
Before Tapsen Sen, J.

DR. GULSHAN SATIJA,—*Petitioner*

versus

THE NEW INDIA ASSURANCE COMPANY,—*Respondent*

C.W.P. No. 15822 OF 2000 AND

C.M. NO. 10362 OF 2003

23rd March, 2005

Constitution of India, 1950—Art. 226—Allegations against a Branch Manager of issuing a cover note by back-dating the same knowingly, wilfully, dishonestly and fraudulently—Charges found to have been established and proved against the officer and punishment of stoppage of two increments with cumulative effect imposed—Consideration of case of petitioner for promotion ignored because of major penalty imposed on him—Promotion of junior persons during the pendency of a vigilance case against the petitioner—An employee has no right to claim promotion but he can claim consideration for promotion—Punishment imposed on petitioner is neither harsh nor disproportionate in view of the charges against the petitioner—Neither chargesheet nor enquiry proceedings/report liable to be quashed—However, punishment inflicted upon the petitioner relates to only financial implications, respondents may consider the case of petitioner for promotion after opening the sealed cover and if he is found otherwise eligible.

Held, that the grievance of the writ petitioner to the effect that from 1995 to 2003, the sealed cover has neither been opened nor has the petitioner been given promotion, this Court notices that right from 24th October, 1996 to 7th November, 2000 the petitioner himself was responsible for the delay as he had filed a Civil Suit which was finally dismissed on 7th November, 2000 and that too, when the respondents herein moved a Civil Revision Application in which an Hon'ble Single Judge disposed off the same on 11th July, 2000 with an observation that the stay granted by the Trial Court shall stand vacated and the application under Order 39 Rules 1 and 2 filed by the petitioner herein would stand dismissed. Consequently, it does not lie in the mouth of the petitioner to state and/or to allege that the respondents have been responsible for keeping the matter in a state of suspended animation from 1995 to 2003.

(Para 19)

Further held, that an employee cannot, as a matter of right, claim promotion. He can only claim that he should be considered for promotion. To that extent, the action of respondents in having considered the case of the petitioner but having not promoted him for the reason indicated above cannot be interfered with. Moreover, in view of the nature of allegations as against the petitioner, this Court is to the opinion that the punishment inflicted is neither harsh nor disproportionate so as to enable this Court to embark on the path of reappraising the evidences brought on record. However, taking into consideration that the punishment inflicted upon the petitioner was only in relation to financial implications, this order should not be construed to be a bar for the respondents to consider the case of the petitioner for promotion after opening the sealed cover and if he is found otherwise eligible, then the respondents should do the needful in accordance with law.

(Paras 21 and 24)

P. S. Patwalia, Senior Advocate with Sanjeev Kumar Tamak
and Vevek Sharma, Advocates, *for the petitioner.*

Ashwani Talwar, Advocate, *for the respondent.*

JUDGMENT

PER TAPEN SEN, J.

(1) By agreement, and as suggested by the learned Counsel for the parties, the main Writ Petition has been taken up along with the Civil Miscellaneous Application. In the said Civil Miscellaneous Application, the Petitioner prays for a direction upon the Respondents to open the sealed cover containing the case of the Petitioner for promotion with effect from 1995.

(2) In the main Writ Petition, the Petitioner has prayed for quashing the Chargesheet (Annexure P-1); the Enquiry Proceedings; the Enquiry Report (Annexure P-6); and the Order dated 4th October, 2000 (Annexure P-9) by which, the Respondents imposed the punishment of stoppage of two increments with cumulative effect. The Petitioner has also prayed for issuance of a Writ of Mandamus directing the Respondents to consider and promote him to the post of Divisional Manager and then to the post of Senior Divisional Manager because persons junior to him have been so promoted. Upon the grant of the

aforementioned prayers, the Petitioner prays that he be given all consequential benefits together with arrears of pay and interest at the rate of 18% Per Annum.

(3) The short facts which are necessary to be taken note of and which have been pleaded, are that while he was posted as Branch Manager in Chandigarh in June, 1994, he made a complaint in the capacity of being the President of the Officers' Union against the functioning of the Local Regional Manager. In retaliation, the Petitioner was transferred mid session, to Kanpur and then to Gurgaon.

(4) It is said the Respondents resorted to further acts of harassment against the Petitioner. A Charge-sheet dated 22nd November, 1994 (**Annexure P/1**) was served upon him in March, 1995. As per the said Charge-sheet, he was said to have wrongly issued a Cover Note in **connivance** with a Senior Assistant named Shri S.S. Dhindsa, by **backdating** the same. The **other charge** was that before signing the same and which was issued by Dhindsa, the Petitioner **neither obtained the Proposal Form nor inspected the vehicle**. The **third charge** was that in one case the Petitioner had allowed a claim more than the required amount by Rs. 2000. In this case, one Shri Angpal was cited as a witness being the representative of the Insured, Shri Tejinder Singh. Suprisingly, the witness mentioned in the list of witnesses was Shri S.S. Dhindsa, Sr. Assistant who was a co-accused along with the Petitioner and had actually issued the Cover Note on 22nd March, 1993. The main thrust of the allegations against the Petitioner was that while he was working as Branch Manager in Sector 22 Branch, Chandigarh, he knowingly and wilfully, acted dishonestly and fraudulently in connivance with the insured and Shri S. S. Dhindsa and issued Cover Note dated 23rd March, 1993 **after** vehicle No. HR-03 5261 had met with an accident **on 22nd March, 1993** giving rise to a third party injury claim before the M.A.C.T. Chandigarh for compensation **by making the date of issuance of the said Cover Note as 22nd March, 1993 and showing the risk period as 22nd March, 1993 to 21st March, 1994**. This was done with the intention of making it appear as if the vehicle had a **valid insurance** at the time of accident.

(5) According to the Petitioner, the Respondents dealt with Dhindsa in a different manner and although he (Dhindsa) had actually prepared and issued he disputed Cover Note, yet he was chargesheeted

for the same offence in May, 1995. A joint enquiry was held against both the Petitioner and Dhindsa and only one witness appeared against the Petitioner. According to the Petitioner, the solitary witness was none other than Dhindsa himself and he, in his statement, **disclosed that the disputed Cover Note had been issued by him under the instructions of the Petitioner.**

(6) The Petitioner further makes a grievance that Dhindsa was not examined in the presence of the Petitioner even though he was shown as a prosecution witness. It is also the case of the Petitioner that nobody else was examined except a Development Officer who only stated the factual position regarding the issuance of the Cover Note but did not make any statement implicating the Petitioner. The Petitioner states that surprisingly, the Enquiry Officer conducted a separate enquiry report regarding the Petitioner and Dhindsa although both the Officers were found to be guilty. Only on the basis of the statement of Dhindsa, the Enquiry Officer found the Petitioner to be guilty. After the enquiry report was supplied to the Petitioner, he pointed out that he was not allowed to examine Dhindsa. According to the Petitioner, in the impugned Order the Respondent has accepted that the Petitioner was not allowed to cross-examine Dhindsa and yet, proceeded to impose the punishment of stoppage of two increments with cumulative effect but in the case of Dhindsa, only one increment without cumulative effect was ordered. The Petitioner submits that the punishments imposed were without any evidence against the Petitioner and the Respondents, having adopted two different sets of punishments, for the same offence, have acted in a mechanical and illegal manner.

(7) In Paragraph 12 of the Writ Petition, the Petitioner has stated that he was held guilty of Charge Nos. 1 and 2 only on the basis of the statements of Dhindsa. After considering the statements made by Dhindsa, the Enquiry Officer relied only on his statement and did not give him any opportunity to cross-examine Dhindsa. Rather, the Petitioner did not even know the contents of the statements made by Dhindsa. He has further stated that the Petitioner has been held guilty in respect of Charge No. 3 only on the statement made by Angpal Singh who appeared as a witness and made the statement. The Petitioner started cross-examining Angpal Singh but before the cross-examining could be completed, the case was adjourned for the remaining cross-examining whereafter Angpal Singh never appeared and yet the Petitioner

has been found guilty in respect of charge No. 3 only on the basis of the said Angpal Singh. Thus, the Petitioner states that the entire enquiry was incorrect and was arbitrary and illegal.

(8) In reply to the aforementioned statements made in Paragraph 12 of the Writ Petition, the Counter Affidavit filed on behalf of the Respondents (termed as Written Statement in this Court), discloses that they have meticulously denied the statements made by the Petitioner. They have stated as follows :—

“.....It is totally incorrect on the part of the Petitioner to suggest that Petitioner was held guilty of the Charges No. 1 and 2 only on the basis of statement of one co-accused Shri S.S. Dhindsa. As already mentioned in Preliminary Objection No. 2 and in the foregoing paragraphs of the written statement, there was ample evidence before the Inquiry Officer in holding the charge No. 1 and 2 to be proved against the Petitioner. The relevant part of the Inquiry Report in this context would be referred at the time of hearing of the writ petition. It is also incorrect that no opportunity so far was given to the Petitioner to cross-examine Shri S.S. Dhindsa and as has already been mentioned in Preliminary Objection No. 2 and in the foregoing paragraphs of the Written Statement that Petitioner had a right to produce Shri S.S. Dhindsa as his witness and had a further right to cross-examine him. It is also incorrect that Petitioner has been held guilty with regard to Charge No. 3 ignoring the statement of the Petitioner. It is submitted here that Petitioner had a right to get produce Shri Angpal Singh for examination if the case was adjourned by the Inquiry Officer for the remaining cross-examination. However, due to the reasons best known to the Petitioner, he never opted his right for the production of Shri Angpal Singh for cross-examination. Petitioner cannot complain for not cross-examining the witnesses due to sheer negligence and deficiency in getting the above said witnesses produced. However, the Petitioner intentionally has not availed the remedy of production of the witnesses as there was nothing wrong in the statement above witnesses.” [Emphasis supplied by this Court].

(9) In this context, it would be relevant to take note of the fact that after having received the Charge-sheet, the Petitioner did not file any positive or effective reply save and except the one that he had sent on 13th March, 1995 and which is contained in Annexure P-3. Upon perusal of the contents thereof, it is evident that it can hardly be said to be adequate for purposes of the same being treated to be an effective reply. On the contrary, it is a mere denial for the sake of denying the charges and therefore, the action of the Respondents in resorting to an enquiry being not satisfied with the same cannot be said to be irregular. Moreover, in an application under Article 226 while exercising the scope of Judicial review, this Court does not sit as a Court of Appeal over the disciplinary proceedings for purposes of appraising or reappraising evidence. However, in order to satisfy the claim of the Petitioner to the effect that the enquiry proceedings before the Enquiry Officer was bad and or irregular, this Court personally went through and perused the entire enquiry report itself. Having gone through the same, it is evident that an elaborate opportunity was given to the Petitioner to examine the relevant witnesses including Mr. Angpal Singh on the basis of the questions and answers and also on the basis of the evidences gathered, a detailed report was submitted. It is further seen that the examination and cross-examination in relation to Angpal Singh was equally elaborate running into 11 (eleven) foolscap sheets. Merely because even after cross-examination, the matter was adjourned cannot be said to be a complete denial of the opportunity of cross-examination because the cross-examination of Angpal Singh itself runs into 8 (eight) foolscap sheets. The statement made by the Respondents in their Counter affidavit to the extent that due to the reasons best known to the Petitioner, he never opted his right for the production of Shri Angpal Singh for cross-examination is equally worth taking note of. To that extent, it is the Petitioner himself who has to blame himself.

(10) That apart, upon reading the contents of the final impugned order as contained in Annexure P-9 and taking into consideration the cryptic reply to the Charge-sheet that was given by the Petitioner (Annexure P-3), this Court, does not find any irregularity when the General Manager-cum-Disciplinary Authority said that "as no reply to the Charge-sheet was submitted by Dr. Gulshan Satija, the Competent Authority,—*vide* Office Order dated 4th October, 1995, appointed Shri S. Balaraman, Deputy Manager, Bangalore RO as Enquiry Officer.

(11) Much has been argued on behalf of the Petitioner to the effect that so far as Charge No. 1 is concerned, the General Manager-cum-Disciplinary Authority had agreed with the contentions of the Petitioner to the effect that Dhindsa's statements were taken into consideration by the Enquiry Officer without affording any opportunity for cross-examination. It is true that the Disciplinary Authority agreed with this contention of the Petitioner and therefore rightly **discarded** the statements of Dhindsa and did not take them into consideration. It is in this context that the statements made in Paragraph 2 of the written statement assumes significance. In Paragraph 2 the Respondents have stated that it is totally incorret that the Petitioner was found guilty only on the basis of the statement of S.S. Dhindsa. It has also been stated that assuming, but not admitting the same, even if the statements of Dhindsa were not taken into consideration, **even then, there was ample evidence** before the Enquiry Officer in reaching to the conclusion that Charge Nos. 1 and 2 stood proved against him. This Court, exercising the scope of judicial review will not reopen findings of fact nor would undertake the task of reappraising evidence.

(12) In answer to the submissions to the effect that the sealed cover has not been opened from 1995 to 2003 and that the Petitioner has not been given promotion for all these years, the learned Counsel for the Respondents has stated that the delay is not attributable to the Respondents but in fact, the delay if any, has been caused at the instance of the Writ Petitioner himself. In this context, it would be relevant to note that the Enquiry Report was submitted on 3rd September, 1996 (Annexure P-6) Thereafter, on 12th September, 1996, the Respondents transmitted a copy of the enquiry report,—*vide* their letter as contained in Annexure P-7 informing him that he was being given an opportunity to file a representation on the basis of findings and conclusions of the Enquiry Officer. He was given an opportunity to file his reply/representation within 15 days.

(13) Having received the aforementioned letter/show cause, the Petitioner has himself stated in Paragraph 13 of the Writ Petition that he moved the Civil Court by filing a Suit. Annexure P/15 is the Order dated 7th November, 2000 passed by the Civil Judge, Junior Division, Lok Adalat in Chandigarh showing that the Suit (being Civil Suit No. 365 of 24th October, 1996) was actually dismissed as withdrawn

before the Lok Adalat on 7th November, 2000. It is also evident to note that after having filed the suit, the Petitioner also filed a Writ Petition which was registered as CWP No. 10673 of 1996 before this court wherein he prayed for quashing the Orders of promotion by which juniors were promoted and he also prayed that a Writ of Mandamus be issued commanding upon the Respondents to promote him to the post of Assistant Manager. At that stage, the Respondents pointed out that the case of the Petitioner had been considered by the promotion committee, but on account of pendency of a vigilance case against the Petitioner, they had decided to place the recommendations in a sealed cover. On 21st August, 1997, a Division Bench dismissed the Writ Petition holding that there was no ground to issue any direction at that stage in relation to the promotion of the Petitioner. The Division Bench also observed that **“since the departmental proceedings are pending, the action of the Respondents in not promoting the Petitioner is absolutely just and fair.”**

(14) This was the observation on 21st August, 1997 when the Civil Suit was still pending. That Suit, as has already been stated above, was dismissed only on 7th November, 2000.

(15) It is also relevant to take note of the fact that the Respondents were constrained to move this Court in civil revision,—*vide* Civil Revision No. 3557 of 1999 wherein they challenged the Order dated 18th March, 1999 passed by the District Judge directing the Trial Court to proceed with the Suit and also directing the Company to afford adequate opportunity of hearing to the Petitioner before passing any final Order on the basis of the Enquiry Report. Upon perusal of the Order passed by this court on 11th July, 2000,—*vide* Annexure R/2 which has been brought on record by the Respondents in their Counter Affidavit (written statement), it is evident that this Court vacated the Order of Injunction passed in favour of the Petitioner by the Trial Court. After having vacated that Order, liberty was given to the Respondents herein (New India Assurance Company Limited) to make an application before the Trial Court and pray before the said Court that the Suit of the Plaintiff (Petitioner herein) be dismissed for being premature or for being in the nature that it did not disclose any cause of action. The Civil Revisional Court comprising of an Hon'ble single Judge of the Court further held that if such an application was moved, the same should be disposed off on merits.

(16) It is also noticed by this Court that while allowing the Civil Revision Application, the said Hon'ble Single Judge also observed as follows :—

“During the course of submissions, it was also brought to my notice that to the show cause notice issued by the Company, the plaintiff-respondent had filed the reply. No further order had been passed by the Punishing Authority. It is also desired by this Court that the Punishing Authority shall look into the reply to the show cause notice and shall pass appropriate orders according to rules and regulations within three months from today.”

(17) It appears that in strict compliance of the aforementioned order dated 11th July, 2000 passed by this Court in Civil Revision No. 3557 of 1999, the Respondent Authorities passed the impugned Order on 4th October, 2000 (Annexure P/9) by which the General Manager-cum-Disciplinary Authority held that Charge No. 1 was proved and that he concurred with the findings of the Enquiry Officer in relation to Charge Nos. 2 and 3 which were found to have been established. In that context, he was of the opinion that the Management was justified in imposing the penalty of reducing the present basic salary of the Petitioner by two stages permanently in his present Time Scale of Pay. In view of the foregoing sequence of events, this Court is of the opinion that there is no irregularity in the impugned order.

(18) Mr. Patwalia then submitted that the Order was passed by the General Manager who was the Appellate Authority and therefore, the Petitioner was deprived of his right to appeal. It is true that the General Manager is the Appellate Authority but under Rule 40 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, a provision has been made giving liberty to an employee to address a Memorial to the Chairman/Chairman-cum-Managing Director within six months from the date he receives a copy of the Appellate Authority. Therefore, even if the Order was passed by the Appellate Authority, the Petitioner could still have preferred a Memorial before the Chairman/Chairman-cum-Managing Director of the Company.

(19) Insofar as the grievance of the Writ Petitioner as highlighted in the civil miscellaneous application to the effect that from 1995 to 2003, the sealed cover has neither been opened nor has the Petitioner been given promotion, this court notices that right from 24th October, 1996 to 7th November, 2002, the Petitioner himself was

responsible for the delay as he had filed a Civil Suit which was finally dismissed on 7th November, 2000 and that too, when the Respondent's herein moved a Civil Revision Application referred to above in which an Hon'ble Single Judge disposed off the same on 11th July, 2000 with an observation that the stay granted by the Trial Court shall stand vacated and the Application under Order 39 Rules 1 and 2 filed by the Petitioner herein would stand dismissed. Consequently, it does not lie in the month of the Petitioner to state and or to allege that the Respondents have been responsible for keeping the matter in a state of suspended animation from 1995 to 2003.

(20) The learned Counsel for the Respondents, during the course of arguments, produced for perusal of this Court photo copies of the deliberations of the Promotion Committee showing that the Petitioner was considered for promotion even in the year 2001-2002 but because of the major penalty imposed on 4th October, 2000 he was not promoted. Similar exercise was again resorted to for promotion in the year 2003-2004 but once again he was not promoted because of the same reason.

(21) An employee cannot, as a matter of right, claim promotion. He can only claim that he should be considered for promotion. To that extent, the action of the Respondents in having considered the case of the Petitioner but having not promoted him for the reason indicated above, cannot be interfered with. Moreover, in view of the nature of the allegations as against the Petitioner, this Court is of the opinion that the punishment inflicted is neither harsh nor disproportionate so as to enable this Court to embark on the path of reappraising the evidence brought on record.

(22) For the foregoing reasons, this court holds that there is no merit in this Writ Petition for quashing either the Charge-sheet or the Enquiry Proceedings or the Enquiry Report or the Order dated 4th October, 2000.

(23) Consequently, the Writ Petition is dismissed. No Order as to Costs.

(24) However, taking into consideration that the punishment inflicted upon the Petitioner was only in relation to financial implications, this Order should not be construed to be a bar for the Respondents to consider the case of the Petitioner for promotion after opening the sealed cover and if he is found otherwise eligible, then the Respondents should do the needful in accordance with law.