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Calcutta High Court

Case No: Writ Petition No. 7262 (W) of 2011

Sajal Kumar Banerjee		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Sept. 25, 2013

Citation: (2013) 5 CHN 8

Hon'ble Judges: I.P. Mukerji, J

Bench: Single Bench

Advocate: Bikash Ranjan Bhattacharyya, Mrs. Shanti Das and Mr. Subha Dey, for the Appellant;Dipak Ghose, Advocate and Mr. Ranjoy De, Advocate for the State, for the Respondent

Final Decision: Disposed Off

Judgement

I.P. Mukerji, J.

Mr. Sajal Kumar Banerjee, the writ petitioner was a Development Officer in the Serampore branch office of the respondent insurance company, United India Insurance Company Ltd. On 11th March, 2004 he was issued a document termed as a "memorandum". It was issued by the Manager and the Disciplinary Authority, Mr. S. Chakraborty. It stated that Mr. Chakraborty proposed to hold an enquiry against him under Rule 25 of General Insurance (Conduct, Discipline and Appeal) Rules, 1975. He was accused of misconduct. The elements of misconduct were stated in the form of Articles of charge made as Annexure-I to the document. He was given an opportunity of filing a written statement whether he admitted or denied any of the Articles of Charge.

2. There were three charges against him, as follows. The first was that he was working as a Development Officer in the branch office at Serampore during the years 2000 and 2001. He had occasion to insure a Bajaj M-80 motor cycle. He delivered the copy of the cover-note No. 567818 on 26th June, 2000 and retained the blank original. He utilized this original to issue an insurance cover to a mini bus having registration no. WB-15-3628, belonging to Sm. Dipika Saha and collected a

cash premium of Rs. 5,200.80/- on 16th August, 2000. He did not deposit this cash premium and misappropriated it. On 16th August, 2000, at 22.30 hrs., this mini bus met with an accident resulting in the death of a third party. Furthermore, to cover the accident of the mini bus, the writ petitioner issued another cover-note no. 567964 with the date of issue as 16th August, 2000. The cover-note mentioned the time of insurance as 12 noon. He deposited the premium of Rs. 5,043/- in the office on 17th August, 2000 at 2 p.m.

3. The second Article of the Charge was that he misappropriated of Rs. 6,060/- collected as cash premium towards cover-note nos. 567804 and 567805 dated 17th April, 2000 and cover-note nos. 567808 and 567809 dated 24th May, 2000 towards insurance of various motor vehicles.

4. The third Article of Charge was that he had issued antedated motor cover notes as mentioned in the show cause notice to grant undue benefit to the assured.

5. The first enquiry report stated that the writ petitioner had admitted charges II and III relating to misappropriation of premium and issuing of antedated insurance covers. The enquiry officer proceeded to make an enquiry report on 10th November, 2005. In the enquiry report the enquiry officer held that the charges were proved.

6. By a letter dated 30th January, 2006 by the Regional Manager and Disciplinary Authority it was stated that according to the enquiry report which was submitted to him on 10th November, 2005 charges I, II and III against the writ petitioners were proved. Under Rule 23 the writ petitioner was given an opportunity to make a representation if any.

7. The writ petitioner submitted a representation on 23rd March, 2006 where he denied that he admitted charges II and III against him.

8. Thereafter, by an office order dated 30th May, 2006, another enquiry was ordered into Articles II and III of the charge. The report of the enquiry officer making a fresh enquiry into Articles II and III of the charge found the writ petitioner guilty of Article II. As far as Article III was concerned the writ petitioner was found to be negligent but it was found that no undue benefit was granted to any third party.

9. By an order passed on 3rd October, 2008 by the Disciplinary Authority, the penalty of removal from service was imposed upon the writ petitioner. It stated that this would not be a disqualification for future employment in terms of Rule 23 (g) of GI (CDA) Rules, 1975.

10. An appeal against the said order was dismissed on 21st May, 2009.

11. It is first necessary to analyze the authorities cited by Mr. Ghose, appearing on behalf of the respondents.

12. The first case was U.P. State Road Transport Corporation Vs. Vinod Kumar, where Ashok Bhan J. had remarked as follows:

10...This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering with the quantum of punishment. Without burdening the judgment with all the judgments of this Court on this point, we may only refer to a recent judgment in Divisional Controller, ...

13. The next case is State of Meghalaya and Others Vs. Mecken Singh N. Marak, . In this case J.M. Panchal J. observed as follows:

14. In the matter of imposition of sentence, the scope for interference a very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

15. While considering the question of proportionality of sentence imposed a delinquent at the conclusion of departmental enquiry, the court should also take into consideration, the mental set-up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision-making process. If the charged employee holds the position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands.

14. The next case is State Bank of Mysore and Others etc. Vs. M.C. Krishnappa, . In paragraphs 8 and 9 Aftab Alam J. held as follows:

8. We are unable to agree with the view taken by the High Court. It is well settled that punishment is primarily a function of the management and the courts rarely interfere with the quantum of punishment. (See UT of Dadra & Nagar Haveli V. Gulabhia M. Lad, SCC paras 9 and 14).

9. IN this case the proven charge against the respondent was of financial irregularities and of making fraudulent withdrawals deriving pecuniary gain for himself. In a bank an offence of this kind is one of the most serious offences and the disciplinary authority had passed an order of removal against the respondent. In the facts of the case even that punishment could not be said to be unreasonable or unduly harsh. The reviewing authority justified the order of punishment and gave him a lighter punishment instead. At that time the respondent accepted it without ado. In those facts we fail to see any scope for interference with the punishment on a purely subjective view taken by the High Court.

15. The other two cases which were cited related to non interference by the Courts with fact finding done in departmental proceedings in the case of State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, R.V. Raveendran J. said:

7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquires. Therefore, courts will not interfere with findings of fact recorded on departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi V. Union of India, Union of India V. G. Ganayutham, Bank of India V. Degala Suryanarayan and High Court of Judicature at Bombay V. Shashikant S. Patil)

16. In the case of Nirmala J. Jhala Vs. State of Gujarat and Another, , Dr. B.S. Chauhan J. held:

24. The decisions referred to hereinabove highlights clearly, the parameter of the Court''s power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a court of appeal but, it merely reviews the matter in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of

them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision-making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene.

17. But nevertheless R.V. Raveendran J. in the case of State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, had kept open a door for the Court to appraise enquiry proceedings when it appeared to be unfair or when findings were based on no evidence or when they were clearly perverse. The test of perversity is also provided i.e. whether a tribunal acting reasonably would arrive at such conclusion or finding. The Court could also interfere if the order was arbitrary, capricious mala fide or based on extraneous considerations. J.M. Panchal J. in the case of State of Meghalaya and Others Vs. Mecken Singh N. Marak, spoke about the conscience of the Court being touched, as a ground for interference.

18. Two important points were raised by learned Counsel for the writ petitioner. When the allegation against the writ petitioner was that he had utilized a copy of the cover-note No. 567818 to issue a policy cover to the person entitled and had wrongfully filled in the original, which had been kept blank, to provide insurance cover to the mini bus bearing no. WB-15-3628, why was not Sm. Dipika Saha, the owner of the mini bus asked to produce the original issued to her? If an insurance policy had been issued wrongfully bearing cover-note No. 567964 to cover the accident, why was the said owner of the mini bus not asked to produce the original policy? Why were copy documents used by United India Insurance Company to prove their charges against the writ petitioner? Furthermore, and more importantly, if the policy according to the Insurance Company was a product of fraud, then, they should have avoided the policy at least at the time when it was used in the Motor Vehicles Claims Tribunal, for claiming compensation for the accident. In fact, moneys under the policy were paid.

19. Therefore, the insurance company did not dispute the genuineness or validity of the policy, before the Motor Vehicles Claim Tribunal. In those circumstances, in my opinion, it was not equitable for the insurance company to turn around and take measures against its employee, on the ground that he had fraudulently issued the policy, although there was no legal bar. In my opinion this made the proceeding arbitrary and based on extraneous consideration as stated by R.V. Raveendran J. in the case of State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya,

20. Non production of the original policy or failure to compel Sm. Dipika Saha to produce the original policies made the departmental proceeding unfair within the rule enunciated by R.V. Raveendran J.

21. Mrs. Das very rightly pointed out that the disciplinary and the appellate authorities did not consider the vital evidence in favour of the writ petitioner. It was his specific case that filling up of the form and receiving cash premium were not done by him but by some other person. He had dealt with hundred of insurance cases involving lakhs of rupees. There was never any allegation against him. Failure to deposit the premium amounts may have been the fault of persons entrusted with its collection.

22. I will set out the relevant question and answers:

DA: In the Charge Sheet it is mentioned that premium was not deposited for the four C.N. and in the CE''s reply he is stated certain agents were deposited the case on his behalf. Was this a practice of the office?

MW1: Yes.

DA: Are you aware that a particular person Mr. Tapan Bose was working under the C.E. for quite a long time though he was not agent of the company as he was to Motor Vehicle Deptt. of Hooghly, he was placing quite a sizeable premium of motor policies?

MW1: Yes.

DA: Can you also confirm that said Tapan Bose used to complete office formalities like completion of proposals etc. and deposit of cash in Cash Deptt. Directly. Whether you have found that this practice was going on in the office when you join in the branch?

MW1: Yes.

23. Thus it was admitted by the management witness that the practice of entrusting the collection of premium amount with subordinates was prevalent in the organisation.

24. Hence, the conclusion arrives at that the writ petitioner had misappropriated the premium moneys as alleged in the show-cause notice was not based on credible evidence.

25. In my judgment, when some material evidence, which would turn the course of the trial has been ignored by the adjudicating authority, it amounts to the decision being based on no evidence. The appraisal of the evidence actually made by the adjudicator is of no value, and does not produce a just result. In those circumstances, it also points to perversity of the decision or the decision making process. These are also grounds, recognised by the Supreme Court, in the above decisions, for interference by the Court with the enquiry proceedings.

26. In my opinion, a re-adjudication is necessary by the appellate authority. In those circumstances, the order of the appellate authority dated 21st May, 2009 is set-aside

and quashed. The appellate authority is directed to rehear the appeal and to make a fresh decision with reasons within three months of communication of this order. Such adjudication will be in accordance with the observations made above. In view of the observations made above the insurance company will be entitled to, if the case so deserves, impose any punishment except the punishment of dismissal or removal from service. This is because of the fault of the company in making payment under the self-same policy regarding which fraud of the writ petitioner is alleged. However, till disposal of the appeal the writ petitioner will be deemed to remain suspended only. The writ application is disposed of accordingly.

27. Urgent certified photocopy of this judgment/order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Later:

Stay of operation of this judgment and order is prayed for. Considering the fact that the dismissal order was passed on 21st May, 2009, there will be stay of operation of this order till 12th November, to enable the respondent insurance company to prefer an appeal and obtain stay.