

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.No.1503 of 2018

1.The United India Insurance Co.Ltd.
No.24, Whites road, Chennai 14

2.The Deputy General Manager/ Disciplinary Authority,
Sillingi Building,
134, Greams Road, Chennai 6 ...Appellants/ Respondents

-Vs-

A.Ravindran ...Respondent / Petitioner

Appeal filed against the order passed by this Court dated 21.12.2017 in WP No.8662 of 2012.

WP No.8662 of 2012:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified to call for the records pertaining to the Proceedings HO:2008-46:24:2011 dated 1.2.2011 issued by the 2nd Respondent and to quash the same as illegal arbitrary and unconstitutional.

For appellant : Mrs.Chitra Sampath, Senior counsel
for Mr.T.S.Baskaran

For Respondent : Mr.K.V.Ananthakrishnan

J U D G M E N T

The respondent appeared before the Enquiry Officer and submitted that technically, he was guilty, but however, he should be permitted to explain the reasons for the alleged misconduct, as according to him, the amount was used for paying the rent due to the premises where the branch office was located and to meet other miscellaneous expenses. The Enquiry Officer, while accepting the guilt, turned down his request on the ground that this is not the forum where the reasons for the misconduct

will be examined. The respondent was ultimately removed from service. The learned Single Judge taking into account the entire background facts, modified the punishment into one of compulsory retirement, resulting in filing this intra court appeal by the United India Insurance company Ltd.

2. We have heard the learned Senior Counsel for the appellant. We have also heard the learned counsel for the respondent.

3. The appellant who was working as Senior Assistant in United India Insurance Company Ltd., was transferred and posted at Kalpakkam. The posting was on 13 February 2002. He was the only staff posted at Kalpakkam. It was a one man branch.

4. The United India Insurance Company Ltd., initiated disciplinary proceedings against the respondent on the ground that the premium amount was not deposited within a reasonable period. There was no explanation given to the charge memo. The Insurance Company therefore appointed Enquiry Officer. Before the Enquiry Officer, the respondent appeared in person and fairly submitted that technically, it was correct to say that the amount was not deposited within a reasonable period. According to the respondent, there was a specific reason for the failure to deposit the amount, the reason being the non payment of the rent and the other miscellaneous expenses in connection with the administration and the payment of the same by the respondent. However, he was not permitted by the Enquiry Officer to submit his explanation for the alleged misconduct.

5. The Daily Order Sheet maintained by the Enquiry Officer clearly indicates that to the question as to whether you admit the charges, the respondent replied to the effect that he is pleading guilty and that he should be permitted to explain the reasons for the delay. The answer given by the Enquiry Officer is recorded as follows:-

Enquiry Officer : This is not the forum where the reasons for the misconduct will be examined. Let the Presenting Officer air his views.

6. The Enquiry Officer closed the enquiry and submitted his report to the disciplinary proceedings. The report was accepted and the same resulted in imposing the punishment of removal from service.

7. We have perused the enquiry report dated 17 September 2009. The Enquiry officer has given a finding that the respondent had deposited the amount belatedly, which would prove his admission of the guilt. The Enquiry Officer further recorded

that the respondent in categorical terms, admitted the guilt. There was no enquiry conducted by the Enquiry Officer in connection with the charges thereafter. In short, the plea of guilt was taken as the basis to arrive at a finding that the charges were proved. However, the fact remains that the respondent was not given an opportunity to submit his explanation as to why the amount was not deposited within a reasonable period.

8. The order passed by the Disciplinary Authority was confirmed by the Appellate Authority.

9. There is no discussion either in the order passed by the Disciplinary Authority or the Appellate Authority with regard to the explanation offered by the respondent that it was only on account of the payment of rent, and other incidental expenses, the premium amount could not be deposited.

10. The Enquiry Officer proceeded on the basis of the explanation made by the respondent that he is pleading guilty. However, he was not permitted to give further explanation. In case the Enquiry Officer was of the view that even after pleading guilty, enquiry should be conducted, no interference is called for. However, in the subject case, while accepting the guilt, the Enquiry Officer turned down the request of the respondent to explain the reasons for the alleged misconduct.

11. The learned Single Judge found that there was no previous misconduct. The learned Single Judge therefore modified the punishment into one of compulsory retirement.

12. We are aware that in case of a defective enquiry, the proper course would be to set aside the order and remand the matter to the Enquiry Officer for fresh consideration or to the Disciplinary Authority to pass a fresh order. However, in the subject case, the misconduct relates to the year 2008. The charge memo was issued as early as on 25 November 2008. The major penalty of removal from service was imposed on the respondent by order dated 8 April 2010. The Appellate Authority dismissed the appeal by order dated 1 February 2011. There is no question of conducting a fresh enquiry by giving opportunity to the respondent to submit his explanation at this point of time. The respondent attained the age of superannuation long back. It would not be possible for him to defend the proceedings also at this point of time. We are therefore of the view that interference is not called for in the order passed by the learned Single Judge, converting the punishment into one of compulsory retirement.

13. For the reasons aforesaid, we dismiss the intra court appeal. No costs. Consequently, C.M.P.No.11915 of 2018 is also dismissed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Deputy General Manager/ Disciplinary Authority,
Sillingi Building, 134, Greams Road, Chennai 6

2.The United India Insurance Co.Ltd.
No.24, Whites road, Chennai 14

+1cc to Mr.K.V.Ananthakrushnan, Advocate, SR.No.53841

+2cc to Mr.T.S.Baskaran, Advocate, SR.No.53662

W.A.No.1503 of 2018

Kak(20/08/2019)