* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 28th October, 2021**
Judgment pronounced on: 10th November, 2021

\+ W.P.(C) 6318/2013

DEVENDER MALHOTRA ..... Petitioner

Through: Mr.Ciccu Mukhopadhaya, Sr. Adv. with Mr.Gautam Khazanchi, Mr.Pradyuman Kaistha and Mr.Omar Ahmad, Advs.

versus

NATIONAL INSURANCE COMPANY LTD. & ORS. ..... Respondents

Through: Mr.Manoj Ranjan Sinha, Adv. for respondent Nos.-1 & 2.
Mr.Vivek Goyal, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

JUDGMENT

1. This petition has been preferred seeking the following reliefs: -

> "(i) Issue a writ of certiorari to quash the impugned inquiry report dated 15.1.2010 and order dated 28.4.2010, 8.9.2010 and 10.10.2012 to the extent whereby the punishment of removal has been reduced to re-employment of Shri D.K.Malhotra and placing him in the initial basic of the scale of Administrative Officer with immediate effect and the period of removal from the service to re-employment shall be treated as period not spent on duty.

(ii) Issue a writ of mandamus directing the respondents to treat the petitioner on continuous duty with no break in service with all consequential benefits."

2. The petitioner assails the enquiry report dated 15th January, 2010, the order of removal dated 28th April, 2010 passed by the Disciplinary Authority, the order of 08th September, 2010 passed by the Appellate Authority affirming the principal order of removal and the order dated 10th October, 2012 passed by the Managing Director of the respondent on a memorial petition submitted by the petitioner. The Managing Director in terms of the order dated 10th October 2012 has modified the penalty of removal and substituted it with that of re-employment. The Court deems it unnecessary to rule on the validity of the orders passed by the Disciplinary and Appellate Authorities since they stand merged in the order ultimately passed by the Managing Director except to the limited extent of evaluating whether they are perverse as urged by learned senior counsel appearing in support of the petition.

3. Before proceeding to notice the rival submissions, it would be apposite to notice the following essential facts: -

(a) The petitioner joined the National Insurance Company in September, 1985 as an Inspector. In course of time and in light of his work and performance, he was promoted to the post of Administrative Officer.

(b) The orders impugned in this writ petition have come to be passed pursuant to disciplinary proceedings initiated by the respondents under the provisions of the **General Insurance (Conduct Discipline and Appeal) Rules 1975**[1].

(c) The proceedings themselves commenced upon a charge sheet coming to be issued against the petitioner on 02nd January, 2007. Four charges came to be leveled against the petitioner. The first alleged that the petitioner was guilty of misappropriation in respect of three cover notes which had been issued in connection with car insurance policies. The other three charges alleged that the petitioner had been negligent in the discharge of his duties thus facilitating an agent namely Mr. Umesh Khanna in misappropriating cash premiums which were received.

(d) The inquiry proceedings were conducted in accordance with the provisions made in the 1975 Rules. While the respondents sought to prove and bring home the charges leveled by way of documentary and oral evidence which was introduced and led in these proceedings, the petitioner chose not to lead any evidence, oral or documentary in support of the defense that was proffered.

(e) The Inquiry Officer submitted his report on 15th January, 2010 holding that all four charges leveled against the petitioner stood established.

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[1] 1975 Rules

(f) Upon a copy of the report being forwarded to the petitioner by the Disciplinary Authority, a reply dated 20th February, 2010 was submitted by the petitioner.

(g) On a consideration of the said reply as well as the report submitted by the Inquiry Officer, the Disciplinary Authority concurred with the opinion as formed by the Inquiry Officer and proceeded to impose the penalty of removal from service. The decision of the Disciplinary Authority as noted above was affirmed in appeal.

(h) The aforementioned two orders were challenged by the petitioner before this Court by way of W.P.(C) 2597/2012. The Court on the aforesaid petition took notice of the fact that the petitioner had preferred a memorial against the order passed by the Disciplinary Authority in terms of the provisions made under Rule 40 of the 1975 Rules. In view thereof, the aforesaid writ petition was disposed of on 27th September, 2012 with a direction to the first respondent to dispose of the pending memorial in accordance with law.

(i) It is pursuant to the direction issued on that writ petition that the first respondent has passed the impugned order dated 10th October, 2012.

4. Appearing in support of the petition, Mr. Ciccu Mukhopadhaya, learned Senior Counsel submitted that the work, performance and conduct of the petitioner had always been appreciated as would be evident from the

certificates of appreciation which had been conferred by the respondents themselves from time to time. It was further highlighted that apart from the instances which were taken note of in the impugned charge sheet, no punishment or adverse remark came to be imposed or made against the petitioner from the time of his initial appointment in 1985. Mr. Mukhopadhaya, learned Senior Counsel has further submitted that it was the petitioner himself who in August, 2002 had addressed a communication to the Divisional Manager of the respondent company apprising him of the various irregularities which had been committed by Mr. Umesh Khanna, the agent in question. It was contended that while the petitioner himself drew the attention of the authorities to the wrongdoings committed by that agent, surprisingly and inexplicably it is the petitioner who has ultimately been penalized for the wrong doings committed by the agent. Assailing the charges on merits, learned senior counsel placed reliance on the circular dated 31st August, 1999 to submit that the petitioner working as an Assistant Administrative Officer was not in-charge of monitoring, controlling or overseeing the issuance of cover notes. According to learned senior counsel, as would be manifest from a reading of the aforementioned circular that responsibility stood entrusted to the concerned Branch Manager. Mr. Mukhopadhaya, further submitted that the charges and the evidence which was led in support thereof had failed to establish the allegation of misappropriation as laid against the petitioner. It was submitted that a cumulative reading of the orders passed by the Disciplinary and Appellate Authorities and ultimately by the Managing Director would establish that all that was ultimately found and held against the petitioner was that he had been negligent in the discharge of his responsibilities. According to Mr. Mukhopadhaya, learned Senior Counsel the charge of negligence would also not sustain since the administrative circulars which prevailed laid no duty or responsibility upon the petitioner to verify the cover notes which may have been obtained by agents. Mr. Mukhopadhaya learned Senior Counsel submits that the agent in question was not working under the control or supervision of the petitioner. In view of the above, he would contend that the respondents have grossly erred in holding that the charge of misappropriation or negligence stood established against the petitioner. It is in the aforesaid backdrop that it was submitted that the findings returned against the petitioner are wholly perverse.

5. Mr. Mukhopadhaya, learned Senior Counsel then proceeded to assail the order passed by the first respondent on the memorial petition which was preferred. The challenge was addressed in the backdrop of Rules 22 and 23 of the 1975 Rules. Mr. Mukhopadhaya, learned Senior Counsel would contend that *"re-employment"* is not a punishment which stands enumerated in Rule 23. It was his submission that a careful reading of the order passed by the first respondent would establish that the decision essentially was to reinstate the petitioner on the post of Administrative Officer. Proceeding further it was submitted that the stipulation in the order ultimately passed by the first respondent to the effect that the period during which the order of removal operated and till the petitioner was ultimately taken back in employment would constitute a break in service would clearly be violative of Rule 22. It was submitted that as is manifest from a reading of that Rule, there is a clear injunct against treating the period during which

an order of punishment remained in force and the date when it may be ultimately revoked or modified by an authority as constituting a break in service. It was further urged that the first respondent has committed a manifest illegality in depriving the petitioner of salary and emoluments for the period during which the original order of punishment operated even though the order of removal was ultimately found to be unjustified.

6. Countering the aforesaid submissions, Mr. Manoj Ranjan Sinha, learned counsel appearing for the respondents has taken the Court extensively through the charge sheet which was submitted against the petitioner and contended that it would be wholly incorrect for the petitioner to assert that he had no control over the issuance, treatment and preservation of the cover notes in question. Mr. Sinha, learned counsel has specifically drawn the attention of the Court to the recitals as contained in the charge sheet to establish that the cover note booklet was in the possession of the petitioner himself and it was from this booklet that cover notes were issued to the agent in question. Mr. Sinha, learned counsel has further highlighted the complaints which were submitted by the insured who had in categorical terms alleged that the premium money had been paid to and received by the petitioner herein. Mr. Sinha, learned counsel has further laid emphasis on the fact that it was the petitioner himself who had introduced Mr. Umesh Khanna to the respondent company, recommended his engagement and had also submitted declarations to the effect that he undertook to accept the responsibility to collect premiums and outstandings in the aforesaid agent's account and that he would be personally liable for the same.

7. In view of the aforesaid facts, which according to Sri Sinha stood duly established and proved in the inquiry proceedings, it would be wholly incorrect for the petitioner to assert that he was not in-charge of the issuance of cover notes or to pass off the instances of misappropriation and loss caused to the respondent company to any systemic failure in the particular office where he was posted.

8. It was then contended by Sri Sinha learned counsel that once the petitioner had chosen to accept the offer of reemployment as made by the first respondent, he was clearly estopped from challenging the same by way of the present writ petition. Mr. Sinha, learned counsel then proceeding to deal with the challenge to the order of the first respondent in the backdrop of the 1975 Rules urged that the impugned order dated 10th October, 2012 cannot be construed as being one of reinstatement. According to Mr. Sinha the first respondent taking a lenient view in the matter only provided for the petitioner being re-employed and re-engaged in the respondent company. According to learned counsel since this amounted to a fresh appointment, the provisions of Rule 22, which are dependent upon an act of re-instatement, would have no application. Continuing along this thread it was lastly submitted that the direction in the impugned order dated 10th October, 2012 for the period between the date of removal up to the date of re-employment being treated as a break in service was in view of the above clearly justified. It is these rival submissions which fall for consideration.

9. At the very outset and dealing with the issue of whether it has been rightly contended that the petitioner had no control over the cover notes in

question and that in any case it was neither his duty nor responsibility to oversee the preservation and use of those notes, the Court find itself unable to sustain or accept the contentions addressed on behalf of the petitioner. As has been rightly pointed out by learned counsel for the respondents, the charge sheet at more than one place has referred to evidence which directly connects the petitioner to the issuance and use of the cover notes which form the bedrock of the charges which stood levelled. This would be evident from the following extracts from the charge sheet which are re-produced herein below:-

> "…. Shri Devender Malhotra issued covernote no. 0832924 on 4.11.2001 for Rs. 8619/- in favour of Shri Raj Kumar. The details of premium in the covernote stated a malus of 35%. It was found by the Office that against the said Covernote a remittance of Rs. 4,055/- only was collected in cash whereas the copy of Covernote, as submitted by the insured, showed a premium of Rs. 8,619/- (cash) on its face. The policy no. 2001/6116946 was allotted to underwrite the premium of Rs. 4,055 deposited by Shri Malhotra. The insured made a written complaint confirming that he had given a sum of Rs. 8,619/- to Shri Devendra Malhotra, AAO (D) against the said Covernote.
>
> ….of Shri G.R. Chaudhary for vehicle no. DL6CH 2803 Alto VX. Covernote control register of DO XIII confirmed the policy no. 6118776 was allotted to this covernote. However, on examination of policy docket no. 6118776 it was observed that this policy covered a different vehicle for which another covernote no. 0891454 had been issued in favour of a different insured namely Shri Vinay Kamal, which is duly countersigned by Shri Devender Malhotra.
>
> ….Accordingly, the insured was asked to clarify the position vide our letter's dated 4.2.2005 and 24.10.2005. As per written statement of the insured in response to letter dated 24.10.2005 he

> had received covernote no. 0891097 from Shri Devender Malhotra against a cash premium of Rs. 7,000/- (not exact amount) paid by him.
>
> ….Covernote No. 0473182 dated 16.11.01 was issued by Shri Devender Malhotra, AAO (D) for mediclaim insurance of the parents of Mrs. Sunita Bari, Premium under the above covernote was not deposited in the Office. On checking of the office records, it was observed that Policy number 8502033 as provided by Shri Devender Malhotra AAO (D) did not refer to covernote no. 0473182. Policy no. 8502033 was found to have been issued to another insured viz Shri S.K. Chaturvedi for his household goods. A mediclaim under the abovesaid covernote no. 0473182 was reported by the insured in the office along with photocopy of the said covernote. Mr. Devender Malhotra neither deposited the premium of Rs. 3,815 nor original covernote no. 0473182 along with office copies duly cancelled in the office.
>
> ….Shri Umesh Khanna was introduced by Shri Devender Malhotra, AAO(D). As per application for Agency of Shri Umesh Khanna, Shri Devender Malhotra had recommended his name and had accepted the responsibility to collect premiums and outstanding in the Agent's Account and hold himself liable for the same."

10. The aforesaid charges were found to be duly proved by the Inquiry Officer in his report which was ultimately submitted. The Court deems it apposite to extract the following parts of the findings recorded by the Inquiry Officer in this regard:-

> "…To establish the charge No. 3 in relation to Rs. 10,946/- Sh. H.K. Verma told that an insured, Mrs. A.R. Kamal Kaur had lodged her complaint that she had paid the premium of Rs. 10,946/- for insurance of her Ford Ikon for the year 2002-03 the office copy of the cover note shows the inspection remarks of Sh. D. Malhotra. It was confirmed by the then Divl. Manager, DO-XIII that Sh. D. Malhotra cancelled the cover note in his

presence. Mr. H.K. Verma told that it was clear as per records on record that the premium of Rs. 10,946/- (cash) against cover note No. 927198 was not deposited by in the office. He also informed since the cover note book was issued to Sh. D. Malhotra it was his duty to ensure its proper control of issuance/ cancellation and deposit of cover note.

Sh. H.K. verma in regard to charge No. 4 made a statement that cover note no. 891459 and 891471 were issued from the cover note book allotted in the name of Sh. D. Malhotra, AAO (D).

….Sh. Bhadoria submitted original agency application of agent Mr. Umesh Kr. Khanna dated 27.07.2000 containing recommendations of Mr. Devendra Malhotra.

….Mrs. Vandana also made a statement that Sh. D. Malhotra was the officer responsible for the marketing and under writing department."

11. From the above it is thus evident that the explanation tendered by the petitioner with respect to misuse of cover notes and failure on the part of concerned agent to deposit the premiums which were collected would not merit acceptance. While the petitioner made an effort to distance himself from the control and monitoring of cover notes, the material which has been gathered in the course of the inquiry proceedings and which has been taken into consideration by the inquiry officer clearly belies the same. The respondents in the disciplinary proceedings have found that the cover note booklet was in the possession of the petitioner himself, that cover notes were issued from the same booklet and that the agent had been introduced to the company by him. The reliance placed on the circular issued by the respondent company would also not come to the aid of the petitioner in light of the factual position which was found to be prevalent in the office of

the respondents as also on account of the undisputed position of the cover note booklet being in the possession and control of the petitioner. The Court further notes that while the Disciplinary and Appellate Authorities had held the petitioner guilty of misappropriation, the first respondent has ultimately held the petitioner to be negligent in the discharge of his responsibilities in light of what has been recorded by the Court above. This is evident from the following recitals as appearing in the order of the first respondent: -

> "….AND WHEREAS the undersigned has perused all the relevant papers/ documents pertaining to this case and <u>observes that Shri. D. K. Malhotra was negligent in exercising proper control of issuance of cover notes by the Agent, which also facilitated the Agent to misappropriate the premium</u>;"

In view of the aforesaid, the Court holds that the charge of negligence as has been ultimately recorded by the first respondent against the petitioner would clearly sustain and stands established.

12. Before proceeding further to deal with the rival submissions of learned counsels on the true import of the expression "re-employment" as appearing in the order of the first respondent, it would be apposite firstly to reproduce the relevant parts of the order of the first respondent who while proceeding to allow and dispose of the memorial which was preferred has observed thus:-

> "….AND WHEREAS the undersigned has perused all the relevant papers/ documents pertaining to this case and observes that Shri. D. K. Malhotra was negligent in exercising proper control of issuance of cover notes by the Agent, which also facilitated the Agent to misappropriate the premium;

> AND WHEREAS the undersigned having carefully gone through the contents of the 'Memorial' as well as the case in its entirety, is of the considered opinion that it would be appropriate to re-employ Shri Malhotra by modifying the penalty of "Removal from Service" to the penalty of "Re-employment of Shri Malhotra and placing him at the initial basic of the scale of Administrative Officer (Admn), with immediate effect";
>
> AND WHEREAS the undersigned further orders that Shri D.K. Malhotra rejoins his duties in the cadre of Administrative Officer (Admn) at Moradabad BO-1 under DDRO on re-employment;
>
> NOW, THEREFORE, the undersigned, in exercise of the powers conferred under Rule 40 of General Insurance {Conduct, Discipline & Appeal} Rules 1975, hereby modifies the penalty of "Removal from Service" to the penalty of **"Re-employment of Shri D.K. Malhotra and placing him at the initial basic of the scale of Administrative Officer (Admn) with immediate effect and such re-employment would be effective only on rejoining of his duties at Moradabad BO-I".**
>
> However; the period between Removal from Service and Re-employment of Shri D.K. Malhotra shall be treated as period **'not spent on duty'** which constitutes a break in service."

13. Upon a careful consideration of the order passed by the first respondent, it becomes relevant to note that the Managing Director has chosen to *"modify"* the penalty of removal from service to a penalty of "re-employment". It must at the outset be noted that "re-employment" is not defined or enumerated as one of the penalties which may be imposed upon a delinquent employee on culmination of disciplinary proceedings under Rule 23 of the 1975 Rules. The Court also bears in mind the fact that the Managing Director chooses to employ the expression "modify". The word

"modify" is defined in the **Oxford English Dictionary, Second Edition** as under: -

> "modify
>
> 2. To alter in the direction of moderation or lenity; to make less severe, rigorous or decided; to qualify, tone down, moderate.
>
> 4. To make partial changes in; to change (an object) in respect of some of its qualities; to alter or vary without radical transformation"

Going by the plain and grammatical meaning of the word "modify" it is apparent that the first respondent essentially sought to alter the punishment of removal. As was noted above, the first respondent ultimately found that the petitioner was liable to be held to be negligent in the discharge of his duties. A careful reading of the order of the Managing Director establishes that the charge of misappropriation as laid against the petitioner was not accepted by that authority. It is thus discernible that the first respondent sought to tone down and temper the punishment that had been imposed by the Disciplinary Authority. It is in the aforesaid backdrop that the first respondent proceeded to "modify" the penalty of removal to that of re-employment. In the considered opinion of this Court, a holistic reading of that order would establish that it constitutes a conscious decision taken by the Managing Director to set aside the punishment of removal and to restore the petitioner in service.

14. The Court additionally finds itself unable to sustain the submission addressed on behalf of the respondents that re-employment would amount to a fresh appointment having been conferred upon the petitioner for the following reasons. Firstly, the first respondent has unambiguously held that the punishment of removal was being modified to the ***"penalty of…"*** re-employment in the basic scale of pay. The modification and alteration of the penalty which was initially imposed upon the petitioner is clearly indicative of the intent of the first respondent to terminate the disciplinary proceedings and impose a substituted punishment upon the petitioner. Secondly, undisputedly Rule 23 encapsulates all the penalties that could be possibly imposed upon an employee. That Rule, it becomes pertinent to note, does contemplate reduction to a lower service, post, time scale or stage in a time scale as one of the major penalties. Re-employment is not a penalty or punishment envisaged under that Rule. The Court cannot possibly proceed on the assumption that the first respondent, the Managing Director, was either ignorant or oblivious of the scheme underlying Rules 22 and 23 of the 1975 Rules. Thirdly, the contention that the order of the first respondent would amount to a fresh appointment cannot be countenanced when one bears in mind the fact that the petitioner was restored on the post of Administrative Officer itself. Lastly it may be noted that in case the Managing Director contemplated the appointment of the petitioner as being one which was a fresh engagement, there was no occasion for him to rule on the manner in which the period between removal till re-employment was liable to be treated. The exercise which was undertaken in this respect by the first respondent is directly traceable to

Rule 22 which has an indelible link to disciplinary proceedings which are initiated against an officer or employee of the respondents.

15. In view of the aforesaid conclusions, this Court is of the considered view that the only plausible interpretation which can be conferred on the order passed by the first respondent is to recognise the same as being one of reinstatement of the petitioner. It cannot possibly be read or construed as being a fresh or re-engagement of the petitioner under the respondents.

16. Upon the aforesaid conclusion being reached, the other and related aspect which would then merit consideration would be whether the respondent was justified in denying all emoluments that would have been payable to the petitioner for the period during which the order of removal operated and holding that the period between removal till employment would constitute a break in service. That question must necessarily be answered bearing in mind the provisions made in Rule 22 which reads as follows: -

> **"22. Treatment of the period of suspension**
>
> When the suspension of an employee is held to be unjustified or not wholly justified, or when an employee who has been dismissed, removed or suspended is reinstated, the Competent Authority, whose decision shall be final, may grant to him for the period of his absence from duty:
>
> (a) If he is honorably acquitted, the full pay allowance which he would have been entitled to if he had not been dismissed, removed or suspended, less the subsistence allowance;

(b) If otherwise, such proportion of pay and allowance as the Competent Authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as period spent on duty. In a case falling under clause (b), the period of absence shall not be treated as period spent on duty, but the Competent Authority may, at its discretion, grant leave for the period to the extent admissible to the employee under the rules. Any period of absence which has not been treated as period spent on duty or on leave shall not count as service for any purpose under these rules but will not constitute break in service.

No order passed under this rule shall have the effect of compelling any employee to refund the subsistence allowance payable under rule 21."

17. A reading of the aforesaid Rule establishes that whenever an employee who has been dismissed or removed is reinstated, the competent authority is firstly obliged to consider whether the delinquent had been honourably acquitted or otherwise. As the Rule prescribes in unambiguous terms, if the delinquent employee is honourably discharged of the allegations leveled, he would be entitled to full pay and allowances which would have been paid but for the fact that the employee had come to be dismissed, removed or suspended. In cases where the employee is ultimately absolved of the charges on the basis of considerations other than merits or where the competent authority comes to conclude that the order of dismissal or removal is liable to be modified, the Rule confers a discretion on the authority to consider and decide how the period of absence from duty is liable to be treated. However, the Rule enshrines a significant restraint on the period of absence being treated as constituting a break in

service. This since it provides that in case the competent authority ultimately proceeds to hold any part or the whole of the period during which an order of dismissal or removal operated to be an absence from duty, while it would be open for him to do so, such a decision would not constitute a break in service. To the aforesaid extent, the Court holds in favour of the petitioner and find itself unable to uphold the decision of the first respondent that the period between removal from service till the petitioner came to be reinstated would constitute a break in service. The aforesaid prescription in the order impugned clearly falls foul of Rule 22 of the 1975 Rules.

18. The Court lastly notes that Rule 22 (b) confers a discretion upon the competent authority to consider the grant of "such proportion of pay and allowances" as also to consider what part of the period during which an order of punishment held the field as being on leave which was otherwise admissible to the employee. The Court is constrained to note that while reinstating the petitioner, the first respondent has failed to accord any consideration to the issue of payment of pay and allowances or a proportion thereof. The authority has additionally failed to examine or deliberate on the question whether the petitioner would be entitled to the grant of any leave that may be otherwise admissible under the Rules for the period in question. Once the respondent came to the conclusion that the order of removal was liable to be set aside and the petitioner reinstated in service, it was clearly incumbent upon the authority to accord due consideration to the terms upon which the petitioner was entitled to be restored in service. To

the aforesaid extent, the matter would merit being remanded to the first respondent for consideration afresh.

19. Accordingly and for the reasons aforenoted, the writ petition shall stand partly allowed. The order of 10th October, 2012 insofar as it holds that the period during which the order of removal remained in place would constitute a break in service shall stand quashed and set aside. The Court is further of the considered view that since the first respondent has failed to examine the issue of payment of emoluments and the treatment of the intervening period up to the reinstatement of the petitioner in the light of Rule 22 as interpreted above, the matter would warrant being remitted to the first respondent for considering this limited aspect bearing in mind the observations and findings recorded hereinabove. The exercise of reconsideration may be concluded with expedition and preferably within 2 months from the date of presentation of an authenticated copy of this judgment.

YASHWANT VARMA, J.

NOVEMBER 10, 2021
SU/dss