

(2009) 08 MAD CK 0341

Madras High Court

Case No: Writ Petition No. 19291 of 2004

S. Kannan

APPELLANT

Vs

United India Insurance Company
Ltd.

RESPONDENT

Date of Decision: Aug. 3, 2009

Acts Referred:

- General Insurance (Conduct, Discipline and Appeal) Rules, 1975 - Rule 23, 25, 39(1)(I), 39(1)(II), 39(1)(III)

Hon'ble Judges: K.N. Basha, J

Bench: Single Bench

Advocate: A. Sasidaran, for the Appellant; R. Revathi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.N. Basha, J.

The challenge in this petition is to the order passed by the third respondent dated 11.07.2003 in CBE/RO/RM/SECT.742/2003 removing the petitioner from service and as confirmed by the appellate authority, the second respondent herein by order dated 19.02.2004 in Ref. No. 2001-45/12/2004 with prayer for a consequential relief of a direction to the respondents to reinstate the petitioner in service with attendant monetary benefits.

2. The factual matrix leading to the filing of this writ petition could be briefed hereunder:

2.1. The petitioner joined the first respondent insurance company limited as a Development Officer on 27.04.1987 and his post was confirmed with effect from 01.05.1998. The petitioner stated that he is having unblemished record of service and his service and performance as Development Officer was appreciated by the Senior Divisional Manager, Coimbatore, by his letters dated 23.05.1995, 28.11.1995 and 19.07.1996. By another letter dated 29.07.1999, the Regional Manager has

appreciated the performance of the petitioner on the Market Front for having registered a growth rate of 57.58 %. That being the position, the third respondent herein initiated proceedings by his memorandum dated 23.08.2001 under Rule 25 of the General Insurance (Conduct Disciplinary and Appeal) Rules, 1975 (hereinafter referred to as "the rules"). The following charge was framed against the petitioner:

Shri. S. Kannan, whilst working as Development Officer in Branch Office V, Coimbatore, during 1995, issued Cover Note No. 186621 on 15.05.1995 Covering Vehicle No. TN-37-Z-2599 belonging M/s. Velu Transport Service, marking the date of issue of the Cover Note as 13.05.1995 and period of insurance as 13.05.1995 to 12.05.1996. The Cover was ante-dated with a view to bring into Cover the occurrence of accident to the above Vehicle on 15.05.1995 at 09.25 A.M. involving death of a third party person. Shri. S. Kannan had ante-dated the insurance with a view to confer undue pecuniary benefit to the insured. Thus Shri. S. Kannan failed to maintain absolute integrity and devotion to duty acted in a manner unbecoming of a public servant and committed misconduct within the meaning of Rule 391) (I), (II) and (III) read with Rule 4(1) 4(5) and 4(9) of General Insurance (General Discipline and Appeal) Rules.

2.2. The petitioner submitted his explanation to the above said charge dated 01.10.2001 stating that only on the instructions of the Senior Branch Manager, he had issued the above Cover Note to M/s. Velu Bus Transports to cover their vehicle bearing No. TN-37-Z-2599 for the period from 13.05.1995 to 12.05.1996 and the proposal had been filled in by the then Senior Branch Manager and initialed on 13.05.1995 at 10.30 a.m. itself as a mark of acceptance of the business on 13.05.1995 itself and the policy was also issued for the same period, i.e., from 13.05.1995 to 12.05.1996 signed by the Senior Branch Manager. The petitioner further stated in the explanation that as per the normal practice prevailing in the office, the cover note will be taken with the permission of the Senior Branch Manager and entries will be made on subsequent working day and 13.05.1995, being a holiday, the cover note was issued by the then Senior Branch Manager without making entries in the Cover Note Register as the said register was kept locked by the record clerk. As 15.05.1995 being the next working day, the Cover Note was signed by the petitioner herein. The petitioner further stated in the explanation that the cover note dated 13.05.1995 was issued by the petitioner as per the instructions of the then Senior Branch Manager purely in the interest of the Company without any motive. Therefore, it is submitted by the petitioner that the charge framed against the petitioner was baseless.

2.3. An Enquiry Officer was appointed to inquire into the charge and submitted his enquiry report dated 13.03.2003 holding that the charge framed against the petitioner had been proved. The third respondent by his letter dated 28.04.2003 in Lr. No. CBI/RO/RM/Sect./682/03 forwarded a copy of the enquiry report to the petitioner for submitting further representation on the enquiry report. The

petitioner submitted his further representation dated 21.05.2003 reiterating the earlier explanation and further pointed out that the enquiry was not conducted in a fair manner. The final orders were passed on 11.07.2003 by the third respondent imposing the penalty of "Removal from Service" which shall not be a disqualification for the petitioner's future employment.

2.4. Against the said order, the petitioner preferred an appeal before the second respondent and his appeal was also rejected by the second respondent by order dated 19.02.2004. The petitioner further submitted a detailed memorandum to the first respondent on 25.05.2004 and the same is pending till the date of filing this writ petition before this Court. The petitioner being aggrieved against such orders preferred the present writ petition.

3.1. Mr. A. Sasidaran, learned Counsel for the petitioner contended that there is absolutely not an iota of evidence available on record to substantiate the charge framed against the petitioner herein. It is contended that the petitioner only acted as per the instructions of the then Senior Branch Manager and issued the Cover Note on 13.05.1995 itself by obeying such instructions given by his higher official. It is contended that if really, the petitioner deliberately ante-dated the cover, he could not have acknowledged the Cover Note book mentioning the date as 15.05.1995. The learned Counsel would further submit that the findings of the Enquiry Officer that the cover note was only received on 15.05.1995 and not on 13.05.1995 is not based on any material available on record but only on mere presumption. It is further contended that the vehicle involved in the alleged accident on 15.05.1995 is covered by cover note No. 186622 bearing registration No. TN-37-Z-2599 whereas in the charge issued against the petitioner, the cover number is mentioned as 186621 and as such the charge itself is defective and the entire proceedings is vitiated. The learned Counsel would contend that the charge was framed on the basis of irrelevant materials and documents.

3.2. The learned Counsel without prejudice to his earlier contentions further submitted that in a similar matter of anti-dating of cover, the concerned delinquent officer was imposed with the penalty of "Reduction in Basic Pay by One Step" in the time scale applicable to him as per Rule 23(d) of the rules and as such the penalty imposed against the petitioner is disproportionate to the misconduct alleged against him.

4. Per contra, learned Counsel for the respondents contended that there is no infirmity or illegality in the impugned orders. The learned Counsel would contend that though there are discrepancies and variations in respect of the cover note numbers, the enquiry officer considered those aspects in the light of the other materials available on record. It is further contended that both the said documents, namely, cover notes bearing Nos. 186622 and 186621 are forms part of the records of the respondents herein and during the preliminary enquiry the same was also acknowledged by the petitioner herein. The learned Counsel would further contend

that the petitioner has not given any probable explanation for the charge framed against him and as such the enquiry officer in his enquiry report rejected his explanation and found the charge framed against the petitioner is proved. It is contended that the appellate authority also rightly confirmed the original order of the disciplinary authority imposing the penalty of "Removal from Service" which shall not be a disqualification for the petitioner's future employment. The learned Counsel would contend that there is no ground made out by the petitioner warranting the interference in the impugned orders.

5. I have carefully considered the rival contentions put forward by either side and also perused the entire materials available on record including the impugned orders passed by the respondents herein dated 11.07.2003 and 19.02.2004 by the third and second respondents respectively.

6. A perusal of the materials available on record discloses that the petitioner was working as a Development Officer in the first respondent insurance Corporation. The fact remains that the petitioner joined service of the first respondent on 27.04.1987. The third respondent initiated disciplinary proceedings under Rule 25 of the rules and framed the charge as stated above. The crux of the allegation levelled against the petitioner is to the effect that the petitioner anti-dated the cover with a view to bring into cover the occurrence of accident to the vehicle bearing Registration No. TN-37-Z-2599 involved on 15.05.1995 at 9.25 a.m. with a view to confer undue pecuniary benefit to the insured. Though there are certain variations and discrepancies in respect of the charge more particularly in respect of the cover note number to the effect that in the charge, the cover note number is mentioned No. 186621, whereas, the vehicle involved in the alleged accident on 15.05.1995 is covered by cover note No. 186622, the charge against the petitioner cannot be thrown out as baseless. A perusal of the impugned order reveals that the disciplinary authority, the third respondent herein, stated in his order dated 11.07.2003 that such variation in cover number has not caused any prejudice to the defence of the delinquent officer and by such variation, the essence of the charge of anti-dating of cover note not resulted in material alteration. As pointed out by the disciplinary authority in the impugned order, it is seen that both the said cover notes formed part of the same cover note book that was issued on 15.05.1995 and the same was produced during enquiry and acknowledged by the petitioner, the delinquent officer. The appellate authority, the second respondent herein also had given categorical reasons for confirming the order passed by the disciplinary authority dated 11.07.2003 in his order dated 09.02.2004. This Court is of the considered view that the reasons assigned in the impugned orders for holding that the charges are proved against the delinquent officer, the petitioner herein, cannot be stated to be contrary to the materials available on record or perverse warranting the interference of this Court.

7. Now this Court is left with the remaining question "whether the punishment of removal from service imposed on the writ petitioner is disproportionate to the delinquency committed by him ?"

8. Before proceeding to consider the above said question in respect of interfering with the punishment imposed on the petitioner, it is relevant to refer the settled principle of law regarding the interference in the punishment imposed on the delinquent officer.

9. The Hon"ble Apex Court in U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, has held as follows:

It is not, that the High Court can, in no circumstances, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings. Not only Supreme Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court.

10. The Division Bench of the Kerala High Court in State Bank of India and Others Vs. T.J. Paul, has held as hereunder:

High Court in exercise of its discretionary powers can interfere with the quantum of punishment where the punishment is not only disproportionate to the proved charges but also harsh and excessive and the Court can impose appropriate punishment in exceptionally rare cases to shorten the life of litigation.

11. Yet another Division Bench of this Court in T. Arumai Sounder Rajan Vs. State of Tamil Nadu, Board of State Express Transport Corporation and Mr. G. Kotteswaran, Managing Director, Metropolitan Transport Corporation, took a similar view.

12. The Division Bench of this Court in P. Sekar, S/o. Ponnan v. The Registrar, Tamil Nadu Administrative Tribunal and 2 Ors. reported in 2008 Writ L.R. 902 interfered with the punishment and modified the same as hereunder:

8. Keeping in view the fact that there is no finding nor any material to indicate that the petitioner had knowingly submitted a false mark sheet and such question would be ultimately decided in the pending criminal case and taking into consideration the social strata from which the petitioner comes, we feel in the interest of justice that punishment of termination of service is required to be modified and instead we direct that the petitioner shall be reverted to the post of Flock Man and shall not be considered for promotion to any other post. As a consequence of such order, it is further directed that the period during which the petitioner has not worked, shall not be counted for any purpose.

13. By keeping the above said principle of law laid down by the Hon"ble Apex Court as well as this Court in mind, let me know consider the circumstances warranting the interference of this Court in the punishment imposed on the petitioner herein.

14. The materials placed before this Court discloses the following circumstances:

(i) The petitioner was having unblemished record of service right from 1987 till the charge in this matter framed against the petitioner ;

(ii) The Senior Divisional Manager in his letter dated 23.05.1995 have given compliment to the petitioner as herein:

On verification of the concluded business performance of our Division, I am glad to inform you that you have procured a premium of Rs. 23.10 lakhs as against last year's income of Rs. 19.27 lakhs showing a growth rate of 20%. Indeed it is a splendid performance when compared to the base premium you had on which the accretion made by you.

(iii) The Regional Manager in his letter dated 23.07.1999 also given a compliment to the petitioner herein about his performance as a Development Officer ;

(iv) No adverse remarks are made against the petitioner till the charge in the instant case.

(v) Neither the disciplinary authority nor the appellate authority has given any explanation or finding to the contention of the petitioner by producing two letters one from Mr. N. Nagaraj of Velu Transport Service and another from Shri. Jayaprakash (then Manager of Velu Transport Service) certifying that the premium payment for insuring the vehicles bearing No. TN 27 Z 2599 and TN-37-Z-2799 was made on 13.05.1995 and cover note No. 180621 and 186622 respectively were obtained then and there.

(vi) The disciplinary authority admittedly held that there is variation and contradiction in respect of the cover note numbers, namely, 186621 and 186622 but only held such variation and contradiction not resulted in any prejudice to the defence of the petitioner.

(viii) The disciplinary authority in respect of the similar matter of charge of anti-dating of cover in respect of another development officer in his proceedings in CEB:RO:MKTG:363:99 dated 09.01.1999 imposed a penalty of reduction in basic pay by one step in the time scale applicable to the said delinquent officer and as such there should not be any discrimination between the writ petitioner and another similarly placed delinquent officer.

15. Considering the above said circumstances, this Court has no hesitation to hold that the punishment imposed on the petitioner is not only disproportionate to the proved charges but also harsh and excessive and shocks the conscience of this Court. Accordingly, this Court is of the considered view that modification of the punishment from "removal from service which shall not be a disqualification for future employment" to "reduction in basic pay in one step in the time scale applicable to the petitioner" would meet the ends of justice.

16. For the aforesaid reasons, this Court is left with the no other alternative except to interfere with the punishment imposed on the petitioner. Accordingly, the punishment awarded on the petitioner by the third respondent in his proceeding in CBE/RO/RM/SECT.742/2003 dated 11.07.2003 as confirmed by the appellate authority, the second respondent herein, in Ref. No. 2001-45/12/2004 dated 19.02.2004 is hereby modified as "reduction in basic pay in one step in the time scale applicable to the petitioner". Consequently, the respondents herein are directed to reinstate the petitioner in service without backwages within a period of four weeks from the date of receipt of a copy of this order. However, the service of the petitioner should be treated as in continuous service which shall accrue to his future service benefits.

With this modification in punishment, the writ petition is ordered accordingly. No costs.