

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.8 of 2022

In

Civil Writ Jurisdiction Case No.12840 of 2006

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Jagannath Mishra, S/o Late Shashi Nath Mishra Resident of Flat No.204,
Jawahar Apartment, New Patliputra Colony, Patna- 800013.

... .. Appellant/s

Versus

1. United India Insurance Co. Ltd. having its registered and head office at 24 Whites Road, Chennai- 600014 through its Chairman cum Managing Director.
2. The Chairman cum Managing Director, United India Insurance Company Ltd., 24 Whites Road, Chennai- 600014.
3. General Manager cum Appellate Authority, United India Insurance Company Ltd., 24 White Road, Chennai- 600014.
4. Assistant General Manager cum Disciplinary Authority, United India Insurance Company Ltd., 24 White Road, Chennai- 600014.
5. Commissioner for Department Inquiries and Enquiring Authority, Central Vigilance Commission, Government of India, New Delhi.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Raju Giri, Advocate

For the Respondent/s : Mr. Ashok Priyadarshi, Advocate

Mr. Sanjay Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 08-09-2023

The writ petition was dismissed on the ground of lack of territorial jurisdiction. The appellant was dismissed from the service of the Respondent-Company after a disciplinary proceeding, which was initiated, while he was working in the office of the Respondent-Company at Dhanbad within the Jharkhand State. The disciplinary proceedings related to



allegations arising from the period, the appellant was working in the office of the Company at Muzaffarpur, within the State of Bihar. The inquiry was conducted partly in Delhi and partly in Patna and the dismissal order was issued by the disciplinary authority, who was at Chennai and served on the appellant at Dhanbad. The appellant also asserts that even the charge sheet was accepted by the appellant at Patna, in the Regional Office of the Company, to which place he was summoned. It is in the context of these bundle of facts, the question arises as to whether the remedy available to the appellant, to challenge the order of dismissal, was available to him in the High Court of Patna or the High Court of Jharkhand; being the highest courts of the respective States.

2. The learned Single Judge, as we noticed, found that the initiation of inquiry and conclusion, being at Dhanbad, this Court lacked the territorial jurisdiction. While rejecting the writ petition, liberty was reserved to approach the appropriate forum. Before the arguments commenced, we specifically queried the counsel as to whether both parties would agree to argue the issue on merits, especially since, if jurisdiction is found to be available, the case would have to be remanded for consideration before the learned Single Judge. Considering the fact that the dismissal was almost two decades



back and that the writ petition and the appeal were in the meanwhile pending before this Court, we were of the opinion that if we find jurisdiction, we could consider the matter on merits. Both parties agreed to argue the matter on merits after putting forth their contentions on the aspect of jurisdiction.

3. The learned counsel for the appellant, Sri. Raju Giri, took us through the documents, particularly, Annexure-2, wherein a letter dated 10.04.2003, sent by the appellant to the disciplinary authority at Chennai, specifically spoke of the memorandum of charges having been received through the Regional Manager at Patna on 04.04.2003. The learned counsel also took us to Annexure-7, inquiry report wherein it has been stated that the regular hearing in the case was held from 24.09.2003 to 26.09.2003 at Patna, after a brief preliminary hearing on two dates at New Delhi. It is then pointed out that after the dismissal, the appellant, a native of the State of Bihar, was residing in Patna and had filed an appeal and the memorial; the last of which was from his residential address at Patna. The rejection of the memorial by the Chairman-cum-Managing Director also was served on him at Patna. The learned counsel placed heavy reliance on **Nawal Kishore Sharma v. Union of India & Ors.**, (2014) 9 SCC 329, which is almost identical to the facts of the present case and the jurisdiction



exercised by the High Court of Patna was found to be correct despite the appellant having been discharged from the service from another State.

4. On merits, it is pointed out that there was absolutely no evidence to establish the guilt of the appellant. All the charges were of misappropriation of funds; (i) relating to reimbursement of expenses incurred for providing lunch in the official meetings of agents/clients, without having carried out such meetings, (ii) misappropriation of funds withdrawn for policy stamps without purchasing the same, (iii) claiming of travelling expenses twice on the very same travel undertaken and (iv) reimbursement of tour expenses in excess of the tours actually carried out. It is argued that there was absolutely no evidence led to establish the bills from the various hotels/restaurants and the one proprietor, as examined by the Charge-sheeted Officer (C.O.), had deposed in favour of the appellant. The other charges were also not proved and, in any event, they related to minimal amounts. Even if the allegations are held to be proved, they were *bona fide* mistakes, which do not warrant the punishment of dismissal.

5. Shri Ashok Priyadarshi, the learned Standing Counsel for the Respondent-Company, sought to uphold the judgment of the learned Single Judge and argued for rejecting



the appeal, leaving liberty to the appellant to invoke the jurisdiction of the High Court of Jharkhand. It was specifically argued that the initiation of the proceedings was at Dhanbad and the inquiry also commenced from Dhanbad. Though for the convenience of examining the witnesses, it was held at Patna, the appellant was working at Dhanbad during the entire period of the inquiry. The order of dismissal was also served at Dhanbad and so was the appeal memorandum submitted from Dhanbad. The mere fact that the appellant had shifted his residence to Patna after his dismissal, from where the memorial was submitted to the Chairman-cum-Managing Director, does not by itself confer jurisdiction on the Court at Patna. The place from which the memorial was submitted, the receipt of the order rejecting such memorial and the location in which this occurred, does not confer jurisdiction, especially since this is not an essential pleading, which has to be established for the appellant to entitle himself to the relief prayed for in the writ petition. On the territorial jurisdiction, the learned counsel would place reliance on **M/s Kusum Ingots and Alloys Ltd. v. Union of India & Anr.; AIR 2004 SC 2321**, a decision of the Hon'ble Supreme Court and a decision of the Division Bench of this Court in **Amar Kumar Choubey vs. The Union of India & Ors.; 2009(1) PLJR 553**.



6. On facts, it is submitted that the entire charges have been proved beyond doubt and it involves misappropriation of funds, which is quite serious in nature, especially considering the fact that the respondent-Company is engaged in huge financial transactions and there is an additional responsibility on the officers who manage these funds, which are also in the nature of public funds, to act with absolute integrity and responsibility.

7. The learned Standing Counsel would rely on the following decisions: **Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh & Ors.**; AIR 1997 SC 1908, **State of U.P. & Ors. v. Raj Kishore Yadav & Anr.**; 2006 AIR SCW 4012, **Chairman and MD V.S.P. & Ors.v. Goparaju Sri Prabhakara Hari Babu**; 2008 AIR SCW 2244, **Union of India & Ors. v. M.Duraisamy**; AIR 2022 SC 2002, and **State Bank of India vs. A.G.D.Reddy in Civil Appeal No. 11196 of 2011** decided on 24.08.2023.

8. The plethora of decisions were placed to urge the trite principle that the judicial review, which this Court undertakes, is not akin to adjudication of the case on merits as is done in an appeal. The contours of jurisdiction under Article 226 to interfere with a disciplinary proceeding is very narrow and well established. Unless there is manifest injustice or violation



of principles of natural justice, this Court would not interfere under Article 226, to substitute the findings of the disciplinary authority nor modify the penalty imposed; which, in the present case, is perfectly proportionate to the gravity of the offenses also; is the argument.

9. We will first look at the jurisdictional aspect, which, if we lack, then there is no question of going into the merits of the issue and we would only leave the appellant to the remedies as available in the neighbouring State; as the learned Single Judge did.

10. We would also first look at the decisions placed before us. **M/s Kusum Ingots & Alloys Ltd.** (supra) obtained a loan from Bhopal and challenged the vires of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'SARFAESI Act') before the Delhi High Court against the proceedings taken by the bank. The jurisdiction of the Delhi High Court was invoked on the ground that the seat of Union Government was in Delhi and the High Court at Delhi had the requisite jurisdiction. The jurisdiction of a High Court, as held in the cited decision, cannot be invoked to determine a constitutional question in a vacuum and the same has to be agitated before the High Court, within whose territorial



jurisdiction, the injury was occasioned. The said decision is not at all applicable in the present case. As we noticed from the facts, the inquiry, though initiated while the appellant was working in Dhanbad, was with respect to the facts that occurred while he was working at Muzaffarpur within the State of Bihar, which forms the basis of the allegations levelled against him.

11. **Nawal Kishore Sharma** (supra) was heavily relied on by the appellant to put forth his contention, of this Court having jurisdiction to entertain the matter. The petitioner in the cited decision was a seaman, registered as such by the Department of Shipping, Government of India at Mumbai. He was declared unfit for seafaring activities due to a heart condition and his registration cancelled. After such discharge, the petitioner settled down at his native place within the State of Bihar. He made a representation raising financial claims, as per the statutory provisions and the terms of the contract, which originated from within the State of Bihar. The employer responded to the disability compensation claim, declining it, but pointing out his entitlement to severance compensation. According to the official-respondents, disability compensation was entitled only to such persons who were disabled in the course of sea faring activities, which was not the case of the applicant. The applicant had been declared unfit for seafaring



activities, due to his health condition; the cause of which was not seafaring activities carried out by him. The Hon'ble Supreme Court found the dismissal of the writ petition by the High Court of Patna to be bad and also relied on two of its earlier decisions, **Om Prakash Srivastava v. Union of India; (2006) 6 SCC 207** and **Rajendran Chingaravelu v. R.K.Mishra; (2010) 1 SCC 457**.

12. **Om Prakash Srivastava** (supra) was a case in which, extradition based on a treaty, was challenged wherein one of the contentions was with respect to the petitioner being kept in solitary confinement without proper medical care within the State of Uttar Pradesh. The Delhi High Court declined jurisdiction on the ground that the contentions could be effectively dealt with by the Allahabad High Court, which finding was frowned upon by the Hon'ble Supreme Court on the reasoning that the Delhi High Court ought to have considered whether it has jurisdiction to deal with the writ petition. The ground of more effective consideration does not necessarily lead to a presumption that there was absolute lack of jurisdiction, was the finding.

13. In **Rajendran Chingaravelu** (supra), the petitioner was detained and contraband recovered, at Chennai



while travelling from Hyderabad and the appellant challenged the income tax proceedings initiated, before the Andhra Pradesh High Court. The Hon'ble Supreme Court found that since the cash carried by the petitioner was declared by him to the security personnel at the boarding point, which led to the detention and recovery at the destination and the fact of the income tax proceedings having been initiated at Hyderabad, gave jurisdiction to the Andhra Pradesh High Court. What comes out from the aforecited decisions, is that the facts pleaded to invoke the jurisdiction of the respective High Courts, should have an inextricable link to the *lis* and they should form an integral part of the facts which had to be proved by the petitioner litigant, for getting a judgment in his favour. The inextricable facts having occurred within the territorial jurisdiction of the respective High Courts, the said High Courts were said to have jurisdiction to deal with the issue under Article 226(2) of the Constitution of India.

14. State of Rajasthan & Ors. v. M/s Swaika Properties & Anr.; (1985) 3 SCC 217 extracted the definition of '*cause of action*' defined in Mulla's Code of Civil Procedure:

“The '*cause of action*' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court.”



It was declared to be that “bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant” (sic). It was held that the mere service of a notice would not give rise to a cause of action within the territory in which it was served, unless the service of such notice was an integral part of the cause of action. Therein the entire cause of action culminating in the acquisition of the land arose within the State of Rajasthan and what had been occasioned in Calcutta was only the service of notice regarding the acquisition. The cause of action was the acquisition of land, which arose within the jurisdiction of the Rajasthan High Court, Jaipur Bench wholly and in that circumstance, the High Court of Calcutta had absolutely no jurisdiction, was the finding.

15. Keeping these principles in mind, we have looked at the disciplinary proceedings initiated and concluded by the Respondent-Company. The appellant was working within the State of Jharkhand when the charge sheet was issued and after finding the explanation to the show cause unsatisfactory, disciplinary proceedings were initiated; again, within the State of Jharkhand. The facts which led to the allegations, as discernible from the statements of imputation of misconduct in support of the articles of charges, clearly indicate the actions of



the Charge-sheeted Officer (C.O.), while working as an AAO (D)/AO(D) in the Divisional Office at Muzaffarpur. He is said to have colluded with the DM/SDM, his superior officer in Muzaffarpur to carry out the said misappropriation.

16. We cannot countenance the contention raised, based on the communication dated 10.04.2003, wherein the appellant asserts that he received the memorandum of charges through the Regional Manager at Patna on 04.04.2003. The appellant was working at Dhanbad and there is no reason why the charge sheet should be issued through the Regional Manager at Patna, when the charge sheet was issued by the AGM at Chennai and the appellant was working within the jurisdiction of the Divisional Manager at Dhanbad. However, we have to notice that the regular hearing of the inquiry was held, throughout in Patna. Annexure-7, the inquiry report indicates that preliminary hearings were held at New Delhi on two dates and the regular hearing was held from 24.09.2003 to 26.09.2003 at Patna. The witnesses were examined and cross-examined as also the hearing carried out in Patna. Presumably this is because the entire statement of imputations, leading to the articles of charges, are with reference to the facts that occurred in Patna.

17. In the above circumstances, despite the



inquiry having been initiated while the C.O. was working at Dhanbad, the allegations which he had to disprove, was with respect to the facts that occurred in Patna. On failing to disprove these allegations and setting up a reasonable explanation in his defence, the appellant would be held guilty of the charges. Hence, what occurred at Muzaffarpur has an inextricable link to the *lis* and those facts were brought out by the Presenting Officer (PO) of the employer within the jurisdiction of this Court, at Patna. We are of the opinion that the learned Single Judge erred in finding lack of jurisdiction though the inquiry was commenced at Dhanbad and the dismissal order was communicated to the appellant at Dhanbad. Since the entire allegations were of facts that occurred within the State of Bihar at Muzaffarpur and the inquiry itself was proceeded with, in Patna, within the State of Bihar; this Court has the jurisdiction to consider the question raised of the sustainability of the order of dismissal.

18. Now, we look at the facts that have come out at the inquiry, which stood proved as held by the Inquiry Officer against the delinquent.

19. The learned counsel for the appellant had vehemently argued a procedural irregularity insofar as the entire



documents having not been supplied to him. In fact, there are a number of documents produced by the appellant himself along with the writ petition which were supplied to him by the Respondent Company. These documents were in support of the allegations levelled against the appellant. We specifically put a query to the learned counsel for the appellant as to which of the documents, not supplied to the appellant, were referred to in the inquiry report or the order of the disciplinary authority. The learned counsel did not specifically point out any such document nor is such an allegation raised in the memorandum, with reference to a particular document, either in the writ petition or the appeal and the memorial submitted before the higher authorities. There is no other procedural irregularity alleged in the disciplinary inquiry. The appellant, who was the C.O., fully participated in the inquiry, he was given opportunity to examine the documents, cross-examine the witnesses and put forth his defence by examining witnesses. The inquiry was thorough and to the point and discussion of the evidence was meticulous.

20. There being no other procedural irregularity alleged and the one irregularity alleged not having been substantiated, we examined the report of inquiry only to



understand whether the allegations were held to be proved on relevant material or on any extraneous considerations.

21. The first charge/allegation was with respect to the expenses claimed towards lunch for agents/clients meetings from the Company by the C.O. in collusion with his superior officer. The allegation was also of false/fake cash bills having been produced for claiming the expenses from the Company. The total expenses, thus claimed falsely, came to Rs. 6,89,175/-, which was during the period between 1996 to 2002. The officers of the Vigilance Team, who conducted the inquiry with the various hotels/restaurants, produced the bills submitted by the C.O. to the Company, which were endorsed as not issued by the respective hotels/restaurants. One of the restaurant owners was examined by the C.O. as DW-1. He admitted that he had made the endorsement in the bills, but that later, he was informed by his employees that the bills were, in fact, issued from the restaurant itself. On being confronted with the fact that neither the sales tax number or the serial number were shown in the invoice issued; the witness stated that he had paid penalty for the same. The penalty paid obviously is for suppression of turn over under the sales tax enactment, which has not been substantiated nor does it absolve the C.O. completely.



22. Further, though, DW-1 submits that he had issued the bill, he does not speak either on the goods having been supplied as per the invoice or the payment having been received by him. This assumes significance especially when it is brought out that the entire amounts withdrawn from the Company, as expenses for lunch supplied to agents/clients, were credited to the account of the C.O.

23. SW-2, examined on behalf of the Company, explained that the financial powers for sanctioning such expenditure is conferred with the Regional Manager and the credit of payments made by the Company to the account of the C.O. was irregular. SW-4, an employee of the Company working in the office at Muzaffarpur, denied that the meetings were held frequently, as has been claimed by the C.O., discernible from the frequent amounts withdrawn as expenditure for providing lunch in such meetings. SW-5, the Accounts Officer, confirmed that no such frequent meetings were held and that he had apprised the SDM of the irregularity in issuing cheques in the name of the C.O. He also deposed that he suspected that the amounts were not, in fact, paid to the hotels/restaurants. He admitted that as an Accounts Officer he had erred, but he had acted on the orders of the SDM. SW-6 to



8, working in the Divisional Office at that time, also would depose that there were no frequent meetings held and SW-9, another employee, explained the procedure for holding agents/clients meetings. Exhibit-D4 submitted by the defence itself indicates that the amounts were disbursed in the name of the C.O. The affidavits from various clients, who are said to have participated in the meetings, are self-serving documents, which cannot be relied upon. This is the evidence on which the Inquiry Officer found the bills to be doubtful, the payments to be irregular, the large number of meetings to be improbable and hence, the charge against the C.O. having been proved.

24. We specifically notice that none of the hotel or restaurant owners were produced before the Inquiry Officer; but the withdrawal of the expenses based on such bills are admitted by the C.O. It has also come out in the evidence that the C.O. has received the payments and credited it to his own account; in which circumstance, the onus shifts to the shoulders of the C.O. to establish that the payments were, in fact, made to the hotels/restaurants. We find the evidence led to be sufficient to prove the guilt of the C.O. in the first charge levelled against him. We have to notice that in such matters, it is the preponderance of probability that reigns supreme and the very



fact of the amounts withdrawn as expenditure for lunch provided to clients/agents, being credited in the account of the C.O., establish the patent illegality in withdrawing such funds; without the same being established as having been disbursed to the hotels/restaurants.

25. Article-II of the charges, is with respect to the TE bills of the C.O. submitted after a delay of two to four years. SW-2, an officer of the Company, had explained that the C.O. submitted the false T.E. bills to adjust the advances received by him. The Inquiry Officer, however, found that there are no rules in the Company regarding the submission of delayed bills and it was the responsibility of the Accounts Officer to not process the bills, if the delayed submissions were unauthorised. It was found that the T.E. bills of the C.O. were approved by the Controlling Officer and the delay in submission was condoned. Only with respect to one instance where there was a double claim made for the very same journey, the C.O. was found to be guilty and hence, the second article of charge stood partly proved.

26. Article-III of the charges is with respect to the alleged misappropriation of Rs. 10,000/-, drawn for the purchase of policy stamps, which were not actually purchased.



It was deposed by the witnesses that the C.O. himself was maintaining the register. The C.O. admitted this fact and also stated that he had purchased the stamps after depositing the money in the treasury, which were not produced by him. However, the challans were only available with the Accounts Department, which were not produced and the stamps purchased were reflected in the audited balance sheet in the Regional Office. The C.O. was found guilty of the charge only because he had not offered any concrete proof of the money deposited in the treasury. We are unable to sustain the said charge and find the order of the Inquiry Officer to be perverse insofar as the challans for deposit of money in the treasury would only be available in the office and not with the C.O. There should have been a statement of accounts produced by the employer to prove that the specific amount withdrawn was not remitted to the treasury; which was not done.

27. Article-IV of the charges refers to misappropriation of an amount of Rs. 802/- being an excess claim raised while claiming monthly petrol reimbursement. The Inquiry Officer had peremptorily arrived at the guilt of the C.O, without anything more than the observation that the C.O. should have shown the mileage covered in the petrol reimbursement



bill. We do not think that the said charge can be said to have been proved.

28. The disciplinary authority has elaborately considered the evidence and found the deposition of DW-1 to be an after-thought, probably to bail out the C.O. It is pertinent that the disciplinary authority has specifically referred to the fact that the delinquent official was the beneficiary of the payments made by the Company. As far as the purchase of policy stamps, it was found by the disciplinary authority that an amount of Rs. 9,800/- was utilized for the said purpose and Rs. 200/- alone is left unaccounted. It is very clearly indicated that the entire documents with respect to the policy stamps, as available with the Company, were not produced in the inquiry and thus, the finding of the disciplinary authority without supplying such documents cannot be upheld. There is also no serious discussion with respect to Articles III and IV, which were held by the disciplinary authority to be procedural failures; in the matter of claiming travelling expenses and monthly petrol reimbursement.

29. In considering the penalty, the disciplinary authority has relied on Article-I, which involves a serious charge of submitting and obtaining payments on false/fake cash bills allegedly towards lunch expenses for agents/clients meetings,



which were never held. Cheques were prepared in favour of the C.O. and the same was deposited in his personal account, thus, leading to misappropriation of an amount of Rs. 6,89,175/-. This was also said to have been done in collusion with the officer-in-charge, thus, causing pecuniary loss to the Company to that extent. The C.O., who was working as an officer in the Divisional Office, was expected to protect the financial interest of the Company as a prudent and diligent officer. We also find that the allegation levelled at Article-I to be very serious in nature.

30. As far as Article-II is concerned, even the disciplinary authority has found the C.O guilty of only the charge of claiming one T.E. bill twice, which put forth lack of due diligence in matters relating to official work. On Article-III, even the disciplinary authority found only a misappropriation of Rs. 200/-, which too, we find difficult to accept since there is absolutely no evidence to that extent. Article-IV also was found to be arising out of gross negligence, which we already found to be not satisfactorily proved.

31. We specifically notice the decisions cited by the learned Standing Counsel for the Company, which deliberated upon and declared the contours of juridical review



under Article 226 while dealing with the proceedings of a disciplinary inquiry, which culminated in a punishment imposed by the disciplinary authority. The scope of judicial review against a departmental inquiry is very limited and it is not in the nature of an appeal or a review on the merits of the decision; which is not permissible. If the decision-making process is legitimate and the findings are based on relevant materials, then there is little scope for interference even if this Court feels otherwise. If the records reveal that the findings are based on some evidence, there is no question of a re-appreciation by this Court to arrive at an independent finding, contrary to that arrived at by the disciplinary authority. The very same principle applies in the case of a punishment and the examination is only on the question of proportionality. An interference can be made under Article 226 only if the punishment imposed is found to be disproportionate to the gravity of the offence alleged.

32. In the present case, as we held, there is little evidence on the two charges levelled against the delinquent but, there is sufficient evidence to find misappropriation of amounts in the first charge levelled against the delinquent. The delinquent was an Administrative Officer of the Respondent-Company, who was responsible for the financial transactions



which arise on the business of the Company. The appellant has a responsibility coupled with the duty to work with absolute integrity without causing prejudice to the Company and its interests. The appellant has failed to do the same by raising false claims for lunch provided at agents/clients meetings, and appropriating the money withdrawn from the Company, which is clear from the fact that the same has been deposited in the account of the appellant. The appellant also had claimed T.E. twice for the same expense incurred, the charge at Article-I which stood proved, justifies the order of dismissal.

33. Though we find jurisdiction to entertain the writ petition, we find absolutely no reason to interfere with the order of dismissal. We reject the appeal.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

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