*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: February 01, 2018

\+   W.P.(C) 11323/2015

VIJAY KUMAR SHARMA ..... Petitioner

Through: Mr. V. K. Garg, Senior Advocate with Mr. Ankur Chhibber, Ms. Noopur Dubey & Ms. Shurti Munjal, Advs.

Versus

UNITED INDIA INSURANCE COMPANY LTD. & ORS. ..... Respondents

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Dinesh Mathur, Mr. R. S. Mathur, Ms. Aparna Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
(ORAL)

1. Petitioner was Deputy Manager in Regional Office of respondent-Insurance Company in Bhopal *(Madhya Pradesh),* when he was departmentally proceeded against on the charge of wilful and gross negligence in disbursing the accident claims thereby causing financial loss of ₹56,061/-, ₹46,067/-, ₹51,500/-, ₹62,450/- and ₹85,419/- respectively. Petitioner was also charged for wilfully approving inadmissible marine claim in a grossly negligent manner thereby causing financial loss of ₹4,27,612/-. The Inquiry Officer in his Report of 12th May, 2010 has held that the aforesaid charges stand duly proved against

petitioner and the Disciplinary Authority vide impugned order of 13th May, 2011 *(Annexure-13)* has imposed penalty of *"removal from service"* upon petitioner, which was unsuccessfully challenged in appeal. The Appellate Authority in the order of 5th January, 2012 *(Annexure-15)* concurs with the Disciplinary Authority and upholds the penalty imposed upon petitioner. Petitioner had made a Representation *(Annexure-18)* and the fact of making such a Representation is not controverted in the counter affidavit filed by respondent-Insurance Company.

2. Impugned order of 5th January, 2012 of the Appellate Authority upholds penalty of *removal from service* inflicted in pursuance of an *ex parte* inquiry holding petitioner guilty of lack of absolute integrity, lack of devotion to duty, dishonestly and fraudulently performing his duties and also gross negligence in performing duties.

3. At the outset, it was submitted on behalf of petitioner that though petitioner was tried on the charge of wilful and gross negligence, but has been indicted for act of grave misconduct i.e. for approval and payment of fraudulent motor claims, causing financial loss to the company, irregularities in settlement of marine claim and issuing the endorsement after the loss have been established in the inquiry. So, it is submitted that the penalty imposed is grossly unjust and not called for.

4. Learned senior counsel for petitioner submits that petitioner has unblemished service record and confines this petition to the proportionality of the penalty imposed. It is submitted that petitioner is having very good grades in respect of his performance of the official duties. It is submitted that even if case set up against petitioner is taken up as it is, still it would be a case of negligence and so the penalty

imposed deserves to be suitably modified. It is urged that instead of remanding the matter back on the proportionality of the punishment, this court ought to modify the penalty imposed to shorten the litigation as these proceedings have been pending for last more than one decade and petitioner is left with three years' service only. Reliance has been placed on Supreme Court's decisions in *Management of Bharat Heavy Electricals Limited Vs. M. Mani* (2018) 1 SCC 285 and *Girish Bhushan Goyal Vs. BHEL & Anr.* (2014) 1 SCC 82 to submit that where the punishment inflicted is exorbitant and disproportionate to the gravity of misconduct, then it needs to be suitably modified. It is submitted that in *Girish Bhushan Goyal (supra),* for the misconduct of causing loss of ₹25 lacs, penalty of dismissal was substituted with penalty of deduction of increment for one year.

5. Learned senior counsel for respondent-Insurance Company supports impugned orders and submits that considering the gravity of the charges, penalty imposed is adequate and so, this petition ought to be dismissed as respondent-Insurance Company is dealing with the financial claims and financial probity cannot be compromised. It is pointed out by learned senior counsel for respondent- Insurance Company that the accident claims were cleared by petitioner without receiving of estimate and without there being any intimation of date of accident, labour charges were grossly inflated and bills regarding the repair of vehicles were from non-existing shops. So, it is submitted that the gravity of the charges against petitioner does not call for any modification of the penalty imposed. To submit so, reliance is placed on Supreme Court's decision in *Mihir Kumar Hazara Choudhary Vs. Life Insurance Corporation &*

Anr. (2017) 9 SCC 404, while pointing out that penalty of dismissal was maintained as there was bungling of money.

6. It is pointed out by respondents' counsel that Supreme Court in *Mihir Kumar Hazara Choudhu (supra)* has ruled that standard of honesty and integrity in discharge of duties is higher when it comes to financial transactions. Reliance is also placed upon Supreme Court's decision in *Uttar Pradesh State Road Transport Corporation vs. Pradeep Kumar* (2016) 15 SCC 122 to submit that when the misconduct relates to financial transactions then the penalty of dismissal is not required to be lightly substituted. Thus, it is submitted that the penalty imposed upon petitioner is just and proper and so, this petition deserves dismissal.

7. In rebuttal, learned senior counsel for petitioner submits that petitioner cannot be singled out for inflicting harsh penalty, as petitioner had approved disbursal of accident claims only after it was duly processed by different levels and the officer, below the rank of petitioner, was awarded lighter punishment of stoppage of increment, which has been set aside in appeal.

8. Learned senior counsel for respondents disputes the above assertion and submits that the penalty imposed upon the other officials/ officers, who were party to disbursal of accident claims in question, has been maintained in appeal.

9. Be that as it may. After having heard both the sides and on perusal of material on record and the decisions cited, I find that petitioner cannot be differently treated than the officers/officials who were instrumental in disbursal of accident claims in question. Fundamental flaw in the case set up against petitioner, is that he was tried on the charge of wilful and gross

negligence, but has been indicted for grave acts of misconduct i.e., approval and payment of fraudulent motor claims causing financial loss to company, irregularities in settlement of marine claim and issuing endorsements after the loss having been established in the inquiry. So, the grave penalty of *removal from service* deserves to be modified to bring petitioner at par with other officers/ officials who were involved in disbursal of accident claims in question.

10. Considering the gravity of financial loss and the role played by petitioner, I find that the penalty imposed upon petitioner is grossly disproportionate. The disparity in awarding penalty shocks the conscience of this Court. In the facts and circumstances of this case, the penalty order is quashed with direction to the disciplinary authority of respondent- Insurance Company to inflict penalty upon petitioner at par with the penalty inflicted on other officers/ officials, who were party to disbursal of accident claims in question. Let it be so done within a period of four weeks.

11. With aforesaid directions, this petition is disposed of.

SUNIL GAUR
(JUDGE)

FEBRUARY 01, 2018
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