

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WP No. 3956 of 2006**

Order Reserved On : 19/09/2019

Order Passed On : 09/1/2020

1. Devandra Kumar Singh, (dead) through his legal representatives-
 - 1a. Shashi Prabha Singh, wife of late Shri Devendra Kumar Singh, aged about 41 years, resident of Sangam Chowk, Vijay Marg, in front of Central Bank, Ambikapur, District Sarguja (Chhattisgarh)
 - 1b. Snigdha Singh, daughter of late Shri Devendra Kumar Singh, aged about 24 years, resident of Sangam Chowk, Vijay Marg, in front of Central Bank, Ambikapur, District Sarguja (Chhattisgarh)
 - 1c. Devyanshu Singh, son of late Shri Devendra Kumar Singh, aged about 22 years, resident of Sangam Chowk, Vijay Marg, in front of Central Bank, Ambikapur, District Sarguja (Chhattisgarh)

---- Petitioner**Versus**

1. The Chairman cum Managing Director, United India Insurance Co. Ltd., Main Branch, 24 – Whites Road, Chennai – 600014
2. The Assistant General Manager/Appellate Authority, United India Insurance Co. Ltd., Main Branch, 24 – Whites Road, Chennai – 600014
3. The Disciplinary Authority, United India Insurance Co. Ltd., Regional Office, Z-7, Zone, M.P. Nagar, Bhopal (M.P.) 462011
4. The Branch Manager, United India Insurance Co. Ltd., Branch Office, Ambikapur (CG)

---- Respondent

For Petitioner : Shri Rajeev Shrivastava with Shri Sunil Verma, Adv.
For Respondents : Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. Challenge in this writ petition is to the order of removal from service passed by the Disciplinary Authority on 2.5.2003, the appellate order dated 19.7.2004 (Annexure-P/8) and the order passed by the Chairman cum Managing Director on 5.7.2005 (Annexure-P/1) dismissing the petitioner's memorial/representation, thereby affirming the order passed by the Disciplinary Authority and the appellate Authority.
2. The first order passed by the Disciplinary Authority has been filed by the respondents as Annexure-R/2.
3. At the relevant time i.e. during the year 1990-94, the petitioner was posted as Development Officer at the respondent United India Insurance Company's Branch Office at Ambikapur. The petitioner was served with a charge sheet dated 9.4.99 (Annexure-P/3) seeking written statement within 10 days. The following two charges were proposed against the petitioner :-

“**Article I :** SHRI D.K. Singh was working as Development Officer, Branch Office, Ambikapur during 1990-94. Whilst working as such, he aided and abetted the activities of Shri V.K. Shrivastava, the then B.M., BO, Ambikapur in issuing insurance policies in respect of 20 non-existing cattle-heads, financed by the District Co-operative Bank Ltd. Ambikapur on which policies fake claims were paid resulting in financial loss to the Company. He also caused the loan amounts disbursed by the

District Co-Operative Bank, Ambikapur in the name of fictitious persons to be ultimately credited to his bank account thus getting illegal financial gain to himself and others.

Article II : Whilst Shri D.K. Singh was working as above, a police case No.791/92 was registered against him along with others at police station Ambikapur under Sections 420, 467, 468, 471, 409 of IPC in connection with irregularities in financing and insurance of non-existing cattle involving Rs.90,000/- of the District Co-operative Bank, Ambikapur. Apprehending his arrest he falsely informed to the Honourable Court that he was suspended by the Company and not likely to escape, in his application for anticipatory bail. Based on such wrong averment of Shri D.K. Singh, the Honourable Sessions Judge, Ambikapur vide his order dt. 15.4.94 granted him anticipatory bail. Shri D.K. Singh was neither suspended by the Company nor any departmental enquiry was under progress at the material time against him as per records. Thus Shri D.K. Singh committed perjury by stating false information before the said Honourable Court regarding a matter germane to his employment with the Company, with an ulterior motive of obtaining anticipatory bail from the said Honourable Court.

By the above acts, Shri D.K. Singh failed to maintain absolute integrity, devotion on duty and acted in a manner unbecoming of a public servant, exhibited dishonesty, furnished false information regarding a matter germane to the employment and further acted negligently in a manner prejudicial to the interest of the Company within the meaning of Rule 3 (1)(i)(ii)(iii) read with 4(1), 4 (4), 4(5) and 4 (9) of General Insurance (Conduct, Discipline and Appeal) Rules, 1975.”

4. Along with the charge sheet, the petitioner was also served with
list of documents and list of witnesses. The petitioner filed his

reply and participated in the enquiry wherein the Management examined Shri K.S. Sharma, Shri L.P. Gupta and Shri Anoop Kumar Lal as Management Witnesses (MW). Report of one NP Jaiswal, Co-operative Development Officer, Ambikapur has also been produced to prove the charges against the petitioner. The petitioner filed affidavit of alleged cattle dealers as well as affidavit of Parsuram and Ram Thakur, however, the persons swearing affidavits have not been produced as witnesses. In its enquiry report dated 22.7.2002 (Annexure-P/5), the Enquiry Officer concluded that the petitioner not only abetted the Branch Manager in insuring 20 non existing cattle heads and getting the bogus finance through his account but also found that after the District Co-operative Bank gave loan to fictitious people, the amounts were eventually deposited in the account of the petitioner for which no plausible explanation was given by him. Thus, the petitioner was found guilty of obtaining illegal financial gain and causing loss to the Company. In respect of charge No.2 also, the enquiry officer held that the petitioner's Advocate was acting under his instructions, therefore, when he stated before the Court that the petitioner is suspended and sustained head injury in an accident at the time of hearing of anticipatory bail application, the same was done in order to secure bail and thus,

the charge No.2 is also proved.

5. It is argued by learned counsel for the petitioner that the main thrust of charge against the petitioner was in the nature of aiding and abetting the activities of Shri V.K. Shrivastava, the then Branch Manager, Branch Office, Ambikapur. Therefore, firstly joint enquiry should have been held against the petitioner and Shri V.K. Shrivastava, and secondly, the punishment awarded to Shri V.K. Shrivastava should also be imposed on the petitioner. Since Shri V.K. Shrivastava has been punished with stoppage of two increments, imposing penalty of removal from service upon the petitioner is illegal and arbitrary. It is also argued that punishment imposed on the petitioner is disproportionate considering the nature of charges.
6. Per contra, learned counsel for the respondent – Insurance Company would submit that the nature of charges against Shri V.K. Shrivastava and the petitioner was different inasmuch as loans disbursed to the fake persons were ultimately deposited in the petitioner's bank account and the same has been proved in course of enquiry. The petitioner was thus found recipient of illegal financial gain and causing loss to the Company. Learned counsel for the respondents would next contend that in the previous enquiry also, the petitioner was imposed punishment on

3.11.1998 inflicting penalty of deduction in basic pay by 3 steps on the time scale and also recovery of misappropriated amount of Rs.2,746/-. Therefore, the petitioner is habitual in causing misappropriation and obtaining illegal financial gain. Thus the penalty imposed upon him is not disproportionate.

7. Having heard learned counsel for the parties and on perusal of the record including the record of the enquiry proceeding, which was placed before the Court in course of hearing, the present appears to be a case where no interference is warranted for the following reasons :-

(i) Charge No.1 against the petitioner was in a sense bifurcated in 2 parts; the first part is for aiding and abetting the activities of Shri V.K. Shrivastava, the then Branch Manager whereas the second part was in relation to obtaining financial gain by depositing the amount of loan issued in the name of fictitious persons in the account belonging to the petitioner. Thus the beneficiary of the entire embezzled amount or the amount involved in the case was the petitioner. While the petitioner's contention that he could not have been imposed more graver punishment than what is imposed against Shri V.K. Shrivastava appears to be convincing in respect of first part of charge No.1. However, if the entire charge is read as a whole, the petitioner's role was more graver, as he

is the eventual beneficiary of the subject transaction.

(ii) It is also to be kept in mind that a separate departmental enquiry proceeding was pending against the petitioner wherein charge sheet was issued to him on 26.5.1997. The present charge sheet was issued to him on 9.4.99. In the first enquiry, penalty of reduction in basic pay by 3 steps was imposed against him on 3.11.1998 whereas the present enquiry was completed by passing the order of penalty on 2.5.2003. While it is true that his previous misconduct or past history of service cannot be a subject matter of discussion when the present charge sheet is being considered, but nothing prevents the Management to consider the entire facts and circumstances of the case in relation to a particular employee while imposing punishment. It cannot be said that when the petitioner was imposed penalty of removal from service, the Management was ignorant of his credentials. When senior officer of the rank of Development Officer of the Insurance Company is involved in committing financial irregularities back to back and in both the enquiries, he has been punished, the order of removal in the subsequent enquiry can never be said to be disproportionate to the nature of misconduct.

8. Coming back to the facts of the case, if the persons in whose favour loan was sanctioned were fictitious persons, it is strange as

to how the amounts disbursed to them were credited in the bank account of the petitioner. The petitioner was thus involved in tacit understanding or arrangement and appears to be kingpin of the entire show for the reason that eventual financial gain was garnered by him.

9. The petitioner's counsel has referred to the judgments in the matters of **Rajendra Yadav Vs. State of Madhya Pradesh and Others** {(2013) 3 SCC 73} and **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others** {(2013) 10 SCC 324} to buttress the plea of arbitrariness in imposing the measure of punishment against two similarly placed delinquents and the desirability of holding common proceeding. However, as discussed supra, the petitioner's act of misconduct was more graver than Shri V.K. Shrivastava, who was otherwise holding the post of Branch Manager and not that of Development Officer. Both the delinquents being belonging to different cadre, necessity of holding of joint enquiry or common enquiry does not appeal to the case.
10. In respect of desirability of common proceeding, clause 29 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 provides that where two or more employees are concerned in a case, the authority competent to impose a major penalty on all

such employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings and the specified authority may function as the competent authority for the purpose of such common proceedings.

11. It is thus apparent that clause 29 is only an enabling provision authorizing the Disciplinary Authority to direct a common proceeding, but it nowhere says that holding of common proceeding against two or more employees is mandatory. The petitioner having not objected to separate departmental proceeding at the inception and having acquiesced with the same, it is too late for him to challenge the entire enquiry on the ground that common enquiry should have been held. This ground of challenge is also negatived.
12. For the foregoing, the Writ Petition being bereft of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)