

(24) According to the respondents themselves, Form 'F' was served on Jia Lal and not to the transferees, who are the present appellants.

(25) Lastly, in view of Section 8(1) (a) of the Haryana Act, irrespective of the relationship with the transferee and the mode of transfer, the transferred area declared surplus would not vest in the State Government under Section 12(3) of the Haryana Act and the transferee shall be entitled to retain that area. This argument has merit in it as it has been decided in Full Bench and Division Bench judgments of this Court in the cases of **Jaswant Kaur** (*supra*) and **State of Haryana versus Chandgi** (*supra*).

(26) As a consequence of the above findings recorded by us, the impugned order passed by the learned Single Judge, cannot be sustained and is set aside. Resultantly, the present appeal is allowed and as a consequence thereof, orders dated 15th May, 1961 (Annexure P-1), 7th September, 1961 (Annexure P-3), 8th January, 1963 (Annexure P-4), 18th April, 1983 (Annexure P-7) and 2nd August, 1983 (Annexure P-9) are declared to be illegal and are quashed as such. There shall be however, no order as to costs.

R.N.R.

Before Hemant Gupta & Mohinder Pal, JJ.

O.P. GUPTA,— Petitioner

versus

**LIFE INSURANCE CORPORATION OF INDIA & OTHERS,—
Respondents**

C.W.P. No. 2846 of 2006

4th February, 2008

Constitution of India, 1950-Art. 226—Transfer of a Senior Bank Manager—Request for cancellation of transfer due to family problem & application for grant of leave submitted—No decision communicated on leave application or on representation—Absence from duty—Exparte proceedings initiated—Exparte inquiry report—Show cause notice issued—Removal from service—Appeal dismissed—Challenge in respect of quantum of punishment—

Petitioner put in 26 years of service—No allegation of misconduct prior to abstaining from duties—Non-participation in inquiry proceedings leading to infer that petitioner has not contested charge of absence from duty—Punishment of removal from service—Harsh & wholly disproportionate to misconduct of absence from duty—Order of removal from service modified to that of voluntary retirement subject to payment of Rs. 1 lac as costs of inquiry proceedings.

Held, that the petitioner abstained from duty in May, 1997. The punishment was imposed in the year 1999 by the Disciplinary Authority. The petitioner has approached this Court firstly for the decision of his appeal and after the appeal was decided, a direction was issued in a separate writ petition to the learned Appellate Authority to consider the years of unblemished service put in by the petitioner. The Appellate Authority was conscience of the fact that each case has to be decided on its own facts but the Appellate Authority has not given any reason as to why misconduct of absence from duty is so grave which warrants punishment of removal from service.

(Para 13)

Further held, that the punishment of removal from service imposed upon the petitioner is harsh, wholly disproportionate to the misconduct proved against the petitioner and consequently we modify the order of punishment to that of voluntary retirement, being one of the rare cases which warrant interference by this Court. However, such order of voluntary retirement is subject to payment of Rs. 1 lac as costs of inquiry proceedings.

(Para 15)

D.S. Patwalia, *Advocate for the petitioner.*

B.R. Mahajan, *Advocate for the respondents.*

HEMANT GUPTA, J

(1) The challenge in the present writ petition is to the order dated 21st December, 1999, Annexure P-15, passed by the Managing Director, Life Insurance Corporation of India (hereinafter to be referred as “the Corporation”), imposing the penalty of removal from service upon the petitioner; order dated 19th September, 2000, Annexure P-17, whereby

the appeal against the penalty of removal from service was dismissed and order dated 3rd December, 2005, Annexure P-20, whereby the representation of the petitioner to consider the quantum of punishment keeping in view 28 years of unblemished service put by the petitioner was declined.

(2) The petitioner was appointed as Development Officer with the respondent-Corporation on 28th December, 1971. He was promoted as Assistant Branch Manager in September, 1985 and as Branch Manager in March, 1991. He was further promoted as Senior Branch Manager in May, 1996 and remained posted at Ludhiana.

(3) The grievance of the petitioner is that he was ordered to be transferred from Ludhiana to Chandigarh. He made a written representation dated 31st May, 1997 for cancellation of his transfer and to adjust him at Ludhiana to look after his ailing wife who is stated to be suffering from arthritis. The petitioner also submitted an application for casual leave but the petitioner was not communicated any decision on his request for grant of casual leave or on his representation. It was on 30th April, 1998,—vide Annexure P-3, he was charge-sheeted on the ground that he has abstained from duty. the petitioner sought documents proposed to be relied upon by the prosecution from the Inquiry Officer as also from the punishing authority but the Inquiry Officer initiated ex parte proceedings against the petitioner. The Inquiry Officer submitted his ex parte inquiry report on 13th July, 1999. On the basis of the said report, a show cause notice dated 31st August, 1999 was served upon the petitioner. On the basis of the said show cause notice, order of punishment dated 21st December, 1999, Annexure P-15, was passed. The appeal against the said order was dismissed. It has been alleged that the petitioner was transferred by Shri GN. Bajpai, while working as Zonal Manager, from Ludhiana to Chandigarh when the petitioner was in a serious family problem. Shri Bajpai recommended disciplinary action against the petitioner and appeal was dismissed by Shri Bajpai while acting as Appellate Authority.

(4) It may be mentioned here that earlier petitioner filed Civil Writ Petition No. 4236 of 2001 against the order passed by the Punishing Authority and the Appellate Authority. The said writ petition was withdrawn on 15th December, 2003 with liberty to approach the authorities for reconsideration on the quantum of punishment by taking into account his

service of 28 years so that his claim for pension can be safeguarded. Consequently, on an application filed, liberty was given to the petitioner to challenge the order dated 3rd December, 2005 in appropriate proceedings and the withdrawal of writ petition will not stand in the way of the petitioner. That is how order dated 3rd December, 2005, Annexure P-20, is subject matter of challenge in the present petition.

(5) Since the petitioner has withdrawn his writ petition against the order of punishment and the order in appeal, the petitioner cannot be permitted to challenge the aforesaid order on merit. The only challenge which can be examined is in respect of quantum of punishment.

(6) It is the case of the petitioner that order of punishment of removal from service has been passed on account of his absence from duty. On the date he abstained from duty i.e., May, 1997, he had put in 26 years of unblemished service. He had earned promotions from time to time and it is only on account of family circumstances i.e., illness of his wife, he could not comply with the order of transfer. No order on the representation filed by the petitioner was passed and, therefore, the order of removal is highly disproportionate to the misconduct levelled against the petitioner and, therefore, it is a case where the order of removal from service should be modified by this Court to that of a voluntary retirement. It is further contended by the learned counsel for the petitioner that the learned Chairman has not considered the period of service rendered by the petitioner in any objective and by giving detailed reasons. Reliance has been placed upon **Kailash Nath Gupta versus Inquiry Officer (R.K. Rai), Allahabad Bank and others (1)**, and **Dev Singh versus Punjab Tourism Development Corporation Limited and another (2)**. Reference is also made to **Hussaini versus The Hon'ble the Chief Justice of High Court of Judicature at Allahabad and others (3)**.

(7) On the other hand, learned counsel for the respondents has vehemently argued that the petitioner is a senior officer of the Corporation and from such senior officer, an act of indiscipline i.e., abstaining from duty is uncondonable. The petitioner has not participated in Inquiry proceedings

(1) (2003)9 S.C.C. 480

(2) (2003)8 S.C.C. 9

(3) (1985)1 S.C.C. 120

which shows his conduct that of irresponsible officer. It is further submitted that the petitioner has not sought voluntary retirement soon after charge-sheet was served upon him and, therefore, it is too late for the petitioner to turn around and to seek voluntary retirement at this stage of the proceedings. It is contended that the Corporation has been made to conduct disciplinary proceedings which has taken substantial time of senior officers of the Corporation. Reliance has been placed upon **General Manager, Appellate Authority, Bank of India and another versus Mohd. Nizamuddin (4)**, to contend that the order of punishment should not be interfered with at this stage.

(8) Having heard learned counsel for the parties and going through the records of the case, it transpires that there is no allegation of misconduct prior to abstaining of the petitioner from his duties i.e., from 31st May, 1997. Prior to the said date, the petitioner has put in 2 years of service. It is also correct that the petitioner has not participated in inquiry proceedings which in a way leads to inference that he has not contested the charge that he abstained from duty. The question which arises is whether in these circumstances the quantum of punishment i.e., removal from service is disproportionate to the misconduct alleged against the petitioner.

(9) The learned Appellate Authority in its order Annexure P-20, while considering the representation of the petitioner, keeping in view the years spent by the petitioner, has observed to the following effect :-

“.....With regard to his contention Nos. 9 and 10, I observe that the penalty imposed upon him by the Disciplinary Authority and upheld by the Appellate Authority is commensurate with the gravity of the misconduct committed by him. With regard to his contention No.11 the case laws cited by him have no relevance to his case. Further no comparison can be drawn in disciplinary action cases since each case is decided on its own merits and penalty imposed with due application of mind of the Disciplinary Authority. Further the Appellate Authority had

(4) AIR 2006 S.C. 3290

considered his case and passed a speaking order dated 19th September, 2000, rejecting his appeal.

With my aforesaid observations and conclusions, I do not find any merit in his representation dated 2nd September, 2005 warranting interference with the penalty of 'Removal from Service' imposed upon him which is in my view commensurate with the gravity of misconduct of which he is found guilty. Shri Gupta has exhausted all the remedies available to him under the LIC of India (Staff) Regulations, 1960 however, in compliance to the aforesaid Court order dated 12th August, 2005 of the Hon'ble High court of Punjab and Haryana at Chandigarh, I have considered the entire case and after the application of mind on the evidence adduced during the enquiry as also the facts and circumstances of the case, I do not find any cogent ground warranting modification in the quantum of penalty on the grounds of his period of service. The misconduct committed by him is very grave in nature warranting deterrent penalty, leniency in such cases would send a wrong signal down the line which would not be in the interest of the Corporation"

(10) Contentions No. 9 and 10, reference of which has been made in the above order, deals with the quantum of punishment keeping in view 28 years of unblemished service rendered by the petitioner. In the order passed, the reasoning given is that the misconduct is very grave warranting deterrent penalty and that the punishment imposed is commensurate with the gravity of the misconduct. It has also been observed that no comparison can be drawn in disciplinary action cases since each case is decided on its own merits.

(11) It is, thus, apparent that the learned Chairman was conscience of the fact that the punishment has to be imposed keeping in view of the facts of each case. The fact that the petitioner has put in 26 years of service before he abstained from duty in May, 1997 is not disputed. Whether an officer who has put in 26 years of unblemished service can be deprived of his past service on account of abstaining from duty has been dealt with by observing that the misconduct is grave, warranting deterrent penalty.

There is no dispute that abstaining from duty is a misconduct but the fact that the petitioner has put in 26 years of service is also required to be considered while imposing the order of punishment.

(12) In **Kailash Nath Gupta's case (supra)**, Hon'ble Supreme Court has recognised the principle of proportionality in exercise of power of judicial review in administrative law. However, it was held that the High Court cannot normally substitute its own conclusion on penalty and impose some other penalty. It is only if the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it can appropriately mould the relief, either directing the disciplinary authority/Appellate Authority to reconsider the penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.

(13) In the present case, the petitioner abstained from duty in May, 1997. The punishment was imposed in the year 1999 by the Disciplinary Authority. The petitioner has approached this Court firstly for the decision of his appeal and after the appeal was decided, a direction was issued in a separate writ petition to the learned Appellate Authority to consider the years of unblemished service put in by the petitioner. The Appellate Authority was conscience service of the fact that each case has to be decided on its own facts but the Appellate Authority has not given any reason as to why misconduct of absence from duty is so grave which warrants punishment of removal from service. Keeping in view the time lag since the date of order of punishment passed, present case is a rare case which warrants interference in writ jurisdiction of this Court. The fact that Shri Bajpai was the Zonal Manager when disciplinary proceedings were initiated against the petitioner and also the Appellate Authority is not in dispute. In reply, it has been pointed out that it is a matter of chance that the case was put up to him when he was Zonal Manager of the respondent Corporation, Central Officer, and Chairman of the respondent Corporation as Appellate Authority. The decisions have been taken by him in a different capacity and were unbiased and in

accordance with the procedure of the Life Insurance Corporation of India (Staff) Regulations, 1960.

(14) In **Mohd. Nizamuddin's case (supra)**, relied upon by the learned counsel for the respondents, charge of misutilization of car loan of Rs. 80,000 and unauthorised absence for over two years was proved against the employee. Still further, voluntary retirement was found to be preceded by an interview after a detailed criteria prescribed is to be followed. However, in the present case, there is no charge of misutilization of any fund of the respondent-Corporation nor is any limitation for the grant of request for voluntary retirement has been pointed out by the respondents. No fact on record has been brought to our notice from which it can be inferred that the Corporation suffered any loss on account of absence of the petitioner.

(15) In view of the above-said fact, we find that the punishment of removal from service imposed upon the petitioner is harsh, wholly disproportionate to the misconduct proved against the petitioner and consequently we modify the order of punishment to that of voluntary retirement, being one of the rare cases which warrant interference by this Court. However, such order of voluntary retirement is subject to payment of Rs. 1 lac as costs of Inquiry proceedings. Learned counsel for the petitioner has consented to the order of costs of Inquiry proceedings but stated that such costs be recovered/adjusted out of the retiral benefits payable to the petitioner.

(16) In view of the above, we set aside the order dated 3rd December, 2005, Annexure P-20, so as to substitute the order of punishment of removal from service to that of voluntary retirement from 3rd December, 2005. The period from 31st May, 1997 to 2nd December, 2005 shall be treated as the dies non period. The respondents shall release the retiral benefits in accordance with law after adjusting Rs. 1 lac out of such pensionary benefits payable to the petitioner.

R.N.R.