

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5700 of 2015

=====

Arvind Kumar Sharma, Son of Sri Raja Ram Sharma. Village - Lakhipur, Police Station - Bakhtiyarpur, District - Patna, at present residing at Road No.1, Vishwanath Nagari, Police Station - Town in the town and District - Begusarai.

.... Petitioner/s

Versus

1. The Chairman Cum Managing Director National Insurance Company Ltd. 3, Middleton Street, Kolkata-71.
2. The General Manager, H.O. Personnel National Insurance Company Ltd. 3, Middleton Street, Kolkata - 71.
3. The Chief Regional Manager, National Insurance Company Ltd. Regional Office, Sone Bhawan, 4th Floor, Birchand Patel Path, Patna-1.
4. The Divisional Manager, National Insurance Company Ltd. Muzaffarpur Division, Mrishna Market, 1st Floor, Motijheel, Muzaffarpur.
5. Deputy General Manager, National Insurance Company Ltd. 3, Middleton Street, Kolkata - 71.
6. Mr. A.K. Aacharya, Deputy General Manager, National Insurance Company Ltd., Kolkata.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Badri Narayan Singh, Advocate.

For the Respondent/s : Mr. Y.V.Giri, Sr. Advocate.
Mr. Ashish Giri, Advocate.
Mr. Vikas Ratan Bharti, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
(Date - 15.04.2015)

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:

"1. to quash the order dated 22.01.2015 passed by Mr. A.K.Aacharya the D.G.M. and disciplinary authority imposing penalty against the petitioner "dismissal from service" with effect from 03.10.2008 while considering the order of the Hon'ble High Court passed in Civil Review Case NO. 275/2014 dated 05.11.2014 arising out of C.W.J.C. No. 3154 of 2010."

3. Mr. Badri Narayan Singh, learned counsel appearing



on behalf of the petitioner, in support of the aforementioned prayer, has submitted that the fresh order of dismissal dated 28.01.2015 passed by the disciplinary authority of National Insurance Company (hereinafter referred to as 'the Insurance Company') is bad both on fact and in law. In this regard, he has primarily assailed the said order on the grounds mentioned in para 13 of the writ application, which for the sake of clarity and convenience is quoted herein below:

"13(i) That the only offence of the petitioner was that the petitioner remained absent from his duty for 90 days and thus defaulted the transfer order of the authority, whereas the fact was that the petitioner remained absent after the unauthorized release by the Divisional Manager, Muazaffarpur, who was not competent to release under para 9(1) of the "Job rotation of the transfer policy for official of National Insurance Co." and this point was not examined by the disciplinary authority when was in representation and thus there is violation of order passed by the competent authority. No doubt, the petitioner after wrongful relieved by Divisional Manager Muzaffarpur without jurisdiction remain absent for filing case in the Hon'ble Court, but after loosing the transfer order, joined his duty worked for months together and thereafter disciplinary proceeding was taken up and highest punishment was awarded of 'dismissal from service'.

(ii) That while passing the above order dated 05.11.2014 the Hon'ble Court had been pleased to held 'this Court expects the respondent no. 5 also to consider whether the extreme punishment of dismissal from service is too harsh for the misconduct done by him', which the disciplinary authority ignored to consider upon this observation of the Hon'ble Court, so the impugned order is wrong.

(iii) That it is wrong to say that the petitioner remain absent after after transfer order when LPA was dismissed on 03.06.2008 the petitioner joined his service just after order of dismissal of LPA, so this the question raised that the petitioner was in default of 90 days after transfer order or order of the Hon'ble Court is wrong. Yes, he was absent after relieve order of D.M.

Muzaffarpur when contesting the case in the Hon'ble Court.

(iv) That entire case is based upon the release order of the Divisional Manager Muzaffarpur challenging his jurisdiction which has not ever considered by the disciplinary authority at all.

(v) That to contest for his cause in High Court is the Civil right of a person, and the absent from duty in contest period cannot be taken an absent from duty for which so extreme hard punishment is to be awarded."

4. According to Mr. Singh, once the impugned order of punishment is bad because the same has been passed in violation of direction of this Court, contained in the order dated 05.11.2014 in Civil Review No. 275 of 2014. He has also submitted that in any event, the misconduct alleged on the part of the petitioner was very trivial in nature and for that he ought to have not been punished with the most severe punishment i.e. dismissal from service.

5. Mr. Y.V.Giri, learned senior counsel appearing on behalf of the Insurance Company, on the other hand, has submitted that first of all, this writ application is not maintainable because against the order of the disciplinary authority, which is being assailed herein, the petitioner had the remedy of both, appeal and revision. He has also submitted that impugned order passed by the disciplinary authority is in complete conformity with the direction given by this Court in the order passed in the connected writ application read with order in the review



application filed by the Insurance Company. He has finally submitted that the petitioner, being an employee of the Insurance Company, can be liable to be transferred from one place to another but he on being found to have flouted the order of transfer for a very long period, could not have expected any lower punishment, save and except, dismissal from service.

6. In reply, Mr. Singh has submitted that though there was a remedy of appeal and revision against the impugned order, but considering the background of the case, where the earlier order of dismissal from service passed by the disciplinary authority, it had already been affirmed by the appellate authority and revisional authority and all of them were quashed by this Court directing the disciplinary authority to pass a reasoned order and the disciplinary authority had again inflicted same punishment of dismissal, no useful purpose could have been served by taking recourse to either appeal or revision at the instance of the petitioner.

7. It has to be also kept in mind that when the petitioner had not complied his order of transfer despite being relived on 25.01.2006 and had remained absent from duty for a period of more than 90 days by way of unauthorized absence in clear violation of Rule 30(iv) with explanation thereto of General Insurance (Conduct, Discipline & Appeal) Rules, 1975, he was



subjected to a departmental proceeding by a memo of charge dated 13.10.2006 and ultimately was dismissed from service by an order dated 03.10.2008. His appeal against the order of dismissal was also rejected and affirmed the order of dismissal by the appellate authority on 16.02.2009 and memorial preferred against the order of the appellate authority was also dismissed by the Chairman-cum-Managing Director of Insurance Company vide an order dated 30.04.2009. Thereafter the petitioner had moved this Court by filing C.W.J.C. No. 3194 of 2010 wherein all the three orders of the disciplinary authority, appellate authority and of the Chairman of the Insurance Company on the memorial filed by the petitioner, were set aside by this Court on 22.01.2014 and the matter was remitted back.

8. To that extent, the order of this Court dated 22.1.2014 in C.W.J.C. No. 3194 of 2010 being relevant is quoted hereinbelow:

"Be that as it may, since I am of the opinion that the order of Disciplinary Authority does not deal with the report of the Enquiry Officer and the comment of the petitioner received thereon, if any, the order of dismissal cannot be sustained and it is accordingly set aside. The petitioner is directed to be reinstated forthwith. The subsequent orders dated 16.02.2009 and 30.11.2009 passed by the Appellate Authority and the Chairman of the Insurance Company are also set aside. The matter is remanded back to the Disciplinary Authority to pass an order afresh in such a manner that the order reflects due application of mind by the Disciplinary Authority and consideration of the report of the Enquiry Officer and the comments of the petitioner received on such enquiry report, if any. The



Disciplinary Authority, that is, respondent no.5 shall be required to pass an order afresh pursuant to the present order within a period of three months from the date of receipt / production of a copy of this order. The Court expects respondent no.5 also to consider whether the extreme punishment of dismissal from service is too harsh for the misconduct alleged against him. It is, further, indicated that the respondent no.5 shall have the liberty to form its own opinion on the quantum of punishment. If the order of Disciplinary Authority goes against the petitioner, the petitioner shall have the liberty to challenge the same in accordance with the Regulations / Rules governing the service condition. The petitioner's claim for payment of back wages etc. shall be dependent upon the final order to be passed by the Disciplinary Authority or any Authority above him in compliance of the present order.

(underlining for emphasis)

9. It has to be also kept in mind that against the aforesaid order, the Insurance Company had filed L.P.A. No. 743 of 2014 and the said appeal was disposed of at the request made by learned counsel for the Insurance Company by an order dated 22.01.2014 which reads as follows:

"Learned counsel for the appellants submits that the appellants would file a review application against the order, dated 22.01.2014, passed, in C.W.J.C. No. 3194 of 2010, and hence this appeal may be disposed of as withdrawn with liberty to the appellants to approach this Court with appropriate application/appeal, in future, if so advised.

Learned counsel for the respondents has not seriously objected to the prayer made on behalf of the appellants.

In view of the above and in the interest of justice, this appeal is disposed of as withdrawn with liberty granted to the appellants to approach this Court with appropriate application/appeal, in future, if so advised."

10. The learned single Judge having considered the prayer in review application along with the contempt application filed by the petitioner being Civil Review No. 275 of 2014 and MJC No. 2175 of 2014 respectively, had partly reviewed his order

dated 22.01.2014 by passing the following order on 05.11.2014:

"12. I am of the considered opinion that it is the duty of the disciplinary authority to consider relevant records of the disciplinary proceedings, the report of the Enquiry Officer and representation of the petitioner against the findings in the enquiry report before passing any order adverse to the interest of an employee. However, in the facts and circumstances of the case, I intend to modify the order dated 22.01.2014 only to the extent that the petitioner will not be required to be reinstated in service upon quashing of the order of the Disciplinary Authority dated 03.10.2008. By the order under review, the Disciplinary Authority was directed to pass an order afresh within a period of three months from the date of receipt/production of a copy of this Court. The order dated 22.01.2014 is modified to the extent he shall pass the order afresh in terms of the order of this Court dated 22.01.2014 within a period of three months from today."

(underlining for emphasis)

11. In the considered opinion of this Court, if the petitioner is so sanguine about the earlier order by which the order of punishment passed by the disciplinary authority and its affirmance by the appellate authority and the revisional authority were quashed, he had to also follow that part of the order wherein this Court had made it clear that the petitioner would have liberty to assail the reasoned order passed by the disciplinary authority in terms of the regulation of the Insurance Company.

12. The underlined portion of the aforementioned observation of this Court in the order dated 22.01.2014 read with the order dated 05.11.2014 will make it very clear that after the order of the disciplinary authority could have gone against the petitioner, the petitioner had only the liberty to challenge the same in accordance with the regulation/rules governing the service

condition of the petitioner. The rules and regulations provide for both remedy of appeal and revision and they are statutory remedy and, therefore, the petitioner should not have rushed to this Court only because he carried in his mind some prejudice against his employer.

13. The moment the earlier order of the disciplinary authority, the appellate authority and the revisional authority were quashed by this Court and the matter was remanded by this Court with an open clean slate, there was no need for the petitioner to carry the prejudice, save and except, his own conscious guilty mind. Such guilty mind of the petitioner is however on account of the fact because he had not complied his order of transfer which became the reason of his unauthorized absence and the consequential departmental proceeding.

14. Let it be noted that the petitioner was working as a Branch Manager in Begusarai Branch and he was transferred to Aurangabad Branch on 30.05.2005. The petitioner did not comply aforesaid order and in fact, when he was relieved on 25.01.2006, he had submitted a representation alleging misbehaviour and mental torture inflicted by one Ravi Shankar Chopra, Divisional Manager, Muzaffarpur. He had also moved the competent authority of the Insurance Company to take action against Mr.



Chopra as also cancel his transfer order and pay monetary compensation to the tune of Rs. 50 crores for facing humiliation in the hands of Sri Chopra. This however was the obvious misconduct committed on the part of the petitioner in course of compliance of his transfer order. Had the petitioner complied this transfer order dated 30.05.2005 after his having relieved one could have appreciated his taking recourse to filing representation either against his controlling authority namely Mr. Ravi Shankar Chopra or cancelling his order of transfer but the clear defiance of order of transfer by the petitioner had made him liable for being proceeded departmentally for the misconduct committed by him.

15. That was not the end of the matter. The petitioner thereafter had assailed the order of transfer before this Court by filing a writ application and that writ application was dismissed wherein the jurisdiction of the authority transferring the petitioner was clearly upheld and an appeal was filed by the petitioner by way of Letters Patent Appeal, thereafter had also been dismissed upholding the correctness of his transfer order. This part is, in fact, admitted by the petitioner himself in para 3 to 6 of the writ application, which reads as follows:

"3. That by an order of the Regional Manager he was transferred to the post of Branch Manager, National Insurance Company Ltd. at Aurangabad. But as the reliever of the petitioner did not turn up at Begusarai for the months together, no charge could be given to any officer and the petitioner continued his work as the Branch Manager for

about eight months after the order of transfer.

4. That all on a sudden after eight months the Divisional Manager of Muzaffarpur came to the office of the petitioner at Begusarai and gave a letter from his side without any authority and relieved the petitioner with a direction to join Aurangabad.

5. That the Divisional Manager was not competent authority to relieve the petitioner from the post in question under Section -2 "Job Rotation and transfer Policy for Officer of National Insurance Company Ltd. At para-9 which reads as below:

9. EFFECTIVE DATE OF POSTING

9.1 Posting Orders given to officers shall specify the date before which the Officer shall take charge of a post. An Officer may be allowed thirty days time to take charge of the new post unless the Managing Director/Chairman-cum-Managing Director decides to extend the above period. At the end of this period, the Officer will be deemed to have been relieved from the previous post, which shall be taken over by the new incumbent or in his absence by local officer designated by R.O./H.O. for this purpose."

Here, neither the Regional Officer or Chairman-cum-Managing Director from head office had ordered to relieve the petitioner.

6. That against the said illegal order the petitioner filed a writ in the Hon'ble High Court which was dismissed against which L.P.A. was filed which was also dismissed."

16. Can in this situation, the misconduct of the petitioner be held to be a minor misconduct only with regard to absence from his duty?

17. It is this aspect of the matter, which has been now considered by the disciplinary authority in a very graphic manner wherein he has held as follows:

"AND WHEREAS the undersigned on perusal of the enquiry report observes that Shri Arvind Kumar Sharma had deliberately abstained himself from appearing on the date so fixed for preliminary hearing held on 08.03.2007 at Patna Regional Office. However, instead of participating, the charged employee served a letter dated 05.03.2007 and did not participate in the same. Accordingly on 08.03.2007, the date for preliminary hearing was re-fixed and a second notice for preliminary hearing was issued on 26.06.2007, fixing the date on 11.07.2007. Again, on next hearing held on 11.07.2007, the charged employee remained absent and the hearing was again adjourned to grant another opportunity to the charged employee by way of last chance for making

further request for submission of name of the defence witnesses and the list of additional documents, if required. Third notice for preliminary hearing was sent on 18.07.2007 fixing the date of preliminary hearing on 10.08.2007 at 11am in the premises of Begusarai Branch as a last chance. ON 10.08.2007, the preliminary hearing was conducted in which the Presenting Officer and Charged Employee were present. However, Shri Sharma refused to receive the copy of the proceedings and ultimately the same was forwarded through speed post along with the additional documents asked by the charged employee vide letter dated 14.08.2007. Thereafter, the regular hearing was conducted on 20.11.2007 and 18.12.2007 in which the charged employee again remained absent but vide letter dated 12.11.2007, had requested for holding the regular hearing in December at Begusarai. The conduct of Shri Sharma was apparent that he was not inclined to cooperate in the enquiry and as such, the Inquiring Authority concluded the inquiry proceedings against Shri Sharma ex-parte after assessment of evidence and it was found that the conduct of the Shri Sharma in not joining the transferred post, despite having lost from the High Court, clearly amounted to gross disobedience of Order of Transfer. Hence, charge Nos. 1 & 2 stood proved.

AND WHEREAS on completion of the inquiry proceedings, the Inquiring Authority submitted his report dated 04.04.2008 after which Shri Sharma preferred an Intra Court Appeal against order dated 16.07.2007 passed in CWJC No. 2997/2007 bearing LPA No. 713/2007. The same was dismissed vide order dated 16.05.2008 holding that the Order of Transfer did not suffer from any malice or ulterior motive.

AND WHEREAS the undersigned has perused the enquiry report dated 04.04.2008 as well as the representation of Shri Arvind Kumar Sharma dated 30.06.2008. On perusal of the same, it is apparent that Shri Sharma had again taken a ground of the Transfer Order being bad in law and that it was passed by a person not authorized to do so. He had raised the issue of malice and ulterior motive in relation to the order of Transfer and had raised question on the conduct of Shri R.S.Chopra, the then Divisional Manager, Muzaffarpur. Allegation had also been made against Shri S.K.Garal of having some nefarious motive behind the Transfer Order. The Hon'ble Division Bench in its order dated 16.5.2008 had also noticed that the Transfer Order did not suffer from any malice or ulterior motive as alleged by the charged employee. Further, from his representation it is evident that he was not aggrieved by the findings of the Inquiring Officer and also did not deny his conduct of deliberately not joining the post and had not given any justifiable reason. Shri Sharma had failed to appreciate that the issue before the Enquiry Officer was regarding the conduct of violation of Transfer Order and not the correctness of the Transfer Order which had already been decided by the Hon'ble High Court. The Enquiry Report was thus correct in holding that the charges of misconduct and flouting of the Order of Transfer were proved.

AND WHEREAS the undersigned, after having

perused the relevant documents including the representation dated 30.06.2008 of Shri Shara vis-à-vis the facts and circumstances of the case, is convinced that Shri Arvind Kumar Sharma had committed grave misconduct by remaining absent from duty without permission or sanction from the Competent Authority for a continuous period of more than 90 days w.e.f. 27.01.2006, grossly violating the rules of the Company and has consequently 'abandoned' his post. The undersigned also observes that Shri Sharma had also disobeyed the orders of the Company by not joining his new place of posting at Aurangabad BO after release from his previous posting at Begusarai BO;

AND WHEREAS the undersigned further observes that earlier Shri Arvind Kumar Sharma was imposed the penalty of 'Dismissal' vide an order dated 03.10.2008 of the Disciplinary Authority and the said Penalty Order was upheld in Appeal as well as Memorial by the respective Authorities.

AND WHEREAS the undersigned being the Disciplinary Authority, is of the view that the misconduct substantiated by Shri Arvind Kumar Sharma is server and grave in nature and hence considers that imposition of the penalty 'Dismissal from service' shall meet the ends of justice.

NOW, THEREFORE, the undersigned in terms of the power conferred under Rule 26 of the General Insurance (Conduct, Discipline & Appeal) Rules, 1975, read with Rule 23 of the said Rules, hereby imposes the penalty of 'Dismissal from Service' on Shri Arvind Kumar Sharma. The present Order is being passed in the light of order dated 05.11.2014 passed by the Hon'ble High Court of Judicature at Patna in Civil Review No. 275/2014 passed in Civil Writ Jurisdiction Case NO. 3194 of 2010 (The Chairman-cum-Managing Director, National Insurance Company Limited & Ors. Vs. Arvind Kumar Sharma).

However, Shri Arvind Kumar Sharma has a right to prefer an Appeal against this Order in terms of Rule 31-34 of General Insurance (Conduct, Discipline & Appeal) Rules, 1975 within a period of three months from the date of receipt of this order."

(underlining for emphasis)

18. Thus, in the background of the findings recorded by the disciplinary authority, this Court would examine the five grounds mentioned in para-13 of the writ application, it would not find merit in any one of them.

19. Let it be noted that the petitioner proceeded on



assumption that it was a case of simple absence from duty, but the fact, as noted above, is that the petitioner was flouting the order of transfer of a competent authority and that by itself is a major misconduct because of any employee is liable to be transferred from one place to another and if it is not carried out on his transfer, he becomes liable for most severe punishment.

20. The second ground that the authorities did not take into account the observation made by this Court again has to be considered in the light of the finding recorded by the disciplinary authority wherein he has categorically gone to hold that for the reasons indicated in the order, namely, the order of transfer being flouted by the petitioner, no lenient view could have been taken. To that extent, the underlined portion of the speaking order passed by the disciplinary authority would itself to show that that observations made by this Court in the order dated 5.11.2014 were kept in mind. Let it be noted that this Court had not held that in no event the petitioner could not have been subjected to order of dismissal. The observation of this Court were only to make the disciplinary authority conscious with regard to quantum of punishment and that has been definitely done by the disciplinary authority.

21. The third ground in para-13 of the writ application



that the petitioner remained absent after the Letters Patent Appeal was dismissed, will be of no avail. The petitioner was subjected to disciplinary proceeding for non-compliance of the order of transfer dated 30.05.2005. There was no order of stay either in the writ application or in the L.P.A., which could have given the petitioner a leeway to not comply the order of transfer for a period of over three years. The dismissal of L.P.A, therefore, was not a water mark for the starting point of disobedience. In that view of the matter, even the ground raised in para 13(iii) will have no bearing much less any adverse effect on the impugned order.

22. The issue raised by the petitioner in para-13(iv) that the relieving order of the petitioner was not made by the Divisional Manager, again will be of no useful defence because the petitioner had challenged the order of transfer before this Court and the jurisdiction of the Divisional Manager was upheld. Therefore, the disciplinary authority could not have gone beyond the finding recorded in an inter parte judgment and the impugned order of punishment, therefore, cannot be held bad on this score as well. Reference in this connection may be usefully be made to the judgment of Apex Court in the case of ***Gujarat Electricity Board and Anr. v. Atmaram Sungomal Poshani*** reported in (1989) 2 SCC 602 wherein exactly similar issue of disobedience of transfer

order by an employee and the resultant unauthorized absence from duty leading to dismissal after departmental proceeding was upheld in the following words:-

"4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer, a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.

xxx xxx xxx
xxx xxx xxx
xxx xxx xxx

9. In view of the above discussion, we therefore hold that the respondent's failure to join his duties at Ukai resulted in unauthorized absence and his failure to join his duties in spite of the repeated reminders and letters issued to him constituted sufficient valid ground for taking action under Regulation 113. We further hold that before issuing the order of discharge the respondent was not only warned but he was also afforded an opportunity to explain as to why disciplinary action should not be taken against him. The respondent acted in an irresponsible manner in not complying with the order of transfer which led to his discharge from service in accordance with the Service Regulation 113. The learned single Judge as well as the Division Bench both erred in law in setting aside the order of discharge. We, accordingly, allow the appeal, set aside the order of the Single Judge as well as Division Bench and dismiss the respondent's petition. There would be no order as to costs."



23. The aforesaid view of the Apex Court has also been followed by a Division Bench of Punjab and Haryana High Court in the case of *Babu Lal v. Presiding Officer, Labour Court, Amritsar* reported in *1991(1) SLR 224* and of Karnataka High Court (D.B) in the case of *Dr. N.S.Srikanta Sastry v. Secretary, Deptt. of Health and Family Welfare Services* reported in *2005(4) SLR 84*.

24. The last ground that every person has a right to file a writ application before a court of law against an order and, therefore, the order of punishment either for disobedience of the transfer order or for the period of absence from duty will be unjustified, has to be again noted for its being rejected. Every employee, if he is working for gain is bound by terms and conditions of the service. The transfer of an employee, therefore, is an incidence of a service and if he is aggrieved on any ground he could definitely move the court but does not take away his responsibility in submitting the joining report and accepting the order of transfer under protest. There was no difficulty for the petitioner to join at Aurangabad after being relieved from Begusarai and in the event, he succeeded in writ application, he could have very well been restored to Begusarai, but the petitioner could not have remained absent from duty by not complying the

order of transfer over a period of more than four years and, therefore, this Court does not find the impugned order bad even on the ground raised in para 13(v) of the writ application.

25. Thus, for the reasons indicated above and specially in view of law laid down by the Apex Court in the case of **Gujarat Electricity Board** (supra), there would be no escape for the irresistible conclusion that the petitioner's defiance of transfer order followed by his unauthorized absence despite his being relieved by the competent authority, had to be viewed seriously by the Insurance Company and the fact that the petitioner had remained defiant in not complying the order of his transfer despite his writ petition and appeal against the order of transfer being dismissed by this Court, will leave nothing for this Court now to make a judicial view even on the issue of quantum of punishment. Law in this regard is also well settled that the order of punishment can only be interfered by a court exercising the power of Article 226 and 227 of the Constitution of India in rare and exceptional cases where the punishment is shocking to the conscience.

26. In this regard, one may usefully referred to the judgment of the Apex Court in the case of **B.C.Chaturvedi vs. Union of India & Ors.** reported in (1995) 6 SCC 749, wherein it has been held as follows:

"18. A review of the above legal position would establish that

the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. "

27. Thus, for all the reasons recorded above when Mr.

Singh learned Counsel for the petitioner has failed to establish any fatal infirmity in course of such departmental proceeding and has confined his submission only to the merits of the charges found established by the disciplinary authority, this Court will have no option but to hold that there is no merit in this writ application.

28. It is, accordingly, dismissed.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 15th April 2015
A.F.R./Sujit/-

U			
---	--	--	--