

**C.M. NO.2746-C OF 2018 &
R.S.A. NO.1105 OF 2018**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**C.M. NO.2746-C OF 2018 &
R.S.A. NO.1105 OF 2018**

DATE OF DECISION: NOVEMBER 06, 2019

National Insurance Company Ltd., Chandigarh

.....Appellant

VERSUS

Dalip Kumar Talwar

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. V. Ramswaroop, advocate,
for the appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

C.M. No.2746 C of 2018

Prayer in this application is for condonation of delay of 141 days in refiling the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the Clerk of the counsel, the application is allowed and delay of 141 days in refiling the appeal stands condoned.

R.S.A. No.1105 of 2018

Challenge in this appeal is to the judgment and decree dated 21.12.2015 passed by the Judicial Magistrate Ist Class, Jalandhar, whereby the suit for declaration preferred by the respondent-plaintiff, who was working as a Deputy Manager, challenging the order dated 30.04.2013 passed by the officials of the appellant-Company imposing a punishment of

reduction of basic pay of the plaintiff by three stages, has been decreed on the ground that the enquiry proceedings held against him were defective as the principles of natural justice have been violated because of non-supply of documents, which he had sought for and denying him the right of cross-examination of some of the witnesses and opportunity to defend himself has also not been given sufficiently and liberty was also granted to the appellant-defendants to hold a fresh enquiry against the respondent plaintiff, appeals against which preferred by the respondent-plaintiff as well as the appellant-defendants were heard together and both the appeals have been dismissed by the learned District Judge, Jalandhar, vide judgment dated 16.12.2016.

2. It is the contention of learned counsel for the appellant that the Courts below have failed to appreciate that various opportunities were given to the respondent-plaintiff to lead his evidence but he has failed to do so and in fact it has come on record in various interim orders, which have been passed by the Enquiry Officer, that efforts on the part of the respondent-plaintiff were for delaying the enquiry proceedings with an intention to avoid the order of punishment so that he may retire from service meanwhile. He also contends that the action on the part of the respondent-plaintiff was never bonafide and was motivated because of exterior consideration. Counsel further contends that the Courts below have not taken into consideration the evidence which has come on record in the enquiry proceedings. Counsel, thus, contends that the judgments and decree passed by the courts below cannot sustain and deserve to be set-aside as the proceedings held by the Enquiry Officer against the respondent-plaintiff are in consonance with the statutory rules governing the service.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgments and decree but do not find myself in agreement with him.

4. Learned courts below have threadbare taken into consideration the evidence, which has been led by the parties. Special reference is required to be made to the cross-examination of DW1 Satish Chander Goel, as has been reproduced in Para 10 of the judgment passed by the lower Appellate Court. Perusal of the said cross-examination would clearly indicate that out of the demanded 35 documents by the respondent-plaintiff, only five documents have been supplied to him, as is apparent from the note of the Investigating Officer. One of the witnesses in the enquiry proceedings, Ms.Gurminder Kaur, MW1, who has deposed on 21.08.2012 and thereafter her cross-examination was deferred at the request of respondent-plaintiff because of time being 05.30 P.M. and on the next date of hearing, the Enquiry Officer proceeded to close the cross-examination of MW1 without giving any reason, which is in total violation of the principles of natural justice, denying the respondent the right of cross-examination. Application for recalling of the said witness has also been rejected by the Enquiry Officer. Cross-examination of MW5 has also been closed by the Enquiry Officer by order. The representation/application, which has been submitted by the respondent-plaintiff to summon three defence witnesses, is admitted but the Enquiry Officer did not allow the summoning of three witnesses but only allowed one witness to be summoned, which is apparent from the enquiry proceedings and page number of the same has also been referred to. Admission has also been made by the said witness that before passing the order of punishment, no separate show cause notice was served

upon the respondent-plaintiff because of letter dated 07.01.2013. All these aspects, when looked into, clearly show violation of the principles of natural justice.

5. The findings, therefore, recorded by the Courts below on the basis of the evidence on record cannot be faulted with and interest of the appellant-defendants has also been protected by the courts below by giving liberty to them to proceed with the enquiry proceedings afresh.

6. In the impugned judgments concurrent findings have been returned by both the courts below, which being in accordance with the pleadings and the evidence brought on record, do not call for any interference by this Court, as there is no misreading or non-consideration of the material available on record nor is there any perversity or illegality in the same.

7. There being no substantial question of law involved in the present appeal, no interference by this Court is called for. The appeal, therefore, stands dismissed.

**November 06, 2019
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**(AUGUSTINE GEORGE MASIH)
JUDGE**

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