
(2021) 08 CHH CK 0089
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 827 Of 2012

Vimal Pratap Singh

APPELLANT

Vs

United India Insurance Company Limited

RESPONDENT

Date of Decision : 26-08-2021

Acts Referred:

General Insurance (Conduct, Discipline And Appeal) Rules, 1975 — Rule 37, 37(2)

Citation : (2021) 08 CHH CK 0089

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Anil Tripathi

Final Decision : Allowed

Judgement

1. Proceedings of this matter have been taken up through video conferencing.
2. The petitioners calls in question legality, validity and correctness of the order dated 2.6.2005 (Annexure PÂ1) by which the appellate authority has dismissed the appeal preferred by the petitioner affirming the order of the disciplinary authority dated 26.7.2004 (Annexure PÂ6) inflicting penalty of removal from service which shall not be a disqualification for future employment.
3. Mr. Anil Tripathi, learned counsel for the petitioner, would submit that Rule 37(2) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (hereinafter called as 'Rules of 1975') has not been complied with and by unreasoned and non-speaking order the appeal preferred by the petitioner under Rule 37(2) of the Rules of 1975 has been dismissed, which is liable to be set aside and the matter be remitted to the appellate authority for consideration afresh in accordance with Rule 37(2) of the Rules of 1975 on its own merit.

4. None present for the respondents though served.

5. I have heard learned counsel for the petitioner, considered his submissions made herienabove and also went through the records with utmost circumspection.

6. Appeal was preferred by the petitioner under Rule 37 of the Rules 1975 which provides the manner of consideration of appeal which states as under:Â?

â??37. Consideration of Appeals :Â?

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoked the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the appellate authority shall consider :Â?

(a) whether the procedure prescribed in these Rules has been complied with, and if not, whether such nonÂcompliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate, or inadequate, and pass orders :Â?

(i) setting aside, reducing, confirming or enhancing the penalty; or (ii) remitting the case to the authority which imposed the penalty or to any other

authority with such direction as it may deem fit in the circumstances of the case.

Provided that :Â?

(i) the appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against

is competent in the case to impose;

(ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may

wish to make against such enhanced penalty ; and

(iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties in clause (b) to (h)of Rule 23, and an inquiry under

the said rule has not already been held in the case, the appellate authority shall itself hold such inquiry or direct that such inquiry be held and thereafter

on consideration of the proceedings of such inquiry and after giving the appellant an opportunity of making any representation which he may wish to make against such penalty, pass such orders as it may deem fit.

3) All appeals should be disposed of as expeditiously as possible and in any event not later than 6 months from the date of receipt of the appeal by the appellate authority.â??

7. A careful perusal of the aforesaid Rules would show that the appellate authority is required to record the finding that whether the procedure has been followed in conducting enquiry and whether the findings are justified or not, whether the penalty is proper or excessive and thereafter the finding has to be recorded.

8. A careful perusal of the impugned order would show that the appellate authority has firstly recorded the finding that the petitioner has not raised any point warranting favourable consideration and thereafter held that the proper procedure has been followed, the findings are justified and the penalty imposed is adequate, but there is no consideration to record such a finding that enquiry was conducted as per prescribed procedure and the findings of the enquiry are justified and the penalty imposed is adequate. For record such a finding, entire oral and documentary evidence has to be considered and thereafter finding has to be recorded. By merely reproducing the words and phrases of Rule 37(2) of the Rules of 1975 the appellate authority cannot perform his duty as a quasi-judicial authority. It has to be considered strictly in accordance with the material available on record and then finding has to be recorded that proper procedure has been followed in enquiry, the findings of the enquiry are justified and the penalty imposed is adequate.

9. It is well settled position of law that the appellate authority in disciplinary proceeding acts in quasi-judicial capacity and order passed has to be reasoned one and showing application of mind to the question raised by the appellant and if it is not done, the appellate order is vitiated. (See Divisional Forest Officer, Kothagudem and others v. Madhusudhan Rao (2008) 3 SCC 469).

10. The Supreme Court reiterated this principle of law by observing that an appellate authority by deciding statutory appeal is not only required to give hearing to the Government servant, but pass a reasoned order dealing with the contention raised in the appeal. (See Deokinandan Sharma v. Union of

India and others (2001) 5 SCC 340).

11. Even if the appellate order is in agreement with that of the disciplinary authority it may not be speaking order, but the authority passing the same

must show that there had been proper application of mind in compliance with the requirement of law while exercising his jurisdiction particularly when

the rules required application of mind on several factors and several contentions had been raised and he was bound to assign reasons so as to enable

the Court reviewing its decision to ascertain as to whether he had applied his mind to the relevant factors which the rule required to do. (See Narinder

Mohan Arya v. United India Insurance Co. Ltd. and others (2006) 4 SCC 713).

12. Reverting to the facts of the present case in the light of the aforesaid provisions and the judgments (supra), it is quite vivid that appeal preferred by

the petitioner has not been considered by the appellate authority in the light of Rule 37(2) of the Rules of 1975 and dismissed the same by unreasoned

and non- speaking order, which ought to have been considered by the appellate authority in the light of Rule 37(2) of the Rules of 1975.

13. As a fallout and consequence of the aforesaid discussion, the impugned order dated 2.6.2005 (Annexure PÂ1) passed by appellate authority is

hereby set-aside. Appeal filed by the petitioner herein is restored to the file of appellate authority. The appellate authority is directed to consider the

appeal of the petitioner in accordance with Rule 37(2) of the Rules of 1975 within 60 days from the date of receipt of a copy of this order and will

decide the same after hearing the petitioner and other side and pass a reasoned and speaking order, strictly in accordance with law. The petitioner is

at liberty to file additional submission before the appellate authority.

14. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).