



**IN THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

**WP(C) No.2442 of 2014**

Shri Deva Prasanna Gogoi,  
Son of Late Bhuban Chandra Gogoi,  
Resident of Basapati, Kakojan, PO: Kakojan,  
PS: Teok, District: Jorhat, Assam.

**.....Petitioner**

**-Versus-**

1. The Life Insurance Corporation of India (L.I.C.I.), Central Office, "Yogakshema" Jeevan Bima Marg, Mumbai – 400021.
2. The Chairman, Life Insurance Corporation of India, Central Office "Yogakshema", Jeevan Bima Marg, Mumbai – 400021.
3. The Secretary/Commissioner, Finance Department, Government of India, New Delhi – 110001.
4. The Managing Director, Life insurance Corporation of India, Central Office "Yogakshema", Jeevan Bima Marg, Mumbai – 400021.
5. The Senior Divisional Manager, (Disciplinary Authority), Life Insurance Corporation of India, Jorhat, Divisional Office, Rajabari, Jorhat, Assam.
6. The Divisional Manager, Life Insurance Corporation of India, Jorhat Divisional Office, Rajabari, Jorhat, Assam.

7. The Chief Manager, Life Insurance Corporation of India, Jorhat Branch Office – 1, Jorhat, Assam.

8. The Senior Branch Manager, Life Insurance Corporation of India, Sibasagar Branch, Sibasagar, Assam.

9. The Asstt. Branch Manager (I/C), Life Insurance Corporation of India, Pasighat Branch Office under Jorhat Divisional Office, Pasighat.

10. The Manager (I/T), Jorhat Divisional Office, Life Insurance Corporation of India, Rajabari, Jorhat, Assam.

**.....Respondents**

**- B E F O R E -**  
**HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

For the Petitioner : A. Goswami, Advocate.

For the Respondents : Mr. K.K. Nandi, Standing Counsel, Life Insurance Corporation of India (LICI).

Date of Hearing : 20.03.2024.

Date of Judgment : 20.03.2024.

**JUDGMENT & ORDER**

Heard Mr. A. Goswami, learned counsel for the petitioner. Also heard Mr. K.K. Nandi, learned standing counsel, Life Insurance Corporation of India (LICI), representing all the respondents.

**2.** The petitioner, by instituting the present proceedings, has presented a challenge to an order dated 07.10.2013 issued by the Chairman, Life Insurance Corporation of India, by which on a review made by the Life Insurance Corporation of India

(for short, "the Corporation"), the penalty as imposed upon him was revised and he was imposed with the penalty of dismissal from service.

The brief facts requisite for adjudication of the issues arising in the present proceedings is noticed herein under.

**3.** The petitioner, while working as a High Grade Assistant at the Pasighat Branch Office of the Corporation under Jorhat Divisional Office, was issued with a memorandum of charge alleging misappropriation of fund while he was posted at Jorhat Branch Office No.1. The petitioner, on receipt of the said memorandum of charge, submitted his reply thereto on 08.11.2011 and therein by placing on record his explanation, admitted the charges mentioned in the memorandum of charge. Being not satisfied with the clarification submitted in the matter by the petitioner, the Disciplinary Authority appointed an Enquiry Officer along with a Presenting Officer to hold an enquiry into the charges levelled against the petitioner vide the charge sheet dated 18.10.2011.

**4.** The Enquiry Officer, on conclusion of the enquiry, submitted his enquiry report and therein held that the petitioner had admitted to all the charges framed against him and further, as per the evidence coming on record, a finding was recorded by the Enquiry Officer to the effect that the petitioner was a very knowledgeable person in accounting and as such the irregularities mentioned in the charge sheet are intentional and not due to any mistake. Thereafter the petitioner, on being furnished with a copy of the said show

cause notice, submitted his reply against the same. The Disciplinary Authority thereafter, on consideration of the matter, vide order dated 26.03.2012, proceeded to impose upon the petitioner penalty of reduction in basic pay by 5(five) stages in the Time Scale applicable to him in terms of Regulation 39(1)(d) of the LIC of India (Staff) Regulations, 1960 (for short, "1960 Regulations") with immediate effect. The period of suspension of the petitioner w.e.f. 04.08.2009 to 21.09.2010 was treated as "period not spend on duty", i.e. as *dies-non*.

**5.** The petitioner accordingly has accepted the said penalty as imposed upon him and was continuing in his services. After a lapse of around a year, the Chairman of the Corporation issued a show cause notice to the petitioner invoking the power of the Corporation under Regulation 48(1)(b) of the 1960 Regulations and proposed to impose upon him the penalty of dismissal from service in terms of Regulation 39(1)(g) of the 1960 Regulations. It was noted in the said show cause notice dated 21.03.2013 that the Corporation had resolved in the above manner in exercise of the powers vested in it under Regulation 48(1) and after calling for the records of the case and reviewing the order passed by the Disciplinary Authority in its 556<sup>th</sup> meeting held on 23.01.2013. Accordingly, the petitioner was directed to submit his show cause reply against the same.

**6.** Against the said show cause dated 21.03.2013 issued by the Chairman of the Corporation, the petitioner submitted

his reply on 25.04.2013 and prayed that the order passed by the Disciplinary Authority on 26.03.2012 be confirmed and the review as proposed be not undertaken.

**7.** Thereafter, the Chairman of the Corporation, under the provisions of Regulation 48(1) of the 1960 Regulations, proceeded to impose upon the petitioner the penalty of dismissal from service. It is the said order dated 07.10.2013 that is presently under challenge in the present proceedings.

**8.** Mr. A. Goswami, learned counsel for the petitioner, by referring to the provisions of Regulation 48(1) of the 1960 Regulations as it stood on the date the impugned order dated 07.10.2013 was passed, has contended that a perusal of the order dated 07.10.2013 would reveal that the penalty as imposed upon the petitioner was so imposed by the Chairman and not by the Corporation. It is the categorical submission of Mr. A. Goswami that in terms of the provisions of Regulation 48(1) of the 1960 Regulations, it is the Corporation only who is empowered to carry out a review in the matter and such power was not permissible to be delegated to any other authority. Accordingly, he prays that the order dated 07.10.2013 is required to be interfered with by this Court.

**9.** Mr. K.K. Nandi, learned standing counsel, Life Insurance Corporation of India, representing the respondents has submitted that the allegations as levelled against the petitioner was admitted to by him, both in his written statement of defence as well as during the enquiry proceedings. The petitioner has also made deposits of the

amount defalcated by him. It is stated that the Corporation having decided to review the penalty as imposed upon the petitioner invoking its power under Regulation 48(1) of the 1960 Regulations and it having further resolved that the Chairman would take decision and necessary action in the matter, the impugned order dated 07.10.2013 passed by the Chairman in terms of such decision of the Corporation cannot be held to be in violation of the provisions of Regulation 48(1) of the 1960 Regulations. It was further submitted that the power under Regulation 48(1) is without any limitation of time and the only requirement is to issue a show cause notice to the delinquent employee before the penalty as imposed upon him is enhanced in exercise of powers under Regulation 48(1) of the 1960 Regulations.

**10.** I have heard the learned counsel appearing for the parties and have also considered the material brought on record.

**11.** The issue arising in the present proceeding is pertaining to the exercise of power by the Corporation under Regulation 48(1) of the 1960 Regulations to enhance a penalty already imposed upon the employee of the Corporation by the Disciplinary Authority. The provisions of Regulation 48(1) of the 1960 Regulations being relevant, are extracted herein below:-

***“Reg. 48 Review.-***

*(1) Notwithstanding anything contained in these Regulations, the Corporation may, on its own motion or otherwise, after calling for the records of the case, review*

*any order which is made or is appealable under these regulations, and*

*(a) confirm, modify or set aside the order;*

*(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;*

*(c) remit the case to the authority which made the order or to any other authority directing such further action or inquiry as it considers proper in the circumstances of the case; or*

*(d) pass such other orders as it deems fit.*

*Provided that an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty.”*

**12.** A perusal of the provisions of Regulation 48 reveals that in a given case, power has been conferred upon the Corporation to call for the records and thereafter review any order, which is made or is appealable under these Regulations. The provisions of Regulation 48 starts with a non-obstante Clause and accordingly the same would have an overriding effect over the other provisions of the Regulations. The provisions of Regulation 48(1) further mandates that after calling for the records of the case and carrying out a review thereof, the Corporation would be at liberty to either confirm, modify or set aside the order or to impose any penalty or set aside, reduce, confirm or enhance the penalty as imposed under the provisions of the said 1960 Regulations. The only requirement for acting in terms of Regulation 48(1) as imposed upon the Corporation is that prior to issuance of an order

imposing or enhancing a penalty, the person concerned must be given an opportunity of making a representation, which he may wish to make against such enhanced penalty.

**13.** What is striking is that Regulation 48(1) mandates that it is the Corporation and the Corporation only that has the power to call for the records of a case and review any order, which is made or is appealable under the Regulations and to impose an enhanced penalty in the matter amongst others. In other words, after calling for the records of the matter and on review of the same in the event the Corporation is of the view that an enhanced penalty is called for in the matter, it must necessarily in terms of the proviso to Regulation 48(1) give an opportunity to the person concerned to make a representation in the matter and thereafter it is the Corporation that has to consider such representation and proceed to act in the matter in accordance with either sub-regulations (a) or (b) or (c) or (d) of Regulation 48(1) of the 1960 Regulations, as it may deem fit.

**14.** A perusal of the order dated 07.10.2013 passed by the Chairman of the Corporation, it is revealed that after the imposition of the penalty by the Disciplinary Authority upon the petitioner vide the order dated 26.03.2012, the Corporation in exercise of its powers under Regulation 48(1) of the 1960 Regulations called for the records of the disciplinary proceeding held against the petitioner and on reviewing the order passed by the Disciplinary Authority in its 556<sup>th</sup> meeting held on 23.01.2013 observed that the penalty as imposed upon

the petitioner vide the order dated 26.03.2012 was not commensurating to the gravity of the misconduct committed by him. Accordingly, the Corporation was of the tentative view that the petitioner, for the misconduct committed by him, was required to be imposed with the penalty of dismissal from service. Accordingly, a show cause notice dated 21.03.2013 was issued to the petitioner provisionally holding him guilty of the charges and provisionally proposing to impose upon him the penalty of dismissal from service. Thereafter, on receipt of the reply of the petitioner to the show cause notice dated 21.03.2013, the same was placed before the Corporation in its 557<sup>th</sup> meeting held on 22.06.2013. It is to be noted that the show cause reply on being placed before the Corporation, the Corporation did not proceed to consider the same and resolved that the Chairman would consider the same and take necessary action as may be required in the matter.

**15.** A further perusal of the order dated 07.10.2013 would reveal that the show cause reply as submitted by the petitioner was considered not by the Corporation but by the Chairman. The Chairman of the Corporation after dealing with the contentions raised by the petitioner in the matter in his show cause reply, proceeded to record that in view of the observations recorded by him after having independently considered the reply dated 25.04.2013 of the petitioner herein for good and sufficient reason hold the petitioner guilty of the charge levelled against the him vide the charge sheet dated 18.10.2011. Thereafter, it was recorded that on examination of the records of the case by the Chairman along with the

evidence available on record and the reply to the show cause notice dated 21.03.2013, the Chairman proceeded to impose the penalty of dismissal of service upon the petitioner by projecting himself to be the Reviewing Authority. The said prescription as made by the Chairman in the order dated 07.10.2013 would reveal that the penalty imposed upon the petitioner is not a penalty so imposed under the provisions of Regulation 48(1) by the Corporation but a penalty so imposed by the Chairman by projecting himself to be the Reviewing Authority in the matter.

**16.** Accordingly, it has to be reckoned that the order dated 07.10.2013 is not a result of a review carried out by the Corporation in terms of the provisions of Regulation 48(1) of the 1960 Regulations but an act carried out without jurisdiction by the Chairman by projecting himself to be the Reviewing Authority in the matter. The above position is further fortified from the affidavit as filed by the LIC authorities in the matter, wherein in Paragraph 13, it was stated that it was the Chairman, who had considered each and every contentions raised by the petitioner in his reply to the show cause notice and disposed of the same by way of a speaking order as the Reviewing Authority on 07.10.2013.

**17.** It is to be mentioned here that the 1960 Regulations is binding on the Corporation in the same manner it binds the employees covered by the said Regulations. The said Regulation has to be reckoned to be having a force of law. It is a settled position of law that where a power is given under a

Statute and/or Regulation and/or Rule to do a certain thing in a certain way, the thing must be done in that way or not at all and that all other methods of performance are necessarily forbidden. The Regulations having conferred the power of review upon the Corporation and that too without limitation of any period of time, such power must necessarily be exercised from initiation to conclusion by the Corporation only, otherwise the intention behind conferring such power on the Corporation of review would stand plainly defeated. The language of Regulation 48(1) does not have any ambiguity and it is clear that such power would be exercisable only by the Corporation and not an authority subordinate to it. The Chairman of the Corporation although a part of the Board but cannot on his own be denoted to be the Corporation. There being no ambiguity in the matter that the review as mandated in respect of the penalty imposed upon the petitioner having been carried out by the Chairman and not by the Corporation, it has to be held that such exercise of power by the Chairman was in clear violation of the provisions of Regulation 48(1) of the 1960 Regulations and done without jurisdiction.

**18.** This Court has carefully also perused the order dated 07.10.2013 as well as the affidavit brought on record by the LIC authorities to examine as to whether after the consideration made in the matter by the Chairman, the matter was placed before the Board for its approval. However, no such material was disclosed either in the order dated 07.10.2013 or in the affidavit as filed by the LIC authorities in the matter. Accordingly, without any ambiguity it has to be

held that the order in question was one passed by the Chairman by assuming the role of a Reviewing Authority under the provisions of Regulation 48(1) of the said 1960 Regulations and the same not being sanctioned by the provisions of the said Regulations, all the action as taken in the matter by the Chairman including the penalty as imposed by him upon the petitioner has to be held to be so done without any jurisdiction. Accordingly, the order dated 07.10.2013 passed by the Chairman in the matter, requires to be interfered with and accordingly, the same is set aside.

**19.** Setting aside of the order dated 07.10.2013 being on the ground of a technicality and also given the nature of the allegation levelled against the petitioner, this Court would not like to restrict the power of the Corporation to act in the matter strictly in accordance with the provisions of Regulation 48(1) of the 1960 Regulations. Accordingly, the matter stands remanded back to the Corporation. The Corporation now shall, without being influenced by the reasoning given by the Chairman in his order dated 07.10.2013, proceed to examine the records of the departmental proceeding as initiated against the petitioner along with the reply as submitted by him in pursuance to the show cause notice issued by the Corporation invoking powers under Regulation 48(1) of the 1960 Regulations on 21.03.2013 and thereafter, come to an independent conclusion as to whether the petitioner is required to be imposed with any enhanced penalty.

**20.** The said action either be taken by the Corporation and/or by the Board of Directors of the Corporation, as may be now prevalent. In the event on such consideration the Corporation/Board is of the view that an enhanced penalty is to be imposed upon the petitioner, the same shall be so imposed to the petitioner and such enhanced penalty if so issued would relate back to 07.10.2013. In the event the Corporation/Board is of the considered view that the penalty as imposed upon the petitioner by the Disciplinary Authority, vide the order dated 26.03.2012 is to be confirmed, the Corporation is at liberty to confirm such penalty and/or impose any other penalty as may be called for in the matter and in the event the same results in the continuation of the services of the petitioner, the consequential service benefits that would be due to the petitioner shall be so released to him. The above exercise, as now required to be carried out by the Corporation/ Board, shall now be carried out and concluded within a period of 6(six) months from the date of receipt of a certified copy of this judgment & order. The petitioner is also at liberty to submit an additional show cause reply to bring on record any further grounds if he so intends and in the event the petitioner prefers such additional representation/reply before the respondent authorities, the same shall be filed without fail on or before 25.04.2024 along with a certified copy of this judgment & order and the Corporation/Board while proceeding to carry out the exercise, as required to be carried out by hereinabove, shall also give due consideration of such

additional representation/reply that may be filed in the matter by the petitioner on or before 25.04.2024.

**21.** With the above observations and directions, the writ petition stands disposed of.

**J U D G E**

**Comparing Assistant**