

A MIHIR KUMAR HAZARA CHOUDHURY

v.

LIFE INSURANCE CORPN. & ANR.

(Civil Appeal No. 7612 of 2009)

B SEPTEMBER 11, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

*Service Law – Dismissal from service – Assistant of LIC issued receipts to policy holders without actually receiving payments from them – Department proceedings – Employee held guilty of misconduct and dismissed from service – Tribunal set aside the dismissal order, however, High Court set aside the order of the tribunal – On appeal, held: No irregularity in the departmental proceedings – LIC department independently proved charges before Enquiry Officer and tribunal – Appellant admitted the charges and only made a prayer for leniency – Further, no defense available to employee to say that there was no loss or profit resulting in a case when employee acted without authority – Having regard to the seriousness of the charges and no defense being taken by Assistant, punishment of dismissal was appropriate – Life Insurance Corporation of India (Staff) Regulations, 1960 – Reg. 39.*

Dismissing the appeal, the Court

**HELD:** 1.1 The reasoning and the conclusion arrived at by the Division Bench that the charges leveled against the appellant stood proved and, in consequence, upheld the appellant's dismissal order holding it to be commensurate with the gravity of the charges, are accepted. Also, the respondent (LIC) was able to prove the charges leveled against the appellant (employee). The charges can be held proved by mere reading of the appellant's reply wherein he, in no uncertain terms, admitted that he had issued the disputed premium/special premium receipts to the concerned policyholders and did not receive the amount from any of them. All he had said was that such mistake occurred on his part due to heavy pressure of workload on him and some family circumstances/worries which, was hardly any

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defense to the charges; and that he himself requested for taking action against him with leniency. [Paras 21, 22][425-G-H; 426-A-B]

1.2 The Enquiry Officer had recorded a finding of fact that the action on the part of the appellant was willful and with *mala fide* intention to perpetrate the fraud on the respondent (LIC) for wrongful personal gains. Though, this report was set aside by the tribunal but the Division Bench set aside the award of the tribunal and upheld the dismissal order. It is for this reason, the report of the Enquiry Officer can now be looked into. Though, sincere attempt was made to attack to challenge the departmental proceedings but there is no merit in the same. [Paras 23, 24][426-B-D]

1.3 The principle of natural justice was fully observed in departmental proceedings wherein the appellant throughout participated. No prejudice was noticed having been caused to the appellant while participating in the Enquiry proceedings. That apart, despite the appellant virtually admitting the charges, the respondent had also adduced the evidence before the Enquiry officer and then before the tribunal to prove the charges independently, which rightly found acceptance by the Division Bench. [Para 25][426-D-E]

1.4 Keeping in view the reasons set out coupled with the findings of the Enquiry Officer, which Division Bench has rightly upheld, there is no hesitation in holding that the charges against the appellant were proved not only on the strength of the admission of the appellant in his reply but also independently with the aid of the evidence led by the LIC before the Enquiry Officer and later before the tribunal. [Para 26][426-F-G]

1.5 An employee, in discharge of his duties, is required to exercise higher standard of honesty and integrity. In a case where he deals with the money of the depositors and customers, it is all the more necessary for him to be more cautious in his duties because he deals with the money transactions for and on behalf of his employer. Every such employee/officer is, therefore, required to take all possible steps to protect the interest of his employer. He must, therefore, discharge his duties with utmost

- A sense of integrity, honesty, devotion and diligence and must ensure that he does nothing, which is unbecoming of an employee/officer. Indeed, good conduct and discipline are inseparable from the functioning of every employee/officer of any Institution and more when the institution deals with money of the customers.
- B Any dereliction in discharge of duties whether by way of negligence or with deliberate intention or with casualness constitutes misconduct on the part of such employee/officer. [Para 27][426-G-H; 427-A-B]

- 1.6 There is no defense available to a delinquent to say that there was no loss or profit resulting in a case when officer/
- C employee is found to have acted without authority. The very discipline of an organization and especially financial institution where money is deposited of several depositors for their benefit is dependent upon each of its employee, who acts/operates within the allotted sphere as custodian of such deposit. Acting beyond
- D one's authority by itself is a breach of discipline and thus, constitutes a misconduct rendering the delinquent to suffer the adverse orders. [Para 28][427-C-D]

- 1.7 Having regard to the seriousness of the charges coupled with virtually no defense taken by the appellant in answer to the
- E charges and the findings of the Enquiry Officer, the punishment of dismissal was appropriate as provided in the service regulations and hence, does not call for any leniency in awarding such punishment. [Para 29][427-E]

- 1.8 The appellant neither set up any defense nor denied
- F the factum of charges, yet the respondent proved the charges with the aid of relevant evidence, which found acceptance to the Division Bench and this Court too. As an Appellate Court, neither this Court can sit over the findings of the Enquiry Officer and find fault in it nor can re-appreciate the evidence of witnesses examined in departmental Enquiry. [Para 31][427-G-H; 428-A]

- G *Damoh Panna Sagar Rural Regional Bank & Anr. v. Munna Lal Jain* (2005) 10 SCC 84; *Disciplinary Authority-cum-Regional Manager & Ors. v. Nikunja Bihari Patnaik* 1996 (9) SCC 69 : [1996] 1 Suppl. SCR 314 – referred to.

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Case Law Reference

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|-------------------------|-------------|---------|
| (2005) 10 SCC 84        | referred to | Para 27 |
| [1996] 1 Suppl. SCR 314 | referred to | Para 28 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7612 of 2009.

From the final Judgment and Order dated 4<sup>th</sup> July, 2007 passed by the High Court at Calcutta in APO No.591 of 2003.

Swatantra Rai, S. K. Puri, Vibhav Srivastava, Ms. Vijayalakshmi (For Ms.Priya Puri), Advs. for the Appellant

Kailash Vasudev, Sr. Adv., Umrao Singh Rawat, Dr. Puran Chand, S. Rajappa, Advs. for the Respondents.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.**

1. This appeal is directed against the final judgment and order dated 04.07.2007 passed by the High Court at Calcutta in APO No.591 of 2003 whereby the Division Bench of the High Court allowed the appeal filed by the Life Insurance Corporation of India (respondent No.1 herein), set aside the order of the Single Judge and the award of the Tribunal and upheld the dismissal order passed by respondent No.1.

2. In order to appreciate the issues involved in the appeal, it is necessary to set out the relevant facts hereinbelow.

3. In the year 1960, the appellant was appointed as an Assistant in the set up of respondent No.1- Life Insurance Corporation of India (hereinafter referred to as "LIC"). At the relevant time, he was posted in the Branch Office of LIC at a place called Burir Bagan, PO & District Burdwan (WB).

4. During the year 1977, it came to the notice of the officials of respondent No.1 (LIC) that the appellant, in discharge of his duties, issued as many as seven receipts including special premium receipts to the policyholders without receiving any premium amount from them. The details of the policies such as their numbers, names of policyholders, due date of premium and the amount of premium are mentioned below:

|   |      |                   |                  |                                                                                                                                                                                                                      |              |
|---|------|-------------------|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| A |      | <u>Policy No.</u> | <u>Name</u>      | <u>Due Premium</u>                                                                                                                                                                                                   | <u>Total</u> |
| B | i)   | 9764225           | Sri D. Hazra     | July 1973<br>July 1974<br>July 1977 &<br>January 1977 @<br>Rs.62.75 each                                                                                                                                             | Rs. 251.00   |
| C | ii)  | 31098245          | Sri S. Mukherjee | June, 1975<br>December, 1975<br>June, 1976<br>December, 1976 &<br>June, 1977 @<br>Rs.147.40 each                                                                                                                     | Rs. 737.00   |
| D | iii) | 30982313          | Sri S.K. Roy     | May, 1974<br>August, 1974<br>November, 1974<br>February, 1975<br>May, 1975<br>August, 1975<br>November, 1975<br>& February, 1976<br>May, 1976<br>August, 1976<br>November, 1976<br>February, 1977<br>@ Rs.33.84 each | Rs. 406.08   |
| E | iv)  | 31210746          | Sri T.N. Samanta | April, 1975 &<br>April, 1977 @<br>Rs.410.60 each                                                                                                                                                                     | Rs. 821.20   |
| F | v)   | 31214187          | Sri P.K. Mallick | September, 1976 &<br>March, 1977<br>@Rs.158.40 each                                                                                                                                                                  | Rs. 316.80   |
| G | vi)  | 31211624          | Sri N.C. Hazra   | August, 1976 &<br>February, 1977 @<br>Rs.881.30 each                                                                                                                                                                 | Rs. 1,762.60 |
| H | vii) | 312111625         | Sri U.C. Hazra   | February, 1975<br>February, 1976<br>August, 1976 &<br>February, 1977 @<br>Rs.829.70 each                                                                                                                             | Rs. 3,318.80 |

5. After being *prima facie* satisfied on verification of the records that the appellant had committed the alleged misconduct, the LIC placed the appellant under suspension and then issued the charge-sheet under Regulation 39 of the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as "the Regulations") to the appellant on 07.11.1977 (Annexure-A) setting out therein the specific charges with details mentioned above. The appellant was asked to submit his reply.

6. On 28.11.1977, the appellant replied to the charges (Annexure-B). The appellant, in substance, admitted the issuance of receipts by him and also admitted non-receipt of the amount against any of these receipts from any of the policyholders. All he said was that he had neither any *mala fide* intention nor any oblique motive behind this. According to the appellant, it occurred due to the pressure of work and family circumstances/worries. The appellant, therefore, prayed respondent No.1 to take lenient view in the case against him.

7. Dissatisfied with the reply of the appellant, respondent No.1 referred the matter to the Enquiry Officer for holding regular Departmental Enquiry into the charges leveled against the appellant as per the service regulations. The Departmental Enquiry was, accordingly, held in which the appellant fully participated. The respondent (LIC) adduced evidence to prove the charges.

8. On 31.07.1981, the Enquiry Officer submitted his report (Annexure-D). The Enquiry Officer, in his detailed report running into 27 pages, held the charges leveled against the appellant as proved. He recorded the following findings against the appellant:

**"Thus I hold him guilty on the charges of his mala fide intention of perpetrating fraud on the Corporation for wrongful personal gains.**

**Thus it is proved further beyond any doubt that Shri M.K. Hazra Chowdhury willfully indulged in the acts of deliberate omission and/or commission by defalcating the amounts and causing temporary financial loss to the Corporation which he tried to compensate by influencing the policy-holders to deposit the amounts subsequently with interest and acted in a manner prejudicial to good conduct and failed to maintain absolute integrity and devotion to**

A        **duty so as to serve the Corporation honestly and faithfully. I have come to this conclusion based on the evidence on records and hold the accused employee guilty of all the charges.”**

B        9. The respondent (LIC) agreed with the findings of the Enquiry Officer and, accordingly, dismissed the appellant from the service by order dated 07.12.1981 (Annexure-E) as provided in the Regulations.

C        10. The appellant (employee), felt aggrieved of the dismissal order, preferred departmental appeal to Zonal Manager. It was dismissed by order dated 22.04.1982. The appellant then sought industrial reference to the Central Government Industrial Tribunal (hereinafter referred to as “the Tribunal”) under Section 10 of the Industrial Disputes Act, 1947 to decide the legality and correctness of the dismissal order. It was referred to the Tribunal as Reference No. 5/1989.

D        11. The Tribunal then embarked upon the reference and by award dated 15.06.1998 held that the Departmental Enquiry was defective and, therefore, bad in law. The Tribunal, therefore, granted an opportunity to the respondent (employer) to prove the charges leveled against the appellant on merits by adducing evidence. The respondent (LIC), accordingly, adduced evidence before the Tribunal and proved the charges. The Tribunal, however, held that the evidence adduced by the  
E        respondent (LIC) was not credible and, therefore, charges were not proved against the appellant.

F        12. In other words, in the opinion of the Tribunal, the respondent (LIC) failed to prove the charges against the appellant for want of adequate evidence and, therefore, the dismissal order was liable to be set aside. It was, accordingly, set aside with a further direction to the respondent (LIC) to pay the entire retiral benefits to the appellant because, in the meantime, the appellant had attained the age of superannuation.

G        13. The respondent, felt aggrieved, filed writ petition (W.P. No.2578/1998) before the High Court at Calcutta. The learned Single Judge stayed the operation of the award of the Industrial Tribunal on condition that the respondent (LIC) would pay a sum of Rs.50,000/- by way of ex-gratia payment to the appellant and then disposed of the writ petition by order dated 31.03.1999 giving liberty to the parties to apply  
H        before the Tribunal.

14. It may here be mentioned that in between, there were some more proceedings ensued between the parties resulting in passing some interim orders by the Tribunal, Single Bench, Division Bench and this Court but eventually the matter reached back to the Division Bench in appeal at the instance of the respondent (LIC) against the order of the Single Bench dated 31.03.1999.

15. By impugned order, the Division Bench allowed the appeal filed by respondent No.1 (LIC), set aside the order of the Single Judge and the award of the Tribunal and upheld the dismissal order passed by the respondent.

16. It is against this order, the employee felt aggrieved and filed this appeal by way of special leave before this Court.

17. Heard Mr. Swatantra Rai, learned counsel for the appellant and Mr. Kailash Vasudev, learned senior counsel for the respondents.

18. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions filed by the learned counsel for the appellant (employee), we find no merit in the appeal.

19. The short question that arises for consideration in this appeal is whether the charges leveled against the appellant (employee), as set out above, were proved in the departmental proceedings before the Enquiry Officer or/and before the Tribunal? If yes, then whether the punishment imposed by the respondent(employer) on the appellant(employee) dismissing him from the service is just and proper?

20. As mentioned above, the Division Bench held that the charges leveled against the appellant stood proved and, in consequence, upheld the appellant's dismissal order holding it to be commensurate with the gravity of the charges.

21. We are in agreement with the reasoning and the conclusion arrived at by the Division Bench. In our considered opinion also, the respondent(LIC) was able to prove the charges leveled against the appellant(employee). This we say for the following reasons:

22. Firstly, the charges can be held proved by mere reading of the appellant's reply (Annexure-B) wherein he, in no uncertain terms, admitted that he had issued the disputed premium/special premium receipts

A to the concerned policyholders and did not receive the amount from any of them. Secondly, all he had said was that such mistake occurred on his part due to heavy pressure of workload on him and some family circumstances/worries that were troubling him during those days which, in our opinion, was hardly any defense to the charges; and thirdly, he himself requested for taking action against him with leniency.

B 23. As would be clear, the Enquiry Officer had recorded a finding of fact that the action on the part of the appellant was willful and with *mala fide* intention to perpetrate the fraud on the respondent (LIC) for wrongful personal gains.

C 24. Though, this report was set aside by the Tribunal but the Division Bench set aside the award of the Tribunal and upheld the dismissal order. It is for this reason, the report of the Enquiry Officer can now be looked into. Though, learned counsel for the appellant made sincere attempt to attack to challenge the departmental proceedings but we find no merit in the same.

D 25. We find that the principle of natural justice was fully observed in departmental proceedings wherein the appellant throughout participated. We have not been able to notice any kind of prejudice having been caused to the appellant while participating in the Enquiry proceedings. That apart, despite the appellant virtually admitting the charges, the respondent had also adduced the evidence before the Enquiry officer and then before the Tribunal to prove the charges independently, which found acceptance to the Division Bench and, in our opinion, rightly.

E 26. In our opinion, keeping in view the three reasons set out above coupled with the findings of the Enquiry Officer, which Division Bench has rightly upheld, we have no hesitation in holding that the charges against the appellant were proved not only on the strength of the admission of the appellant in his reply but also independently with the aid of the evidence led by the LIC (respondent No.1) before the Enquiry Officer and later before the Industrial Tribunal.

G 27. An employee, in discharge of his duties, is required to exercise higher standard of honesty and integrity. In a case where he deals with the money of the depositors and customers, it is all the more necessary for him to be more cautious in his duties because he deals with the money transactions for and on behalf of his employer. Every such employee/officer is, therefore, required to take all possible steps to protect

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the interest of his employer. He must, therefore, discharge his duties with utmost sense of integrity, honesty, devotion and diligence and must ensure that he does nothing, which is unbecoming of an employee/officer. Indeed, good conduct and discipline are inseparable from the functioning of every employee/officer of any Institution and more when the institution deals with money of the customers. Any dereliction in discharge of duties whether by way of negligence or with deliberate intention or with casualness constitutes misconduct on the part of such employee/officer. (See some observations in **Damoh Panna Sagar Rural Regional Bank & Anr. v. Munna Lal Jain**, (2005) 10 SCC 84)

28. There is no defense available to a delinquent to say that there was no loss or profit resulting in a case when officer/employee is found to have acted without authority. The very discipline of an organization and especially financial institution where money is deposited of several depositors for their benefit is dependent upon each of its employee, who acts/operates within the allotted sphere as custodian of such deposit. Acting beyond one's authority by itself is a breach of discipline and thus constitutes a misconduct rendering the delinquent to suffer the adverse orders (see some observations in **Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunja Bihari Patnaik**, 1996(9) SCC 69).

29. In our opinion, having regard to the seriousness of the charges coupled with virtually no defense taken by the appellant in answer to the charges and lastly, the findings of the Enquiry Officer, the punishment of dismissal was appropriate as provided in the service regulations and hence does not call for any leniency in awarding such punishment.

30. Learned counsel for the appellant (employee) made sincere attempt in his oral as well as written submissions to find fault in the conducting of the departmental proceedings and also urging from interfering in the quantum of punishment by imposing lesser punishment but we are afraid we can interfere in either.

31. As held supra, the departmental proceedings were conducted strictly in accordance with law by following the principle of natural justice in which the appellant duly participated. The appellant neither set up any defense nor denied the factum of charges, yet the respondent proved the charges with the aid of relevant evidence, which found acceptance to the Division Bench and this Court too. As an Appellate Court, neither

- A we can sit over the findings of the Enquiry Officer and find fault in it nor can we re-appreciate the evidence of witnesses examined in departmental Enquiry.

32. In the light of foregoing discussion, we find no merit in the appeal. The appeal thus fails and is, accordingly, dismissed.

- B 33. It was, however, brought to our notice that the learned Single Judge during pendency of the writ petition by an interim order had directed the respondent (LIC) to pay a sum of Rs.50,000/- by way of ex-gratia payment to the appellant. The respondent accordingly paid this amount to the appellant. Let this amount be remained with the appellant.

C

Nidhi Jain

Appeal dismissed.