(1995) 09 AHC CK 0138

Allahabad High Court

Case No: C.M.W.P. No. 18980 of 1988

Samaru Ram		APPELLANT
	Vs	
Divisional Manager, L.I.C. of India and Others		RESPONDENT

Date of Decision: Sept. 22, 1995

Acts Referred:

- Life Insurance Corporation (Staff) Regulations, 1960 - Regulation 39, 39(1), 39(2), 40, 48

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: D.R. Chaudhari, for the Appellant; R.P. Goyal, for the Respondent

Final Decision: Partly Allowed

Judgement

D.K. Seth, J.

Quashing of the order dated 11th August, 1986 (Annexure ''13''), the order dated 29th July, 1987 (Annexure ''14'') and order dated 9th May. 1988 (Annexure ''17'') passed on appeal there out arising out of the charge-sheet dated 25th June, 1979 (Annexure ''3'') and the report of enquiry dated 10th March, 1986 (Annexure ''10'') are the orders impugned and relief sought for in this writ petition.

2. The Petitioner's case, as appears from the writ petition, is that after having been appointed on 18th February, 1974, the petitioner was subjected to a disciplinary proceeding under Regulation 39 of the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as ''the said Regulations''), Initiated by issue of charge-sheet dated 25th June. 1979 (Annexure ''3'') resulting into an enquiry and a report after the petitioner had filed his reply (Annexure ''6'') and his participation in the enquiry. Without giving him proper opportunity to Inspect documents despite his request, made by Annexure ''7'', punishment was Inflicted upon the petitioner by the disciplinary authority under Regulation 39 (1)(d) of the

said Regulations by bringing down permanently his basic salary to the minimum scale of pay applicable to him and implemented the same with effect from 11th August, 1986. The Petitioner's appeal preferred under Regulation 40 before the Respondent No. 2 was decided on 29th July, 1987. The said orders were challenged by means of writ petition being Writ Petition No. nil of 1987 which was disposed of by order dated 24th September, 1987 with the observation that under Regulation 49, of the said Regulations, the petitioner has a remedy by way of second appeal though the same is termed as review. Therefore, if the petitioner files a review, the same should be disposed of on merits.

3. The review petition filed on 10th October, 1986 was decided by Respondent No. 4 on 9th May, 1988 (Annexure ''17''). It is this order after which the present writ petition has been filed.

4. Contesting the said case, the Respondents contended that the finding of enquiry is Justified on the materials placed before the authority and that the enquiry was held after providing sufficient opportunity to the Petitioner. The order of punishment was passed after affording opportunity to the petitioner to show cause against the proposed order of punishment. The punishment inflicted under Regulation 39 (1)(d) is Justified. There was no Infirmity in the charge-sheet or in the order of punishment or in the proceedings. The order on appeal under Regulation 40 and that under Regulation 48 are Justified and the present writ petition is not maintainable on account of the fact that the petitioner had an alternative remedy by way of submission of Memorial to the Chairman under Regulation 39 which he had not resorted to.

5. The petitioner attacked the proceedings and report of enquiry on the ground that he was not given sufficient opportunity to defend himself and he was not allowed inspection of the records despite requests made in writing and that the report of enquiry is perverse and is not based on materials on record and there are gross irregularities and that the orders passed by the appellate authority under Regulations 40 and 49 are bad and cannot be sustained and that after the counter-affidavit has been exchanged, the preliminary objection as to alternative remedy cannot be raised. By means of the rejoinder affidavit, the petitioner has controverted the facts narrated in the counter-affidavit and reiterated those in the writ petition.

6. The preliminary objection taken by the Respondents to the maintainability of the writ petition on the ground of availability of alternative remedy has been pushed through with great endeavour by the Respondents relying on the decision in the case of Satyapal Singh Chauhan v. Chairman-cum-Chief Executive Officer, New Okhla Industrial Development Authority, Noida Complex, Ghaziabad. Relying on the said judgment, Mr. Goyal contended that the petitioner having a remedy by way of industrial dispute under the Industrial Disputes Act If he considers himself to be a workman within the meaning of the said Act or he may have his remedy under the

U.P. Public Services Tribunal Act if he is not a workman but a Government servant. In the case relied upon by him, the observation is similar as has been contended by Mr. Goyal. The learned Counsel for the petitioner in this case has contended that the petitioner is neither a workman within the meaning of the U.P. Industrial Disputes Act nor he is a Government servant within the meaning of U.P. Public Services Tribunal Act and, therefore, those two alternative remedies are not available to him. Nothing has been produced before the court by Mr. Goyal to show that the petitioner is either a workman under the Industrial Disputes Act or a Government servant under the Public Services Tribunal Act. In my view, an employee of Life Insurance Corporation of India cannot be a Government servant within the meaning of the U.P. Public Services Tribunal Act. It is doubtful as to whether the petitioner is a workman within the meaning of the U.P. Industrial Disputes Act as well. Furthermore, it was observed in the said judgment that alternative remedy does not operate as a complete bar to the exercise of writ jurisdiction. The court acts in its discretion taking into consideration the facts and circumstances of the case. In the present case, the petitioner had travelled a long way and that affidavits having been exchanged and alternative remedies being doubtful, as Indicated above, the principles of the said decision cannot be attracted in the facts and circumstances of the present case.

7. In the case of Ambika Singh v. U.P. State Sugar Corporation Ltd. and Anr. a Division Bench of this Court held that if the facts are not disputed seriously and the question can be decided on the interpretation of law, then the same should not be refused on the ground of alternative remedy. In the present case, I am afraid that the court cannot go into the question as to the facts relating to the enquiry and its report and findings since the same has already been decided by the concurrent findings of fact by the disciplinary authority and the two successive appellate authorities. Therefore, the facts need not be gone into.

8. Now, therefore, the question remains as to whether the punishment inflicted can how far be sustained in the facts and circumstances of the case. It is apparent that the Petitioner's pay has been fixed at the bottom of the scale. The petitioner was appointed in 1974 and the punishment was inflicted with effect from August, 1986, namely, after 12 years of service. The petitioner had a long way to go into the service. It would be too harsh to compel him to suffer such a punishment in the facts and circumstances of the case. Inasmuch as in this case the charges were that the petitioner had shown inflated account in order to avail of a higher commission.

9. Apart from the said fact, the punishment was imposed under Clause (1)(d) of Regulation 39 which runs as follows:

39. (1) Without prejudice to the provisions of other regulations, any one or more of the following penalties for good and sufficient reasons, and as hereinafter provided, be Imposed by the disciplinary authority specified in Schedule 1 on an employee who commits a breach of regulations of the Corporation, or who displays

negligence, inefficiency or Indolence or who knowingly does any thing detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct--

(a) censure:

(b) withholding of one or more increments either permanently or for a specified period;

(c) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders;

(d) reduction to a lower service, or post, or to a lower time-scale, or to a lower stage in a time-scale;

(e) compulsory retirement;

(f) removal from service which shall not be a disqualification for, future employment;

(g) dismissal.

(2) No order Imposing on an employee any of the penalties specified in Clauses (b) to (g) of Sub-regulation (1) supra, shall be passed by the disciplinary authority specified in Schedule 1 without the charge or charges being communicated to him in writing and without his having been given a reasonable opportunity of defending himself against such charge or charges and of showing cause against the action proposed to be taken against him.

10. It appears from Regulation 39(1)(d) that the punishment may be of reduction to a lower service, or post, or to a lower time-scale or to a lower stage in a time-scale. The penalty provided does not provide any penalty to be fixed permanently at a particular stage of a time-scale. However, in this case, the punishment is not of reduction to a lower service or post. It is also not a punishment of placing the delinquent to a lower time-scale. It is a punishment to a lower stage in a time-scale. The word time-scale'' means a moving thing which is measured by the units which Increases with the progress of time having several stages. Therefore, the pay can be fixed at a lower stage of a scale under Regulation 39(1)(d) as has been done in the present case but that fixation is at the stage of the bottom of the time-scale. The time cannot be suspended that and bottom stage cannot continue for ever. It is also not a case of withholding one or more increments either permanently or for a specified period. The punishment, as it appears from Annexure ''13'' to the writ petition, was inflicted in terms of Regulation 39(1)(d). This clause does not provide for withholding of increment. Regulation 39(1)(b) specifically provides for withholding one or more increments either permanently or for a specified period. While Inflicting punishment under Clause (d), the punishment under Clause (b)

cannot be brought in or combined together since the punishment has been proposed only under Clause (d) which does not contemplate or conceive of stoppage of increment. Under Clause (d), reduction to a lower stage in a time-scale means fixation of pay at a lower stage. In the present case, the same being reduced to the bottom of the scale with effect from August 1986, the petitioner cannot be compelled to suffer stoppage of increments permanently as has been sought to be applied unless the punishment is inflicted under Regulation 39(1)(b).

11. The Respondents had a choice of inflicting any one or more of the penalties provided in Regulation 39(1) Clauses (a) to (g). In the present case, the Respondents having chosen only to inflict one punishment under Regulation 39(1)(d), the punishment under Regulation 39(1)(b) cannot be imported and thereby one punishment cannot be converted into more than one when the reference has been made only to Regulation 39(1)(d).

12. The other contention of the petitioner that punishment being a major punishment, the Respondents ought to have followed the procedure necessary for inflicting major punishment cannot be sustained in view of Regulation 39(2) which specifically provides the procedure for inflicting punishment contemplated in Regulation 39(1). Admittedly, the procedure contemplated in Regulation 39(2) has been followed which is apparent on the basis of Annexure included in the writ petition itself. Therefore, the said contention cannot be sustained.

13. The Respondents contention that the misconduct was so grave that it warranted dismissal, namely, the extreme penalty but a lenient view having been taken, the punishment inflicted cannot be interfered with. The said submission is devoid of any merit since even when being lenient, it was open to the Respondents to inflict more than one punishments under Regulation 39(1) but as soon the Respondents had chosen to inflict only one of the penalty provided under Regulation 39(1)(d) it cannot circumvent the position inasmuch as the order has been passed can neither be added to or subtracted from.

14. In that view of the matter, I am not inclined to interfere with that part of the penalty which is imposed under Regulation 39(1)(d) and hold that the penalty should be confined only to Regulation 39(1)(d) in terms whereof the penalty has been inflicted by the Respondents. By reasons of the penalty inflicted under Regulation 39(1)(d), the penalty provided under Regulation 39(1)(b) cannot be imported. Therefore, that part of the order of punishment which prescribes fixation of pay at the bottom of the scale permanently cannot be sustained and is liable to be quashed.

15. In the result, the writ petition succeeds in part and, as such, stands allowed to the extent referred to above. The order Imposing penalty of permanently stopping increment is quashed. The reduction of pay to the bottom of the scale with effect from 11th August, 1986 shall be construed strictly in terms of Regulation 39(1)(d)

with the benefit of increment in the said time-scale. The petitioner shall be entitled to all increments available to the scale from the bottom stage thereof with effect from 11th August, 1986 and other benefits and to the difference of pay as admissible to him in the light of the observations made above. The Respondents shall calculate and pay such differences to the petitioner as early as possible, preferably within a period of six months from the date a certified copy of this order is served upon the Respondents. The writ petition is thus disposed of. There will be no order as to costs.