

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.782/2006**

Date of Decision : 04.05.2009

LIFE INSURANCE CORPORATION OF INDIA Petitioner
Through : Ms.Indra Sawhney
with Mr.Parikshir Paul,
Advocates.

Versus

SHRI SANDEEP GUPTA Respondent
Through : Mr.Inderjit Singh,
Advocate

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J. (Oral)

1. The petitioner in the instant writ petition has challenged the award dated 15.6.2005 passed by the Industrial Tribunal cum Labour Court-II in ID No. 191/1997 titled Sh.Sandeep Gupta Vs. The Divisional Manager, LIC of India.

2. By virtue of the present award, the learned Industrial Tribunal has although upheld the legality and the fairness of the enquiry and reduced the punishment of stepping down five increments w.e.f. 30.1.1995 to withholding of two increments for a period of two years. This reduction in punishment has been challenged on the ground that such reduction was neither within

the powers of the learned Tribunal nor is the same based on any cogent reason.

3. Briefly stated the facts of the case are that the respondent /workman was charge sheeted on 12.2.1987 for having willfully and fraudulently altered the records and thereby made wrong and excess payments to certain agents amounting to Rs.2,110.40 paise. The second charge against the respondent/workman was that the respondent /workman had made certain alterations and unauthorized and wrongful entries in the earning records of the agents with a view of preparation and settlement of bonus, commission to agents of the Corporation and thirdly, that he was working as a Telephone Operator, P&T in the Delhi w.e.f. 24.11.1981 which fact was suppressed by him while he was offered appointment in LIC.

4. On the basis of the aforesaid charges, it was held against the respondent/workman stating that he failed to maintain absolute integrity and devotion to the duty and failed to serve the Corporation honestly and faithfully, acted in the manner detrimental to the interest of the Corporation and prejudicial to the good conduct and thereby committed breach of regulations 21 and 24 read with regulation 39(1) of the LIC (Staff) Regulations, 1960. The respondent/workman denied the charges which necessitated the holding of an enquiry with regard to the proof of charges. It was held by the Inquiry Officer that charge no.1 was proved in respect of one agent while as charge

no.2 was also proved but with regard to charge No.3, a finding in favour of the respondent /workman was given.

5. The Disciplinary Authority namely the petitioner after considering the report of the Inquiry Officer imposed punishment on the respondent/workman which was bringing him down by seven steps in the pay scale which he was getting. This was reduced by the Chairman of the petitioner/Corporation to five steps which was challenged before the learned Industrial Tribunal culminating into adjudication by the aforesaid impugned award.

6. The main contention of the learned counsel for the petitioner is that although the learned Tribunal has specifically observed that the question of challenge to the fairness of the enquiry was given up by the respondent /workman but while deciding the reference, the learned Tribunal has exceeded its jurisdiction by substituting the punishment which was imposed by the Disciplinary authority with a punishment of withholding of two increments for a period of two years by observing that the respondent/workman was guilty of minor negligence and the quantum of money which was involved was just Rs.2,110/-. It was vehemently urged that firstly the learned Tribunal has exceeded its jurisdiction of substituting its own views on the question of punishment as it was not the case of the respondent /workman before the learned Tribunal and secondly even if it is assumed that such a punishment needed to be set aside, the proper course of procedure which the learned Tribunal ought to

have followed was to remand the matter back to the Disciplinary authority to consider the question of imposition of punishment afresh.

7. The third submission which was made by the learned counsel for the petitioner was that even if it is assumed that the Tribunal was well within its power to substitute the punishment imposed by the Disciplinary authority by the punishment of withholding of two increments with cumulative effect, there is no cogent reason given by the learned Tribunal holding that the punishment which was imposed on the respondent/workman was grossly disproportionate so as to shock the conscious of the learned Tribunal.

8. Per contra, the learned counsel for the respondent/workman has contended that the learned Tribunal has given a contradictory finding with regard to the fairness of the enquiry because despite the fact that at one place the learned Tribunal has observed that the respondent/workman has given up the plea of challenge to the fairness of the enquiry yet in the later portion of the impugned award, the learned Tribunal has observed that the enquiry has been vitiated and at another place, it has been observed that the enquiry is not 'perfectly fair' and that is the ground which persuaded the learned Tribunal to reduce the punishment which has been imposed on the respondent /workman.

9. In addition to this, it was contended by the learned counsel that the money involved in the entire transaction was also very

meager and therefore, the learned Tribunal was well within its power to reduce the punishment keeping in view the totality of circumstances.

10. I have carefully considered the submission made by the learned counsel for the parties and gone through the records.

11. The law regarding the proportionality of punishment has been fairly crystallized in catena of judgments of the Apex Court. Broad principles which have emerged from these authorities can be put as under:

(i) The imposition of punishment on the delinquent employee is essentially a job to be performed by the Disciplinary Authority. The punishment which is imposed on the delinquent employee must be the one which is prescribed by the conduct rules under which the conduct of the delinquent employee is governed.

(ii) that the learned Tribunal of the Courts will not ordinarily interfere with the discretion of the Disciplinary Authority in imposing the punishment on the delinquent employee in this regard unless the same is shockingly disproportionate to the proved misconduct or shocks the conscious of the Court or that it is excessive or arbitrary. Though the terminology which has been used by the Apex Court in different judgments for interfering with the punishment imposed by the Disciplinary Authority varies from case to case but essentially the substratum of all these judgments is that the punishment which is imposed on the delinquent should shock the conscious of a reasonable and judicial mind.

(iii) While considering the imposition of punishment on the delinquent especially in matters where there is question of defalcation of accounts, embezzlement of Government funds etc. The quantum of funds, which may be subject matter of such misconduct may not be relevant for reduction of punishment as it is a question of trust which the employer loses qua such an employee. Interfering with the punishment on the ground that the quantum of money of theft or embezzlement is a paltry sum has been deprecated by the Apex Court as showing mis-placed sympathy with the delinquent.

(iv) The last but not the least while setting aside the punishment which the Court considers to be shockingly disproportionate the Courts should as a matter of course remand the matter back to the Disciplinary Authority for considering the imposition of punishment on the delinquent afresh rather than imposing a substituted punishment itself in place of the discretion of the Disciplinary Authority but this is with one exception is that where the Court feels that there will be a irreparable or considerable loss of time or there are special circumstances which the Court may in its discretion find fit the imposition of punishment by the Court itself. It may do so but this would be only as a matter of exception.

12. Reliance in this regard is placed on the following authorities :-

***U.P.State Road Transport Corporation
Dehradun Vs. Suresh Pal*** AIR 2006 SC
3227,

M/s Amrit Vanaspati Co. Ltd. Vs. Khem Chand & Anr. AIR 2006 SC 2739,
Anand Regional Coop. Oil Seedsgrowers' Union Ltd. Vs. Shaileshkumar Harshadbhai Shah 2006(6) SCC 548

13. Now coming back to the facts of the case, the respondent /workman himself given up the challenge to the fairness of the enquiry having done so, it was totally inappropriate and unjustified on the part of the learned Tribunal to have commented on holding the enquiry by saying that the enquiry was not fair or that it was not perfectly fair or that user of the term with the enquiries vitiated. This seems to be inconsistent observation of the learned Tribunal made inadvertently. If the learned Tribunal was of the view that the enquiry was vitiated or it was not perfectly fair, the Tribunal was well within its right to have set aside the enquiry itself. But the law does countenance the situation where the learned Tribunal upheld the validity of the enquiry and yet tinkers with the punishment which has been imposed on the delinquent more so when in the entire statement of claim. This is not the case of the respondent /workman that he is challenging the proposal of the punishment imposed on him. In addition to this, this Court finds with the reasoning for reduction of punishment from stepping down of five increments to withholding of two increments for a period of two years on the ground that the amount being involved as mere Rs.2,000/- or so is in direct violation of the pursuance of the Apex Court in case titled ***UP SRTC Vs. Ram Kishan Arora*** 2007 (4) SCC 627 where

the Apex Court has held that the quantum of punishment is to be seen in the light of seriousness of the charge. The amount of money embezzled, defalcated should not make the difference in the imposition of punishment because what is matter is the loss of trust and not the loss of money. The reduction of punishment in such a case would be showing mis-placed sympathy to the delinquent rather than criminal behavior of the delinquent employee.

14. The arguments of the learned counsel for the respondent is that such a reduction of punishment is justified on account of the doubt introduced by the learned Tribunal cannot be expected because it is not the respondent /workman who has challenged the impugned award. If the respondent/workman was aggrieved by the finding of upholding the fairness of enquiry, he was well within its right to challenge the impugned award not having been done so he cannot be permitted to urge that the enquiry itself is bad and therefore, the punishment which has been imposed on the respondent/workman is justified. This argument is having inherent contradiction inasmuch as if the enquiry itself is not fair then the respondent/workman cannot be visited with any punishment at all rather than a reduced punishment.

15. Therefore, this submission of the learned counsel for the respondent does not have any merit.

16. For the reasons mentioned above, I am of the considered opinion that the learned Tribunal has grossly exceeded its jurisdiction by substituting the punishment of stepping down of

five increments with withholding of two increments for a period of two years which cannot be sustained in the eyes of law. Accordingly, the impugned award dated 15.6.2005 passed by the Industrial Tribunal cum Labour Court-II in ID No. 191/1997 to the extent of substitution of punishment in place of punishment imposed on the respondent/workman is set aside and the punishment which has been imposed by the Disciplinary Authority is revived.

17. With these directions, the writ petition is allowed.

No order as to costs.

CM No.687/2006(stay)

No separate order is required in the aforesaid application as the same has become infructuous on account of main matter having been decided.

V.K. SHALI, J.

MAY 04, 2009
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