

Chandra Deo Prasad Vs Life Insurance Corporation of India and Others

Court: Jharkhand High Court

Date of Decision: July 19, 2010

Hon'ble Judges: R.R. Prasad, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.R. Prasad, J.

The petitioner in the year 1990 was appointed as an Assistant under the Salary Saving Scheme of Life Insurance

Corporation of India at Dhanbad. Subsequently, he was promoted in the year 1996 to the post of Programmer-II in Branch Office of Katrashgarh.

In course of time, he was served with a memo of charge dated 9.4.2001 containing following charges of:

(i) misappropriation of a sum of Rs. 1,22,650/ -

(ii) misappropriation of a sum of Rs. 64,264.90

(iii) putting to the company in a loss to the extent of Rs. 8,110/ -

(iv) misappropriation of a sum of Rs. 2400/ -

(v) 1307 numbers of unused receipts were recovered from his custody.

(vi) Project Directory of the Back End system was found removed from the system and all the transactions files for the cash collections prior to

10.5.1999 were found removed from the Front end System.

(vii) 5 Passwords were created using dummy Serial Nos. without any names except one.

(viii) To have confessed his guilty"" in letter dated 3.6.1999 of depositing a sum of Rs. 10,000/ - only to Katrasgarh Branch office vide receipt No.

060257 dated 11.5.1999.

(ix) misappropriation of an amount of Rs. 1,97,425/ -.

2. For holding departmental enquiry, the Divisional Manager (NB and SETL), Hazaribagh was appointed as an Enquiry Officer to enquire into the

charges levelled against the petitioner. The Enquiry Officer after holding enquiry, submitted its report on 12.10.2001 which is not on record but

according to the petitioner, the Enquiry Officer did not find the accused guilty of all the charges. The Disciplinary Authority did not accept that

report rather sent back the matter before the Enquiry Officer for holding enquiry again. Thereupon, the Enquiry Officer after holding enquiry

submitted its report on 9.5.2002. Against that report, the petitioner did file his representation on 9.7.2002 but no order was passed, rather the

Disciplinary Authority vide its letter dated 7.8.2002 issued second show cause notice to the petitioner. Thereupon the Disciplinary Authority vide

its order dated 20.7.2003 (Annexure 3) passed an order of removal of the petitioner from service and also for recovery of a sum of Rs. 1,97,425/

-, the amount to which Life Insurance Corporation of India was put to loss by the petitioner. Thereafter the petitioner unsuccessfully preferred an

appeal against that order and even a memorial preferred by the petitioner got dismissed affirming the order of removal.

3. Being aggrieved with the order of removal and also by the order of Appellate Authority affirming the order passed by the Disciplinary Authority

and also by the order passed in memorial, this writ application has been preferred challenging those orders to be bad.

4. Mr. Anil Kumar Sinha, learned Senior counsel appearing for the petitioner submits that at the first instance when the enquiry was held the

enquiry officer did not find all the charges to be proved and hence, when such report was submitted by the Enquiry Officer, the Disciplinary

Authority should have assigned the reason/ground for disagreeing with the conclusion arrived at by the Enquiry Officer and by communicating the

said reason, the petitioner should have been called upon to submit his explanation and after taking into consideration the explanation, the

Disciplinary Authority should have sent the matter back for fresh enquiry, if the explanation submitted would have been found to be unsatisfactory.

5. But in the instant case, the Disciplinary Authority has never adopted that practice. Hence, the order passed by the Disciplinary Authority for

fresh enquiry is bad, in view of the decision laid down by the Hon"ble Supreme Court rendered in a case of Punjab National Bank and Others Vs.

Sh. Kunj Behari Misra, and also in a case of Onkar Saran Singh v. Bihar State Electricity Board and Ors. 2002 (1) JLJR 64 as well as in a case of

Dr. Ananda Devi v. State of Jharkhand and Ors. (2002) 1 JLJR 17 and again in a case of Madan Kishore Singh v. State of Jharkhand and Ors.

(2002) 1 JLJR 1.

6. Having gone through the said decisions, the situations, in which law was laid down to the effect that in case of disagreement with the enquiry

report, the Disciplinary Authority after formulating the reason/ground for disagreeing with the view arrived at by the Enquiry Officer needs to call

for explanation from the delinquent, are quite different.

7. It be pointed out that in a case of Punjab National Bank v. Kunj Behari Misra (supra), the Disciplinary Authority had disagreed with the finding

of the Enquiring Authority in regard to certain charges. Their Lordships after taking into account various decisions including the decisions relied on

behalf of the petitioner clearly held that where the Disciplinary Authority disagrees with the report of the enquiring authority in regard to certain

charges, providing of an opportunity is necessary to satisfy the principles of natural justice which fact would emerge from the observation made in

paragraph 19 of the said judgment which reads as follows:

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof,

whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such

charge, it must record its tentative reason for such disagreement and give to the delinquent officer an opportunity to represent before it records its

findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to

persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already

observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of

misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

8. Thus, it is quite evident that a fresh opportunity needs to be given by the Disciplinary Authority in case of disagreement with the enquiry report

before passing order of penalty in order to satisfy the principles of natural justice but in the instant case, the situation is quite different as the

Disciplinary Authority on receiving the enquiry report did not pass order on the point of punishment rather sent back the matter for fresh enquiry.

Therefore, it is not the case that the Disciplinary Authority without asking for explanation on the point of disagreement passed the order of

punishment. The purport for laying down the ratio as aforesaid is to observe the principles of natural justice in a case where Disciplinary Authority

disagrees with the enquiry report. But in the present case when the Disciplinary Authority sent back the matter for fresh enquiry the principle of

natural justice got observed as the delinquent participated in the enquiry conducted in the light of the order passed by the Disciplinary Authority.

9. Admittedly, the petitioner participated in the said enquiry but at no point of time, he ever raised any objection over the propriety of the fresh

enquiry. Thus, the ratio laid down in the case of Punjab National Bank v. Kunj Behari Misra (supra) which was followed in other cases, referred to

above, on behalf of the petitioner does not apply in the present case where the petitioner has been found guilty of the charge relating to financial

irregularities.

10. Thus, I do not find any merit in this application. Hence, it is dismissed.