

(1982) 04 CAL CK 0030

Calcutta High Court

Case No: None

Taramohnn Chowdhuri

APPELLANT

Vs

Union of and India (UOI) and
Others

RESPONDENT

Date of Decision: April 30, 1982

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 33

Citation: 86 CWN 885 : (1982) 2 LLJ 318

Hon'ble Judges: P.K. Banerjee, J

Bench: Single Bench

Judgement

P.K. Banerjee, J.

This rule is directed against an order of dismissal of the petitioner from the service of the Life Insurance Corporation of India by order dated 30th of March, 1970. As there was an Industrial Dispute pending before the National Industrial Tribunal, approval was sought for and granted by the National Industrial Tribunal on 26th of June, 1970. On 3rd August, 1968 a charge sheet was issued against the petitioner which is annexed as Annexure "A" to the petition which is as follow :

You Sri Taramohan Chowdhury, an Assistant, working in the Unit: Metropolitan, Calcutta, are hereby charged with the following offences:

1. That you along with Shri Amulya Das, Santosh Kumar Das and Anil Kumar Dey entered into a conspiracy and committed a criminal breach of trust to the tune of Rs. 4,455.00 in respect of a fraudulent death claim under Policy No. 186783 on the life of Shri Shibdas Chakraborty.

2. You being entrusted with the work of preparation of discharge voucher and also the payment voucher directed the cheque for Rs. 4,455.00 mentioned here in above

under item No. 1 to be sent to the claimant Smt. Tara Rani Chakraborty c/o Sm. Sandhya Dutta, Bankimpalli, Plot No. 185, (near Sodepur Cotton Mills) P.O. Sodepur, Dt. 24 Parganas, although the address of the policy holder, as noted in the ledger was, 2 Sarat Dutta Lane, North Bantra, Howrah and there had been no change of address as such was noted in the ledger.

You have thus been found to have acted in a manner prejudicial to good conduct as also detrimental to the interest of the Corporation and thereby violating provisions of the (Staff) Regulations 1960, penalties for which may be imposed upon you in terms of Regulation 39.

You are directed to state whether you admit that you are guilty of charges mentioned above if not. you are directed to put in your written-statement together with such documents as you propose to rely upon in support of your defence within 15 days from date.

In case your written statement as mentioned above, is not received within the stipulated time limit exparte proceedings shall be taken.

Yours faithfully,

Sd/- Illegible,

Asstt. Divisional Manager

2. On 10th October, 1968 the order of suspension pending the enquiry, was issued Enquiry was held by an enquiry officer who made a report on 22nd September, 1969 holding the petitioner guilty of the charges. Thereafter second show cause notice was issued which was replied to by the petitioner and the order of dismissal was made after the enquiry. A Civil Suit was filed by the petitioner in the City Civil Court, Calcutta, being Suit No. 998 of 1970. On 21st August, 1972 the said suit was withdrawn. Thereafter on 18th December, 1974 an application was moved under Article 226 of the Constitution of India which was discharged by order dated 23rd March, 1976 as the petitioner wanted to withdraw the same with liberty to move afresh. On 30th March, 1976 the petitioner moved this Court and obtained the present rule being C.R. No. 7372(W) of 1976. From the charge-sheet it appears that the petitioner was charged with the criminal breach of trust to the tune of Rs. 4,455.00 in respect of fraudulent death claim payment under Policy No. 186783. In the charge-sheet it is alleged that he was entrusted with the work of preparation of discharge voucher and also the payment voucher, directed the cheque for Rs. 4,455.00 mentioned here in above under item No. 1 to be sent to the claimant in a particular address but was sent to 2, Sarat Dutta Lane, North Bantra, Howrah. The enquiry officer, as I have already said, held that the petitioner is guilty of the charges levelled against him.

3. Mr. K.K. Maitra appearing for the petitioner contended that the charge-sheet itself will show that the Disciplinary Authority had a closed mind in respect of the charge

and secondly, it is argued that the enquiry officer's finding is perverse and is based on presumption and conjecture and not on evidence on record and contrary to the evidence already adduced and no reasonable person can come to a finding as the enquiry officer found in this case.

4. On behalf of the respondent Mr. Sen contended that as the order of dismissal was approved by the National Industrial Tribunal u/s 33(2)(b) of the Industrial Dispute Act, this cannot be challenged under Article 226 of the Constitution of India again. Secondly, it is contended by Mr. Sen that the order of dismissal was passed as far back as in 1970 and this application was made in 1976 and, therefore, delay in moving the application is fatal. It is further contended by Mr. Sen that the charge-sheet does not make out a case of a closed mind or bias on the part of the Disciplinary Authority and contended further that the finding arrived at by the enquiry officer on consideration of the evidence on record is not perverse.

5. In so far as the objection of Mr. Sen regarding the question of delay is concerned, in my opinion, the delay has been explained properly and it appears that the petitioner has explained the delay in paragraph 12 onwards. It appears that the petitioner moved different authorities praying for reference of order of dismissal to the Industrial Tribunal and failed to get an order in his favour and that was communicated to him in 1974, Immediately there after the petitioner moved this Court and obtained the rule being C.R. No. 8294 (W) of 1974 which was, however, discharged by this Court by order dated 25th March, 1976 with liberty to move again on the same cause of action.

6. Immediately thereafter the present rule was obtained by the petitioner. The delay in moving the application, according to me, was sufficiently, explained and the application cannot be thrown out on the ground of delay. Secondly, it is argued by Mr. Sen that, as the approval of the National Industrial Tribunal u/s 33(2)(b) was made, it cannot now be agitated collaterally under Article 226 of the Constitution of India. In my opinion, this point overlooks the scope of Section 33(2)(b) of the Industrial Disputes Act. Section 33(2)(b) of the Industrial Disputes Act only comes into play when a person has been dismissed pending an industrial dispute between the workman of the concern and the employer. At the relevant time, admittedly an industrial dispute was pending before the Industrial Tribunal. It appears to me that, even if the approval is made u/s 33(2)(b) of the Act and the order of dismissal takes effect, it is open to the petitioner to agitate the question of the validity of the dismissal order in the Industrial Tribunal and the petitioner can agitate if it is found and the grievance is made that the dismissal order violates the principle of natural justice or constitutional provision or the finding is either perverse or based on no evidence at all by a writ application. Therefore, there is no merits in the second argument also.

7. It is argued by Mr. Maitra that the finding of the enquiry officer is perverse and is based on surmise and conjecture and not on the evidence on record. Before I deal

with the finding, it is convenient for me to refer to a piece of evidence which was given before the enquiry officer by Harshabardhan Ghosal which is quoted at page 11 of the petition :

ENQUIRY OFFICER (QUERY) :

Will you please let me know your duties:

H. Ghosal (Ans.)

I receive completed claim forms from the Supdt. of the Section. Thereafter I examine whether the claim requirements are completed in all respects, i.e., age is admitted, death certificate is attached, claim forms are properly attested, i.e., the signature of the claimant is properly attested, and if I find them in order I put up papers to the Supdt. of the Section for initiating actions for admission of claim.

ENQUIRY OFFICER (QUERY) :

Do you remember whether the papers for payment of claim under Policy No. 186783 were passed through you ?

H. Ghosal (Ans).

I do not remember.

ENQUIRY OFFICER (QUERY) :

Do you maintain any record in respect of cases for which claim papers are received and passed through you ?

H. Ghosal (Ans.)

Yes" I maintain two Rough Registers- one indicating the date of admission of claim and the other indicating the date of sending the discharge vouchers to the claimant. Both the Registers are submitted and recorded as Exhibit No. 27 & 28. The entries made in these two registers indicating 6-3-67 as the date of admission of claim against Policy No. 186783 and 7-3-67 as the date of sending the discharge voucher were made by me. I prepared the discharge voucher including the name and address of the claimant.

ENQUIRY OFFICER (QUERY) :

Do you handover discharge voucher form to any employee of your unit where claimant is known to him?

H. Ghosal (Ans.)

No, in all cases send the discharge voucher form to the Despatch Section for despatch.

ENQUIRY OFFICER (QUERY) :

Do you examine the address of the claimant given in the Claimant's statement and in the death intimation letter with reference to that in the Policy-ledger ?

H. Ghosal (Ans)

I do not make any checking in respect of the address of claimant beyond referring to the address given in the claimant's statement and Death Intimation letter. After issuing the discharge voucher I have no work to do in respect of the claim.

8. It is clear that the petitioner was discharged for the criminal breach of trust in respect of fraudulent death claim payment under Policy No. 186783. In so far as this charge is concerned, the finding of the enquiry officer is to be found at page 52 which is as follows :

The office, had not been maintaining any record regarding the preparation of the discharge vouchers. They however maintained a Register called discharge sending Register (Ext. 28). according to which the discharge for Policy No. 186783 was despatched from the office on 7-3-67 along with those of three other policies viz., 362959, 26053/ and 399004. As the claim bag in respect of Policy No. 186783 was not available, I requisitioned the claim bags in respect of other three policies, the discharge vouchers for which were despatched on 7.3.67. found that discharge vouchers and their forwarding letters in respect of all the three policies were prepared by Shri Tara Mohan ; Choudhuri, accused, although according to the attendance Register. Shri Harshabardhan Ghosal, the assistant responsible for the preparations of such discharge vouchers was present in the office. In view of this it can be safely presumed that on 7-3-67 all the four discharge vouchers including that for Policy No. 186783 was prepared by Shri Tara Mohan Choudhuri, although it was not his duty to do so. To prove the matter further I verified all the claim bags the in respect to which discharge vouchers had been prepared on 2-3-67, 3-3-67 and 8-3-67 for three days prior to 7-3-67 and one day subsequent to 7-3-67 to see for myself whether Shri Choudhuri used to prepare discharge vouchers occasionally beyond his allotted duties as he did on 7-3-67. But my scrutiny revealed that all the discharge vouchers had been prepared by Shri Ghoshal, the dealing assistant, on those four days. It is thus apparent that Shri Taramohan Choudhuri had rightly said in his letter dated 16-8-68 (Ext. 5) that the preparation of discharge voucher was not his concern and he went out of his way and beyond his own allotted sphere of duties to make it his concern to prepare the discharge vouchers and the for-warding memos on 7-3-67 the date on which the same for Policy No. 186783 was prepared. My further scrutiny into the matter disclosed that there was no unusual pressure of work on Shri Ghosal on 7-3-67 that might necessitate any assistance from Sri Choudhuri for quick disposal of papers. Shri Ghosal was to prepare only four discharge vouchers and their forwarding letters on that day. But the very fact that Shri Taramohan Choudhuri volunteered to do the duties of Shri Ghosal on that date is sufficient to lead one to believe that his only interest was to prepare the discharge voucher and the for warding letter in respect of Policy No. 186783. This interest

arose I feel, out of his fear that unless he himself prepared the discharge voucher and the covering letter he could not be sure of the despatch of the discharge voucher to the address selected by them, i.e. the Sodepur Address of the father-in-law of Shri Anil Kumar Dey care of Sandhya Dutta. It was with this ulterior motive that somehow or other Sri Choudhuri managed to persuade Shri Ghosal to do some other work on 7-3-67 and he himself attended to Shri Ghosal's allotted work.

9. It will appear from this evidence, according to me, that the finding is not based on any evidence on record. The claim bag in respect of Policy No. 186783 was admittedly not available. It is also in evidence that Taramohan Choudhuri was not allotted the duty with the preparation of discharge voucher. This is obtained from the evidence as hereinbefore quoted of Harshabardhan Ghosal who was admittedly allotted the duty of preparation of discharge voucher. I directed Mr. Sen to produce the original evidence adduced by the parties. After the long adjournment this was produced. From the enquiry officer's finding at page 78, it appears that Shri Ghosal stated that the entries made in these two registers indicating 6-3-67 as the date of admission of claim against Policy No. 186783 and 7-3-67 as the date of sending the discharge voucher were made by him. He prepared the discharge voucher including the name and address of the claimant. This evidence has not at all been considered but the enquiry officer held, as I have already quoted, that it can be said to be presumed that on 7-3-67 all the four discharge vouchers including Policy No. 186783 were prepared by Shri Taramohan Choudhuri. This is on the face of it based on presumption and conjecture and not on evidence adduced by the different persons in particular by Harshabardhan Ghosal who admitted before the Enquiry Officer that he had himself prepared the discharge voucher ; and sent it to the despatch section. In the circumstances, in my opinion, on the face of this evidence that finding is not based on any evidence whatsoever but on conjecture and surmise. It is contrary to the evidence already adduced by Harshabardhan Ghosal who was admittedly in-charge of the preparation of discharge voucher and who himself stated that the discharge voucher of policy No. 186783 was prepared by him and despatched by him.

10. Mr. Sen however relied upon the case reported in [Railway Board Representing The Union of India \(UOI\) Vs. Niranjan Singh](#), It has been held that the finding of the Disciplinary Authority could not be said to be unsupported by evidence nor could it be said that no reasonable person could have reached such a finding. The conclusion reached by the Disciplinary Authority should prevail. But if it is found that in coming to a finding the Disciplinary Authority has violated the principle of natural justice and that the finding made is perverse and based on no evidence, the Court can certainly interfere with this case. In this case, in my opinion, the finding regarding the guilty of Tara Mohan Choudhuri In respect of Policy No. 186783 for which he was charge-sheeted is based on no evidence and in my opinion the finding is based on presumption and conjecture and furthermore against the evidence

already on record of the person who was in-charge of making the discharge voucher and in fact admitted as I have just quoted herein before that it is he who made the discharge voucher and prepared it including the name and address of the claimant and sent to the despatch section for despatch. On the face of this evidence. I find that the finding of the enquiry officer on this charge is based on no evidence at all and only on conjecture and surmise.

11. The case reported in [State of Andhra Pradesh and Others Vs. Chitra Venkata Rao](#), on which both the parties relied, according to me, supports the contentions of the petitioner. In the said case it has been held that the adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. In the said case the Supreme Court at paragraph 23 held as follows:

In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal.

12. In my opinion, in the fact of the present case the finding is perverse based on no evidence and furthermore on the evidence of Harshabardhan Ghosal which is contrary to the finding of the enquiry officer and no reasonable person can come to the finding as made by the Enquiry Officer.

13. Mr. K.K. Maitra argued again that the charge-sheet itself shows that the Disciplinary authority had a closed mind in respect of the charge. Mr. Sen, however, on behalf of the respondent contended that this is not so. It appears to me, however, that the wording of the charge-sheet is clearly made with the closed mind. It is stated that the petitioner along with some others had committed a criminal breach of trust and was found to have acted in a manner prejudicial to good conduct as also detrimental to the interest of the Corporation. Thereafter, of course, it is stated whether the petitioner admits guilt or not and asked to give a written statement within a certain date. In the frame of the charge-sheet it has been held that the petitioner "committed a criminal breach of trust and that thus found to have acted in a manner prejudicial to good conduct etc."

14. In the circumstances, therefore, the Rule must be made absolute. The charge-sheet and the enquiry report and the order of dismissal and the order of representation must be set aside. There will be no order as to costs. This order,

however, is without prejudice to the right of the Life Insurance Corporation to proceed again in accordance with law on the same allegations.

15. Let the operation of the judgment be stayed for a period of one month from today.