

(2007) 08 GAU CK 0036**Gauhati High Court****Case No:** Writ Petition No. 4775 of 2006

Jadunath Barborah

APPELLANT

Vs

Life Insurance Corporation of
India

RESPONDENT

Date of Decision: Aug. 24, 2007**Citation:** (2008) 2 GLR 385**Hon'ble Judges:** A.B.Pal, J**Bench:** Single Bench**Advocate:** B.Sarkar, A.Dasgupta, B.R.Dey, Advocates appearing for Parties**Judgement**

1. The petitioner was appointed as Assistant in Golaghat branch of the Life Insurance Corporation of India CLIC") on 17.3.1963. He was assigned to perform as paying Cashier with effect from 15.9.1980. But on 14.8.1986 he was placed under suspension and after more than a year on 30.11.1987 he was served with a charge sheet alleging misappropriation of funds and negligence. He denied the charges followed by an inquiry by a senior branch manager. The inquiry report was submitted on 27.7.1989, after a period of about three years from the date of suspension. The petitioner was found guilty of negligence for causing a loss of Rs. 30,631.72 to the Corporation. The said report was not acted upon for a period of 8 years where after on 8.8.1997 a showcause notice was issued by the Divisional Manager, being the disciplinary authority, proposing to impose the penalty of reduction of pay of the petitioner to the minimum of the scale under regulation 39(1)(d) of LIC of India (Staff) Regulations, 1960 and to recover Rs. 30,631.72 being the appropriated money under regulation 39(1 He) of the said regulations.

2. When the petitioner was under suspension a second charge sheet was issued against him on 2.1.1996, after a period of about 10(ten) years from the date of suspension alleging that he had misappropriated a further amount of Rs. 1,00,649.26. A second inquiry was thus set in motion. On 14.8.1996 the report of the second inquiry was submitted according to which the petitioner was not guilty of

the charge of misappropriation. But the disciplinary authority was not satisfied with the said report and directed further inquiry. Accordingly, further inquiry was done and the report was submitted on 7.10.1996 with the same observation that the petitioner was not guilty of the charge of misappropriation. The disciplinary authority refused to be satisfied with the said findings and decided to proceed against the petitioner for imposing penalty for the second charge also. On 8.8.1997 a showcause notice in connection with second inquiry was served on the petitioner proposing to dismiss him from service and recover from him Rs. 1,00,649,26 being the misappropriated amount.

3. Aggrieved by the two showcause notices issued on the same date, i.e., 8.8.1997, proposing separate penalties after a period of 11 years from the date of suspension, the petitioner approached this court by filing CR No. 4145 of 1997 putting under challenge the decisions recorded in the said showcause notices. This court stayed further proceeding initially, but dismissed the writ petition on 27.6.2003 after a period of about 6(six) years holding that the writ petition was premature.

4. The petitioner then preferred writ appeal No. 335 of 2003 against the said judgment and order which was finally closed on 20.12.2005 with the following direction in para 6, which reads:

"6. We, therefore, dispose of this appeal with the direction that the disciplinary authority shall not act upon the two notices issued on 8.8.1997 without first giving an opportunity to the appellant to make his submission with regard to the delay in taking actions insofar the first report is concerned and nondisclosure of reasons for differing with the second enquiry report along with other grounds as submitted before this court. The appellant is given one month's time from today to submit his representation reply to the aforesaid two notices before the disciplinary authority and, on receipt thereof, the authority shall afford personal hearing to the appellant and pass appropriate orders in terms of the Regulations, 1960. Needless to say that the authority shall not in any manner be influenced by the earlier decision communicated in the two notices issued on 8.8.1997. The judgment and order passed by the learned Single Judge accordingly stands modified."

5. The order of suspension was, however, revoked on 27.2.2002 after a period of about 16 years without recording any reason justifying such a long period of "suspension which undoubtedly entailed manifold sufferings and mental agonies to the petitioner. However, before the judgment in the writ appeal was rendered the petitioner retired from service on 31.5.2004 which fact was not brought on record at the time of disposal of the said appeal. The Master and servant relationship having thus come to an end with his retirement from service the question of imposing any penalty in the form of dismissal from service, or reduction of his pay as proposed in the showcause notice ceased to exist.

6. Though retired from service, the petitioner, following the direction of this court in the said writ appeal, submitted a representation to the disciplinary authority against two showcause notices in connection with two inquiries highlighting that the first inquiry report holding him guilty of negligence only was not acted upon for a period of 8 years and the second inquiry into alleged misappropriation was initiated after a period of about 10 years from the date of his suspension which is quite illegal and not sustainable in view of the law laid down by the Gauhati High Court in K.S. Vohra v. The Director General of Boarder Security Force (1990) 2 GLR 271. He further pointed out that though the first inquiry was completed on 27.7.1989, the notice proposing penalty was issued on 8.8.1997 after a period of long 8 years which is again based on no reason and thus unsustainable in law. His further submission in the said representation was that in the second inquiry he was found not guilty of the charge of misappropriation. When the disciplinary authority ordered further inquiry after being dissatisfied with such finding, the petitioner was again found not guilty to the charge. In spite of such finding, the disciplinary authority, without recording any reason for differing with the findings of the inquiring officer, proposed penalty of dismissal from service holding the petitioner, guilty of the charge of misappropriation. He pointed out that the Supreme Court in Yogenath B. Bagde v. State of Maharashtra, 1999 (7) SCC 731 laid down the ratio that the disciplinary authority must record the grounds of his disagreement and afford opportunity to the delinquent of being heard. The same view has been taken by this court in T.S. Sriuastava v. State of Assam, AIR 1972 Gau. 3 which has been cited in the said representation of the petitioner. The other important aspect of the case which the petitioner brought to the notice of the disciplinary authority is that he was kept under suspension for a long agonizing period of 16 years and when he retired from service on 31.5.2004 serving the corporation for a short period after his reinstatement on 27.2.2002 his pension and pensionary benefits have been withheld. He also highlighted the legal position laid down by the Supreme Court in AIR 1986 SC 2116 that the punishment of dismissal from service could not be imposed upon an employee after his retirement.

7. But as the said representation could evoke no response, he issued legal notice on 12.7.2006 asking the disciplinary authority to dispose of the representation as otherwise it would violate the direction of this court in the said writ appeal. When the legal notice also failed to activate the disciplinary authority, the petitioner instituted a contempt proceeding No. 650 of 2006 in which this court issued notice on 1.12.2006 directing the disciplinary authority why he would not be held to be guilty of charge. Only thereafter, on 20.12.2006 the Branch Manager of the Corporation issued a letter to the petitioner proposing to settle his provident fund after deduction of the misappropriated amount which was, however, strongly objected to by the petitioner in his letter dated 22.1.2007. In the duplicate copy of the settlement of the provident fund account of the petitioner (Annexure8) an amount of Rs. 30,635 (the amount defalcated as per first inquiry report) appears to

have been deducted from the provident fund account of the petitioner.

8. Aggrieved by the persistent refusal to release pension and pensionary benefits of the petitioner and non disposal of the representation submitted on 5.1.2006 by the petitioner as per direction in the writ appeal, this writ petition has been instituted for appropriate remedies.

9. I have heard learned counsel for the parties.

10. Mr. Dasgupta, learned counsel for the petitioner has vividly represented from the facts noticed above how the petitioner has been punished mentally and financially even without any formal order of punishment by keeping him under suspension for long period of 16 years without any good and sufficient reason and denying him even provisional pension after his retirement. He has strongly submitted that the disciplinary authority of the Corporation even dared to disobey the direction of this court passed in the writ appeal to dispose of the representation of the petitioner which he submitted highlighting the serious flaws in the disciplinary proceeding against him. Even today, after such a long lapse of time and institution of a contempt proceeding the respondent Corporation continued to disobey the direction of this court and prolonged the sufferings of the petitioner by not releasing his pension and pensionary benefits. No reference to any particular decision of the Apex Court is necessary, according to Mr. Dasgupta, to take a view on the basis of a line of decisions that an employee cannot be denied of his pension after superannuation as that would result in a situation of virtual starvation of the retired employee and his family.

Other submission of Mr. Dasgupta is that the petitioner was not found guilty of misappropriation, in the second departmental inquiry even after a further inquiry ordered by the disciplinary authority. In the showcause notice there is nothing why the disciplinary authority differed from the findings of the inquiring officer, that the petitioner was not guilty of the charge of the misappropriation. In view of the failure on the part of the disciplinary authority to record any reason for taking a different view from the second inquiry report, the notice proposing penalty of dismissal and recovery of the amount allegedly misappropriated is legally untenable. That apart, Mr. Dasgupta submits, as the petitioner has already gone on retirement, the question of dismissal from service does not arise and as the report of inquiry declares him not guilty of misappropriation of any amount, the proposal to recover any amount in connection with the second inquiry is illegal, arbitrary and, therefore, liable to set aside and quashed. As regards the first inquiry, his submission is that there is no definite finding in the report of the inquiring officer that the petitioner had defalcated any amount. The only finding is that he was guilty of negligence which led to the alleged defalcation by another employee who had been dismissed from service of the Corporation. Even in the charge sheet in connection with the first inquiry it has been clearly indicated that the petitioner by permitting others to make entries in the cash book caused to happen the defalcation of Rs. 30,631. Mr.

Dasgupta has pointed out that without passing any order finally in the departmental proceeding a and without disposing of the representation submitted by the petitioner as per direction in the writ appeal, the disciplinary authority most arbitrarily and illegally deducted the amount of Rs. 30,631 from the provident fund account of the petitioner. Even thereafter, the petitioner has not been given provisional monthly pension or other pensionary benefits. This highlights gross illegality and arbitrariness on the part of the disciplinary authority of the Corporation which calls for interference by this court, Mr. Dasgupta urged.

11. Mr. Dey, learned senior counsel for the Corporation has, however, assured that the Corporation shall release provisional pension of the petitioner within a short time though the Corporation reserved its right to proceed against the petitioner for recovery of the defalcated amount. According to him the departmental inquiries could not be completed because of the stay order passed by this court at the instance of the petitioner. He, however, has no answer why the petitioner had to be kept under suspension for 16 years.

12. From the rival submission and the factual position noticed above what has finally emerged is that the petitioner has not been found guilty of misappropriation of any money in the second departmental inquiry and, therefore, neither he can be punished nor any recovery can be made as proposed in the second notice. As regards the first notice proposing penalty of reduction of pay to the minimum of the pay scale and recovery of Rs. 30,631, it would appear that no decision has yet been taken by the Corporation even after a clear direction from this court in the aforesaid writ appeal. As the petitioner has already retired from service question of imposing any penalty in the form of reduction of pay does not arise. As regards the recovery of the alleged amount of defalcation Mr. Dasgupta submits that the said amount has already been recovered from the provident fund account of the petitioner. There is, however, no prayer in the writ petition with regard to the said recovery.

13. Law is wellsettled that when a disciplinary authority intends to differ with findings of the inquiring officer, the said authority must give sufficient reasons for doing so and must afford opportunity to the delinquent officer to represent against such different findings. This has not been done in the present case. What is found from the materials on record in this case is that the petitioner was kept under suspension for a period of, 16 years for which no good and sufficient reason could be shown. This is again an instance of gross illegality and arbitrariness on the part of the disciplinary authority. Such a long suspension has certainly caused severe mental agony to the petitioner. In consideration of the above facts in their entirety the disciplinary authority can be said to be guilty of grave offence of gross misuse of power by keeping a the petitioner under suspension for a period of long 16 years and then not releasing even his provisional pension after retirement. The said authority is also guilty for not disposing of the representation submitted by the petitioner in terms of the direction of this court in the writ appeal, aforementioned

which nakedly show arrogance of power.

14. For the reasons and discussions aforementioned, this writ petition is allowed setting aside and quashing both the proposals of penalty made in the two showcause notices and directing the respondent Corporation to release pension and pensionary benefits of the petitioner, without any deduction, within a period of one month from today. ,

No cost.