IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.33 of 2016

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Chandra Kant Thakur, Son of Late Jai Narayan Thakur, Assistant (C), (Employee No. 11325), National Insurance Company Limited, Presently posted as Assistant Ghatshila Branch, at and P.O. Ghatshila, District - East Singhbhum.

.... Petitioner/s

Versus

1. National Insurance Company Limited, through Chairman Cum Managing Director, 3, Middleton Street, Prafulla Chandra Sen, Sarani, Kolkata, W.B. 700071.
2. Chairman Cum Managing Director, 3, Middleton Street, Prafulla Chandra Sen, Sarani, Kolkata, W.B. 700071.
3. Chief Regional Manager-Cum-Appellate Authority, National Insurance Company Limited, Sone Bhawan, Birchand Patel Marg, Patna.
4. Assistant Manager-Cum-Disciplinary Authority, National Insurance Company Limited, National Centre for Insurance Learning, 79, Netaji Subhash Road, Narendrapur, Kolkata, 700103, West Bengal.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Shree Nandan Pd. Singh, Adv.
For the Respondent/s : Dr. Anshuman, Adv.
Mr. Sanjay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-02-2018

Heard Mr. Shree Nandan Prasad Singh, learned counsel appearing on behalf of the petitioner, and Dr. Anshuman, learned counsel for the National Insurance Company Ltd. *(hereinafter referred to as the* ***'Insurance Company'****).*

The petitioner is aggrieved by the order dated 03.11.2004 of the Disciplinary Authority, whereby the petitioner has been imposed a penalty of reduction of pay by four stages as well as realization of Rs. 8,096/-, stated to be 50% of the alleged defalcated amount, with interest @ of 9%, to be calculated with effect from 22.06.1999. A copy of the penalty order is impugned at Annexure 5, which has been upheld by the Appellate Authority *vide* order dated 25.01.2007, at Annexure 6.

The petitioner questioned these orders before this Court in C.W.J.C. No. 5296 of 2007 and the writ petition was disposed of *vide* order passed on 20.11.2014, at Annexure 7, requiring the petitioner to exhaust the Memorial available under the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. The order passed on the memorial modifies the punishment order by quashing the penalty of reduction of pay by four stages, but considering the conduct of the petitioner that the Chairman-Cum-Managing Director, while considering the memorial, has upheld the recovery order. The order passed on memorial, dated 21.08.2015, is placed on record *vide* Annexure A to the counter affidavit of the Insurance Company and is sought to be questioned by the petitioner by filing I.A. No. 705 of 2018.

I have heard the parties and perused the record as well.

The sum and substance of the imputation against the petitioner is of having failed to delinquently discharge the duties of the Cashier. The facts on record would confirm that the petitioner was on leave from 17.06.1999 until 20.06.1999 and joined his duty on 21.06.1999. It is also confirmed from the record that in the circumstances where the petitioner was on leave that the Branch Manager requested one Pradeep Paswan, an Assistant, to discharge the duty of a Cashier and it resulted in a defalcation of amount of Rs. 16,191/-. It is again not in dispute that even though the petitioner was the Cashier and held the keys to the cashbox, despite his leave, he neither handed over the keys to the Branch Manager nor to his successor. It is again not in dispute that although the petitioner joined his duty on 21.06.1999, but was busy with other work and although he shoulders it of on the Branch Manager, but there is no evidence in support thereof, rather the only evidence is that the petitioner was busy with other work. As observed, the said Pradeep Paswan, who discharged the duties of the petitioner caused a financial mess of Rs. 16191/-. It is, thus, noticing the failure on the part of the petitioner to *bona fidely* discharge his duty as well as the act complained against the said Pradeep Paswan, which resulted in the penalty order passed by the Disciplinary Authority endorsed by the Appellate Authority, *vide* orders present at Annexure 5 and 6 respectively, but the Chairman-Cum-Managing Director of the Insurance Company in consideration of the matter, in totality, has chosen to modify the same to set-aside the order in so far as it reduces the pay of the petitioner by four stages, but noticing the default of the petitioner that he has upheld the recovery.

In the circumstances taken note of, the petitioner would have to share the responsibility and this is exactly what the impugned order passed on memorial does confirm. The order reflects application of mind by the Chairman-Cum-Managing Director, who, while finding the original order not commensurate to the charge, has reduced the punishment to the loss suffered by the Insurance Company.

No cause for indulgence is, thus, made out. Law is well settled and mere a second opinion in the given facts and circumstances, governing a case, would not render the order put to challenge bad and illegal. In the backdrop noted, the order so passed by the Chairman-Cum-Managing Director would require no interference.

This petition is disposed of.

(Jyoti Saran, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20/02/2018
Transmission Date	N/A