IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21864 of 2011

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Binod Kumar Sinha @ B.K.Sinha Son Of Sri Ram Nandan Prasad Resident Of Pirmanscor, G.B. Road, Gaya, District-Gaya.

.... Petitioner/s

Versus

1. The National Insurance Company Ltd. (A Subsidiary Of General Insurance Companies Of India), A Company Incorporated Under The Companies Act, Having Its Registered Office At 3, Middleton Street, Kolkatta Through Its Chairman-Cum-Managing Director, 3, Middleton Street, Kolkatta 700071.
2. The Chairman-Cum-Managing Director, The National Insurance Company Ltd., 3, Middleton Street, Kolkatta-700071.
3. The General Manager (Personnel), The National Insurance Co. Ltd., 3, Midleton Street, Kolkatta-700071.
4. The Assistant General Manager-Cum-Competent Authority, The National Insurance Co. Ltd., 3, Middleton Street, Kolkatta-700071.
5. The Manager & Disciplinary Authority, Patna Through Regional Office Of The National Insurance Company Ltd. 4th Floor, Sone Bhawan, Bir Chand Patel Marg, Patna-800001.
6. The Deputy Manager, Patna Regional Office Of The National Insurance Company Ltd., 4th Floor, Sone Bhawan, Bir Chand Marg, Patna-800001.
7. The Divisional Manager, National Insurance Company Ltd., (Gaya Division), Shanti Market, Church Road, Gaya.
8. The Vigilance Officer, National Insurance Company Ltd., Patna Regional Office, 4th Floor, Sone Bhawan, Bir Chand Marg, Patna-800001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Shankar Singh, Adv.
Mr. Amit Kumar Mishra, Adv.

For the Respondent/s : Mr. Ashok Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 20-11-2017

Heard learned counsel for the petitioner and counsel for the State.

The basic question that has been raised in the present case in what manner the order of punishment dated 31.3.2010 passed by the Manager and Disciplinary Authority would be interpreted and to be given effect to as has been submitted by the learned counsel for the petitioner that the order of reduction of basic pay by one stage which the petitioner has accepted mentions its operation with immediate effect but, the petitioner has been deprived of the annual increment for the period he was put under suspension. The question has been raised by the petitioner that if interpretation as given by the respondents is accepted, it gives two results, firstly, the order of punishment will be treated to have been given effect from the date of order of suspension, will have effect of in retrospectivity, against the basic principle of service jurisprudence. Secondly, it has been raised that it amounts to enlarging the punishment as punishment is given for reduction of basic pay by one stage, if the petitioner is deprived of the increment during the period of suspension, will amount to putting another punishment of depriving of increment permanently which is in its nature, will have a cumulative effect because it will run all through his service career.

In the present case, the petitioner has been employed at Insurance Company as Development Officer at Dehri-on-Sone Branch. The petitioner, for the charge of misconduct, was put under suspension on 27.2.2002 which finally concluded in passing the order of punishment by the Disciplinary Authority dated 31.3.2010 which the petitioner has voluntarily accepted. The petitioner has been reinstated in service but, has been deprived of the increment during the suspension period.

Learned counsel for the Insurance Company has submitted that the increment is always based upon the performance of business collected by the employee. Admittedly during suspension period, he was not stopped to collect business but, he failed to do so which he has accepted that the business within that period was completely nil which is also not in dispute.

The next question will be that whether under suspension period, the petitioner could have done the business for the Insurance Company. Certainly the answer will be negative because if a person put under suspension, though the relationship does exist but, during that suspension period, the relationship remained dormant, he cannot be supposed to do the business but, he has to remain present in the office and there is nothing on record to suggest that the Insurance Company, during the period of suspension, has ever allowed the petitioner to collect the business. If the petitioner had collected the business, it would have been an act of misconduct as when an employee is put under suspension, he would not have discharged the normal function which he was to discharge but, only the relationship exists.

The Corporation has placed reliance on Clause 13 of the

General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Scheme, 1976 which deals with the condition for granting increment which reads as follows:-

*"**13. Increments:***

(1) A development Superintendent or an Inspector Grade I or Inspector Grade II shall earn increments in the appropriate scale of pay on the 1st day of January, 1977 and 1st day of January, 1978 if his cost Ratio does not exceed the limit stipulated in sub-clause (b) of clause (17) of paragraph 3.

(2) A Development Superintendent, an Inspector Grade 1 or an Inspector Grade II whose Cost Ratio does not exceed the limit stipulated in sub-clause (b) of clause (17) of paragraph 3 shall earn increment in the appropriate scle of pay on the 1st day of January of the year commencing from the year 1979, if in the immediately preceding year he has registered a minimum increase in his scheduled premium income over that on the previous year as indicated below:

Category	*Minimum Increase*
Development Superintendent	*One lakh of rupees*
Inspector Grade I and Inspector Grade II	*Seven and a half per cent or Rs. 15,000 whichever is less*

Provided that in computing the minimum increase in the scheduled premium income, the notional increase or reduction in the scheduled premium income as provided in sub-paragraph (4) of paragraph 12 shall also be taken into account.

(3) As from the 1st day of January, 1979, and onwards where the minimum increase mentioned in sub-

paragraph (2) fail short for the year under consideration in respect of a person referred to therein, the average increase in respect of such person for the three years immediately preceding the year under consideration shall be taken into account, for grant of an increment."

The rider which has been created under Clause 13 of the service condition of the administrative officer will be applicable in the normal service period, not during the period the person was put under suspension. Suspension itself denotes that he would not engage himself in the normal business of the Insurance Company. The plea which has been taken by the Insurance Company is not sustainable in law. If certain order has been passed, its scope cannot be enlarged. Counsel for the Insurance Company has also drawn attention of this Court to the letter dated 18.5.2011 wherein the Chief Regional Manager who is the authority to redress the grievance, has quoted above, the advice of the Headquarter. In the considered opinion of this Court, the decision dated 18.5.2011 suffers from the basic fault that he was deprived to engage in business, hence he could not do the business during the suspension period.

In that view of the matter, the Insurance Company is directed to consider the case of the petitioner for increment treating the period of suspension as a normal business duty and take a decision in accordance with law within a period of six months from the date of receipt/production of a copy of this order.

With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.11.2017
Transmission Date	NA