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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22553-2013

Date of Decision : October 15, 2018

Naval Kishore Garg

.... Petitioner.

Versus

Chairman-cum-Managing Director, United India
Insurance Company Limited and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Sukhdev Singh Khokher, Advocate
for the petitioner.

Mr. D.R.Bansal, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is challenge to the orders dated 18.4.2011 (Annexure P/5); 24.2.2012 (Annexure P/7) and 24.07.2013 (Annexure P/9), whereby the petitioner was removed from service and his appeal and Memorial were dismissed by the respondents.

2. Facts relevant for the purpose of decision of this writ petition; that the petitioner herein was appointed as Development Officer on 1.7.1988 and was removed from service vide order dated 18.4.2011 (Annexure P/5) on the basis of charge sheet having been issued and

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regular departmental proceedings having been conducted and after issuance of show cause notice and affording opportunity of hearing to the petitioner.

3. Learned counsel for the petitioner, at the time of arguments, contended that the petitioner who had already put in 23 years with the respondent-Corporation was removed from service without there being any justified grounds. Even the enquiry proceedings were not conducted in accordance with law. Earlier FIR No. 64 dated 1.5.2008 under Section 408 IPC was registered against the petitioner and he was acquitted of the charges vide judgment dated 9.1.2012 passed by learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib as the prosecution failed to prove the guilt.

4. Learned counsel for the petitioner mainly contended that the petitioner, who has already put in more than 20 years of service has been awarded punishment of removal from service, which is totally disproportionate and this Court may consider the matter so as to quash the order, Annexure P/5 or in the alternative to award some lessor punishment as provided under the Corporation Rules. On this point, reliance was placed on the judgments of Hon`ble Apex Court in **Diwan Singh vs. Life Insurance Corporation of India and others**, (2015) 2 Supreme Court Cases 341; **Chairman-Cum-Managing Director, Coal India Limited and another vs. Mukul Kumar Choudhuri and others**, (2009) 123 FLR 601 and judgment from Hon'ble Delhi High Court in **K.L. Bhasin vs. Punjab National Bank and another**, W.P.(C) No.7487 of 2000 decided on

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23.03.2017.

5. While arguing on this point, learned counsel for the respondents contended that the petitioner was facing serious allegations of mis-conduct as he had pocketed the premium amount collected by him from the insured-persons and had not deposited the same with the respondent-Corporation. The petitioner used to issue cover note to the insured persons and pocketed the premium amount collected from the first insured and thereby caused loss to the respondent-Corporation. The matter was investigated by the Vigilance Officer of the respondent-Corporation and he had admitted his conduct as is evident from the enquiry report. Otherwise, the enquiry report is based on evidence. The matter was duly considered by the Disciplinary Authority and order of punishment was passed. Thereafter, the matter was considered by the Appellate Authority and the appeal was dismissed. The conduct of the petitioner does not deserve any leniency in the matter. On this point, learned counsel for the respondents placed reliance upon the judgment of Hon`ble Supreme Court in **State of Meghalaya and others vs. Mecken Singh N. Marak**, 2008 (4) RSJ, 593; **Divisional Controller, N.E.K.R.T.C. vs. H. Amaresh**, (2006) 6 Supreme Court Cases 187; **Divisional Controller, KSRTC(NWKRTC) vs. A.T. Mane**, (2005) 3 Supreme Court Cases 254; and **Indian Oil Corporation Ltd. and another vs. Ashok Kumar Arora**, (1997) 3 Supreme Court Cases 72.

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record and the judgments referred to

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and relied upon by the parties, this Court is of the considered view that the allegation against the petitioner, on the basis of charge sheet, was that he had mis-appropriated the amount belonging to the respondent-Corporation as he used to issue cover note to the insured persons and used to mis-appropriate the premium amount and that fact was admitted by him during the investigation proceedings. The petitioner herein had already put in more than 20 years of service, which is not a disputed fact. However, the allegations involving mis-conduct and causing financial loss to the respondent-Corporation were duly inquired into by the Enquiry Officer and on the basis of the enquiry report, the Punishing Authority had passed the punishment order (Annexure P/5) of removal him from service and the Appellate Authority rejected his appeal.

7. As per judgments relied upon by learned counsel for the petitioner, though in such like matters, the Court can interfere in the matter of awarding of punishment, yet that power cannot and should not be exercised if it is not a case of gross injustice. In **Diwan Singh's case (supra)**, the concerned employee had committed offence of temporary embezzlement of Rs.533/- for the period from 13.8.1990 to 27.11.1990. On facts, the present case is clearly distinguishable as the petitioner herein has mis-appropriated the amount and did not deposit the same with the respondent-Corporation.

8. Similarly, in **Mukul Kumar Choudhuri's case (supra)**, dismissal order was passed and the allegations were absence from duty for some period and even that charge was admitted by the workman, but in

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this case, the petitioner had mis-appropriated the amount of the respondent-Corporation and caused financial loss to it.

9. Identical are the facts of **K.L. Bhasin's case (supra)**, where there were certain procedural lapses and the order of dismissal was passed.

10. However, in identical matter, Hon`ble Apex Court in **Mecken Singh N. Marak's case (supra)**, observed that if during the departmental proceedings, it is found that there were serious allegations of mis-conduct and those findings have been recorded in the departmental proceedings, the said findings of fact are not liable to be interfered in appeal and the Courts are not to re-appreciate the evidence adduced during the departmental enquiry.

11. Similarly, in **H. Amaresh's case (supra)**, Hon`ble Apex Court was of the view that if an employee was facing allegations of mis-conduct thereby resulting in financial loss and the said charges are proved in the domestic enquiry, the punishment of dismissal from service awarded by the Disciplinary Authority does not call for any interference by Labour Court or the High Court. Hon`ble Apex Court in Para No. 18 of the said judgment, held as under:-

“18. In the instant case, the misappropriation of the funds by the delinquent employee was only Rs.360.95. This Court has considered the punishment that may be awarded to the delinquent employees who misappropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot be a factor

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which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment.”

12. Identical view as also taken by Hon`ble Apex Court in **A.T. Mane's case (supra)**.

13. In view of the above judgments rendered by Hon`ble Apex Court and the facts of the present case that the petitioner herein was facing allegations of mis-conduct and mis-appropriation of funds of the respondent-Corporation and the same having been proved in the departmental proceedings, there is no scope of interference by this Court in exercise of writ jurisdiction and to set-aside the impugned orders passed by the Disciplinary Authority and the Appellate Authority. The present writ petition is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 15 , 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes