BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.(MD) No.16500 of 2013
and MP(MD)No.1 of 2013

D.Suresh ... Petitioner

Vs.

1.The Chairman-cum-Managing Director
The Oriental Insurance Company Ltd.,
A-25/27, Asaf Ali Road,
New Delhi 110 002.

2.The General Manager &
Appellate Authority,
The Oriental Insurance Company Ltd.,
A-25/27, Asaf Ali Road,
New Delhi 110 002.

3.The Deputy General Manager &
Disciplinary Authority
The Oriental Insurance Company Ltd.,
P.B.No.1877, U.I.L. Building,
IV-Floor, No.4, Esplanade
Chennai 600 018. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 3rd respondent, dated 01.4.2011, confirmed by the 2nd respondent in Ref.No.469-A Human Resources department, dated 15.6.2012 and finally confirmed by the 1st respondent in Ref.No.427-M HR Department, dated 25.2.2013, and quash the same and consequently direct the respondents herein to reinstate the petitioner in service as Sub-Staff with continuity of service, backwages, increments and monetary benefits accrued to his service including seniority and promotion to the petitioner, within a reasonable time.

For Petitioner : Mr. K.Appadurai
For R1 to R3 : Mr. K.Balasubramanian

ORDER

The prayer in the writ petition is for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the third respondent, dated 01.04.2011, confirmed by the second respondent in Ref.No.469-A Human Resources Department, dated 15.06.2012 and finally confirmed by the first respondent in Ref.No.427-M HR Department, dated 25.02.2013 and to quash the same and consequently direct the respondents to reinstate the petitioner in service as Sub-Staff with continuity of service, backwages, increments and monetary benefits accrued to his service including seniority and promotion to the petitioner, within the reasonable time to be fixed by this Court.

2. The petitioner was appointed as a Sub-staff of the Divisional Office-II, Madurai under the control of the third respondent in the year 1990 and he was employed till 01.04.2011. The petitioner while he was in service was placed under suspension on 24.02.2003 and based on an enquiry, charges were framed against the petitioner. Thereafter, charge-memo was issued on the petitioner on 24.02.2003, wherein two charges were framed against him. An Enquiry Officer was appointed and enquiry was conducted. Finally, the Enquiry Officer gave his report on 09.02.2009, wherein the Enquiry Officer has stated that the charges framed against the petitioner were not proved.

3. Even though the Enquiry Officer's report, dated 09.02.2009, says that the charges framed against the petitioner were not proved, after more than two years, the third respondent, who is the Disciplinary Authority passed the impugned order, whereby the petitioner was removed from service. The said order passed by the Disciplinary Authority, dated 01.04.2011 was appealed to the second respondent/the Appellate Authority. The Appellate Authority by an order, dated 15.06.2012, without considering the relative merits of the issue and the grounds raised by the petitioner in the appeal, has simply confirmed the order of punishment. Against which, the petitioner preferred further appeal/revision before the first respondent, who has also in turn by an order, dated 25.02.2013, has confirmed the order of the Original Authority as well as the Appellate Authority, without assigning any specific reasons. Challenging the orders passed by the Disciplinary Authority, the Appellate Authority as well as the Revisional Authority ie., respondent No.3, respondent No.2 and respondent No.1 respectively, the petitioner has come out with the present writ petition with the aforesaid prayer.

4. Heard both sides.

5. The learned counsel appearing for the petitioner by relying upon the Enquiry Officer's report and the findings of the Enquiry Officer, would submit that since the Enquiry Officer has given his

clear finding that none of the charges framed against the petitioner were proved, the question of giving such major punishment against the petitioner, does not arise as there is no fresh materials or evidences, which were omitted to be considered by the Enquiry Officer and even assuming that some materials or evidences were omitted to be considered by the Enquiry Officer and no evidence is available before the Disciplinary Authority, *de novo* enquiry could have been conducted. Without any materials to show that the petitioner was guilt, the Disciplinary Authority after more than two years, on receipt of the Enquiry Report has passed the impugned order, whereby a major punishment of removal of service was inflicted on the petitioner. Therefore, the same is liable to be interfered with.

6. The learned counsel appearing for the petitioner would further submit that even though the petitioner has signed on the reverse side of the two cheque leaves, the said signatures have been made as a routine formality in order to identify the claimants to encash the amount, which normally the people working in the banks and in the Insurance companies, would do. There is no evidence to show that the petitioner has unjustly encashed the amount payable to the claimants through encashment of two cheque leaves pursuant to the identification signatures made by the petitioner. When that being the position, the petitioner cannot be treated as guilty and out of which, the petitioner cannot be inflicted with such a major punishment of removal of service.

7. The learned counsel appearing for the petitioner would also submit that in spite of the appeal as well as the revision filed by the petitioner before the second and first respondents, where all these aspects have been raised by the petitioner, both the Appellate Authority as well as the Revisional Authority, have simply upheld the order passed by the Disciplinary Authority, by simply saying in one line that 'in the absence of new facts, the penalty imposed by the Disciplinary Authority/Appellate Authority, is hereby upheld'.

8. It is the settled proposition of law that both the Appellate Authority as well as the Revisional Authority must look into the entire aspects afresh on the available grounds as projected by the delinquent and in case disciplinary actions were contemplated and if a major punishment is given, the grounds raised by the appellant/revision petitioner, should have been considered thoroughly and on comparing with the facts of the case as well as the evidences and the findings of the Enquiry Officer's report, proportionality of the punishment as well as the liability of the punishment imposed by the Disciplinary Authority ought to have been examined by the Appellate Authority and the Revisional Authority.

9. Here, in this case, both the Appellate Authority as well as the Revisional Authority have not done so and they have merely confirmed the punishment awarded against the petitioner. Therefore, the learned counsel appearing for the petitioner submits that interference of this Court, is very much required at the orders of the Disciplinary Authority as well as the Appellate and the Revisional Authority.

10.Per contra, the learned standing counsel appearing for the respondents would vehemently contend that it is an admitted case on the part of the petitioner that he has signed in the cheque leaves and out of which, encashment has been made. It is also the case of the claimants that neither they have signed in the cheque leaves nor they have encashed the amount pursuant to the cheque leaves. When there is a definite case on the part of the claimants that they have not signed in the cheque leaves and they have not encashed the amount and if encashment has been made pursuant to the cheque leaves presented before the bank, where signature of the claimants were identified by the petitioner, there is no other conclusion can be possible except to conclude that only in order to encash the amount, the petitioner has forged the signature of the claimants and he himself identified the claimants and presented the cheques before the bank for encashment.

11. The learned standing counsel appearing for the respondents would further submit that even though evidences are enough and it was deposed before the Enquiry Officer, the Enquiry Officer has not given any findings or a conclusion that the petitioner has signed in the cheque leaves of course, as identification signature and therefore, the final findings given by the Enquiry Officer that the charges framed against the petitioner were not proved, is absolutely not in consonance with the evidences available before the Enquiry Officer. The learned counsel would further submit that therefore, only in that circumstances, the Disciplinary Authority after having considered the entire materials available before him has concluded that this is the case where the petitioner himself has accepted his guilt by stating that he only has signed in the cheques leaves and therefore, this strong circumstantial evidence would go to show that preponderance of probabilities is very well available in this case also, which gives way to come to a irresistible conclusion by the Disciplinary Authority that only with ill-intention of encashing the amount belongs to the claimants, the petitioner has signed in the cheque leaves. Therefore, this action on the part of the petitioner cannot be viewed lightly and therefore, a serious view was taken by the Disciplinary Authority and ultimately, punishment of removal of service was inflicted on the petitioner. The learned counsel would further submit that a Sub-staff cannot be expected to be involved in very big scam or multi-crore scam and this kind of Sub-staff would involve in this kind of activities for a paltry

sum. Therefore, that cannot be taken lightly and therefore, serious view was taken by the Disciplinary Authority and therefore, such punishment of removal of service was inflicted on the petitioner and the same need not be interfered with.

12. This Court has considered the said rival submissions made by the learned counsel appearing for both sides.

13. The Enquiry Officer after having completed his enquiry, has given his final opinion in the Enquiry Report, dated 09.02.2009, which reads thus:

"5.Final Opinion:

1. ***We have searched for the Claim payment Register in DO-II, Madurai for who have received the Claim Cheque No.121817/dt. 16.04.99/for Rs.5000/- in the claim no.13/00, JAB but there is no claim payment register in the DO-II, Madurai.***
2. ***The MW-7, MW-09 & MW-11 confirmed the A/c. Payee and cancellation cheque signature are tallied and they are not able to remember whom they have paid the amount.***
3. ***As per the Scientific Officers Report dt. 29.07.05 he opined that "It has not been possible to express opinion on the rest of the questioned items on the basis of material at hand.***
4. ***As per the CBI, Court Madurai verdiction dt. 25.04.08 for the same FIR RC.No.58(A) the Hon'ble Court acquainted the Charge Sheeted Employee Mr.D.Suresh and further opined that the prosecution has not proved the case beyond all reasonable doubts.***
5. ***As per the Defence Assistants filing of written statement reply to the Presenting Officer report it is evident that the insured Mr.S.Teslinic has not made any complaint against Mr.D.Suresh for non payment of claim.***
6. ***As per the claim settled docket of Mrs.Thavamani Arockiamary Claim No.80/2000 JAB, it is evident that in the bills Cash Received seals were affixed by the Hospital Authorities."***

14. This report, dated 09.02.2009, was under consideration of the Disciplinary Authority for more than two years. No action was initiated pursuant to the said Enquiry Officer's report and after more than two years, suddenly the Disciplinary Authority has passed the impugned order inflicting major punishment against the petitioner, only on 01.04.2011. In the impugned order of punishment, the Disciplinary Authority has stated reasons for his conclusion to give major punishment in the following terms.

"AND WHEREAS the Enquiry Officer, vide his Enquiry report, dt. 13.03.2009 concluded that the charges levelled against Sri.D.Suresh is not able to

be proved.

AND WHEREAS the undersigned being the Deputy General Manager and Disciplinary Authority in the matter after having gone through the Charge Sheet, Enquiry Report, reply and documents relating to this case, observe that there is Strong Circumstantial evidence and Preponderance of Probability as Shri.D.Suresh admitted that the signature on the reverse side of the two cheques are his only. He has further stated that he has done the act innocently. Thus Shri.D.Suresh is guilty of charges framed against him under Rule No.3(1), (I), (ii) & (iii) r/w 4(1)(5) & (16) of General Insurance (Conduct, Discipline and Appeal) Rule, 1975 as amended and caused financial loss to the company by defalcating company's money fraudulently.

AND THEREFORE the following penalty is imposed on Shri.D.Suresh.

"Removal from service which shall not be disqualification for further employment"

15. When the Disciplinary Authority says that the petitioner admitted the signatures on the reverse side of the two cheque leaves and he has done the act innocently, the Disciplinary Authority has come to a conclusion that he should be punished with major punishment. In this regard, the learned standing counsel appearing for the respondents has produced the letter given by the petitioner, dated 08.09.2010, wherein the petitioner has stated as follows:

"I respectfully beg to put forth my explanations hereunder for your said memorandum.

Sir, I have never admitted during the enquiry proceedings that, I had withdrawn the money not pertaining to me. However, I accepted that the signature on the reverse side of the two cheques is of mine. I signed on the backside of the cheques only to introduce the identity of the claimants to the bankers, since they are not having any kind of A/C in the said bank. I have innocently done this only out of helping tendency under humanitarian grounds, without knowing the consequences. Due to the said innocent act, I have not obtained either any undue pecuniary advantage or making any pecuniary loss to the company.

I am innocent in this case. So I humbly request you to excuse and free from the charges levelled against me.

Thank you."

16. Therefore, this is the only material which tilted the balance. On receipt of this letter from the petitioner, the Disciplinary Authority has come to a conclusion that he should be awarded with the punishment of removal of service. When this Court perused the contents made by the petitioner in the said letter, dated 08.09.2010, it is found that the petitioner though has accepted the signatures made in the two cheque leaves, has also stated that he has signed only to introduce the identity of the claimants to the bankers since the claimants do not have any account in the bank. He has also claimed that he had innocently done this act only to help and on humanitarian ground without knowing the consequence. He has also stated that due to the said act, he has not obtained any pecuniary advantage or not even made pecuniary loss to the respondents.

17. Though the said defence has been taken by the petitioner, from his version, it is obvious that the petitioner only has signed in the cheque leaves on the reverse side in order to identify the claimants. Normally, identification would be made by any person or third party, who gives identity of the person, who claims certain rights. If the petitioner does not know the identity of the claimants, he should not have signed in the reverse side of the cheques even for the purpose of identification. Suppose, the petitioner knows the claimants, certainly he could not have made signatures because it is a definite case of the claimants that neither they have given any cheque for encashment nor they have received any amount out of the cheques being encashed. Therefore, it can be easily presumed that the petitioner has signed in the reverse side of the cheques either without knowing the identity of the claimants or with the intention to make a signature knowing fully well that the person, who claims the amount through the cheques is not the actual person. For both these situations, the action of the petitioner can be considered as dereliction of duty. However another view is also possible where normally sub-staff working in the banks or Insurance Companies would make this kind of small help by putting signatures to identify the claimants. Somebody may be very well known to the staff, who gives identification and somebody may not be known. If everything goes right, no-one will be found fault with. If something goes wrong, certainly the person, who is responsible for making signature for the purpose of identification, would certainly will be sued. Here, in this case, both possibilities are there and it can be taken either the

first one or the second one. The Disciplinary Authority has taken the first one and has come to a irresistible conclusion that the petitioner was in guilt and has signed in the reverse side of the cheque leaves only to encash the money knowing fully that the person, who makes the claim is not the actual claimant.

18. Assuming that the petitioner has signed for the purpose of identification after having known well that the person, who makes the cheques is not the real claimant, then certainly some punishment has to be awarded. Here, in this case, removal of service has been inflicted on the petitioner, which in the considered view of this Court is disproportionate even if the guilt is taken as proved against the petitioner.

19. In view of the said facts and circumstances and the above discussion made by this Court, the punishment imposed against the petitioner being disproportionate one, the same is liable to be interfered with.

20. Accordingly, the Writ Petition is allowed and consequently, the impugned orders, are set aside and the matter is remitted back to the Disciplinary Authority/third respondent, for re-consideration. It is made clear that on re-consideration, a modified punishment can very well be inflicted on the petitioner, but not as the one now has been imposed. Once a modified punishment is awarded, the other consequential benefits to the petitioner would follow depending upon the modified punishment to be awarded by the Disciplinary Authority. The needful as indicated above shall be done by the respondents within a period of two months from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

Pm
To
1.The Chairman-cum-Managing Director
The Oriental Insurance Company Ltd.,
A-25/27, Asaf Ali Road,
New Delhi 110 002.

2.The General Manager &
Appellate Authority,
The Oriental Insurance Company Ltd.,
A-25/27, Asaf Ali Road,
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3.The Deputy General Manager &
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P.B.No.1877, U.I.L. Building,
IV-Floor, No.4, Esplanade
Chennai 600 018.

+1CC to Mr.K.Appadurai, Advocate Sr.No.3204
+1CC to Mr.K.Balasubramanian, Advocate Sr.No.3032

GJM/PM/SAR-I-1.3.17-9P-6C

W.P.(MD) No.16500 of 2013
19.01.2017