

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1330 of 2015

In
Civil Writ Jurisdiction Case No. 5246 of 2012

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Om Prakash Singh, S/o Basant Kumar Singh, resident of F/85, Peoples Co -
Operative Colony, Kankarbagh, P.S. Kankarbagh, Distt. - Patna

.... Appellant

Versus

1. The Chairman Managing Director United India Insurance Company Ltd.,
Head Office - 24 Whites Road, Chennai
2. The Chief Regional Manager, United India Insurance Company Ltd.,
Regional Office, Chanakya Commercial Complex, 3rd Floor, R - Block,
Patna
3. The Deputy Manager, United India Insurance Company Ltd., Regional
Office, Chanakya Commercial Complex, 3rd Floor, R - Block, Patna

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Verma with M/S Suman
Kumar Verma & Anish Kumar, Advocates
For the Respondent/s : Mr. Ashok Priyadarshi, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 22-12-2016

I.A.No.5803 of 2015

The interlocutory application has been filed for
condonation of the delay of three years and 12 days in filling the
appeal.

The grounds stated for the delay do not really inspire
much confidence. However, considering the fact that the matter
before us is regarding removal from service, it is decided to hear
the appeal on merits.



The delay in filing the appeal is condoned.

I.A.No.5803 of 2015 is, accordingly, disposed of.

Heard learned counsel for the appellant and learned counsel for the respondent United India Insurance Company Limited.

The appeal is directed against the order dated 19.3.2012 passed by a learned Single Judge of this Court in CWJC No.5246 of 2012 by which the writ petition has been dismissed on the Court finding no reason to interfere in the matter.

The writ petitioner-appellant was appointed as an Assistant Cashier in the Branch Office-II, Patna of the United India Insurance Company Limited in the year 1986 and during the said period cash collection of Rs.27,283/- on different dates was not deposited. With a view to conceal the fact of his misappropriation, he had also affixed fake rubber stamp of Andhra Bank and forged the signatures on the copies of money receipts and had tampered with the same which was misappropriated. He also deposited five cheques for various amounts misappropriated by him and all these cheques were dishonoured. Moreover, he without any authorization had signed as Assistant Administrative Officer in the letter of undertaking dated 9.3.2000 given in the Company's letterhead to the Allahabad Bank for securing



consumer loan for himself and also for Rajendra Prasad Singh, Development Officer. He unauthorisedly signed as AAO on the letter of undertaking by affixing seal of the Company and misrepresented himself in order to mislead the Bank for his personal gain and misused his official position.

On the aforesaid two charges, memorandum of charges framed against the appellant was issued to him on 29.11.2001 to which he filed his reply on 14.12.2001 unconditionally accepting the charges against him and depositing the misappropriated amount of Rs.27,262/-, which was deposited by him on 7.3.2001. In view of the unconditional acceptance of the charges against him the disciplinary authority passed the order dated 25.1.2002 imposing a penalty of removal from service which shall not be a disqualification for future employment. The appeal against the same was rejected by the Appellate Authority on 22.3.2006. A Memorial filed by the appellant before the Chairman-cum-Managing Director was also rejected by order dated 18.11.2008. A review application was also rejected.

In view of the fact that the charges had been accepted the only submission of learned counsel for the appellant before the learned Single Judge and before us is on the ground that there has been violation of the provisions of Article 311 of the Constitution



and, secondly, that the order of punishment was disproportionate.

Mr. Ashok Priyadarshi, learned counsel for the respondent Insurance Company submits that the aforesaid grounds have rightly been rejected by the learned Single Judge.

So far as the Article 311 of the Constitution is concerned, it is evident that there is no applicability of the said provision so far as an employee of a Public Sector Undertaking of the Government of India or a State is concerned and is confined to Government employees. Article 311(1) of the Constitution provides that no person who is a member of a civil service of the Union or an all-India service or a civil service of State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Article 311(2) provides further protection in disciplinary matters to such class of persons.

It is thus evident that the said Article is confined to a person who is either a member of a civil service of the Union or a State or belonging to an all-India service or holding a civil post and since the employee of a Public Sector Insurance Company does not hold either a post in the civil service or a civil post under the Union or State, the appellant cannot claim any protection under Article 311 of the Constitution. That may be sufficient to



meet the submission based on Article 311 of the Constitution, but it could still be argued by learned counsel that a similar protection can be sought in view of Articles 14 and 16 of the Constitution of India and the Service Rules relating to an employee of a public sector enterprise.

The issue here is that there has been no denial of equality or right to equality or any arbitrary action on the part of the respondent Corporation for the simple reason that after the article of charges were issued to the writ petitioner-appellant he has himself unconditionally accepted the charges, including the fact that he had deposited the misappropriated amount. Thus, a case of temporary defalcation is admitted by the writ petitioner himself. In the present matter, apart from the temporary defalcation, there is also charge with regard to petitioner tampering with the documents and misutilising his official position to give false undertaking to Allahabad Bank; the same clearly goes to show that the petitioner-appellant is not a fit person to be retained in the service of an Insurance Company which is regularly receiving cash from the members of the public as premium or otherwise towards Insurance Policies.

In the said circumstances, the punishment of removal from service which shall not be a disqualification for future



employment cannot be considered to be harsh and disproportionate. Under such circumstances, even a punishment of dismissal from service which would have entailed disqualification from future employment would not be considered as harsh by the court. Thus, the imposition of penalty of removal from service cannot be considered as shocking to the conscience of the court or disproportionate to the admitted charges against the appellant.

We, thus, see no reason to interfere with the impugned order and the order of learned Single Judge of this Court. The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

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(Arun Kumar, J)

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