

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3344 of 2018

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Amrendra Kumar Ojha S/o Late Hariganesh Ojha, Resident of A/51,
Sachiwalaya Colony, PO- Lohianagar, PS- Kankarbagh, Patna- 800020
working as a Stenographer, Life Insurance Corporation of India, posted at
Sales Training Centre, Jeevan Prakash Building, Fraser Road, Patna- 800001.

... .. Petitioner/s

Versus

1. The Life Insurance Corporation Of India, Through Its Chairman, Life Insurance Corporation of India, Central Office, “Yogakshema”, Jeevan Bima Marg, Mumbai-400021
2. The Chairman, Life Insurance Corporation of India, Through Its Chairman, Life Insurance Corporation, Central Office, “Yogakshema”, Jeevan Bima Marg, Mumbai-400021
3. The Zonal Manager, Life Insurance Corporation of India, East Central Zone, 'Jeevan Deep' 5th Floor, Exhibition Road, Patna-800001
4. The Chief PER-ER, Life Insurance Corporation of India, Central Office, 'Yogakshema', Jeevan Bima Mumbai-400021
5. The Sr. Divisional Manager, Life Insurance Corporation of India, Patna Divisional Office-1, “Jeevan Prakash” Fraser Road, Patna-800001
6. The Manager (P&IR), Life Insurance Corporation of India, Patna Divisional Office-1, “Jeevan Prakash”, Fraser Road, Patna-800001
7. The then Manager (CRM) & Enquiry Officer, Vide Charge Sheet dated- 15.03.2014, Life Insurance Corporation, Patna Divisional Office-1, “Jeevan Prakash” Fraser Road, Patna-800001

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amrendra Kumar Ojha, In-person
For the Respondent/s : Mr. Abhimanyu Vatsa, Advocate



CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 04-07-2025

In the instant petition, petitioner has prayed for the following relief(s):-

“i. For issuance of an appropriate writ(s), rule(s), direction(s), in the nature of mandamus commanding the concerned respondent for quashing of Order dated 07.04.2015 issued by the Sr. Divisional Manager cum- the Disciplinary Authority by which a penalty of **"Reductions by two stages in the time scale of pay applicable to his cadre"** in terms of Regulation 39(1)(d) of the LIC of India (Staff Regulation) 1960 has been imposed upon the petitioner.

ii. For quashing the order dated-14.12.2015 passed by the Appellate Authority-cum-Zonal Manager, LIC of India, East Central Office, by which he has rejected the appeal dated-11.05.2015 and affirmed the punishment order date-07.04.2015.

iii. For issuance of an appropriate direction to the concerned respondents for the petitioner's two stages in the time of pay applicable to his cadre, from due date and all consequential benefits, thereof, and

iv. For grant of other relief(s) to which the petitioner may found entitled to on the facts and circumstances of the case.”

2. Petitioner was working as a Stenographer in the Life Insurance Corporation of India. He was subjected to disciplinary proceeding in framing article of charges on 15.03.2014 under



Regulation No. 39(2). On receipt of article of charges, the petitioner has demanded certain documents on 05.05.2014 which was not made available to the petitioner, on the other hand, Disciplinary Authority proceeded to appoint Inquiring Officer and Presenting Officer on 29.08.2014. Thereafter Inquiring Officer's report was submitted. Second show cause notice was issued on 09.02.2015 along with the inquiring officer's report and it was subject matter of litigation before this court in CWJC No. 4977 of 2015 which was disposed of on 02.04.2015 directing the petitioner to take all the contentions raised in CWJC No. 4977 of 2015 against show cause notice along with Inquiring Officer's report before communication of the order dated 02.04.2015 passed in CWJC No. 4977 of 2015, the Disciplinary Authority proceeded to impose the penalty on 07.04.2015 to the extent of "*reduction by two stages in the time scale of pay applicable to his cadre*" in terms of Regulation 39(1)(d) of the LIC of India (Staff) Regulation, 1960, (for short 'Regulation 1960').

3. Feeling aggrieved by the order of penalty, petitioner preferred an appeal before the appellate authority on 11.05.2015. Appellate Authority was required to decide the petitioner's appeal within a period of six months from the date



of receipt of such appeal and it was not decided, resultantly, petitioner invoked remedy of filing *memorial* before the concerned authority on 14.11.2015, and it was returned without deciding the petitioner's *memorial* on 16.09.2016 in the meanwhile, appellate authority proceeded to confirm the Disciplinary Authority's order of imposing penalty on 14.12.2015, hence the present petition.

4. Petitioner-in-person-Mr. Amrendra Kumar Ojha submitted that he has not been provided ample opportunity like in providing documents to be relied on by the Presenting Officer on behalf of LIC at the time of issuance of article of charges. Resultantly, he has been denied in submission of effective reply. Reply to the show cause notice along with the documents could be given effectively only after perusal of the charges read with the documents. On the other hand, on 01.07.2014 Disciplinary Authority stated to have communicated to the petitioner in respect of furnishing of documents, it was not so.

5. Even during the course of inquiry, the Presenting Officer was bound to furnish all those documents to be relied in the enquiry, the same was not provided. To this extent, respondents have not apprised this court with reference to any material information to the extent that Disciplinary



Authority/Presenting Officer furnished documents demanded by the petitioner and so also Annexure-A and B referred in the article of charges dated 15.03.2014. Nextly, it was contended that defence assistant sought by the petitioner namely Binay Kumar Sinha who was a co-employee was refused. This is evident from letter dated 23.08.2014. On the other hand circular bearing Ref: Per/C/ZD/Cir./127/79 dated 14th July, 1979 reads as under:-

“LIFE INSURANCE CORPORATION OF INDIA
CENTRAL OFFICE

'Yogakshema',
Jeevan Bima Marg,
Bombay-400 021.

Ref: Per/C/ZD/Cir./127/79

14th July, 1979.

TO ALL ZONAL MANAGERS AND
OFFICERS-IN-CHARGE OF THE DIVISIONAL
OFFICES:

Re: Request of charge-sheeted employees for availing of assistance of outsiders in the departmental proceedings.

As you are aware, an employee who is charge-sheeted departmentally, if he so desires and applies, may be permitted by the disciplinary authority to avail of the services of a fellow employee to assist him in defending his case if the disciplinary authority considers it necessary to do so in the interest of natural justice. A query has been raised as to whether charge-sheeted employee be permitted to avail of the services of an outsider, who is not an employee of the Corporation, in defending himself in the departmental proceedings that are initiated against him.



2. It has now been decided that in departmental proceedings where our case is presented before the Enquiry Officer by an "outsider", including a CBI/SPE official or where an "outsider" has been appointed as an Enquiry Officer by the Disciplinary Authority, the charge-sheeted employee may be permitted, if so considered necessary by the disciplinary authority, to avail of, at his own cost, the services of an outsider for the purpose of assisting him in defending his case in such proceedings. Needless to say, such permission should be granted only under written request being received by the disciplinary authority from the charge-sheeted employee mentioning therein the name, designation/occupation, address, etc. of such assisting person together with a letter from him that he is agreeable to assist the charge-sheeted employee.

3. In all other cases, the present practice as set out in paragraph 1 above will continue.

4. These instructions shall come into force with immediate effect.

CHIEF (PERSONNEL)"

In the light of the aforementioned circular, petitioner's suggestion and request for appointment of defence assistant namely Binay Kumar Sinha should have been permitted by the Inquiring Officer/Disciplinary Authority, however, he was not permitted. In other words, without defence assistant, the Inquiry Officer has concluded the proceedings. It is further contended that Disciplinary Authority to the petitioner is Principal and not the Divisional Manager whereas the action has been taken by the Divisional Manager. No other contention has been raised by the petitioner-in-person.

6. Per contra, learned counsel for the respondents



resisted the aforementioned contentions and submitted that the documents have been supplied during the course of inquiry. Defence assistant could be provided only within the division whereas Mr. Binay Kumar Sinha was not working within the division. Therefore, the aforementioned contention of the petitioner is not tenable. It is further submitted that Divisional Manager is superior to Principal. The petitioner has not produced any material to show that he was appointed by the Principal. Be that as it may, having regard to Schedule-I, one of the authority for Class-II and Class-III is the Divisional Manager, therefore, there is no infirmity in respect of competent authority to initiate and conclude the departmental enquiry.

7. Heard learned counsel for the respective parties.

8. Facts are not disputed that the petitioner was subjected to disciplinary proceeding on 15.03.2014, and it was concluded in imposition of penalty of reduction by two stages in the time scale of pay applicable to his cadre under Regulation 39(1)(D) of the LIC Regulation, 1960. It was subject matter of appeal before the Appellate Authority and it was rejected while confirming the order of the Disciplinary Authority on 14.12.2015.

9. Petitioner-in-person submitted that despite



demanding supply of documents as and when, he was in receipt of article of charges, the same was not provided. On the other hand there was a communication that those documents could be made available to the petitioner during the course of enquiry. During the course of inquiry also documents were not furnished to the petitioner for the reason that no material have been placed on record by the respondents.

10. Be that as it may, for the purpose of filing explanation/reply to the show cause notice along with the article of charges, it was bounden duty of the Disciplinary Authority to provide list of documents in support of the charge. In the absence of furnishing of list of documents at the time of issuance of article of charge, the very object of issuance of charge memo and seeking explanation/reply would defeat his right. In other words, petitioner is not in a position to submit his effective reply to the charge memo with reference to documents to be relied in support of charge. Therefore, the respondents have denied the benefit of perusal of records so as to submit effective reply and so also present his case before the inquiring officer.

11. The petitioner-in-person submitted that Mr. Binay Kumar Sinha as a defence assistant has been denied without



examining the circular dated 14.07.1979. Circular dated 14.07.1979 provides for taking a defence assistant of the co-employee. There is no specific provision or specific decision of the authorities to the extent that petitioner is entitled to take defence assistant only from the concerned division where he was working. Therefore, in denial of engaging defence assistant to present petitioner's case before the inquiring officer is in gross violation of the principles of natural justice. In the case of **Delhi Transport Corporation Vs. Ram Avtar Sharma** reported in **2024 SCC OnLine Del 3638**, Delhi High Court has held that denial of defence assistant to charged employee violates principles of natural justice. Para 30 of the said judgment reads as follows"-

*"30.This Court is of the view that non-supply of the log book and absence of proper documents to prove the fact that the petitioner was allowed to inspect the documents considered during the inquiry proceedings, vitiated the enquiry proceedings. Moreover, the factum that the respondent was not allowed to be represented by the **defence assistant** as well as the past record was not enclosed with the chargesheet, establishes that the enquiry proceedings were conducted in violation of the principles of natural justice."*

12. Denial of relevant documents in a departmental enquiry has been deprecated by the Hon'ble Supreme Court in the case of **Kumaon Mandal Vikas Nigam Ltd. vs. Girja**



Shankar Pant and Others reported in ***(2001) 1 SCC 182*** in paragraph no. 22, it is held as under:

*“22. The sixty-five page report has been sent to the Managing Director of the Nigam against the petitioner recording therein that the charges against him stand proved — what is the basis? Was the enquiry officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative; if the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records — unfortunately there is not a whisper in the rather longish report in that regard. Where is the presenting officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish report. But if one does not have it — can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a decision of the King's Bench Division in the case of *Denby (William) and Sons Ltd. v. Minister of Health* [(1936) 1 KB 337 : 105 LJKB 134 : 154 LT 180] may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state:*

“I do not think that it is right to say that the Minister of Health or any other officer of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament.



*From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Minister's discretion, and I think what was said by Lord Halsbury in *Sharp v. Wakefield* [1891 AC 173 : 60 LJ MC 73 : 64 LT 180 (HL)] (AC at p. 179) is important to consider with reference to the exercise of such discretion. He there said:*

*“Discretion” means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke case* [(1598) 5 Co Rep 99b, 100a] ; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.”*

13. Non-supply of documents is in violation of the principles of natural justice as held by the Hon'ble Supreme Court in the case of *Chamoli District Cooperative Bank Limited & Anr Vs. Raghunath Singh Rana and Others*, reported in (2016) 12 SCC 204. Para 21 of the said judgment read as under:-

“21. The Apex Court in State of Uttranchal & Ors. Vs. Kharak Singh reported in (2008) 8 SCC 236 had occasion to examine various contours of natural justice which need to be specified in a departmental inquiry. The Apex Court noticed earlier judgments where principles were laid down as to how inquiry is to be conducted. It is



useful to refer paragraphs 9, 10, 11, 12, 13 and 15, which are to the following effect:-

“.....9. Before analyzing the correctness of the above submissions, it is useful to refer various principles laid down by this Court as to how enquiry is to be conducted and which procedures are to be followed.

10. The following observations and principles laid down by this Court in Associated Cement Co. Ltd. vs. The Workmen and Anr. [1964] 3 SCR 652 are relevant:

"... ... In the present case, the first serious infirmity from which the enquiry suffers proceeds from the fact that the three enquiry officers claimed that they themselves had witnessed the alleged misconduct of Malak Ram. Mr. Kolah contends that if the Manager and the other officers saw Malak Ram committing the act of misconduct, that itself would not disqualify them from holding the domestic enquiry. We are not prepared to accept this argument. If an officer himself sees the misconduct of a workman, it is desirable that the enquiry should be left to be held by some other person who does not claim to be an eye- witness of the impugned incident. As we have repeatedly emphasised, domestic enquiries must be conducted honestly and bona fide with a view to determine whether the charge framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities. If an officer claims that he had himself seen the misconduct alleged against an employee, in fairness steps should be taken to see that the task of holding an enquiry is assigned to some other officer. How the knowledge claimed by the enquiry officer can vitiate the entire proceedings of the enquiry is illustrated by the present enquiry itself.

..... It is necessary to emphasise that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic



enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr. Sule is right in contending that the course adopted in the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry."

(11) In ECIL v. B. Karunakar (1993) 4 SCC 727, it was held:

"(1) Where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to



plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment. The second stage consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence in respect of the charges.

Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. The proviso to Article 311(2) in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed



to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry.

Hence, when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

(12) In Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. and Another, (1999) 2 SCC 21, it was held:

"34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee -- even though such acceptance of findings is not recorded in the order of termination. That is why



the misconduct is the foundation and not merely the motive in such cases."

(13) In Syndicate Bank and Others vs. Venkatesh Gururao Kurati, (2006) 3 SCC 150, the following conclusion is relevant:

"18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

* * * *

15. From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only



thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.”

14. Further in case of ***Coal India Ltd. v. Ananta Saha,*** reported in ***(2011) 5 SCC 142*** in paragraphs no. 32 and 33, it is held as under:

*“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.*

*33. In ***Badrinath v. Govt. of T.N.*** [(2000) 8 SCC 395 : 2001 SCC (L&S) 13 : AIR 2000 SC 3243] this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders.”*

15. In the light of these facts and circumstances, it is crystal clear that the petitioner has not been provided ample opportunity which is in violation of principles of natural justice insofar as initiation and conducting of departmental inquiry and conclusion and its affirmation by the appellate authority.



16. Accordingly, the petitioner has made out a case so as to interfere with the impugned orders dated 07.04.2015 and 14.12.2015. They are set aside.

17. Writ petition is allowed.

18. Respondents are hereby directed to restore the petitioner's scale of pay and extend difference of pay from time to time, after calculating the same within a period of three months from the date of receipt/production of a copy of this order.

(P. B. Bajanthri, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.07.2025
Transmission Date	NA

