IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10668 of 2016

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Sri Chandra Mohan Ojha, son of Shri Baikunth Ojha, resident of village- Gundi, P.S.- Barahara, District- Bhojpur.

... ... Petitioner/s

Versus

1. The Life Insurance Corporation of India through its Chairman, having its office at Bombay.
2. The Senior Divisional Manager, Divisional Office, Fraser Road, Patna.
3. The Branch Manager, L.I.C. of India, Branch Office, Aurangabad.
4. Shri Anirudh Kumar, Administrative Officer, or, Enquiry Officer, L.I.C. of India, Divisional Office, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Awadhesh Kumar Mishra, Advocate
Mrs. Sandhya Sharma, Advocate
Mrs. Rita Rai, Advocate
Mr. Ajay Kumar, Advocate

For the Respondent/s : Mr. Nilanjan Chatterjee, Advocate
Mr. Sahil Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 19-09-2019

By an order dated 27.7.2015 passed by the Senior Divisional Manager (Disciplinary Authority), Life Insurance Corporation of India, Divisional Office, Frazer Road, Patna, punishment of dismissal from service has been imposed on the petitioner, who was working as an Assistant under the said office. His appeal against the said order has been rejected by the Zonal Manager of the Corporation by an order dated 26.02.2016. These two orders have been put to challenge in the present writ application.

2. This to be noted that punishment of dismissal from service was imposed on the petitioner earlier, by the Disciplinary Authority, by an order dated 06.01.1994 which he had challenged by filing a writ application before this Court giving rise to CWJC No. 6220 of 1999. The order of dismissal dated 06.01.1994 was interfered with by this Court by Judgment and order dated 20.05.2015 after having noticed that the petitioner was not given the due opportunity of dealing with the report of the Inquiry Officer, before the impugned order of the Disciplinary Authority dated 06.01.1994 was passed. Paragraphs-7 and 8 of the said judgment and order dated 20.05.2015 read thus;

> "7. In such view of the matter, I find substance in submission made by the learned counsel appearing on behalf of the petitioner that the petitioner was not given due opportunity of dealing with the report of the Inquiry Officer, before the impugned order of the Disciplinary Authority dated 06.01.1994 was passed. I, therefore, hold that the order of dismissal dated 06.01.1994 impugned in the present writ application having been passed in violation of principles of natural justice cannot be sustained and is, accordingly, quashed. The order of the appellate authority dated 15.10.1999 also stands quashed.

> 8. The matter is remanded back to the Disciplinary Authority to proceed after the stage of the receipt of petitioner's reply to the second show cause notice and his comments upon the report of the Inquiry Officer. The Disciplinary Authority will be required to pass an order afresh within a period of two months from the date of receipt/production of a copy of this order. The Disciplinary Authority will be required to consider the petitioner's reply to the second show cause notice and pass reasoned and speaking order. The petitioner shall be at liberty to make such legal submission befoe the Disciplinary Authority as he may be advised by way of supplementary to his reply already filed in response to the second show cause notice, which shall also be considered by the Disciplinary Authority while passing the final order, if such supplementary is filed within two weeks from today, before the Disciplinary Authority"

3. It was in compliance of the aforesaid order of this Court that after having given the petitioner an opportunity to deal with the report of the Inquiry Officer, the impugned order dated 27.07.2015 has been passed by the Disciplinary Authority. The petitioner's appeal against the subsequent order of dismissal passed on 27.07.2015, has been dismissed by the impugned order dated 26.02.2016.

4. In order to appreciate the grounds taken by the petitioner to challenge the impugned orders, certain facts need to be taken note of which are as under:-

5. The petitioner, at the relevant point of time was holding the post of an Assistant and was working as temporary Cashier at Aurangabad Branch office of the Corporation. It was noticed by the authorities of the Corporation that 13 Premium receipts under 12 Policies covering total amount of Rs.10,886/- were issued on different dates, but the petitioner had not made any entry in the Cash Book or Premium Ledger sheet of the respective days. Further, 04 Premium receipts under 04 Policies as shown in the Premium Ledger covering a total amount of Rs.3953.20 were issued on different dates, but entry was not made in the relevant Cash Book of the respective days. Additionally a total sum of Rs.27,665.50 was collected by the petitioner on different dates as Premiums due against different Policies from Policy Holders, but fake cheques were issued by the petitioner against such cash collection and entries were passed by him in the cheque column of the Branch Premium Cash Book of respective days. Based on the information available to the Disciplinary Authority to the aforesaid effect, a Disciplinary Proceedings was initiated against the petitioner containing three charges of misappropriation of money

to the tune of Rs.10,886.30, 3,953.20 and 27,665.50 as noted above. Alleging that by the aforesaid acts, the petitioner had failed to maintain absolute integrity and devotion to duty and failed to serve the Corporation honestly and faithfully acting in a manner detrimental to the interest of the Corporation and prejudicial to good conduct and thereby acting in breach of Regulations 21 and 24 read with Regulations 39(1) of the Life Insurance Corporation of India (Staff) Regulations, 1960, the Departmental Proceedings was initiated and an Inquiry Officer and a Presenting Officer were appointed. The petitioner was asked to submit his written statement of defence within 15 days of the issuance of the Charge Memo. The Charge Memo was issued on 12.04.1991. This is to be noticed that the details of the transactions which became the basis for initiation of Departmental Enquiry on part of the Charge Memo as Annexures-A, B and C covering misappropriation of the amounts to the tune of Rs.10,886.30, 3,953.20 and 27,665.50. The petitioner submitted his written statement of defence. The Inquiry Officer submitted his report on 05.03.1993, recording his specific finding that the petitioner had acted in a manner prejudicial to the interest of the Corporation and he had put the Corporation to loss to the following extent:-

As per Annexure-I - 6964.70
As per Annexure-II - 3953.20

As per Annexure-III - 16776.80

27,694.70
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6. On the basis of analysis of the documentary evidence produced before him by the Presenting Officer, he reached a conclusion that the petitioner had committed a big fraud and for the said purpose, he had devised all sorts of evil, illegal and corrupt practices. The Inquiry Officer, however, found that in respect of the rest of the amount said to have been misappropriated, no definite proof could be made available during enquiry. The report of the Inquiry Officer is available on the record of the present writ application by way of Annexure. The report of the Inquiry Officer was sent to the petitioner along with a second show cause notice dated 17.12.1993 which he had received on 03.01.1994. He was asked to reply to the second show cause notice within one week by 10.01.1994. The order of Disciplinary Authority dismissing the petitioner was passed on 06.01.1994 without waiting for the petitioner’s reply to the second show cause notice and his comment from the report of the Inquiry Officer. In the aforesaid background considering the stand of the petitioner that he was not given reasonable opportunity to deal with the report of the Inquiry Officer, this Court had passed the judgment and order dated 20.05.2015 setting aside the order of dismissal

passed by the Disciplinary Authority. After the matter was remanded back, it is evident that the petitioner was given due opportunity of dealing with the report of the Inquiry Officer. The Disciplinary Authority after having considered the petitioner's comments on the report of the Inquiry Officer, has passed the impugned order dated 27.07.2015, recording his agreements with the findings recorded by the Inquiry Officer.

7. It transpires from the findings recorded by the Inquiry Officer, which have been accepted by the Disciplinary Authority, that it was accepted by the petitioner himself that cheques were drawn on his account, S.B. A/C. No. 761 maintained with State Bank of India, ADB Branch, Bhabhua, in the joint name of the petitioner and his wife. It was found that the petitioner had availed personal cheque, encashment of cheque Nos. 132371 and 132374. They thus, reached the conclusion that the cheques belonging to this series belonged to the petitioner's account and the cheques were tendered against the Policies, not in his name. They thus, concluded that he had definitely issued his own cheques for depositing Preimum against the Policies, against which he had collected Premium in cash. It was accordingly found by the Disciplinary Authority that the cheques were deposited

against Premium of other Policies which conclusively proved that he used them to pocket the cash received by him.

8. It is not the case of the petitioner that the findings arrived at by the Inquiry Officer and the Disciplinary Authority would not amount to constituting misconduct under the Regulations attracting disciplinary action.

9. Mr. Awdhesh Kumar Mishra, learned counsel appearing on behalf of the petitioner assailing the impugned order has submitted that non-examination of the customers who had suffered loss, were not examined and non-examination of crucial witnesses invalidates the entire Departmental Proceeding. According to him, in such circumstance, the charges cannot be said to have been proved. He has further submitted, referring to the concluding portion of the report of the Inquiry Officer, that he himself suggested for further departmental enquiry which is indicative of the fact that he was not definite about his own finding in respect of the charges against the petitioner. According to him, the petitioner had demanded certain documents to defend his case effectively which were not supplied. He has further argued that the order of the Disciplinary Authority imposing punishment or dismissal from service suffers from non-application of mind. He has contended that there is finding that the petitioner had forged

the signature of the AAO despite the specific denial by the petitioner in this regard. He has argued that if there was any dispute over the signature of AAO, an expert's opinion should have been sought before holding the petitioner guilty of such misconduct. He has relied on **Supreme Court's decision** in case of **Kuldeep Singh Vs. The Commissioner of Police and others (AIR 1999 SC 677)** to bolster his contention that no witness having been examined to prove the charge against the petitioner, the findings holding the petitioner guilty of the charge, are perverse and without any evidence. He has placed reliance on a decision of this Court dated 02.08.2018 passed in **CWJC No. 16091 of 2014 (Naushad Alam Vrs. Bihar State Minorities Finance Corporation Limited and Ors.)** to contend that non production of any evidence in course of Departmental Enquiry has resulted in gross failure to prove the charges against the petitioner.

10. Mr. Nilanjan Chatterjee, learned counsel appearing on behalf of the Respondent Corporation, on the other hand, has argued that there has been no violation of principle of natural justice nor any provision under the Regulation governing departmental action against the petitioner. He has submitted that reasonable opportunity was given to the petitioner and relevant documents/receipts were shown to him during the Departmental

Enquiry which he had inspected and referred to also in his comments on the report of the Inquiry Officer. He has relied on a decision of this Court reported in **2018 (3) PLJR 677 (Bal Mukund Prasad Singh Vs. The Punjab National Bank through its Chairman-cum-Managing Director & Ors.)** that an Officer of a financial institution is a repository of public trust and his action has to be essentially transparent and beyond shadow of doubt, impugned action taken against him, cannot be termed as unreasonable or arbitrary. He has submitted that the plea as taken on behalf of the petitioner that findings of the Inquiry Officer and the Disciplinary Authority are perverse, cannot be accepted for the reason that every finding is based on documentary evidence, which were duly placed before the Inquiry Officer during the departmental enquiry after giving the petitioner to an opportunity to deal with such evidence. He has submitted that the appellate authority has duly considered the petitioner’s appeal and the order passed by him, is speaking and reasoned.

11. Before I proceed to consider the submissions advanced on behalf of the petitioner as noted above, I must record that no plea has been taken on behalf of the petitioner of any breach of the Regulations governing the procedures for disciplinary action against the petitioner. Except for the plea that

certain documents were demanded by the petitioner were not supplied to him, there is no plea that there has been violation of any principle of natural justice. In response to a query made by this Court in course of hearing as to non-supply of which document had prejudiced the petitioner's case in the Disciplinary Proceedings, learned counsel for the petitioner has failed to refer to any such document, with reference to the pleadings on record. As a matter of fact, there is no pleading in the writ application that non-supply of any document during the Departmental Proceeding had prejudiced the petitioner's case in any manner whatsoever. The submission by Mr. Mishra, in that background, that non-supply of documents demanded by the petitioner vitiated the findings recorded by the Inquiry Officer and the Disciplinary Authority deserves to be rejected and is rejected accordingly. The plea that the order of the Disciplinary Authority does not show any application of mind is wholly misconceived. As can be easily seen from the final order passed by the Disciplinary Authority at Annexure-13 that the Disciplinary Authority has dealt with each and every plea taken by the petitioner in his response to the report of the Inquiry Officer. He has applied his own mind and has not mechanically agreed with the report of the Inquiry Officer, which is evincible from the order itself. The Appellate Authority has himself appreciated the evidence available on records of the departmental enquiry and has recorded his own findings about the petitioner's guilt.

12. Mr. Mishra has given his emphasis of non-examination of witnesses during the departmental enquiry so as to assail the impugned action. According to him, the LIC Policy Holders ought to have ben produced as witnesses to prove the allegation against the petitioner of misappropriation of the amount of Corporation.

13. I do not find any force in submission so advanced on behalf of the learned counsel for the petitioner after having perused the report of the Inquiry Officer and the order of the Disciplinary Authority. It can be seen from the report that the petitioner was shown copies of renewal Premium receipts along with letters of Policy Holders in respect of the Policies as per Annexure-8. He admitted his signature over the said receipt. The Inquiry Officer found that there was no entry made in the Policy Premium Cash Book nor in the Ledger. Dealing with the Annexure-B of the Charge-sheet, the petitioner was asked to confirm about the collection of premium. He had wanted to see the copies of Premium Ledger, which were made available to him. Out of the four Policies, he confirmed his signature on three of the

Policies and denied his signature in respect of the Policy at Sl. No. 2.

14. The findings recorded by the Inquiry Officer which have been accepted by the Disciplinary Authority, thus, cannot be said to be without any material/evidence. This has to be kept in mind that standard of proof in a Disciplinary Authority is preponderance of probabilities. Strict rules of evidence do not apply in a Departmental Proceedings. Further, this Court cannot re-appreciate the evidence which have been appreciated by the Disciplinary Authority for reaching a conclusion. Such interference with the findings by this Court in a Proceeding under Article 226 may be required if the findings are either based on no evidence or contrary to evidence. The Court may interfere if irrelevant materials have been taken into account and relevant ones have been left out from the consideration, in a quasi judicial proceeding. No such point is available in favour of the petitioner before this Court to interfere.

15. The Supreme Court's decision in the case of **Kuldeep Singh Vrs. Commissioner of Police (Supra)** will have no application in the present set of facts. Reliance has rightly been placed by the learned counsel for the Corporation on this Courts decision in case of **Bal Mukund Prasad Singh** (Supra) holding

that it is incumbent for an Officer/Employee working in a financial institution to maintain his actions beyond all shadow of doubt. This Court has taken note of Supreme Court's decisions in case of **Disciplinary Authority cum Regional Manager & Ors. Vrs. Nikunja Bihari Patnaik reported in (1996) 9 SCC Page 69 and State Bank of India Vrs. Bela Bagchi and Ors.** reported in **(2005) 7 SCC 435.** It is not a case where statement of any individual has been relied on to record finding of guilt against the petitioner rather such findings are based on the documentary evidence made available in the Departmental Enqiry. Non examination of witnesses, in my view, will not vitiate the findings of the Inquiry Officer and the Disciplinary Authority in the facts and circumstances of the present case. The charges against the petitioner have been held to have been proved on the basis of admitted documents which were considered relevant by the Inquiry Officer and the Disciplinary Authority.

16. So far as the appellate order dated 26.02.2016 passed by the Zonal Manager of the Corporation is concerned, the order is speaking and reasoned on the face of it and has taken note of the grounds taken by the petitioner.

17. Situated thus, I do not find any merit in this writ application, which is dismissed accordingly.

18. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04/10/2019
Transmission Date	N.A.