

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode at Jammu)**

.....

SWP no.715/2011

*Reserved on 19.10.2023
Pronounced on: 07.12.2023*

Mushtaq Ahmad Para (deceased) through LR.

..... Petitioner(s)

Through: Mr Mir Manzoor, Advocate

Versus

National Insurance Company Limited and others

.....Respondent(s)

Through: Mr Aatir Javed Kawoosa, Advocate

CORAM:

HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE

JUDGEMENT

1. Chief Regional Manager, National Insurance Company Limited, vide Order dated 1st October 2010 (*Annexure A to writ petition*), has imposed penalty upon petitioner by “*removal of service which shall not be disqualification for future employment*”. Right to appeal was, however, given to the petitioner.
2. Petitioner preferred an Appeal against the order dated 1st October 2010. Appellate Authority (Deputy General Manager, National Insurance Company Limited, Chandigarh Regional Office-1), has, vide Order dated 28th February 2011, rejected the petitioner’s appeal and confirmed the penalty imposed on him.
3. Aggrieved of the aforementioned Orders, the petitioner has knocked at portals of this Court with the writ petition on hand, seeking its

quashment. He also prays to direct the respondents to reinstate him and give him all the consequential benefits.

4. Reply/counter was filed by the respondents. Thereafter rejoinder was filed by the petitioner.
5. During pendency of this writ petition, it was brought to the notice of this Court that the petitioner has passed away on 8th June 2020. His legal heirs, thus, came up with an application, bearing CM no.1720/2021. A Bench of this Court vide order dated 18th March 2021 allowed the application, bringing on record legal heirs of deceased petitioner.
6. I have heard the learned counsel for the parties and considered the matter.
7. Learned counsel for the petitioner has stated that the appellate authority has not followed Section 37(2) of the General Insurance (Conduct, Discipline and Appeal) Rules 1975 (for short the “Rules”) while passing the order impugned dated 28th February 2011. According to him, the enquiry against the petitioner was not conducted in accordance with Rule 25 (3) of the Rules as the charge sheet was to be framed by the Chief Regional Manager but it had been framed by Deputy Manager (respondent no.3), who has no jurisdiction to do so.
- 7.1. It is also contended by the learned counsel for the petitioner that the petitioner made various representations to the respondents requesting them to wait for outcome of the criminal trial pending before the court of the Special Judge Anticorruption, Srinagar, but he was, vide letter dated 31st March 2009, informed that the departmental inquiry had

been initiated against him to impose a major penalty upon him and that there was no need to postpone departmental inquiry initiated against him.

7.2. According to the learned counsel for the petitioner, the enquiry was just an eyewash as the petitioner was not provided an opportunity to file a detailed reply to the charge sheet, though he requested for it.

7.3. Learned counsel for the petitioner has vehemently stated that the enquiry against the petitioner was conducted by Shri M. R. Balla, who was at the same time cited as a prosecution witness in the final report/challan filed by the CBI before the court of the Special Judge Anticorruption, Srinagar and therefore, it was not expected that the said officer would hold the enquiry fairly and unbiasedly.

7.4. It is also his contention that Branch Manager of Branch Batamalloo, namely, Mr. M.A.Shah, where the petitioner was last working, was not at all produced as a witness during the enquiry notwithstanding the fact that he was an important witness, particularly when the allegation against the petitioner was that he accepted Rs.2000/- from the party/claimant; out of which Rs.1000/- was allegedly recovered from Branch Manager and Rs.1000/- was allegedly recovered from the petitioner.

7.5. Learned counsel for the petitioner has also averred that the findings of the enquiry officer are self-contradictory because on one hand, he has observed that the claim file was handed over to the petitioner on 18th June 2007, which was processed by him and obtained the approval on 2nd July 2007 and the cheque was prepared on 12th July 2007, which was dispatched to the claimant on 17th July 2007 while as on the other

hand, the enquiry officer has observed that the petitioner was not fully responsible for keeping the file pending but because he has dealt with the file, so he is also responsible for delay, while observing so he forgets that petitioner has, as per his own findings, dealt with the matter expeditiously and disposed of the same within 29 days, including holidays, from the date of receipt of the file.

7.6. It is also contended by the learned counsel for the petitioner that the enquiry officer has also observed that the petitioner had accepted the bribe but has also at the same time observed that the cheque for issuance whereof the money was paid, was already dispatched when the trap was laid by CBI. It is also admitted fact that CBI could not recover the bribe amount from the petitioner as only Rs.1000/- was allegedly recovered from the petitioner and in order to involve him, it was alleged that Rs.1000/- was recovered from Branch Manager; if it was so, then the Branch Manager should have also been involved in the matter as co-accused.

8. To rebut the contentions of the learned counsel for the petitioner, it is contended by learned counsel for the respondents that it is well settled that even in those cases where two views are possible from the material on record and if the enquiry officer has taken one view, the Court cannot substitute the same with the other view.

8.1. It is also insisted by the learned counsel for respondents that the departmental proceeding is not a criminal trial and sufficiency and insufficiency of evidence cannot be examined. According to him, petitioner has no right to challenge the findings of the enquiry officer, the disciplinary authority and appellate authority before this Court in

its extra ordinary writ jurisdiction. He also states that petitioner has been given sufficient opportunity to put forth his defence while conducting departmental enquiry against petitioner.

9. In order to refute to the contentions of the learned counsel for the respondents, Mr. Mir Manzoor, counsel appearing for the petitioner, would contend that respondent no.3 appointed Branch Manager, namely, Mr. M.R.Bala, as the enquiry officer and that even the enquiry officer has stated in the enquiry report that the petitioner is not fully responsible for keeping the claim file pending as it has been proved that the file had also been dealt by other officials.
- 9.1. It is also stated by the learned counsel for the petitioner that the petitioner was charged before the Trial Court in case FIR no.RC0042007A008 of 2007. The Trial Court examined the evidence and other related material and acquitted petitioner from allegations levelled against him. The claimant, namely, Bashir Ahmad Shah, deposed before the Trial Court that he did not have any personal knowledge about the demand and that he had not spent any amount on settlement of claim in the Insurance Company nor he had given any bribe. This fact is evident from judgement dated 31st August 2016, passed by the Trial Court, thereby acquitting petitioner of all charges levelled against him. According to learned counsel for petitioner, respondents have miserably failed to follow the Rules in its strict accord. He has made reference to *Sher Bahadur v. Union of India and others, 2002 (7) SCC 142*.
10. There is no gainsaying to the fact that the case-FIR, on the basis whereof disciplinary proceedings were initiated against the petitioner

and culminated in issuance of the impugned orders, has been held not proved against the petitioner by the court of law.

11. Bare perusal of the impugned order dated 1st October 2010 reveals that upon registration of FIR and arrest by CBI/ACB, Jammu, on 17th July 2007, the deceased petitioner was placed under suspension vide order dated 20th July 2007. Impugned order mentions that it was on the advices of CBI that departmental proceedings were initiated against the deceased petitioner.

12. The memorandum dated 11th June 2008 was issued with two Articles of Charges levelled against the deceased petitioner, which are:

- (i) Mr Musthaq Ahmad Parra deliberately kept the captioned claim file pending with him and the cheque was given to the Dispatcher on 17.07.07 by him for dispatching to the claimant, only after he received a telephonic call from the complainant assuring him that he (complainant) was reaching to this office with the demanded amount.
- (ii) Mr Mushtaq Ahmad Parra demanded and accepted bribe of Rs.2000/- from the complainant, as a motive for issuing cheque in favour of Mr Bashir Ahmad Shah whose Maruti Car No.JK-01-F-5785 was insured with Batmaloo Branch under Policy No.420003/31/05/6100002983 and had met with an accident on 18.04.05.

13. It is also evident from perusal of the impugned order dated 1st October 2010, Mr M.R.Bala, Branch Manager, Branch Office Sopore, was appointed as Inquiry Officer and Mr L. A. Hamdani, A.O. D.O. Srinagar as Presenting Officer to conduct inquiry against the deceased petitioner.

14. What is statement of imputations of misconduct in support of the Articles of Charges framed against the petitioner, is worthwhile to be looked into and reproduced here and then discussed.

“Mr. Mushtaq Ahmad Para, while posted and working as Assistant (Under Suspension) in BO Batamaloo under DO Srinagar of National Insurance Co. Ltd, during the year 2007,

his duties inter-alia were to process and recommend claims after close scrutiny of claim documents, to disclose all material facts to his superiors, to work honestly in the interest of the Company and also to follow rules, regulations and guidelines issued by the Company from time to time. Mr. Mushtaq Ahmad Parra while working as Assistant during the above said period, failed to maintain absolute integrity, devotion to duty, acted in a manner unbecoming of a public servant and in, a manner prejudicial to the interest of the Company in as much as:-

A case under FIR No.RC0042007A0008 was registered in the Anti Corruption Branch, CBI, Jammu on 17.07.2007 on receipt of a written complaint dated 17.07.2007 lodged by Mr. Ghulam Nabi Dagga s/o Mr. Haji Ghulam Mohd. Dagga r/o Karan Nagar, Srinagar. It was alleged in the complaint that on 16.07.2007 Mr. Mushtaq Ahmad Parra while working as Assistant, National Insurance Co. Ltd., BO Batmaloo Srinagar had demanded illegal gratification of Rs.2000/- from Mr. Ghulam Nabi Dagga in consideration of releasing claim cheque favouring Mr. Bashir Ahmed Shah s/o Haji Ghulam Shah r/o Shergarhi, Srinagar whose Maruti Car Th'et with an accident on 18.04.2005 and the said vehicle was insured with NIC, Batmaloo. Mr. Ghulam. Nabi Dagga pursuing the matter on behalf of Mr. Bashir Ahmed Shah since he was his driver and presently working with his brother-in-law.

During the course of investigation, it was established that Mr. Mushtaq Ahmad Parra was posted as Assistant in National Insurance Co., BO Batmaloo, under D/O. Srinagar and was on duty on 17.07.2007. Investigation further revealed that on 16.07.2007 when Mr. Ghulam Nabi Dagga approached Mr. Mushtaq Ahmad Parra for releasing the claim cheque, he demanded Rs.2000/- as illegal gratification in consideration of getting the claim cheque issued. Mr. Ghulam Nabi Dagga approached CBI Office, Srinagar and had lodged the written complaint dated 17.07.2007 against Mr. Mushtaq Ahmad Parra and requested to take legal action.

After registration of the case in CBI under FIR NO.RC0042007A000 on 17.07.2007 on the basis of a written complaint, it was decided to lay a trap and to catch hold of Mr. Mushtaq Ahmad Parra while demanding and accepting illegal gratification of Rs.2000/- from Mr. Ghulam Nabi Dagga. Assistance of one Dy. SP from Vigilance Organization, Srinagar was also sought and obtained.

Thereafter, in the presence of independent witnesses and complainant, all the pre trap procedural and legal formalities were carried with regard to laying of trap. The amount was returned back to the complainant to be given to the accused Mr. Mushtaq Ahmad Parra on demand. Necessary instructions were also issued to the complainant as well as to the independent witnesses and other members of the trap party. After completing the pre trap proceedings all the members of the trap party including witnesses and complainant left CBI Office,

Srinagar at 1525 hours on 17.07.2007 and reached near National Insurance Co. Branch Office Batmaloo, Srinagar at about 1540 hours. The complainant along with shadow witness went inside the National Insurance Co., Branch Office Batmaloo, Srinagar and other members of the trap party including another witness positioned themselves in a scattered manner close to the spot.

Mr. Ghulam Nabi Dagga, the complainant, when contacted Mr Mushtaq Ahmed Parra in his office, Mr Mushtaq Ahmad Para demanded. Rs.2000/- from the complainant and accordingly, the complainant handed over the tainted amount to the accused Mr. M.A. Para who accepted the same, then counted with both his hands and placed the same in left side pocket of his shirt. After the bribe transaction was over, pre arranged signal was flashed by the shadow witness. On the receipt of the signal, all the members of the trap party including other independent witness, from whom he, had demanded and accepted illegal gratification from the complainant Mr. G.N. Dagga. Mr. M.A. Parra became nervous and denied to have accepted any bribe. However, he also begged for mercy.

After receiving the tainted money of Rs.2000/- by Mr. MA. Parra from the complainant Mr. Ghulam Nabi Dagga, Mr. M.A.Parra had lent Rs.1000/- out of the tainted amount of Rs.2000/- to his fellow colleague Mr M.A.Bazaz, an Insurance Agent. Mr. M.A. Bazaz had in turn handed over the said amount to Mr M.A.Shah, the Branch Manager, National Insurance Co. Ltd., BO Batmaloo, Srinagar towards the repayment of his loan borrowed by Mr.M. A. Bazaz from Mr.M.A.Shah earlier. Hence out of the said tainted amount of Rs.2000/-, Rs.1000/- each were recovered from the possession of Mr.M.A. Para and Mr. M.A.Shah later only by the Trap Laying Officer in presence of independent witnesses.

Both the hands of the accused Mr.M.A.Parra and pocket of the shirt of Mr. M.A.Parra – wherefrom the tainted money was recovered, were got washed in the separate solutions prepared of water and Sodium Carbonate and in all the times, the colourless solution was changed to pink colour, which confirms that Mr. Mushtaq Ahmed Para had received the tainted amount.

That the complaint dated 17.07.2007, Pre Trap Memo, Recovery Memo, Statement of witnesses recorded during the course of investigation clearly disclose that Mr. Mushtaq Ahmed Para, the then Assistant, BO Batmaloo had committed gross misconduct while discharging his official duties and thereby failed to maintain absolute integrity and devotion to duty, which is unbecoming of a public servant.”

14.1. It is mentioned in the statement of imputations that the petitioner, while posted and working as Assistant in Branch Batmaloo in the

year 2007, was to process and recommend the claims after close scrutiny of the claim documents and to disclose all the material facts to his superiors, to work honestly in the interest of the respondent-company and also to follow rules, regulations, and guidelines issued from time to time.

14.2. The petitioner, it is next alleged in the statement of imputations, while working as Assistant during 2007 failed to maintain absolute integrity, devotion to duty as he acted in a manner unbecoming of a public servant and in a manner prejudicial to the interest of the respondent-company inasmuch as FIR was registered in ACB, CBI, Jammu, on 17th July 2007⁶ on receipt of a written complaint dated 17th July 2007 lodged by one Mr Ghulam Nabi Dagga S/o Haji Ghulam Mohd Dagga R/o Karan Nagar, Srinagar, alleging therein that the petitioner had demanded illegal gratification of Rs.2000/- from him (complainant) on account of releasing the claim cheque favouring Mr Bashir Ahmed Shah S/o Haji Ghulam Shah R/o Shergarhi, Srinagar, whose Maruti Car had met with an accident on 18th April 2005 and the said vehicle was insured with respondent-company. It is averred in the statement of imputations that it was decided to lay a trap and to catch hold of the deceased petitioner while demanding and accepting illegal gratification of Rs.2000/-, assistance of one Dy. S.P. from Vigilance Organisation was also sought and obtained. Thereafter pre-trap procedure and legal formalities were carried.

14.3. It is also alleged in the statement of imputations that when the complainant contacted the deceased petitioner, he demanded Rs.2000/- from former and, accordingly former handed over the

tainted amount to latter, who accepted the same. It is also alleged in the statement of imputations that after the bribe transaction was over, the pre-arranged signal was flashed by the shadow witness and on receipt of the signal, all the members of the trap party including other independent witness, from whom he had demanded and accepted the illegal gratification from the complainant, the deceased petitioner became nervous and denied to have accepted any bribe.

14.4. It is also stated in the statement of imputations that after receiving the tainted money of Rs.2000/- by the deceased petitioner from the complainant he had lent Rs.1000/- out of the tainted amount of Rs.2000/- to his fellow colleague, Mr M.A. Bazaz, an Insurance Agent, who in turn handed over the said amount to Mr M.A. Shah, Branch Manager, National Insurance Co. Ltd., Branch Office Batamaloo, Srinagar towards the repayment of his loan borrowed by Mr.M.A. Bazaz from Mr. M.A. Shah earlier. So, out of the said tainted amount of Rs.2000/-, an amount of Rs.1000/- each were recovered from the possession of the petitioner and Mr. M.A. Shah later only by the Trap Laying Officer in presence of independent witnesses.

14.5. It was presumed in the statement of imputations that the petitioner has committed gross misconduct while discharging his official duties and that he failed to maintain absolute integrity and devotion to duty.

14.6. The memorandum dated 11th June 2008 also contained List of as many as Nineteen (19) witnesses in support of Charges framed against the deceased petitioner, namely:

(1) Ghulam Nabi Dagga

- (2) Ghulam Rasool Dar
- (3) Abdul Ahad Sheikh
- (4) Ali Mohd Shah
- (5) Rafique Ahmed
- (6) Malik Zada Idress
- (7) Ishaq Ahmed
- (8) Mohd Tariq Misger
- (9) Subhash Mithani
- (10) Mohd Ayoub Bazaz
- (11) Manzoor Ahmed Khan
- (12) Mohd. Amin Shah
- (13) Bashir Ahmad Shah
- (14) Parvez Ahmed Mir
- (15) **M. R. Bala**, Asstt. Divl. Manager, NIC, Srinagar
- (16) Tanzin Sharub
- (17) Showkat Ahmed Misgar
- (18) Mohd. Farooq Bhat
- (19) Any other witness.

15. Upon receipt of the Memorandum dated 11th June 2008, the petitioner requested the respondent-company to postpone the departmental inquiry till final outcome of the judicial trial. He also in his application refuted the allegations levelled against him as being false, manipulated and baseless. He made it clear to the respondent-company that since the criminal case as well as the departmental inquiry were based on same facts and also involve same questions of law, the requirement of law was to stay the departmental enquiry pending disposal of the criminal case. His request, however, vide communication dated 31st March 2009 was declined.

16. As is evident from perusal of the inquiry report dated 12th March 2010, submitted by the Inquiry Officer, namely Mr M.R.Bala, it has been concluded by Inquiry Officer that the deceased petitioner could not be exonerated fully of charge No.1 framed against him.

16.1. Having regard to the conclusion drawn by the Inquiry Officer (Mr M.R. Bala), it would be apt to reproduce relevant portions of the Inquiry Report hereunder:

“The charges framed against Mr. M.A.Parra – Asstt (under suspension) CE as per Articles of Charges (Annexure-I of Memorandum dated: 11.06.2008) are as under:

Mr. M.A. Parra, while posted and working as Assistant BO Batmaloo of National Insurance Co. Ltd, under DO Srinagar during the year 2007, failed to maintain absolute integrity, devotion to duty, acted in a manner unbecoming of a public servant, acted dishonestly and in a manner prejudicial to the interest of the company in as much as:-

1. Mr Musthaq Ahmad Parra deliberately kept the captioned claim file pending with him and the cheque was given to the Dispatcher on 17.07.07 by him for dispatching to the claimant, only after he received a telephonic call from the complainant assuring him that he (complainant) was reaching to this office with the demanded amount.
2. Mr Mushtaq Ahmad Parra demanded and accepted bribe of Rs.2000/- from the complainant, as a motive for issuing cheque in favour of Mr Bashir Ahmad Shah whose Maruti Car No.JK-01-F-5785 was insured with Batmaloo Branch under Policy No.420003/31/05/6100002983 and had met with an accident on 18.04.05.

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In support of Articles of charge against charged employee Mr M.A.Para (CE) the Management through its duly appointed Presenting Officer Mr J.A. Hamdani, presented the management documents marked as MD-1 to MD-10 and provided the names of following Management Witnesses he desired to be examined:-

1. Mr M.T.Misgar, Record Clerk, BO Batmaloo (MW-8)
2. Mr Rafique Ahmad, Inspector CBI/ACB Srinagar (MW-5)
3. Mr Mohd. Farooq Bhat, SI CBI/ACB Srinagar (MW-18)

Accordingly the regular hearing was held on 20.08.2009 at DO premises Srinagar in which the Presenting Officer produced his 1st Management Witness Mr M.T. Misgar (MW-8). During the proceeding, the examination and cross-examination of MW-8 was concluded. The another Management Witness was not present hence the proceedings were adjourned on 21.08.2009 and next date was fixed on 28.08.2009 for examination of another Management Witness.

The another Management Witness Mr. Rafique Ahmad, Inspector CBI/ ACB Srinagar (MW-5) was examined on 28.08.2009 at DO premises Srinagar. His examination, cross-examination and re-examination in Chief was concluded. At this stage, the PO sought time for examination of any other Management Witness. As such, the next date of regular hearing was fixed on 25.09.2009 for

examination of both Management and Defense Witness vide order dated: 28.08.2009.

.....Since the CE has not provided the name of Defense Witnesses hence another opportunity was provided vide order dated: 09.10.2009 to CE to communicate the name of Defense Witness by 2nd Nov. 2009. However, the CE failed to provide the name of Defense Witnesses by 2nd Nov-2009, with the result final opportunity was provided to CE to provide the name of Defense Witnesses latest by 23.11.2009 vide order dated: 13.11.2009.

In response to order dated: 13.11.2009, the CE submitted the names of two Defense Witnesses on 23.11.2009. The proceedings which were earlier scheduled for 25.11.2009 were held on 12.12.2009 at BO M.A.Road Srinagar. During the proceedings, Defense Witness Mr B.A.Shalla, Marketing Officer-BO Batmaloo DW-1 was examined and re-examined by DA and also cross-examined by PO. Another Defense Witness Mr. Fayaz Ahmad Rather, sub-Staff – BO Batmaloo DW-2 did not turn up on 12.12.2009 and as such the proceedings were adjourned.

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In support of the first charges, the Presenting Officer produced its management witness Mr. M.T.Misgar-MW-8. During examination in chief on 20.08.2009, MW-8 admitted that the subject claim file has been processed by CE and the file has been approved by Divisional Office on 02.07.2007. To another question put by PO, MW-8 confirmed the cheque was prepared on 12.07.2007 at 10:22 Am and subsequently the cheque was dispatched on 17.07.2007 at 10.30 AM. In cross examination by DA, MW-8 confirmed that correspondence lying across the subject file at page No.2 & 3 is in the hand writing of Mr. Zahid Abdullah – Assistant BO Batmaloo, page No.4 in the hand writing of Mr.M.Shafi Bhat – Assistant BO Batmaloo and page 5 & 31 in the hand writing of Branch Manager, Mr.M.A.Shah. MW-8 further confirmed that loss voucher has been dispatched immediately to the claimant by CE vide letter dated: 04.07.2007 lying at S.No.54 of the subject claim file. During cross examination MW-8 confirmed that he received the cheque on 16.07.2007 at 5 PM and dispatched it in the morning of 17.07.2007. He further confirmed that 13th, 14th & 15th July 2007 were holidays.

During cross examination of the Management Witness MW-8 some specific questions were put by DA which are reproduced as under:-

DA to MW. Was there any pressure on you by any employee especially CE to delay the dispatch of cheque No.362844

MW-8: No, there was no pressure exerted on me for the delay in dispatch of subject cheque.

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DA to MW-8: Does it mean the cheque No.362844 was neither in your custody nor the custody of CE at the time of lying of so called Trap by CBI.

MW-8: The cheque No.362844 was neither in custody of CE nor in my custody at the time and date of CBI's raid.

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To another question put by DA, MW-5 confirmed that tainted amount of Rs.1000/- consisting of two GC notes of Rs.500/- each were recovered from Mushtaq Ahmed Parra-CE and remaining tainted amount of Rs.1000/- consisting of two GC notes of Rs.500/-

each were recovered from Mr. Mohammad Amin Shah-Branch Manager. MW-5 also confirmed that they did not locate the claim cheque at the time of lying Trap. During re-examination, MW-5 to a question stated that complainant has not directly paid the tainted amount of Rs.1000/- to Mr. Mohammad Amin Shah which was recovered from him at the time of lying the trap on 17.07.2007.

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The another Defense Witness Mr. Fayaz Ahmad Rather DW-2 during his examination on 18.12.2009 stated that to his knowledge CE has not asked for any gratification from any of the clients. During cross-examination by PO, DW-2 also stated that he knows nothing what happened inside the Chamber of Br. Manager as he was not allowed to go inside the chamber.

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From the above facts, it is confirmed that the charged employee is not fully responsible for keeping the claim file pending as it has been proved that the file has been dealt by other officials also..... But Management could not prove that during this period, the claim cheque was lying with the charged employee.

In view of the above discussion and evidence led by the parties in support of their respective cases. I have come to the conclusion that Charged Employee (CE) Mr M.A. Parra-Assistant (Under Suspension) can't be exonerated fully of charge No.1 framed against him as per Article of Charge (Annexure I & II) attached with Memorandum dated: 11.06.2008 while as charge No.2 has been proved to the extent as stated above."

17.The prosecution story before the court of Special Judge Anticorruption (CBI Cases) is same as is alleged in the departmental proceedings. Prosecution has before the Special Judge maintained that on 16th July 2007, accused/deceased petitioner asked the complainant that the cheque of insurance claim will be dispatched only when an amount of Rs.2000/- would be paid to him. The complainant approached CBI and got a trap party ready. It was also maintained by the prosecution before the Special Judge that accused/deceased petitioner received the tainted amount of Rs.2000/- from the complainant and out of the said tainted amount, the accused/deceased petitioner handed over an amount of Rs.1000/- to one Mohammad Ayoub Bazaz, who went to the office chamber of the Manager of the Branch (Mohammad Amin Shah). It is also evident from prosecution

story that the notes in the denomination of Rs.500/- each was recovered from the accused and rest of the amount from Mohammad Ayoub Bazaz.

17.1. The prosecution before the Special Judge cited twenty-one (21) witnesses in support of its case, whose names are:

- (1) Ghulam Nabi Dagga
- (2) Ghulam Rasool Dar
- (3) Abdul Ahad
- (4) Ali Mohammad Shah
- (5) Rafique Ahmad Kaloo
- (6) Malik Zada Idress
- (7) Ishaq Ahmad Sheikh
- (8) Mohammad Tariq Misgar
- (9) Manzoor Ahmad Khan
- (10) Mohammad Amin Shah
- (11) Bashir Ahmad Shah
- (12) Parvaiz Ahmad Mir
- (13) Mohammad Rafique Bala**
- (14) Tanzin Sherub
- (15) Showkat Ahmad
- (16) Mohammad Shafi Bhat
- (17) R.S.Chowhan
- (18) K. Singh
- (19) Mohammad Farooq Bhat

17.2. The Special Judge upon consideration of the case set up by the prosecution, the whole record, statements of witnesses, and submissions made by learned counsel for the parties, came to the conclusion that prosecution has failed to prove the guilt of the accused/ deceased petitioner and accordingly dismissed the case of the prosecution and acquitted the accused/deceased petitioner.

17.3. From the perusal of both the judgement dated 31st August 2016 and impugned orders/inquiry report, it is abundantly clear and evident that both the proceedings, that is criminal proceedings before the Special Judge and domestic/disciplinary proceedings initiated by the respondent-company, were grounded upon the same set of facts and

evidence and also pertains to the same/similar allegation of having received the illegal gratification. Thus, the charges, evidence witnesses and circumstances are one and the same. The witnesses adduced and examined before the Special Judge led to the conclusion that the prosecution has not proved the guilt alleged against the deceased petitioner beyond any reasonable doubt, resulting in acquittal of the deceased petitioner by judicial pronouncement with the finding that the charge has not been proved. Such facts and evidence in the department as well as in criminal proceedings were the same without there being any iota of difference. The deceased petitioner has been honourably acquitted by the competent court on the same set of facts and evidence and witness and, therefore, the dismissal order based on the same set of facts and evidence on the departmental side is liable to be set-aside.

18. The law on the subject is well-settled. The case in hand is squarely covered by the judgement passed by the Supreme Court in *G. M. Tank v. State of Gujarat and another, 2006 (5) SCC 446*. The relevant portion thereof is appropriate to be reproduced hereunder:

“27. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating

Officer, Mr. V. B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

28. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

19. The Supreme Court ***G. M. Tank*** (supra) has observed that the criminal and the departmental proceedings were initiated on the same set of facts; the same witnesses were examined in the criminal case and the criminal court on examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with a finding that the charge has not been proved. It was also noticed by the Supreme Court that judicial pronouncement was made after a regular trial and on hot contest and that it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. The Supreme Court opined that the facts and evidence in the departmental

as well as criminal proceedings were the same without there being any iota of difference and, therefore, the appellant should succeed.

19.1. In the present case, the criminal case pending before the Special Judge and the departmental proceedings initiated by the respondent-company, were on the same and similar set of facts. The witnesses, cited both in the criminal proceedings and the departmental proceedings were same and similar. The prosecution in the present case has failed to prove the case against the deceased petitioner and, therefore, the present writ petition is destined to succeed.

20. The Supreme Court in *ECIL v. B.Karunakar (1993) 4 SCC 727*, has held:

“(1) Where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions.

If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions.

The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment. The second stage consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of

time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty.

Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence in respect of the charges.

* * *

Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations.

The proviso to Article 311(2) in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry.

Hence, when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

21. Pertinent to mention here that the Supreme Court in *Chamoli District Cooperative Bank Ltd through its Secretary/Mahaprandhak and another v. Raghunath Singh Rana and others, 2016 (12) SCC 204* has laid down the following the principles vis-à-vis the departmental proceedings:

- (i) The enquiries must be conducted *bona fide* and care must be taken to see that the enquiries do not become empty formalities.
- (ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.
- (iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and given an opportunity to him cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.
- (iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

- 21.1. It is, *inter alia*, deducible from the above principles laid down by the Supreme Court that if an employee/officer is a witness to any incident, with respect whereof an employer initiates and/or cause to hold/initiate an enquiry against the alleged delinquent/workman, then such an employee/ officer, who is witness to the incident, should not be the enquiry officer. And as and when such a fact comes to fore even after appointment of such an employee/ officer as an enquiry officer during conducting of the enquiry, the employer should take steps to assign the enquiry to some other officer.
- 21.2. When the case in hand is looked into and considered in the context of the principles laid down by the Supreme Court in ***Chamoli District Cooperative Bank*** (supra), the enquiry conducted by Enquiry Officer, Mr M. R. Bala, is vitiated *ab initio*.
- 21.3. Interestingly, in the present case, Mr M. R. Bala has been cited as witness amongst the 19 listed witnesses against the deceased petitioner in the departmental proceedings/enquiry initiated by respondent-company and consequently in the very departmental proceedings/ enquiry, the person of Mr M. R. Bala was appointed as Enquiry Officer. He had also been cited as witness by the prosecution before the Special Judge. So, fairness and unbiasedness could not have been expected by the deceased petitioner inasmuch as such appointment of Mr M.R.Bala is against the principles laid down by the Supreme Court in ***Chamoli District Cooperative Bank*** (supra). Result thereof is that impugned enquiry as also report made by enquiry officer and action taken thereon by the respondents which culminated in issuance of impugned order are, *en bloc*, vitiated.

21.4. Even the appellate authority, before whom the deceased petitioner filed an appeal, did not take the note of the above imperative aspects in considering and deciding the appeal. Resultantly, order passed by appellate authority is also liable to be quashed.

22.In the backdrop of preceding discourse, the impugned orders dated 1st October 2010 and 28th February 2011 are quashed. Since the consequence of quashing of the above impugned orders would have been to remit the matter back to the disciplinary authority for consideration of the matter afresh on merits, but in view of the fact that petitioner has passed away during pendency of the present writ petition on 8th June 2020, therefore, the same would not serve any purpose. The deceased petitioner is held entitled to continuity of service from the date of removal from service till the date of his superannuation or till the date of death, whichever is earlier, with all the service benefits. However, the deceased petitioner is held entitled to only 50% of the salary for the period between the date of his removal from service till the date of his superannuation or till the date of his death, whichever is earlier. The retiral benefits shall be released in favour of legal heirs of the deceased petitioner.

23.The writ petition is disposed of in terms of above.

(Tashi Rabstan)
Judge

SRINAGAR

07.12.2023

“Madan Verma, Secy”

Whether the order is reportable: Yes