IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1.) CWP-20151-2014 (O&M)
Date of Decision:-09.01.2019.

J.S. Bhola .....Petitioner

Versus

Life Insurance Corporation of India and others
......Respondents

(2.)
CWP-832-2014 (O&M)
Date of Decision:-09.01.2019.

Jai Pal Ganghas .....Petitioner

Versus

Life Insurance Corporation of India and others
......Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

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Present: Mr. Namit Kumar, Advocate for the petitioner in CWP-20151-2014.
Mr. Pritam Saini, Advocate for the petitioner in CWP-832-2014

Mr. Prateek Mahajan, Advocate for the respondents.

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ARUN MONGA, J. (Oral)

1.) Vide this common order/judgment, two connected writ petitions are being disposed of, as both are filed on common facts seeking similar relief. The petitioners are aggrieved against imposition of penalty of "Censure" by the appellate authority constituted by respondent/LIC. Originally, their disciplinary authority had imposed penalty of "Reduction in Basic Pay by one stage permanently in the time scale applicable" but the appellate authority modified/reduced it to "Censure".

2.) For convenience, first the CWP No.20151 of 2014.

3.) Succinctly, the facts are that at the relevant time, petitioner was working as Higher Grade Assistant in Branch Office of the LIC at Hisar. He was reporting to one Mr. S.K. Lohan, an Administrative Officer at the branch. The petitioner was charge-sheeted on 09.12.2010, *inter alia,* on the allegations, that while preparing/checking various claim payment vouchers, qua the policies which had matured and had been settled, he did not use due prudence and caution in processing and making the payments. It was alleged that the said payments were made without verifying the intimation register, paid register and AFM List for the month in which maturity was actually due, which resulted in fraudulent payments, causing heavy financial loss to the Corporation.

4.) The case of the petitioner is, that the fraudulent transactions attributed to him were the handiwork of his Administrative Officer, who was HOD (Claims) at the relevant time. It is also the case of the petitioner that the said Administrative Officer (Sh. S.K. Lohan) established unauthorized access to the computer system, which resulted in the fraudulent transactions, including his signing the claim vouchers, as also the cheques against the policies which had already matured and had been settled.

5.) The petitioner states that Inquiry Officer, vide his report dated 22.06.2011, has wrongly held that the charges against the petitioner had been proved. Based thereon, the disciplinary authority had issued a show cause notice. The same resulted in the final impugned order dated 14.10.2011 (Annexure P-7) passed by the disciplinary authority imposing a penalty of "Reduction in Basic Pay by One stage permanently in the time scale applicable to his cadre". On petitioner's appeal, it was modified by the

Appellate Authority vide impugned order dated 31.03.2012 (Annexure P-9) to that of censure. Present petition has been filed impugning both of the said orders.

6.) The petitioner states that an inquiry against his Administrative Officer, Sh. S.K. Lohan was also conducted by LIC with respect to the fraudulent transactions. Therein, a confessional statement dated 25.01.2011 signed by Sh. S.K. Lohan was adduced in evidence and the same was accepted. The said confession is extracted hereinbelow:-

> *"I, S.K. Lohan, was previously posted as Administrative Officer in LIC of India, Branch Officer Hisar-I and the LIC had got registered a case about the fraud that took place at BO Hisar-I. The CBI had investigated the case and I wish to submit that my relatives had derived undue gain as a result of the fraud for which I had played the role. None of the staff member had played any role. I had managed the fraud through computer system which could not be detected by any member of the staff. I had not taken in confidence the staff member. I further declare that entire staff was innocent in this matter.*
>
> *Sd/-*
> *(Suresh Kumar Lohan)*
> *25.1.2011"*

7.) Mr. Namit Kumar, Advocate, the learned counsel for petitioner contends that, in fact, Sh. S.K. Lohan was involved in a much bigger scam. In as much as, about ₹ 1.35 crores was fraudulently siphoned away into various bank accounts, by manipulating/fudging the computer system fraudulently. The said fraud could not be detected by any member of the LIC staff while remitting the payments. He further contends that on enquiry, it was found that none of the staff members of LIC had played any collusive role with the said Sh. S.K. Lohan. It was S.K. Lohan who had managed the entire fraud with his sole efforts through computer system. He vociforously contends that the petitioner has been made a scapegoat in the disciplinary proceedings, ostensibly on the ground that in the payment vouchers prepared fraudulently by S.K. Lohan, salary roll (SR) number of the petitioner was mentioned. He contends that neither the petitioner has signed anywhere, nor his signatures are there on the payment vouchers, except that his SR number has been fraudulently mentioned in the relevant column. He contends that once the computer system is stealthily accessible then its very easy to note down the secret SR number of any employee.

8.) Per contra, learned counsel for the respondents as a preliminary objection strongly emphasized on the default of the petitioner in not having preferred a memorial as per clause 49 of LIC of India (Staff) Regulations, 1916 which envisages as below:-

> ***"Memorial:***
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> *49. An employee whose appeal under these Regulations has been rejected by the appellate authority subordinate to the Chairman, or in whose case such appellate authority has enhanced the penalty either on appeal under Regulation 40 or on review under Regulation 48(2) may address a memorial to the Chairman in respect of that matter within a period of 6 months from the date of appellant received a copy of the order of such appellate authority."*

9.) Placing reliance on the above clause 49, learned counsel for the respondents states that the present writ petition has been filed after a lapse of 2 ½ years. For the memorial, petitioner had six months to approach the Chairman of LIC. He contends that having once accepted the order passed by the Appellate Authority whereby he was censured, the petitioner cannot reopen the case at a belated stage. The petition is, therefore, liable to be dismissed on the ground of delay and acquiescence.

10.) On merits, strong vehemence has been placed by Mr. Prateek Mahajan, Advocate, the learned counsel for the LIC, on the finding of the Inquiry Officer, wherein, the petitioner/charge-sheeted employee (CSE), admitted his delinquency in the following terms:-

> *"The CSE vide his statement page-3 of hearing dated 10.05.2011 and page-6 of the said hearing 10.05.2011 admits that the alleged cheques appear to have signed by him after verifying the computer record and original documents of the records Again on page-6 of the said hearing of 10.05.2011 in reply to a question, the CSE confirms that when a cheque is presented for signatures as authorized signatory, in addition to ensure that the voucher is duly passed, one has to verify the supporting documents also."*

11.) Learned counsel for the respondents-LIC contends that there is no irregularity, inasmuch as, petitioner having once admitted his fault cannot resile from the same. The Inquiry Officer had, therefore, rightly indicted the petitioner which led to the passing of the order dated 31.03.2012 (Annexure P-9). Learned counsel for the respondents further points out that though the order of the disciplinary authority was fully justified, however, the Appellate Authority while modifying the order of the disciplinary authority has awarded to the petitioner the lower penalty of simple censure. The petitioner ought to have been satisfied with the leniency shown by the Appellate Authority. He further points out that the Appellate Authority even though had merely censured the petitioner but rightly observed as below:-

> *".......it is to be stated that the guilt attributable to some other person in itself does not prove that CSE is absolved of his responsibilities when it comes to exercising due prudence and caution in processing and making payments. It is a matter of record that the appellant had signed the cheques, as enumerated in the charges levelled against him, without supporting documents. Moreover, the appellant has admitted to signing the cheques, during the disciplinary proceedings as well as in the aforesaid contention. Also it is a matter of record that the voucher no.1976 on the basis of which cheque no.775616 has been signed by him, was also duly checked by him.*
>
> *XXXX----XXXXX-----XXXXXX*
>
> *As such it is proved that his negligence had facilitated the fraud and hence, even though he had not benefitted, he can not be absolved of the misconduct. Further every case has its own merits and the decision is taken by the respective disciplinary authority while independently applying his mind on facts and circumstances of the case. As such the contentions of the appellant are devoid of any merit."*

12.) I have gone through the pleadings of the parties and the record relied by them. Having heard the rival contentions, I find that the preliminary objection to the extent that the petitioner did not file any memorial before the Chairman is devoid of any merit. I am also of the opinion that the impugned order dated 14.10.2011 which merged into order dated 31.03.2012 (Annexure P-7), whereby, the punishment of "Censure" has been imposed on the petitioner, does not stand the judicial scrutiny and is not sustainable.

13.) Learned counsel for the petitioner rightly contends that the clause 49 *ibid* is simply directory in nature and not mandatory and, therefore, the non-filing of the memorial before the Chairman of LIC cannot debar/non-suit the petitioner from seeking remedy under Article 226 of the Constitution of India. A careful perusal of clause 49 *ibid,* would reflect that same is more in the nature of revision and is merely directory. It is just an option exercisable at the choice of an employee, having once exhausted the appellate remedy, under the service rules of the LIC.

14.) A penalty of censure *per se* is not of such a nature which would in normal course adversely impact the future service prospects of the petitioner. However, the petitioner asserts that, while considering the future promotion prospects of a co-employee Mr. Jai Pal Ganghas, who was also censured for the same allegations arising out of the same fraudulent transaction, LIC had viewed the "censure" adversorially qua him. LIC though found the said other employee suitable for promotion but did not actually promote him. Said Jai Pal Ganghas has approached this Court and filed a petition bearing CWP832-2014 which is sub judice. Learned counsel for the petitioner contends that when the petitioner discovered that similarly situated person who was censured had approached this Court, he too thought it proper to pursue his remedy for setting aside the censure order passed by the Appellate Authority. Explanation of the petitioner in filing the present petition after about 2 ½ years is fair and reasonable and, therefore, I hold that there is no unreasonable delay in filing the petition before this Court.

15.) On merits, conceded position is that in the inquiry conducted by LIC, to unearth the collusion of its staff members in the scam, perpetrated by the Administrative Officer (S.K. Lohan to whom the petitioner was reporting), no role has been attributed to the petitioner. Not only that, the said S.K. Lohan, in no uncertain terms, admitted that none of the staff members had played any role. He confessed that the entire fraud was committed by him alone through computer system and the same could not be detected by any of the staff members. It is also the admitted position of respondent LIC that the petitioner did not make any pecuniary gain, owing to the delinquency attributed to him. What weighed in the mind of the Appellate Authority was, the fact, that the petitioner had admitted in the disciplinary proceedings that he had signed the cheques as authorized signatory towards illegal redemption of the policy, which had already been paid. It is well known that, in this digital age, once the computer, which one uses to verify and cross check is fudged/manipulated, then the cascading impact of it is enormous. A person, despite all the prudence at his command, is likely to be misled and commit mistakes.

16.) Another aspect of the matter is that the inability to detect the mischief by physical verification of vouchers before signing the cheques could also not have been taken as dereliction of duty by the petitioner. The vouchers had been duly passed by the competent authority i.e. HOD of Claims (S.K. Lohan). Similarly, the cheques had already been passed for payment and had been counter-signed by the HoD. The name of the payee in the cheque was the same as shown in the verified voucher and the amount of the cheque was also the same as shown in the voucher. The petitioner was justified in acting on the premise that the vouchers had been verified and there was no deficiency and, accordingly, put his signatures on the cheques.

17.) The Appellate Authority overlooked the fact that once the computer record had been fudged, then the verification thereof, which the petitioner was supposed to carry out being the authorized signatory would also be based on the fudged computer record leading naturally to wrong conclusion. I am in agreement with the contention of the learned counsel for the petitioner that once the actual delinquent employee i.e. S.K. Lohan had made a candid confession that he had manipulated the computer record and had used the salary roll number of the petitioner on the vouchers for illegal redemption of the policy, then the petitioner could not have been made a scapegoat in the disciplinary proceedings, particularly, when the scam went undetected by the entire staff of the LIC.

18.) The CBI which was assigned the task of investigation into the scam committed by S.K. Lohan has also not found the petitioner negligent or in collusion. In fact, none of the employees of LIC other than S.K. Lohan has been made accused in the investigation proceedings of the C.B.I.

19.) A suit for recovery of Rs.1,35,52,801/- was also filed by the LIC against Sh. S.K. Lohan, AO, HOD (Claims) and his relatives. In said suit, it is the own contention of the LIC that defendant/S.K. Lohan misued his powers as Officer, made fraudulent payments in his own name and in the names of his relatives, by tampering with the Master Files and made multiple payments with regard to at least 46 cases.

20.) The said suit has been decreed by learned Civil Judge (Senior Division), Hisar vide judgment/decree dated 26.02.2015. Learned counsel for the petitioner relies on the findings given in the judgment therein, copy whereof is Annexure P/15 in the connected CWP No.832 of 2014. It is contended that a clear finding has been recorded to the effect that except

Administrative Officer S.K. Lohan, no fraud was committed by any other employee.

21.) Since the trial Court judgment is sub judice, I do not consider it appropriate, for purpose of present writ petition, to place any reliance on the findings recorded therein. However, the definite factual stand taken by LIC in the plaint filed before the trial Court is very significant qua both the petitioners in CWP No.20151 of 2014 and CWP No.832 of 2014. The stand of LIC in its plaint per para 18 of judgments reads as under:-

> *"18 xxxxxxxxxx. As per the case of the plaintiff, the payments were made in the name of defendant No.1 and in the name of other defendants who are never relatives/friends of the defendant No.1 and no payment is shown in the name of other officials of LIC, therefore, the action of plaintiff in seeking recovery of the money only from defendant No.1 and other beneficiaries, and not from the other officials of the LIC is quite justified."*

In para 22 of judgment (Annexure P/15 in CWP No.832 of 2014), it has been stated as under:-

> *"Now coming to the merits of the case, as per the case of plaintiff, the defendant No.1 while serving with them at Hisar had made fradulent payments in his name as well as in the name of defendants No.2 to 9. It has been categorically pleaded by the plaintiff that the defendant No.1 had tampered with the master file and had paid multiple payments as detailed in the list contained in para No.6 of the plaint. xxxxxxxxxxx.*

22.) Without relying on the findings of trial Court judgment, *ibid,* suffice to hold that LIC is bound by the stand taken by it in the plaint filed in the civil suit and the prayer made therein, viz. that the tampering of master files was done by S.K. Lohan. Prayer for recovery in the suit is also only against S.K. Lohan and his henchmen/beneficiaries and not against any LIC staff member on the petitioner. I, therefore, hold that the finding of guilty recorded against the petitioner by the Inquiry Officer is perverse and is unjustified.

23.) In view of my observations above, the order dated 14.10.2011 (Annexure P/7) passed by disciplinary authority as also censure order passed by the Appellate Authority dated 31.03.2012 (Annexure P-9) do not stand judicial scrutiny. The same are, therefore, set aside. The petitioner is at liberty to approach the respondents-Corporation to seek all consequential benefits that may arise out of the quashing of the order dated 14.10.2011 (Annexure P/7) as also order dated 31.03.2012 (Annexure P-9).

24.) CWP No.20151 of 2014 is allowed in above terms. No order as to costs.

CWP No.832 of 2014:-

25.) This case is on better footing than the one in aforesaid connected case. Herein, there is no admission of delinquency, as in the case of petitioner in the connected CWP-20151-2014, which has been reproduced in para 10 above. Besides this additional factor in favour of present petitioner Jai Pal Ganghas, the other facts and circumstances in present case are broadly similar to those in the connected CWP-20151-2014. The observations, reasons and conclusions recorded in that case apply to the present case also. In view thereof and the aforesaid additional factor in favour of the present petitioner, this petition is also allowed and the impugned orders dated 14.10.2011 (Annexure P/7) passed by the punishing authority as also the impugned appellate order dated 31.03.2012

(Annexure P/12) are set aside with liberty to the petitioner to approach the respondents for all consequential benefits.

(ARUN MONGA)
JUDGE

January 09, 2019.
sandeep

Whether speaking/reasoned:- Yes / No
Whether Reportable:- Yes / No.