinquent has admitted his guilt, one striking feature of the present case is the immediate admission of the delinquent after charge memo was served on him. Moreover, the misappropriated amount of Rs. 58,372/- was deposited in the Company's account at the first opportunity. Whether deterrent and exemplary punishment is really warranted in a case of this nature is something, which has disturbed the court's mind and I feel that the Disciplinary Authority should have also considered the mitigating conduct of the delinquent immediately after the charges were levelled against him. Unlike many similarly situated delinquent, the petitioner admitted his guilt in his first response and also squared up the account at the earliest opportunity. But nevertheless the Disciplinary Authority considered only the aggravating circumstances and the mitigating factors were overlooked by referring to the misconduct of the delinquent."

5. On the finding above the learned Single Judge held that the punishment of removal from service was harsh and disproportionate and in its place the disciplinary authority could have imposed any other major penalty which did not entail severance of employer-employee relationship. In that regard, a direction for reinstatement was made, however, without any back wages. A further direction was made that the break in service should, however, be considered for pension and superannuation benefits.

6. At the outset, we place on record that we respectfully disagree with the findings and decision of the learned Single Judge. Foremost of all, the sole respondent/writ petitioner was holding a position of trust, in that, he was serving as an Assistant Cashier under the appellant Company. He was holding a responsible post and he was accountable to any breach of discipline and misconduct on his part. His duties as an Assistant Cashier in collecting cash premium from the Insured" required him to perform his duties with utmost integrity, devotion and diligence and do nothing unbecoming of a responsible officer. He was required to ensure strict compliance of the rules and regulations.

7. As records would reveal, he misappropriated Company's fund to the extent of Rs. 55,222.00 which he had collected by way of cash premium and a further sum of Rs. 3,150.00 which he had received on 26.11.2002 towards sale of salvage. The aforesaid amount of Rs. 55,222.00 was collected on various dates on thirty-two occasions from thirty-two different Insured,. The sole respondent/writ petitioner also admitted to the charge of misappropriation and, in fact, he had also deposited the misappropriated amount into the account of the Insurance company.

8. Where an officer deals with public money or is engaged in financial transactions, it is imperative that he has to demonstrate the highest degree of

integrity and trustworthiness. In this regard, breach of discipline detrimental to the institution amounts to misconduct which has to be dealt with iron hands. As regards the admission of guilt and return of the misappropriated amount, the Supreme Court in the case of Narendra Nath Bhalla v. State of Uttar Pradesh & Others, reported in (2007) 15 SCC 775 dealt with a similar situation. It was held that mere repayment of money would not absolve a person of the serious charge of misappropriation.

9. If it is a case of loss of confidence in the officer, who had admitted to his guilt and the charge of misappropriation, it was not for the Court to embark upon an exercise of judicial review to interfere with the decision of the disciplinary authority and to direct the appellant to take back the officer in whom confidence was lost.

10. Having regard to the above, we are unable to concur with the findings and decision of the learned Single Judge. As a necessary corollary this writ appeal stands allowed by setting aside the judgement and Order dated 07.01.2014 passed in WP(C) 5428/2006. It is ordered accordingly, without any order as to cost.