IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9031 OF 2013

Subhash s/o Budhaji Wagh,
Age-56 years, Occu-Service,
R/o V.W.S.Praghyapak Vasahat
Near Maleriya Office, Sakri Road,
Dhule, District-Dhule -- PETITIONER

VERSUS

The Disciplinary Authority,
i.e. Deputy General Manager,
The New India Assurance Co.Ltd.,
New India Assurance Building No.87,
M.G.Road, Fort, Mumbai 400 001. -- RESPONDENT

Mr.S.S.Jadhavar, Advocate for the petitioner.
Mr.S.G.Chapalgaonkar, Advocate for the respondent.

**(CORAM : DIPANKAR DATTA, CJ AND
RAVINDRA V. GHUGE, J.)**

DATE : JANUARY 21, 2021

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The petitioner, at the relevant time, was a Development Officer under The New India Assurance Company Limited (hereafter

the company, for short). He was proceeded against departmentally for alleged misconduct by issuance of a memorandum of charge sheet dated 22/07/2008. The charges levelled against the petitioner have been reproduced in the office order of the Disciplinary Authority dated 25/05/2010, reading as follows :-

> "*1. Mr.S.B.Wagh, Asstt. Manager (D) whilst servicing the Bancassurance business, at Dhule, deliberately with a malafide intention in blatant contraventions of the company's guildelines and with the contents of circular dated 15th November 2006 issued by the CMD of the company, diverted the premium from the bank codes to the agency code Number 42015 of his agent Mr.Sanjay Mangu Chaudhari thereby depriving the banks of their legitimate dues and concurrent wrongful gain of at least Rs.72294/- in the form of commission to the agent.*
>
> *2. Mr.S.B.Wagh by way of his wrongful actions created a cause of complaint and customer dissatisfaction and tarnished the image of the company as UBI Pimpalner branch vide their letter dated 15/05/2007 have already lodged a complaint to that effect.*
>
> *3. Mr.S.B.Wagh has claimed LTS reimbursement for Rs.37,420/- on 30-3-2007 in an fraudulent manner by submitting a fake/bogus Taxi bill numbering 176, dated 25/12/2006 of Rajni Tours and Travels for Rs.17,120/- and deceived the Company.*"

3. Although Mr.Jadhavar, learned advocate for the petitioner has

submitted before us today that the petitioner did not file any reply to the charge sheet dated 22/09/2008, we find an observation in the aforesaid order of the Disciplinary Authority dated 25/05/2010 that the petitioner did reply to the charge sheet and had denied the charges *"in toto"*.

4. An enquiry followed, wherein the petitioner participated. He was granted opportunity to cross examine the prosecution witnesses and also to lead evidence in defence.

5. Upon consideration of the materials on record, the Enquiry Officer held the petitioner guilty of all the 3 charges. The report of enquiry was furnished to the petitioner asking for his comments. Upon receipt of the comments of the petitioner, the Disciplinary Authority looked into the entire records and returned a finding that principles of natural justice were duly complied with in the enquiry, the petitioner had been given due opportunity to defend his case, and that the findings reached by the Enquiry Officer deserve to be concurred with and accepted. Despite the serious nature of the charges levelled, the Disciplinary Authority imposed upon the petitioner a penalty of reduction of basic salary by 3 stages

permanently under rule 23(f) of the New India Assurance Company Limited (Conduct, Discipline and Appeal) Rules, 2003 (hereafter “the Rules”, for short) and further directed recovery of wrongly diverted agency commission amount of Rs.72,294/- and LTS amount of Rs.37,420/- under rule 23(c) thereof from the petitioner.

6. The order of the Disciplinary Authority, imposing punishment, was carried in appeal by the petitioner before the General Manager of the Company. For the reasons recorded in the order dated 18/08/2011, the appeal was dismissed. In terms of the Rules, the petitioner pursued the remedy of a second appeal. Such appeal was considered by the Chairman-Cum-Managing Director of the company. By an order dated 09/06/2012, the second appellate Authority modified the order of the Disciplinary Authority and reduced the penalty to 'deduction in basic salary by 2 stages permanently', instead of 3 stages, as directed earlier.

7. In this writ petition dated 18/02/2013, the petitioner has questioned the legality and propriety of the orders passed by the second appellate Authority, the first appellate Authority as well as the Disciplinary Authority. There is, however, no formal challenge to

the enquiry report submitted by the Enquiry Officer.

8. We have heard Mr.Jadhavar in support of the writ petition.

9. According to Mr.Jadhavar, the enquiry conducted by the Company has been vitiated because the petitioner was not given copies of the documents on which the management sought to rely on, the findings of the Enquiry Officer are based on no evidence, and that the petitioner did not receive due, fair and adequate opportunity to defend himself in the enquiry.

10. The argument that the petitioner was prejudiced by reason of non-supply of the documents listed in Annexure “C” to the charge sheet, at first blush, would appear to be attractive if one looks at the communication dated 01/09/2008 of the Deputy General Manager of the company. The petitioner had asked for the listed documents to prepare his reply to the charge sheet, when such Deputy General Manager remarked that the documents may not be supplied at the stage of issuance of charge sheet because the Rules do not provide for the same; however, he hastened to add that the petitioner would have the opportunity to inspect the documents as a part of natural

justice in course of the enquiry proceeding. As has been noticed above, the petitioner had replied to the charge sheet and denied the charges *“in toto”*. At that stage, i.e., at the stage of reply, the petitioner did what was required of him to set the ball in motion. Once the charges were denied, the company too was left with no alternative but to proceed to have an enquiry conducted for unearthing the truth. Such enquiry was indeed conducted and from the materials on record, we do find that the documents on which the management relied were supplied to the petitioner and no grievance in this behalf was made. The contention raised is, thus, overruled.

11. The defence of the petitioner changed in the midst of the enquiry. In support of charge no.1, the Management sought to rely on a letter dated 15/11/2006 of the Chairman-cum-Managing Director. The specific defence raised by the petitioner was that he had never received such letter and, therefore, could not have been held responsible for acting in violation thereof. Before the Enquiry Officer, a management witness deposed of the said letter being marked to the petitioner. The petitioner, however, denied receipt. The Enquiry Officer proceeded to deal with the defence of the petitioner and observed that even if it were assumed that the

petitioner had not received such letter, nothing substantial turned on it. The Enquiry Officer proceeded to support such finding with reasons.

12. In the course of judicial review, we are not supposed to examine the sufficiency of the reasons assigned by the Enquiry Officer. We, therefore, find no reason to accept the contention of Mr.Jadhavar that the petitioner was prejudiced in his defence by reason of non-supply of the letter dated 15/09/2006 of the Chairman-cum-Managing Director. The finding that by reason of acts of omission/commission of the petitioner the bank suffered loss and the image of the company was tarnished, appears to be not without any evidence on record.

13. The third charge that was levelled against the petitioner was with regard to the production of bogus bills for obtaining LTS. Although learned advocates for the parties could not say what the abbreviation LTS stands for, we presume the same to be in the nature of Travel Allowance. We have looked into the evidence on record as well as the findings returned by the Enquiry Officer in this behalf. Although the petitioner intended to produce a witness to support his

defence case, he failed to do so. We are not concerned with the reasons as to why the petitioner so failed. It has not been demonstrated before us that in finding the petitioner guilty of Charge No.3, the Enquiry Officer proceeded against him in a manner prejudicial to his interest. The finding arrived at is therefore unexceptionable.

14. Having regard to the seriousness of the charges levelled against the petitioner and proved at the enquiry, we initially thought that the Disciplinary Authority had removed the petitioner from service; instead, the punishment imposed, though a major penalty in terms of the Rules, was in the nature of reduction in basic salary. In such circumstances, we were utterly surprised to hear the last contention raised by Mr.Jadhavar that the punishment imposed is quite harsh and disproportionate, and not commensurate with the charges.

15. Considering the facts and circumstances, we cannot resist the temptation of observing that the Disciplinary Authority of the petitioner was unusually generous and the petitioner must thank his fortune that he was not removed from service of the company. Not only that, the second appellate authority was more indulgent towards

the petitioner and reduced his pay by 2 stages permanently, instead of 3 as imposed by the Disciplinary Authority without, however, interfering with the recovery part.

16. We are surprised, not a little, that it is such show of indulgence that encourages employees like the petitioner to indulge in more wrong doing. We are informed by the learned Advocate for the company that for a subsequent misconduct committed by the petitioner, he has been dismissed from service and that such order of dismissal has been challenged in another writ petition before this Court and is pending.

17. Be that as it may, we are not concerned with the issues raised in the said pending writ petition. However, we record that the punishment imposed on the petitioner by the second appellate authority is indeed shocking in the sense that the petitioner was let off despite having indulged in misconduct of a serious nature. We are reminded of those line of cases where bus conductors having failed to account for 15 paise or other paltry amounts, were dismissed from service by Transport Corporations and such punishments were not disturbed even by the Supreme Court on the ground of breach of

public trust. The contention under consideration, we feel, has been urged to be rejected.

18. For the reasons as discussed above, we find absolutely no merit in this writ petition to interfere with the orders passed by the respective authorities of the company.

19. The writ petition stands dismissed. There shall be no order as to costs. Rule is discharged.

(RAVINDRA V. GHUGE, J.) **(CHIEF JUSTICE)**