IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 1446 of 2017
Date of Decision: 17 .2.2017

Rajesh Arora

... Petitioner

Versus

Life Insurance Corporation of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gurnam Singh, Advocate for the petitioner

RAJIV NARAIN RAINA, J.

1. A scam broke out in the Jalandhar Office of Life Insurance Corporation of India (for short "the Corporation"). The petitioner was a Development Officer in Branch Office Unit-2, Jalandhar. He was charged with misconduct of engaging a private person, namely, Avtar Singh @ Lucky to assist him in discharge of his official work in the Branch Office Unit-2, Jalandhar. Avtar Singh, in connivance with one Raj Kumar @ Raju were allegedly involved in fraudulently surrendering 10 policies pertaining to the Branch Office Unit-1 Jalandhar and Branch Office Unit-2, Jalandhar causing loss to the Corporation to the tune of ₹ 5,23,524/-. News of these incidents got adverse media attention for the Corporation reported in the Punjab Kesri, Jalandhar in its issue dated 12th June, 2006 alleging that fake accounts had been opened in the Corporation in the names of 10 policy holders for fraudulent encashment of cheques. Avtar Singh and his associate were named as co-accused in FIR No.241 dated 9th September, 2006 registered under Sections 420, 380, 465, 467, 468, 34 of the IPC at Police Station Division

No.4, Jalandhar. This started a criminal trial. The Chief Judicial Magistrate, Jalandhar vide judgment dated 8th November, 2011 held the accused guilty of the offences they were charged with. The judgment of the trial court was affirmed by the learned Sessions Judge, Jalandhar vide judgment of conviction and sentence dated 12th March, 2014. These judgments were challenged in the High Court by way of CRR No.1158 of 2014. The revision was allowed and the judgments of the courts below were set aside and both the accused were acquitted of the charges framed against them vide judgment dated 6th January, 2015 (Annex.P-12).

2. The petitioner's role in engaging Avtar Singh from his own pocket to assist him in office work in the Branch Office was put under the scanner by the Corporation in a departmental proceeding initiated by a charge-sheet. The charge was that Avtar Singh had been allowed access to the records of the LIC office which exposed the office to the incident leading to fraudulent payments by surrender value of the policies of 10 subscribers. This initially led to issuance of Office letter dated 28th November, 2009 advising the petitioner to give his observations in the matter of fraudulent payment of surrender value of the policies causing loss to the Corporation. This was followed by a reminder dated 12th January, 2011 (Annex. P-5). Both these letters are mentioned in the letter dated 25th July, 2012 (Annex. P-6) holding the petitioner liable to make good the loss caused to the Corporation and advising him to deposit an amount of ₹ 2,61,762/- being half of the sum of the total financial loss to be made good within 10 days from the date of receipt of the letter.

3. The petitioner was held responsible for occasioning fraudulent acts committed by his delegate Avtar Singh in the capacity of a private person who had nothing to do with Corporation. In short, the Corporation blamed the

petitioner to have outsourced and palmed off his official work to Avtar Singh allowing him to work with him in his office and this private arrangement was impermissible and breach of confidentiality. The petitioner's response dated 16th August, 2012 (Annex.P-7) contained an admission that he had indeed engaged Avtar Singh for his personal (private) office at 131, Master Tara Singh Nagar, Jalandhar. He admitted that payments were made on forged policies/documents in connivance with some people of the administrative staff, but he was not involved in these payments. He asked employer to show any documents which involved him in the commission of crime or misconduct. He said that he never authorized Avtar Singh to receive any payment/cheque/documents from any of the LIC offices.

4. The disciplinary authority was not amused with his reply. They did not buy the story. The petitioner was issued charge-sheet dated 9th November, 2013 (Annex. P-4). The petitioner replied to the charge-sheet. He defended saying that Avtar Singh was engaged by him in July, 2005 and had served him till 2009 doing petty jobs of house-keeping, taking care of his office in his absence etc. The petitioner used his services occasionally as a courier/messenger/driver for collection and delivery of official material from Branch Office to agents' place or vice versa. These were purely external jobs. He asserted that he never used Avtar Singh in Branch Office to assist him in his office work. There was no proof of Avtar Singh functioning inside Branch Office. His involvement was never investigated during police investigations or during the course of criminal trial. Branch Manager, Kirpal Singh appeared as prosecution witness in the criminal trial and stated that the Corporation possessed no record to substantiate the allegation that Avtar Singh @ Raju had been engaged as an assistant of Development Officer in the Corporation. Moreover, the incident was seven years old by then.

5. The disciplinary proceedings were initiated under Regulation 39 of the LIC of India (Staff) Regulations, 1960 (for short "1960 Regulations"). A regular enquiry was conducted and enquiry report was submitted on 1st March, 2014 holding the charges established. The enquiry report was supplied to the petitioner for his comments and the same was filed on 15th March, 2014. On a consideration of the reply, a second show-cause notice was issued to the petitioner under Regulation 39 of the 1960 LIC Regulations. The contentions of the petitioner in defence were considered and dealt with by recording separate reasons for each of the grounds taken by the petitioner in writing to establish his innocence. The disciplinary authority delineated the charge against Avtar Singh and Raj Kumar and the misconduct committed by the petitioner. The charge was not that the petitioner was involved in the criminal offence of which Avtar Singh and Raj Kumar were tried. The charge against the petitioner was that he had engaged a private person to assist him in his office without due authority, who [Avtar Singh] further committed fraud with the Corporation in connivance with Raj Kumar by submitting discharge vouchers with fake signatures and fake policy bonds. Thus engagement of Avtar Singh by the petitioner was said to have paved the way for him to access LIC record and commit fraud on the Corporation causing substantial financial loss. It was correctly pointed out that the petitioner was not required to point out the lapse of others and throw the charges levelled upon him to others to escape from liability. The show-cause notice dated 30th October, 2014 (Annex. P-10) required the petitioner to submit his written explanation as to why he should not be held guilty of the charge as aforesaid and to show why the proposed penalty of "Censure" in terms of Regulation 39(1)(a) of the 1960 Regulations be not imposed upon him.

6. The petitioner submitted his reply on 12th December, 2014 (Annex. P-11). He pleaded that he committed no misconduct and he deserved to be exonerated of the charges framed against him. It was his main defence that Avtar Singh had not committed any fraud in connivance with the petitioner. The petitioner's name did not figure anywhere during the investigation by the police.

7. The reply was considered by the authority and a detailed order was passed on 9th January, 2015 (Annex. P-13) by the disciplinary authority being the Senior Divisional Manager imposing penalty of "Censure" on the petitioner and ordering recovery of money from his pocket.

8. Aggrieved by the punishment imposed, the petitioner submitted an appeal dated 30th March, 2015 (Annex. P-14) before the Zonal Manager, being the appellate authority, who by a detailed order dated 27th October, 2015 (Annex. P-16) rejected the appeal after noticing each of the nine contentions raised by the petitioner in his grounds of appeal and on due consideration assigned reasons for rejection of those contentions.

9. Dissatisfied with the order of the appellate authority, the petitioner took resort to his final administrative remedy before the Chairman, LIC of India, Mumbai by presenting a Memorial dated 29th February, 2016 (Annex. P-18). The Chairman entertained the proceedings under Regulation 49 of the 1960 Regulations and passed a detailed order on 27th June, 2016 (Annex. P-19) dismissing the Memorial by upholding the order of penalty of "Censure" and recovery of money. The Chairman LIC was conscious that the petitioner was neither punished nor charged with any direct involvement in fraudulent activity and crime, but the delinquent was charged specifically with engaging Avtar Singh to assist him in office work thereby presenting a situation of commission of fraud resulting in causing loss to the Corporation.

There was no doubt loss was caused irrespective who was responsible for it. The Corporation's concern was being done out of money

10. If the petitioner admitted that he had engaged Avtar Singh and used him in Branch Office for communication and delivery of material, this really established that he had engaged him to assist him in office work without any authority to do so or prior information of the private arrangement. Admittedly, Avtar Singh was even paid ₹ 1500/- per month by the petitioner from his pocket. The Chairman was right in recognizing in his order that the lodging of the FIR had no bearing on the departmental proceedings initiated against the memorialist. When access to Branch Office is established on record of footfalls of Avtar Singh in the Branch Office for communication and delivery of LIC papers/material, then it is inconsequential in defence that the services of Avtar Singh were used by the petitioner occasionally as a courier or messenger or driver for collection and delivery of material from Branch Office to agents' place or vice-versa.

11. After all, a rank outsider was permitted access to the confidential records of the Corporation without notice or intimation of the arrangement to the superior authorities. This act had exposed the Branch Office to risk and breach of confidentiality and loss of reputation of the Corporation. The petitioner knew what the charge was against him and he could not hedge on the criminal case having admitted to an inference of unauthorised entry by Avtar Singh on premises of LIC where rights of admission are reserved. The petitioner may have had a clean, spotless and unimpeachable past service record of 26 years, but the charges have been substantiated in the enquiry proceedings where the petitioner was given all reasonable opportunities to defend his case. The Chairman went on to say that performance par excellence in one arena does not provide immunity from guilt established elsewhere. The

penalty of Censure was suitably commensurate with the gravity of proved misconduct. Thus the charge was established by virtue of the employment of Avtar Singh by the petitioner giving the former full access to the Office of the Corporation. The Chairman observes in his order that punishment has to follow when offence is established and this is an established and time-tested principle of jurisprudence. The reasoning is legal and valid and tenable on the facts and circumstances obtaining on record.

12. Due to the disciplinary proceedings, the petitioner was passed over for promotion. Therefore, the other prayer in the petition is for grant of promotion from the date when the juniors were promoted from the post of Development Officers to Assistant Branch Managers vide office order dated 26th March, 2013 (Annex. P-3) with joining date as 15th April, 2013. It is argued that juniors were promoted before the charge-sheet was issued to the petitioner on 9th November, 2013 (Annex. P-3). This could found a good argument inasmuch as the right to promotion prior to charge-sheet would not take away the right to consideration. However, I find a hornets' nest had been stirred by Office letters dated 28th November, 2009 and 12th January, 2011 and 25th July, 2012 which had set the ball rolling for disciplinary proceedings based on an incident relating to 2006 which ultimately culminated in the charge-sheet dated 9th November, 2013.

13. In the face of these facts, I do not think that the principle of retrospective promotion prior to charge-sheet would apply in this case. The punishment of "Censure" will date back to the incident in 2006 and may foreclose the right to consideration for promotion for the time being in case promotion is based on merit. However, if there are specific regulations on the subject obtaining in the Corporation that censure cannot hold back promotion, then the petitioner would be at liberty to approach the authorities for his

request of promotion to be considered from the back date and in that event the observations made in the second part of the order will not influence the promoting authority from acting fairly and independently. No order has been placed on record of this case depriving the petitioner from the promotion. Neither is the view of the Corporation on the point known. I would, therefore, leave this question open for consideration by the Corporation in the first instance. Since there is no adverse order regarding promotion, this petition is premature on the second prayer, especially in view of the disciplinary proceedings and the effect it may have on such rights.

14. For the foregoing reasons, this petition is dismissed qua prayer (i) and the impugned orders dated 9th January, 2015 (Annex. P-13), 3rd December, 2015 (Annex. P-16) and 27th July, 2016 (Annex. P-19) passed by the disciplinary and appellate authorities awarding penalty of "Censure" and recovery of money are maintained. However, qua prayer (ii), that is, for promotion to the post of Assistant Branch Manager the petition is dismissed as premature.

(RAJIV NARAIN RAINA)
JUDGE

17.2.2017
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*