

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9551 of 1998

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Anil Kumar Son of Shri Nawal Kishore Prasad, Mohalla Lallu Pokhar P.O & District Munger

.... Petitioner/s

Versus

1. Life Insurance Corporation of India through its Chairman
2. The Zonal Manager, Life Insurance Corporation of India, Eastern Zonal Office, Calcutta.
3. Sr. Divisional Manager, Life Insurance Corporation of India, Bhagalpur Divisional Office.
4. Branch Manager, Munger Branch Office, Life Insurance Corporation of India

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Madhuresh Prasad

For the Respondent/s : Mr. Rajeeva Ranjan Prasad
Ms. Nilanjan Chatterjee &
Mr. Sudarshan Trivedi

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 25-03-2015

1. Petitioner, at the relevant point of time was posted at Munger Branch Office as Grade III employee of the Respondent Life Insurance Corporation of India Limited (hereinafter referred to as the Corporation). He had taken leave travel concession advance to the tune of Rs. 18,000/- on 31.5.1995. As has been stated in the application he could not proceed for his tour to Himachal Pradesh, for which he had taken LTC advance, as his parents fell seriously ill. He, therefore, made a request to the Branch Manager to extend his leave up to 9.7.1995. He is said to have altered his tour



programme and after visiting Mata Vaishno Devi Shrine, he returned to the Headquarter on 9.7.1995. It is his case that for certain compelling reasons, he could not submit the bill relating to leave travel concession. On 14.9.1995 and 15.9.1995, the petitioner is said to have deposited unutilized amount of Rs. 7904/-, out of total advance of Rs. 18,000/- ,which he had taken.

2. The petitioner's promotion to the post of higher Grade Assistant had, in the meanwhile, become due and an interview was held for that purpose on 16.9.1996. The result on the basis of said interview was published on 21.9.1996. Fifty seven candidates in the general category had participated in the said promotion process. Results in respect of all of them were published except the petitioner. The petitioner's result was shown to have been withheld in accordance with Regulation 9 of Life Insurance Corporation of India, Class-III & Class-IV Employees Promotion Instructions, 1987. Thereafter, an explanation was sought for from the petitioner with the issuance of a show cause notice dated 22.8.1997 (Annexure-7) for the following charge:-

"On the above subject, we have to inform

you that you took an amount of Rs. 18,000/- (Rs. Eighteen thousand Only) as LTV Advance on 31.5.1995. Your outward journey commenced on 14.6.1995. Your return journey commenced on 6.7.1995 and ended on 9.7.1995. However, you submitted your LTC Bill dt. 14.9.1995 only after detection of non-submission of LTC Bill during surprise check of the Branch Office, by C.O. Vigilance Team.

3. The petitioner submitted his explanation on 12.9.1997. The disciplinary authority, i.e. Senior Divisional Manager, Bhagalpur Divisional Office of the Corporation by the impugned order dated 18.9.1997, imposed upon the petitioner, penalty of censure in terms of Regulation 39 (1) (a) of the Life Insurance Corporation of India (Staff) Regulations, 1960. The petitioner thereafter, preferred appeal against the order of the disciplinary authority. The appellate authority vide order dated 27.7.1998 rejected the petitioner's appeal on the ground that the penalty of censure imposed upon him was just and proper and it was mildest penalty that could have been given in the case of that nature. The order of the appellate authority dated 27.7.1998 is also under challenge in the present proceeding.

4. In the background of the facts as noted above, the



petitioner has sought for two reliefs. Firstly, he seeks quashing of the order of punishment dated 18.9.1997 and the order of appellate authority dated 27.7.1998. The other grievance which is being sought for in the present application is that his result for promotion on the post of Higher Grade Assistant (Adm.) was wrongly withheld in the year 1996, though there was no departmental proceeding initiated against him nor show cause notice was issued against him prior to the date of publication of result on 21.9.1996. It is also his plea that, in the facts and circumstance of the case, that if the respondents had adopted sealed cover procedure on the ground of a contemplated departmental proceeding while considering the case of the petitioner's promotion to the post of Higher Grade Assistant in the year 1996, they are obliged to open the sealed cover proceeding in connection with the petitioner's promotion and take decision accordingly, even now.

5. A counter affidavit has been filed on behalf of the respondent-Corporation. It has been stated in the counter affidavit that the petitioner had obtained a sum of Rs. 18,000/- as LTC advance on 31.5.1995 though he was entitled for a sum



of Rs.2088/- only. It has further been stated that the petitioner was required to submit his bills within fifteen days from the date of his return on 10.7.1995 and it was only in course of a surprise check conducted by the officials of Zonal Office that it was detected that LTC advance lying against the petitioner was outstanding. On 14.9.1995, the petitioner submitted his LTC bill for which he claimed a sum of Rs. 11096/-. The balance money of Rs. 7004/- was admittedly deposited on 14.9.1995 and 15.9.1995. Accordingly, a stand has been taken that retention of unutilized money amounted to temporary misappropriation of the Corporation's money and accordingly, a disciplinary proceeding was initiated against the petitioner, which finally resulted into imposition of punishment of censure.

6. As regards the petitioner's promotion to the post of Higher Grade Assistant (Adm.), it has been stated in the counter affidavit that in accordance with Rule 9 of Life Insurance Corporation of India, Class-III & IC Employees, Promotion Instructions, 1997, a sealed cover procedure was adopted in case of the petitioner because as on the date of publication of the result for promotion to the cadre of Higher

Grade Assistant, a departmental proceeding was under contemplation.

7. Before considering the petitioner's case for his entitlement for promotion to the post of Higher Grade Assistant (Adm.) , it would be apt to consider his case for quashing of the order passed by the disciplinary authority, imposing punishment of censure and that of the appellate authority, confirming the order passed by the disciplinary authority, since the petitioner's claim for promotion will certainly depend upon the result of the action taken against him, leading to imposition of punishment.

8. Mr. Madhuresh Prasad, learned counsel appearing on behalf of the petitioner has relied upon an order of this Court dated 25.6.2012 passed in CWJC No. 9301 of 2006 (Prafull Chandra Jha, Vs. The Life Insurance Corporation of India Limited and ors) and has submitted that delay in submitting the LTC bills itself does not amount to misconduct and no punishment could have been imposed upon the petitioner on the basis of such allegation or said charge. Paragraphs 31 and 32 of the said order are relevant for the

present purpose and are being reproduced hereinbelow for quick reference:-

“31. From a bare perusal of Rule 19 (vii) of the LTC Rules it becomes apparent that although 7 days time was prescribed for refund of amount from the date it became due i.e. the date of proposed journey which failed, but it also provides that if the employee fails to refund it within the prescribed period of 7 days then the amount of advance due for return of refund shall be recovered from the next pay bill of the employee. Thus it is quite apparent that neither any penal provision has been attached in the said Rule for any such short delay in the refund nor it is deemed to be a misconduct as per the aforesaid Rules, as the authorities have been provided an opportunity to get it deducted from the next pay bill of the employee. Furthermore, in the instant case when the amount was refunded within 26 days there was no occasion for recovery of the amount from the next pay bill.

32. In such circumstance reliance may be placed upon a decision of the Apex Court in case of A.L. Kalra Vs. The Project and Equipment Corporation of India Ltd, reported in AIR 1984 SC 1361 in which it was held that even if the facts alleged in the heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in the Rules and no penalty can be imposed for such act or delay. Furthermore, the matter was merely with respect to the payment and the recovery for which specific provisions have been made in the concerned LTC Rule itself. The same view had been taken by a Bench

of this Court vide order dated 24.6.2005 (Annexure-7) passed in CWJC No. 9272 of 2004 (Rai Vijay Kumar Sinha Vs. The Life Insurance Corporation of India and others)."

9. Mr. Rajeev Ranjan Prasad, learned counsel appearing on behalf of the Corporation does not dispute this position, in the background of the fact that the only allegation which was levelled against the petitioner through show cause notice dated 22.8.1997 was of delay in submission of LTC bills.

10. Applying the principle as laid down by this Court in the case of Prafull Chandra Jha vs. Life Insurance Corporation of India & Ors (supra), I find force in submission made on behalf of the petitioner that no punishment could have been imposed upon him on the sole ground that he submitted his LTC bills belatedly, nearly 2 ½ months after he returned to his place of posting. Accordingly, the impugned order dated 18.9.1997 imposing punishment of censure as well as the order of the appellate authority dated 27.7.1998 are quashed.

11. As per the case of the Corporation, petitioner's promotion was withheld on 21.9.1996 and a sealed cover procedure was adopted, since a departmental proceeding was



under contemplation. Now when the order of punishment has been quashed by me by the present order, the respondents will have now to open a sealed cover procedure and consider the petitioner's case for promotion to the post of Higher Grade Assistant with effect from 21.9.1996.

12. A supplementary counter affidavit has been filed on behalf of the respondent-Corporation stating that the petitioner has already been granted promotion to the post of Higher Grade Assistant in the year 2004 and further to the post of Assistant Administrative Officer in the year 2012.

13. Mr. Rajiv Ranjan Prasad, learned counsel appearing on behalf of the Corporation, referring to the supplementary counter affidavit has submitted that the petitioner himself accepted the promotion to the post of Higher Grade Assistant in the year 2004 and subsequent promotion to the post of Assistant Administrative Officer. According to him, the petitioner cannot claim promotion to the post of Higher Grade Assistant with effect from 21.9.1996 after having accepted such promotion in the year 2004. He has further submitted that there has been delay on the part of the petitioner



in approaching this Court after he was denied promotion in the year 1996. He has contended that, as a matter of fact, he had participated for such promotion in the year 1998 which was not granted. He submits that petitioner took a chance for promotion to the Higher Grade Assistant in the year 1998 and only after he failed there, he filed the present writ application.

14. While countering such submission, learned counsel for petitioner has submitted that this writ application was filed on 7.11.1998 whereas the interview for promotion to the post of Higher Grade Assistant in the year 1998 was held on 22.12.1998. He submit that the petitioner had in fact filed I. A. No. 253 of 1999, seeking interim order from this Court commanding the respondents to publish the petitioner's result on the basis of said interview. He submits that the plea that the petitioner approached this Court after having failed in the selection procedure in the year 1998 is not tenable.

15. I do not find much substance in the submission made on behalf of the respondent-Corporation that there has been any delay on the part of the petitioner in approaching this Court for the relief sought for in the present writ application.



According to the case of the Corporation itself, the sealed cover procedure was adopted in the year 1996, while considering the petitioner's case for promotion to Higher Grade Assistant on the ground that a departmental proceeding was under contemplation. In the year 1997, penalty of censure was imposed upon the petitioner. The petitioner preferred appeal against the order imposing punishment which was rejected. The petitioner thereafter, approached this Court raising grievance against the imposition of punishment as well as denial of promotion to the post of Higher Grade Assistant with effect from 21.9.1996.

16. In view of the above, after having set aside the order of the disciplinary authority imposing punishment upon the petitioner and order of the appellate authority affirming the order of the disciplinary authority, the sealed cover will have to be opened now for considering the petitioner's case for promotion to Higher Grade Assistant (Adm.) with effect from 21.9.1996. the competent authority will proceed accordingly and consider the petitioner's case for promotion to Higher Grade Assistant with effect from 21.9.1996, as if no punishment

was ever imposed upon the petitioner. The Respondents will be required to take a decision in this regard within a period of four months from the date of receipt/production of a copy of this order.

17. The petitioner shall also be entitled for benefits, consequential to grant of promotion to the post of Higher Grade Assistant with effect from 21.9.1996, if such promotion is granted after sealed cover is opened.

18. Mr. Rajiv Ranjan Prasad, learned counsel for the Corporation has raised an apprehension that the records of interview held in the year 1996 might not be available. It is indicated, in the facts and circumstances of the present case that the final decision on petitioner's case shall not be delayed on that ground and a decision will have to be taken within the time framed prescribed treating the petitioner at par with those who have been selected on the basis of result published in the year 1996.

19. This application is accordingly allowed.

20. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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