

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 13383/2005

Reserved on: July 22, 2011

Decision on: August 23, 2011

S.K. GUPTA

..... Petitioner in-person

versus

NATIONAL INSURANCE CO. LTD. & ORS.

..... Respondents

Through: Mr. Rajinder Dhawan, Advocate

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

23.08.2011

1. The Petitioner, who worked as a data entry operator with Respondent No. 1, National Insurance Company Ltd., challenges an order dated 13th April, 2004 passed by the Disciplinary Authority ('DA') imposing a penalty of "censure" on the Petitioner and cautioning him to be careful in future in matters of leave. The Petitioner also challenges an order dated 16th July 2004 passed by the Appellate Authority ('AA') rejecting the Petitioner's appeal and the further order dated 24th June 2005 passed by the Chairman and Managing Director of Respondent No. 1 upholding the decision of the DA and the AA.

2. The Petitioner joined the services of Respondent No. 1 on 10th January 1984 as a data entry operator. He was transferred from the Divisional Office-1 ('DO-1') to Divisional Office-2 on 14th November 1994 by the Regional Officer. The Petitioner states that Respondent No. 4, instead of relieving him issued a letter on the same day seeking an explanation for non-submission by the Petitioner of leave applications for the year 1992 and thereafter placed the Petitioner under suspension by a letter dated 29th November 1994. Subsequently, the suspension order was revoked on 5th May 1995. However, nearly two years later, on 3rd April 1997, the Petitioner was issued a charge sheet in regard to leave taken during the year 1992. The articles of charge were that the Petitioner had been

unauthorisedly absent from his duties on several dates in 1992. Of these periods the significant periods of absences were between 23rd March and 27th March 1992 for five days, between 31st March and 10th April 1992 for eleven days, and between 28th April and 1st May 1992 for four days. The rest of the leaves were for half a day, or one or two days. The second article of charge was that on 21st November 1992 when he was called by Respondent No. 4 for being served with a letter dated 14th November 1994, the Petitioner refused to accept the said letter. He got up from the chair and walked out of the office of Respondent No. 4 without seeking his permission.

3. In the written statement filed on 21st April, 1997 the Petitioner explained that the charges were not maintainable against him. The enquiry commenced in 1998 but took almost seven years to conclude. The significant portions of the enquiry are recorded in the proceedings of 14th February 2003 (Annexure P-3). One Shri AK Mehndiratta was the Presiding Officer ('PO'). He was asked if he had been able to obtain the original application form submitted by the Petitioner on 17th February 1992 for sanction of leave for the period between 4th February and 14th February, 1992. The PO stated that the original application was not available. Thereafter Mr Bhim Singh Sharma, an assistant DO-1 who was management witness No. 1 (MW-1) was examined. He was asked the following question to which he answered as under:

“Question. I am showing you of the following application (original) dated 17.3.92, 20.3.92, 23.3.92 to 27.3.92, 31.3.92 to 10.4.92, 21.4.92 to 22.4.92, 24.4.92, 28.4.92 to 1.5.92, 5.5.92 to 6.5.92, 18.5.92, 20.5.92, 25.5.92, 3.6.92, 9.6.92, 16.6.92, 10.6.92, do you certify the authenticity of the applications.

Ans. Yes.”

4. The cross-examination of MW-1 by the Petitioner revealed that the period of absences mentioned in the charge sheet had been debited to the Petitioner's account. As regards the applications for the said periods of leave, the witness stated that “all applications were approved except application dated 17th February 1992 for the period of 4th February 1992 to 14th February 1992.” This witness confirmed that the said application was not available in the record in original.

5. The report dated 16th February 2004 of the Inquiry Officer ('IO') shows that the IO concluded that “the failure of the prosecution to produce the original application gives credence to the defence charge of manipulation and the benefit of doubt goes to the

charged employee.” The IO also categorically held that the fact that the charged employee was suspended on 29th November 1994 after lapse of 15 days of the transfer order dated 14th November 1994 “crystallises the charges of mala fides against the divisional manager by the charged employee.” The IO further held that the evidence of MW-2, Jaswant Singh Chaudhary, as regards the second article of charge was contradictory and could not be relied upon. Likewise, the answers given by MW-3, i.e. Respondent No. 4, were found to be evasive. The IO pointed out that absence for more than four days without sanctioned leave without sufficient ground would attract the charge of misconduct. There were three such periods. However, as regards the period between 4th and 14th February, 1992 it was evident that the Petitioner had made an application but the original thereof was not available in the record. The other days of absence for more than four days were 23rd to 27th March, 1992 (5 days) and 31st March to 10th April 1992 (11 days). It was concluded that “the defence could not produce any confirmative proof of having submitted the above application as such the prosecution charge of absence without sanctioned league stands established.” The IO accordingly held that the allegation of absence without sanctioned leave stands partly established and the charge of insubordination does not stand established. On the basis of the above report of the IO, the DA passed the impugned order dated 13th April, 2004 imposing the penalty of censure on the Petitioner. Further, the suspension period between 29th November and 5th May 1995 was held as not spent on duty and salary and other allowances were withheld. As already noticed, the Petitioner’s appeal was dismissed by the AA on 16th July, 2004 and the review petition by the Chairman and Managing Director on 24th June 2005.

6. In the counter affidavit, the Respondents have reiterated what has been stated in the impugned orders. Although at one place in the counter affidavit it is stated that the findings of the IO are based on evidence, the immediate line thereafter states that the observations of the IO in regard to the *mala fides* of Mr Amiya Kumar (Respondent No. 4) are not supported by the record “and/or are unfounded.” As regards the delay in completion of the inquiry it is stated that it has not caused any prejudice to the Petitioner.

7. This Court has heard the Petitioner who appeared in-person and Mr Rajinder Dhawan learned counsel for the Respondents.

8. A striking feature of the disciplinary enquiry in the present case is that it has gone on for nearly seven years from April 1997 up to February 2004. There is no satisfactory explanation for this inordinate delay in completing the enquiry particularly when the Petitioner submitted his reply to the charge sheet dated 3rd April 1997 on 21st April 1997 itself. The IO was appointed only on the 30th June 1998. The substantial proceedings appear to have taken place only on 14th February 2003. This inordinate delay itself must have caused the Petitioner tremendous mental agony and harassment. There is merit in the contention that this procedure adopted by the Respondents itself attracts the charge of arbitrariness and unreasonableness and violates the Petitioner's fundamental right under Article 14 of the Constitution.

9. The order of the DA dated 13th April, 2004 simply accepts the report of the IO without noting a very significant finding rendered in the report dated 16th February 2004. The IO very categorically concluded that the charge of *mala fides* against Respondent No. 4 stood proved. This was the officer who in fact issued the letter dated 14th November 1994 to the Petitioner seeking explanation for non-submission of the leave application. This finding itself should have been sufficient to hold that the charge sheet *per se* was vitiated in law. However, the DA does not appear to have applied his mind to this important aspect.

10. There was only one article of charge that was held to be "partly established" by the IO. This pertained to unauthorised absence for more than four days during two periods, i.e., 23rd March to 27th March 1992 for five days, and 31st March to 19th April 1992 for eleven days. The IO proceeded on the premise that the Petitioner could not produce confirmative proof to having submitted applications for the above periods of leave. This finding of the IO is perverse and contrary to the evidence on record. The question and answer asked of MW-1 on 14th February 2003, which has been extracted hereinbefore, confirms that the originals of the application was submitted by the Petitioner for the aforementioned periods, i.e. 23rd to 27th March, 1982 and 31st March to 10th April 1992, were in fact available and produced before the IO. The further cross-examination of the same witness revealed that all applications except the application dated 17th February 1992 for the period 4th to 14th February 1992 were approved. In light of the answers given by MW-1 during the enquiry it is plain that there were in fact application forms for the aforementioned two periods of leave and that they were in fact sanctioned. Consequently the finding of the IO that the first charge was partly proved was unsustainable in law. It

could not have been accepted as such by the DA to impose a penalty of censure. The confirmation of the said order of the DA by the AA by its order dated 16th July 2004 and by the Chairman and Managing Director on 24th June 2005 was also mechanically done without any application of mind.

11. For the aforementioned reasons the report dated 16th February 2004 of the IO to the extent it holds the first article of charge of absence without authorisation as being partly proved is hereby set aside. Consequently, the orders dated 13th April 2004 of the DA inflicting the penalty of censure on the Petitioner and the subsequent orders dated 16th July 2004 of the AA and 24th June 2005 of the Chairman and Managing Director affirming the order of the DA are also set aside. Consequently the period of suspension of the Petitioner from 29th November 1994 to 5th May 1995 will be treated as a period on duty and his salary and other admissible allowances for the said period will be paid by Respondent No. 1 to the Petitioner within a period of four weeks from today.

12. In addition, considering that the Petitioner has been subjected to tremendous mental agony and harassment and particularly in the view of the findings of *mala fides* against Respondent No. 4 by the IO, Respondent No. 1 is directed to pay the Petitioner a sum of Rs. 25,000/- as compensation and Rs. 5,000/- as costs of litigation within a period of four weeks from today. The writ petition is allowed in the above terms.

S. MURALIDHAR, J.

AUGUST 23, 2011

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