

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(239)

CWP No. 19684 of 2013

Date of Decision: 16.09.2016

Vinod Kumar Sharma

.....Petitioner(s)

Versus

Oriental Insurance Company Limited and OthersRespondent(s)

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: - Mr. Sapan Dhir, Advocate
for the petitioner.
Mr. S.C. Pathela, Advocate
for the respondents.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of Annexure P-9 and P-11 order dated 09.01.2013 and 04.07.2013, by which the disciplinary authority imposed the penalty of recovery of Rs. 1,28,461/- as a 50% of the disputed financial loss of amount and further imposing the penalty of withholding of three increments for a period of one year under CDA Rule 23 (B).

The petitioner while working as an Assistant, for the purpose of issuing policy to M/s Baba Knits for the period from 25.06.2001 to 24.06.2002 assisted the then Development Officer. The charge is that M/s Baba Knits' stock was damaged due to heavy rain prior to issuance of insurance cover note to the company. Thus, there is a negligence on the part of the petitioner and the then Development Officer in issuing insurance cover note to M/s Baba Knits.

The respondents have initiated departmental enquiry. It was concluded in imposing the penalty of recovery as well as withholding of three annual increments for a period of one year.

Learned counsel for the petitioner submitted that one Sh. O.P. Garg, Surveyor had submitted report which was in favour of M/s Baba Knits. The respondents-insurance company resorted to another report from Sh. Satnam Singh who had given adverse report against the M/s Baba Knits that company managed to get insurance cover note subsequent to damage of stock. Based on Sh. Satnam Singh's report, M/s Baba Knits have been denied the insurance claim. Feeling aggrieved by rejection of insurance claim, M/s Baba Knits approached the District Consumer Forum. District Consumer Forum refuse to entertain the claim of M/s Baba Knits. Thereafter, M/s Baba Knits preferred application before the State Consumer Forum wherein the petition filed by the M/s Baba Knits was allowed and Rs. 2 lacs was awarded along with the interest. Thereafter, on 31.07.2012, the respondents have initiated disciplinary proceedings against petitioner and Development Officer that while issuing insurance cover note for the period from 25.06.2001 to 26.04.2002 and claim made by M/s Baba Knits to the tune of Rs. 2 lacs along with interest thereby financial loss has been caused to the insurance company. After receipt of the reply to the charge memo the disciplinary authority proceeded to pass order of penalty of recovery as well as imposing the penalty of withholding three increments for one year.

The petitioner feeling aggrieved by the penalty order preferred an appeal before the Appellate Authority. The Appellate Authority confirmed the

order of the disciplinary authority. Thus, the petitioner has presented this petition.

Learned counsel for the petitioner vehemently contended that there is a disputed fact that without holding an enquiry, petitioner has been punished. Even while imposing minor penalty if there is a disputed fact enquiry should have been held. Merely on the statement/report of Sh. Satnam Singh. Disciplinary authority cannot punish the petitioner, that too when there are two reports which are contradictory to each other. Even the Appellate Authority's decision is not a speaking order. Therefore the disciplinary authority order as well as Appellate Authority's order are liable to be set aside.

On the other hand, learned counsel for the respondents submitted that departmental enquiry was initiated based on the report of Sh. Satnam Singh. The petitioner has not cooperated before Sh. Satnam Singh who has drafted the report. Therefore there is no lacuna in the report and imposition of penalty. Learned counsel for the respondents further submitted that the petitioner failed to exhaust the remedy of memorial to the Chairman of the respondent-insurance company.

Heard learned counsel for both the parties.

Perusal of the records, it is evident that the the respondent-insurance company appointed one Sh. O.P. Garg to survey the damages in the premises of M/s Baba Knits and to submit the report. Accordingly, Sh. O.P. Garg, Surveyor submitted the report. As per the report due to heavy rain stocks of M/s Baba Knits damaged, with reference to the date of rain as 30.06.2001. Whereas the respondents insurance company appointed Sh. Satnam Singh to

give a report. In his report, it was stated that damages of the stock of M/s Baba Knits was prior to 25.06.2001, the date on which insurance cover note was issued by the petitioner and the then Development Officer. Based on Sh. Satnam Singh's report, the insurance company declined to grant insurance claim made by M/s Baba Knits. The insurance company have not disclosed as to why the report of Sh. O.P. Garg and Sh. Satnam Singh are different and why they have accepted only Sh. Satnam Singh's report is not forthcoming. When there is a disputed fact it is necessary to hold disciplinary proceedings so as to find out whether the petitioner and the then Development Officer have committed misconduct or not i.e. by examination and cross-examination of author of the reports namely Sh. O.P. Garg and Sh. Satnam Singh. Such a proceedings can be done only in regular domestic enquiry. In the present case merely issuance of show cause notice and charge memo and obtaining reply/explanation from the petitioner and the then Development Officer. The insurance company proceeded to pass penalty orders. Therefore without holding enquiry punishing the petitioner is highly arbitrary and illegal. Insofar as non-exhausting of remedy of memorial to the Chairman is concerned, it is to be noted that penalty has been imposed without holding enquiry which goes to the root of the matter. Therefore, the petitioner need not exhaust the remedy of submitting memorial. In fact, in the present petition the petitioner has exhausted remedy of appeal before the Appellate Authority and the Appellate Authority has not passed a speaking order. In fact, the Appellate Authority should have considered the appeal, whether the disciplinary authority has complied the rules and whether principles of natural justice has been provided to the petitioner and the then Development Officer or not. Further the Appellate

Authority has not examined as to why Sh. Satnam Singh's report is accepted and why not Sh. O.P. Garg's report is not accepted. Even perusal of disciplinary authority's order there is no compliance to Rule 27 (2) (iii) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 for the reasons that there is no discussion of Sh. O.P. Garg's and Sh. Satnam Singh's report to what extent report are against and in favour of the petitioner. Then there is no analysis of report. The Supreme Court in the case of **O.K. Bhardwaj Vs. Union of India and Others (2001) 9 SCC 180** held as follows:

“1. Leave granted.

2. The High Court has recorded its opinion on two questions: (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, “it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty”: a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.

3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that “withholding increments of pay with or without cumulative effect” is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

4. Learned counsel for the respondent, however, says that though the second proposition of the High Court may not be correct, yet so far as this case is concerned it does not make any difference for the reason that in this case, as a fact an opportunity was given to the appellant and that there has been adequate compliance with the principles of natural justice. But

since the

(a) High Court has not considered the matter from the above angle that is on merits the proper course in our opinion is to remit the matter to the High Court to consider whether an opportunity was given to the appellant to put forward his case and whether in the light of the facts and circumstances of the case, an enquiry was called for and if called for, was it held according to law and the principles of natural justice, and to dispose of the matter

(b) According to law. The appeal is allowed with the above directions. No costs.”

In view of these facts and circumstances the impugned penalty order as well as Appellate Authority's order are liable to be set aside.

The petition stands allowed.

Learned counsel for the petitioner submitted that recovery as well as penalty has been effected during the pendency of the litigation. Therefore the respondents are directed to refund the recovered amount and so also set right the withholding of increment and to grant monetary benefits to the petitioner.

This order will not come in the way of respondents to proceed to hold an enquiry in accordance with law i.e. holding a full-fledged enquiry. For the reasons that there are two reports and also disputed facts are involved with reference to the charges. Such enquiry shall be completed within a period of six months from today.

(P.B. BAJANTHRI)
JUDGE

16.09.2016

sahil soni

Whether Speaking/Reasons: Yes/No

Whether Reportable: Yes/No