IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4840 OF 2012

Tanaji Maruti Shinde .... Petitioner
Vs.
United India Insurance Co. Ltd. & Ors. .... Respondents

WITH

CIVIL APPLICATION NO.2582 OF 2017
IN
WRIT PETITION NO.4840 OF 2012

Tanaji Maruti Shinde .... Applicant
In the matter between
Tanaji Maruti Shinde .... Petitioner
Vs.
United India Insurance Co. Ltd. & Ors. .... Respondents

Ms Neha Bhide for the Petitioner.
Mr. V.Y. Sanglikar for Respondent No.1.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : NOVEMBER 07, 2017

P.C:

1. We have heard the learned Advocate appearing for the petitioner. She seeks time by contending that there is a Civil

Application {No.2582 of 2017} moved for amendment of the writ petition and that is not shown on today's Board. Hence we should adjourn the matter and first dispose of this Civil Application after which the writ petition may be taken up for admission.

2. We decline the adjournment because the petition is filed on 11-5-2012. That challenges an order dated 29-6-2009 of the Disciplinary Authority, and an order dated 4-8-2010 of the Appellate Authority. Finally what is challenged is an order of 11-4-2012 of the Chairman-cum-Managing Director, Memorial Authority, United India Insurance Company Limited.

3. We find from the record that unless and until the petitioner succeeds in the challenge to these orders, there is no question of granting any reliefs, much less as intended. The reliefs that are sought are that the petitioner has since retired from service after serving the Company. In the event the petitioner succeeds, he would be entitled to all the benefits and on par with such other retirees whose pay has not been scaled

down or interfered with.

4. For us to take note of all these amended pleas, the petitioner must first establish and prove the allegation that the impugned orders are vitiated by total non-application of mind or errors apparent on the face of the record. The petitioner would have to establish that they are perverse as well.

5. In order to consider such a challenge, we have heard Ms Bhide at length. She would submit that the Inquiry Officer did not grant reasonable opportunity to the petitioner to defend the charges. The charges were serious in nature. The petitioner is alleged to have connived with the Management of Hotel Deepak at Chiplun, or if not connivance, has himself inflated the bills by adding something therein so that the Company pays to him a sum higher than what he was entitled to as reimbursement. Ms Bhide would submit that none from the Hotel Management nor the staff at the relevant time at the counter was examined as a witness. The petitioner was also not allowed to cross-examine the Management's witnesses and

particularly the hand-writing expert. Hence, the inquiry is not fair and impartial and stands vitiated by non-observance of the principles of natural justice. Finally, she would contend that pecuniary loss has not been caused due to any acts of the petitioner or attributable to him for it is not observed and held that he carried out any alteration or made insertion in the bills. If he is not responsible for the same, then, he cannot be visited with such a penalty, as is imposed.

6. With her assistance, we have perused the petition and all the annexures thereto. We find that the charges were specific and clear. The petitioner was charged with having presented bills with exaggerated amount of his stay at Hotel Deepak in Chiplun. The petitioner at the relevant time was posted as an Administrative Officer, DO-Kolhapur to head the affairs of the Branch Office at Chiplun from 1-4-2004 till further directions. The petitioner pointed out that he had no place of his own while visiting Chiplun and, therefore, would be required to check-in in a hotel. That is how the petitioner checked into a lodging and boarding house/hotel. The petitioner was, as per

the terms and conditions of his service, entitled to reimbursement of the bills, payments for which have been made while staying at such hotel. The petitioner chose Hotel Deepak at Chiplun for his stay. He stayed there during April, 2004 to August, 2005. The bills charged by the hotel were Rs.2,000/-, Rs.3,100/-, etc., for various months from April, 2004 to July, 2005. The petitioner would have been entitled to reimbursement of the actual amount charged by the hotel and reflected in the bills. However, it appears that the bill amount was altered and instead of the actual sums being reimbursed, the reimbursement resulted in the petitioner being paid a sum in excess and computed as Rs.87,850/-. This was the Article-I. The Article-II was that the petitioner also obtained some undue pecuniary benefit causing undue pecuniary loss to the Company, being the difference in the amount actually incurred by him and the amount of hotel expenses for which his bills were settled.

7. The petitioner submitted his defence to these charges which was not found to be satisfactory. That is why an inquiry was held and the Inquiry Officer allowed the Management to

adduce evidence. Thereafter, the petitioner was granted an opportunity to cross-examine the witnesses. Since the petitioner denied the charges, the Management's witness one Umesh Pathak, Deputy Manager, a resident of Pune, was summoned as a witness. He stated that he also had an occasion to check into Hotel Deepak and he checked into an air-conditioned room. He paid an amount far less than what the petitioner claimed to have paid for a non-air-conditioned room/air-conditioned room. Thereafter, a second witness, who was a Senior Assistant, Chiplun Branch, deposed but he did not give any relevant information. Thereafter, a third witness was examined and he confirmed the variation in the amount of the bills, inflation made and tampering and fabrication therein. Thus, the Management's witnesses pointed out the discrepancies and the alteration in the amounts. It is clear that the Management did not rest its case here but for the purposes of ascertaining whether there was indeed a subsequent interpolation and insertion in the bills, these documents were forwarded for the opinion of a hand-writing expert. The hand-writing expert confirmed that the interpolation or insertion has not been made at the time of issuance of the bills but subsequently. It is in these circumstances and the petitioner not disputing his stay at the said hotel, his receipt of the bills, his making payment at the counter while checking out of the hotel and thereafter the reimbursement, that the Inquiry Officer concluded that it was none other than the petitioner who was involved in enriching himself and causing a pecuniary loss to the Company.

8. We have perused the detailed inquiry report and thereafter the submission thereon to the Disciplinary Authority. The Disciplinary Authority after perusing the inquiry report came to the conclusion that the charges are proved. The explanation by the petitioner was once again found to be unsatisfactory and he was thus visited with the penalty which we do not think is unduly harsh or disproportionate to the guilt established and proved. The Company's order dated 29-6-2009 clearly spells out the charges, the inquiry and how the same is fair, just and proper. The alterations/tampering/fabrication of the bills resulting in inflated amount claimed by the petitioner

and being paid to him, has been rightly termed as undue pecuniary gain. We think that the petitioner got away with a lighter penalty of reduction in basic pay by three steps in the time scale applicable to the petitioner and also recovery of Rs.1,13,175/-. The petitioner does not dispute the power of the Disciplinary Authority to impose such penalty or the relevant Rules in the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. Once such is the power derived from the Rules themselves, then, the Disciplinary Authority was in no error in imposing this penalty. The penalty has then been challenged in appeal and the appeal was also dismissed.

9. The initial writ petition preferred by the petitioner being Civil Writ Petition No.727 of 2011 came to be disposed of on 3-10-2011 on the statement of the Insurance Company that the petitioner can invoke Rule 40 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. Even that remedy has been availed of.

10. We do not find that these concurrent orders are

vitiated by perversity or any error of law apparent on the face of the record. We are not an Appellate Authority nor do we function as such so as to enable us to re-appreciate or re-appraise the same documentary materials on record. We do not find any serious legal infirmity in the inquiry or the punishment imposed. There is no prejudice caused as the petitioner was treated fairly and reasonably. Consequently, the writ petition has no merit and is dismissed.

11. Once the penalty is upheld, on retirement, the petitioner's pay and other emoluments and benefits, as determined by the Insurance Company, need not be interfered with nor they require any alteration or change.

12. In view of the above, Civil Application No.2582 of 2017, which is shown as on today's Board, stands disposed of.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)