

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30-03-2015

CORAM:

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE P.R. SHIVAKUMAR

Writ Appeal No.1159 of 2012
and M.P.No.1 of 2014

1. C. BAKKYAM
S/O.A. CHINNAPPAN
C-10 MARUTHI APARTMENTS
PURASAWALKAM CHENNAI-84

... Petitioner

Vs

1. NATIONAL INSURANCE COMPANY LTD
REP.BY ITS GENERAL MANAGER
MIDDLETON STREET
KOLKATTA-700 701

2. THE ASST.GENERAL MANAGER
NATIONAL INSURANCE COMPANY LTD
REGIONAL OFFICE
AT NO.190, ANNA SALAI
CHENNAI-6

... Respondents

Appeal under Clause 15 of Letters patent against the order passed by the learned Single Judge in W.P.No.28266 of 2004 dated 07-02-2012 filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Manadamus, call for the records of the 1st Respondent relating to the order dated 04.10.2002 confirmed the order dated 10.05.2002 passed by the second respondent awarding the punishment of 'Reduction of basic pay to the initial basic pay in the scale of Administrative Officer' and quash the same and consequently direct the first respondent to promote the petitioner to the post of Assistant Manager with all service and monetary benefits with effect from the date he became eligible for promotion but for the impugned order.

For petitioner : Mr. R. Parthiban

For respondents : Mr. V. Karthic for M/s. T.S. Gopalan & Co.
For RR1 and 2

JUDGMENT

(Judgement of the Court was made by V.RAMASUBRAMANIAM,J.)

The appeal arises out of the dismissal of a writ petition filed by the appellant, challenging the penalty of reduction of the basic pay to the initial stage.

2. Heard Mr. R. Parthiban, learned counsel for the appellant and Mr. V. Karthic, learned counsel for the respondent.

3. When the appellant was working as Administrative Officer in the National Insurance Company, he was issued with a charge memorandum dated 10-05-2000. The Statement of the Articles of Charges proceeded on the footing that when the petitioner was functioning as Administrative Officer in the Regional Office during the year 1996, he had committed a gross misconduct, by evaluating the answer sheets of the type-writing tests conducted for the Assistants-(T) by suppressing the actual number of mistakes committed by the candidates to enable them to qualify in the test. The Articles of Charges referred to the answer sheets of several candidates.

4. The appellant submitted his explanation to the charges on 19-07-2000. Not satisfied with the explanation furnished by them, an enquiry was ordered. In the enquiry, the Management examined five witnesses and marked twenty six documents. The Enquiry Officer submitted a report dated 14-06-2001 holding that all the four Articles of Charges were proved.

5. A copy of the enquiry report was furnished to the appellant and his objections were called for, to the findings. The appellant submitted his objections to the enquiry report. Thereafter, the disciplinary authority passed an order dated 10-05-2002 imposing upon the appellant, a major penalty of reduction of basic pay to the initial basic pay in the scale of Administrative Officer.

6. Aggrieved by the said order, the appellant filed a statutory appeal on 01-08-2002. The appeal was dismissed by the appellate authority by an order dated 04-10-2002. The appellant submitted a memorial to the Chairman-cum-Managing Director on 27-02-2003. That was also dismissed on 24-03-2003.

7. Therefore, the appellant filed a writ petition in W.P.No.28266 of 2004 on the file of this Court. The writ petition was dismissed by a learned Judge by an order dated 07-02-2012. Aggrieved by the said order, the appellant is before this Court.

8. At the outset, it should be pointed out that the penalty imposed upon the petitioner namely that of reduction of basic pay, is a major penalty under Rule 23(e) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. Rule 25 of the Rules, prescribes a detailed procedure for the imposition of major penalties. There is no denial of the fact that the procedure stipulated in Rule 25 for the imposition of the major penalties, had been scrupulously followed. Five witnesses examined on the side of the Management were allowed to be cross-examined by the representative of the appellant. Therefore, there has been no procedural infirmity in the manner in which the enquiry was conducted. There has also been no violation of the principles of natural justice in the conduct of the enquiry.

9. However, the main contention of Mr. R. Parthiban, learned counsel for the appellant is that under Rule 29, the respondents were obliged to initiate proceedings in common, when two or more employees were involved in the same case. The contention of the learned counsel for the appellant is that by segregating the proceedings and initiating disciplinary action against different members of the Interview Committee separately, the respondents have treated of them unequally. It appears that only minor penalties of warning or censure was imposed upon the Chairman and other members of the Interview Committee. Therefore, the learned counsel for the appellant contends that the proceedings are violative of Rule 29 as well as the principles of determination.

10. We have carefully considered the submissions.

11. Rule 29 of the Rules reads as follows:

"Common Proceedings:-

Where two or more employees are concerned in a case, the authority competent to impose a major penalty on all such employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings and the specified authority may function as the competent authority for the purpose of such common proceedings."

As it appears from a perusal of Rule 29, the authority competent to impose a major penalty upon all employees, who are concerned in a case, may make an order directing that the disciplinary proceedings against all of them may be taken in common. But the intent and purpose of the said Rule is to ensure that when two or more employees in the hierarchy are involved in a case, the power to take disciplinary action may vest in different authorities causing an administrative difficulty and that therefore, the same has to be addressed to. Therefore, Rule 29 is an enabling provision entitling the highest superior officer, who is the Disciplinary Authority against the person holding the highest post in the

hierarchy among those involved in a case to initiate common proceedings. It does not mandate that in all such cases, the proceedings are to be initiated only in common. Therefore, the failure of the respondents to take common proceedings in accordance with Rule 29, cannot be said to have vitiated the proceedings.

12. Insofar as the contention regarding discrimination is concerned, unfortunately for the appellant, his case stands on a slightly different footing than that of the others. It is true that the Chairman as well as the other members of the Interview Committee were also proceeded for modifying the marks. But the difference is that insofar as the appellant is concerned his own brother-in-law was one of the candidates who appeared for the selection. Though it is contended by the learned counsel for the appellant that he was not aware of his brother-in-law's participation in the written examination, it has so happened that he valued the answer papers of his brother-in-law. Therefore, he cannot claim equality of treatment with the other persons, none of whose relatives participated in the examination. Therefore, we find no illegality or infirmity in the order of the learned Judge warranting interference.

13. In order to check up the impact that the impugned penalty would have upon the career of the appellant, we also called for the details, as to whether the reduction of the basic pay to the bottom-most level would have the effect of postponing the future increments. But on facts, it was informed by the learned counsel on both sides that after the imposition of penalty, the appellant had earned his increments normally. Therefore, this is also not a case where we can question the proportionality of penalty. Hence the writ petition is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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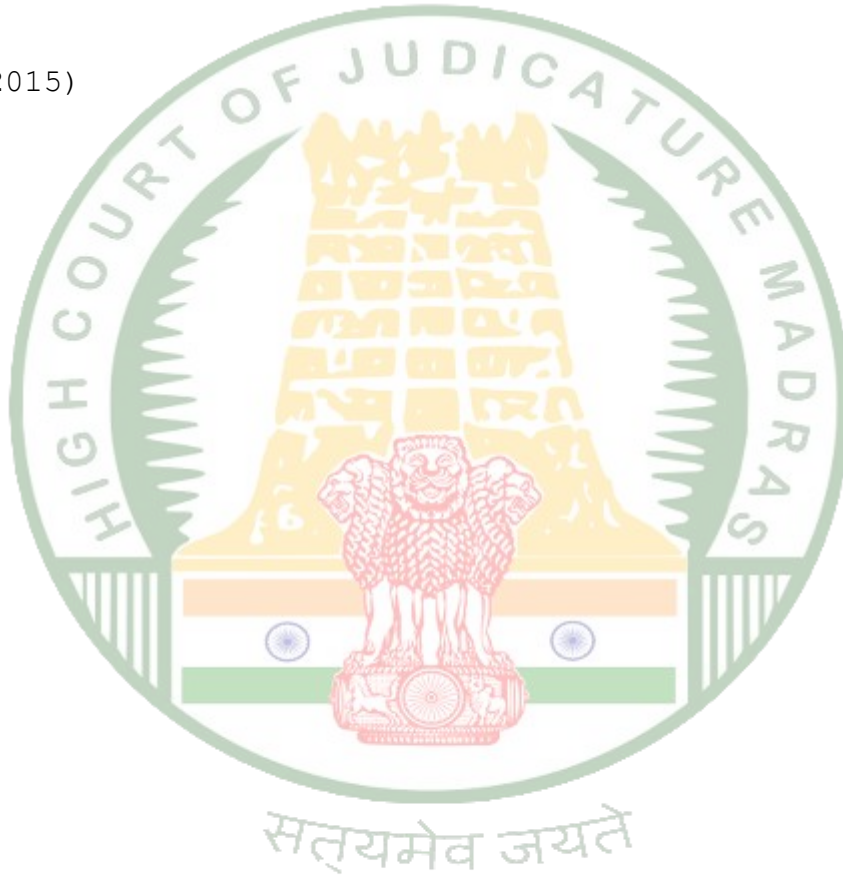
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+1cc to Mr.R.Parthiban, Advocate, S.R.No.17586
+1cc to M/s.T.S.Gopalan, Advocate, S.R.No.17687

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and M.P.No.1 of 2014

TS (CO)
CA(10/04/2015)



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