HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.28199 OF 2009

ORDER:

Heard learned counsel appearing for the parties.

The petitioner challenges Articles of Charges dated 16.12.2002, removal order reference No.HRO:VIG:2003: 901 dated 05.08.2003 and order of appellate authority No.HO:2002-70:57:2004 dated 20.05.2004, as illegal, arbitrary and unjust and the petitioner prays for consequential relief to reinstate the petitioner into service with full back wages.

The circumstances necessary for the disposal are as follows:

The petitioner was selected and appointed as Inspector in the year 1979. In the year 1985, the services of petitioner were confirmed On 04.10.2001, when the petitioner was working as a Development Officer in Nalgonda, being the Development Officer, he has issued seven motor vehicle insurance cover notes bearing Nos.246616 to 246622 and collected premium of Rs.10,759/-. The charges are framed against the petitioner for the act of misconduct of not depositing the premium amount as per the applicable instructions and misappropriation of the premium collected against the above cover notes. On 12.11.2001, one of the Motor Vehicle Agents approached the office of 3rd respondent and complained against the petitioner that the petitioner has collected the premium issued insurance cover notes to the vehicle owners and it appears the premium is not paid or remitted to 3rd respondent. On 13.11.2001, the petitioner was directed to attend the office of 3rd respondent to explain why he failed to remit the premium amount. From the admitted facts and circumstances, it can be referred at this stage that on 13.11.2001, the petitioner has issued cheque for the premium admittedly received by him on 04.10.2001. The cheque given by the petitioner was dishonoured and the 3rd respondent on 16.12.2002 issued charge memo and the charges read as follows:

> "Shri P.Narasaiah was working as Development Officer, BO, Miryalguda during the year 2001. Whilst working as such he issued seven motor cover notes nos.246616 to 246622 to various parties on 04.10.2001, collecting a total premium of Rs.10,759/-. He did not submit the copies of the cover notes so issued as well as the cash collected immediately to the office, as required by the rules.
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> The BO came to know about non-submission of the said cover notes and brought it to the attention of Shri P.Narasiah vide letter dated 13.11.2001. He then submitted copies of the cover notes so issues to the office on 15.11.2001, along with his cheque no.914273 back dated as 04.10.2001 for Rs.10,759/- and also with the respective proposals. He thus got issued seven back dated polices bearing nos.02933 to 02939 in respect of the said cover notes. It is revealed that the said cheque was dishonoured vide bank's letter dated 19.11.2001, leading to the respective policies being cancelled.
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> As advised by BM, Miryalguda on 28.11.2001 Shri Narasaiah, from out of the seven motor cover notes, he submitted the original cover note no.246619 and its original policy no.02939 along with cash premium of Rs.9,398/- and a fresh proposal and physical verification form and got issued a fresh policy no.03040.
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> Shri P.Narasaiah thus, misappropriated cash premium of Rs.9,398/- and willfully issued back dated cheque in lieu of the said premium with a view to cover up his act of misappropriation. He has not submitted to the office copies of the balance six cover notes nor remitted the cash premium of Rs.1,361/- pertaining to the same."

On 07.02.2003, the petitioner submitted his written submission. The order of removal was passed. The relevant portion of removal order reads as follows:

> "Hence, it is clear that the contentions of Shri P.Narasaiah in his representation dt. 11.06.2003 are one given merely as an after-thought without any credible basis and therefore not acceptable. The charge of misappropriation of premium of Rs.10,759/- issuance of a personal cheque with insufficient funds in lieu thereof and belated accounting of premium of Rs.9,398/- only, leaving balance premium of Rs.1,361/- still unaccounted, are very grave in nature warranting a deterrent penalty. Shri P.Narasaiah's misconduct is nothing but a calculated move to defraud the Company to the tune of Rs.10,759/- for his personal gain and to deliberately mislead the Branch Office by issuing a personal cheque for the like amount and allowing it to bounce. As such, retaining him in the office would prove detrimental to the Organization. Hence, I am not inclined to take a lenient view and

> therefore in exercise of powers conferred on me, I hereby impose a penalty of "removal from service which shall not be a disqualification for future employment" in terms of rule 23 (g) of GI (CDA) Rules, 1975.

The petitioner filed appeal against the order of removal and as already noticed, the appellate authority confirmed the order of removal. Hence, the writ petition.

Mr.Abinand Kumar Shavili, learned counsel for the petitioner, contends that the petitioner was appointed as Inspector in the year 1979 and has unblemished service for 22 years. It is contended that non-payment or non-remittal of premium amount of Rs.10,759/- is on account of the fact that when the petitioner was going from his Village to 3rd respondent office, he suffered epileptic attack, was hospitalized and on account of hospitalization, there was delay in payment of premium. The respondents ought to have taken into consideration the totality of circumstances and the imposition of punishment of removal from service is unsustainable, not based upon the material available on record and the punishment is disproportionate and shocks the conscience of prudent man and appeals to the Court to pass appropriate orders.

Mr.Vedula Srinivas, learned counsel for the respondent/ corporation, contends that on 04.10.2001, the insurance premium was collected. According to applicable guidelines and rules, firstly an Agent is required to remit the premium without much loss of time at the 3rd respondent branch and alternatively shall remit the amount at least before the expiry of validity of cover notes were issued by the petitioner. In the case on hand, the respondents received a complaint on 12.11.2001. According to him, fortunately the vehicles for which the cover notes were issued did not meet accidents and the respondents with a view to afford opportunity to the petitioner accepted the cheque issued by the petitioner on 13.11.2001. Had the cheque issued by the petitioner on 13.11.2001 towards premium amount has been honoured, there is justification to accept the explanation offered by the petitioner. On the contrary, the cheque issued by the petitioner was dishonoured. Therefore, according to him, the withholding the insurance premium by the petitioner is a serious misconduct more particularly, when the business of insurance company is risk acceptance and amounts to misappropriation. He further contends that in the enquiry the petitioner has admitted and having regard to the admission of failure in depositing the premium amount the authority has imposed the punishment of removal of petitioner from service. According to Mr.Srinivas, the contention that the punishment of removal is disproportionate and shocks the conscience of prudent man does not arise in the facts and circumstances of the case for the appellate authority though rejected the appeal, sanctioned compassionate allowance towards pension equivalent to two/thirds of pension and the relevant portion reads thus:

> " I have carefully perused the memorandum of charge dt.16.12.2002, reply dt. 07.02.2003 of Shri P.Narasaiah, Inquiry report dt.06.05.2003 along with detailed inquiry proceedings, representation dt.11.06.2003 of Shri P.Narasaiah on the findings of the Inquiry Officer, order dt.05.08.2003 of the Disciplinary Authority, the present appeal dt.31.10.03 preferred by Shri P.Narasaiah and other relevant records. In his appeal, Shri P.Narasaiah has not raised any new points meriting favourable consideration of the same and the points raised by him were already dealt with by the Disciplinary Authority in his order dt.05.08.03. Hence I find no reason to interfere with the order dt 05.08.03 of the Disciplinary Authority and therefore in exercise of powers conferred on me, I hereby reject the appeal dt.31.10.03 preferred by Shri P.Narasaiah, in terms of Rule 37(2) © of GI (CDA) Rules 1975. However, as a special case, I sanction to him, under Rule 32(1) (II) of General Insurance (Employees) pension Scheme 1995, a compassionate allowance towards pension equivalent to two-thirds of pension which would have been admissible to him on the basis of qualifying service rendered up to the date of his removal from service.

Therefore, he prays for dismissal of the writ petition.

I have taken note of the submissions of learned counsel appearing for the parties and perused the material available on record.

Now the point for consideration is whether the orders impugned in the writ petition suffers from illegality, or any error apparent on the face of record warranting interference by this Court under Article 226 of the Constitution of India.

The admitted facts and circumstances of the case are as follows:

On 04.10.2001, the petitioner has received premium of Rs.10,759/- and issued insurance cover note Nos.246616 to 246622 and the petitioner did not remit or deposit premium with 3rd respondent. The petitioner was given an opportunity on 13.11.2001 at least to make good the inadvertent or advertent mistake that has happened on 04.10.2001 in depositing the premium amount. The fact of the matter is that the cheque issued by the petitioner was dishonoured, thereby resulting in non-deposit of premium collected by the petitioner. The charge sheet dated 16.12.2002 was issued. The petitioner has made the following admissions in the course of enquiry:

> " In spite of his best efforts, he could not collect the originals of the remaining 6 Cover Notes as the addresses mentioned in the proposal forms were not the present addresses of the vehicle owners. They were issued at RTC, Nalgonda as per the addresses presented in the Registration Certificate.
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> That he is 50 years old and completed 24 years of services in the company. This is the only incident in his career. He has all along been sincere in his duties so far as procurement of premium and remittances to the offices. He therefore feels sorry for the above lapses which were beyond his control due to his physical health.
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> He voluntarily pleaded guilty of the charges leveled against him vide Memorandum of charge dated 16.12.2002 and prayed for mercy."

Once the guilt is admitted by the petitioner and keeping in mind the nature of business carried on by the respondents, the 3rd respondent imposed punishment of removal of petitioner from service. The appellate authority has taken lenient view and sanctioned compassionate allowance towards pension equivalent to two/thirds of pension. In my view once the act of misconduct is admitted and the same was continued as late as 13.11.2001, it cannot be said that the petitioner has not committed any misconduct. Further the petitioner having issued cheque towards premium amount is not prudent enough in getting the cheque honoured, cannot complain against orders impugned when the act of misconduct of non-payment of premium is admitted. Once the misconduct is proved, punishment of removal is imposed, and the appellate authority in its discretionary power after examination of the past record of petitioner, sanctioned compassionate allowance. As rightly contended by Mr.Srinivas, no exception can be made to the order impugned. There is no irregularity or illegality and the findings recorded are based upon the admissions and oral and documentary evidence. I see no reason to interfere with the impugned orders. The writ petition is dismissed. No order as to costs.

S.V.BHATT, J

Date:23.02.2016
Stp