

Court No. - 49

Case :- WRIT - A No. - 13137 of 2023

Petitioner :- Sharda Prasad Singh

Respondent :- Union of India and others

Counsel for Petitioner :- Sankalp Narain, Srivats Narain

Counsel for Respondent :- A.S.G.I., Mohan Srivastava,
Siddharth Singhal

Hon'ble J.J. Munir, J.

1. This writ petition is directed against an order passed by the Senior Divisional Manager, Life Insurance Corporation of India, Gorakhpur dated 10.06.2021, removing the petitioner from service, after disciplinary proceedings. The petitioner also impugns the order dated 31.01.2023 passed by the Zonal Manager, Life Insurance Corporation of India, Kanpur, rejecting the petitioner's appeal and affirming the order of removal. The petitioner further questions an order dated 20.06.2023 passed by the Chairman, Life Insurance Corporation of India, Central Office, Mumbai, rejecting the petitioner's memorial and affirming the orders of the two Authorities below.

2. The petitioner was appointed as a Development Officer by the Life Insurance Corporation of India (for short, 'the LIC') on 16.05.2012. He was posted with the Satellite Office, Jiyanpur, District Azamgarh. The petitioner's conditions of service are governed by the Life Insurance Corporation of India (Staff) Regulations, 1960 (for short, 'the Regulations of 1960'). The petitioner says that as a Development Officer with the Satellite Office, Jiyanpur, he had a good service record. It is his case that trouble for him began when he questioned his superiors about non-provision of the muster roll to mark his daily

attendance. This did not go well with them. He was served with a show cause notice dated 29.05.2020 issued by the Senior Divisional Manager, seeking his explanation about certain matters, the most important of these being his unauthorized absence from office for a period of 445 days from 02.01.2019 to 31.03.2020. There was also an allegation about the petitioner's intermittent absence for a period of 50 days during the period October, 2018 to December, 2018, without information or prior approval of leave.

3. The petitioner, upon receipt of the show cause notice, addressed a letter dated 18.06.2020 to the Senior Divisional Manager (the Disciplinary Authority), wherein, he took stand that allegations about the period of time, that had been mentioned in the show cause notice, indicating his continuous and intermittent absence, was ill-founded, for reason that during the period in question, he had regularly attended the Satellite Office of the LIC, including meetings, that were presided over by the Disciplinary Authority. Ignoring the petitioner's explanation, the Disciplinary Authority initiated disciplinary proceedings against the petitioner primarily on charges of unauthorized absence. A charge-sheet dated 19.09.2020 was issued by the Disciplinary Authority, carrying seven charges. The charges, carried in the charge-sheet dated 19.09.2020, read:

“1. यह कि, सैटेलाईट कार्यालय जीयनपुर से बिना किसी सूचना एवम अवकाश आवेदन पत्र के आपकी लगातार अनधिकृत अनुपस्थिति के कारण मुख्य प्रबंधक, शाखा कार्यालय, आजमगढ़ प्रथम द्वारा पत्र दिनांक 14.11.2018 प्रेषित करते हुए कार्यालय से आपकी अनधिकृत अनुपस्थिति के सम्बंध में स्पष्टीकरण मांगा गया जिसके प्रत्युत्तर मे आप द्वारा अपने प्रेषित पत्र दिनांक 18.11.2018 में अपनी अनधिकृत अनुपस्थिति का कोई सम्यक कारण न देते हुए अंग्रेजी मे पत्र देने एवम पत्र व्यवहार अपने ई-मेल के पते पर किये जाने की सलाह दी गयी एवम आप द्वारा अपने इसी पत्र मे यह भी सूचित किया गया कि आप दिनांक 19.11.2018 से 28.11.2018 तक अवकाश पर रहेंगे परंतु आप द्वारा न तो कोई अवकाश आवेदन ही दिया गया और न ही उसे सक्षम अधिकारी से स्वीकृत करवाया गया।

2. यह कि, हेडक्वार्टर एवम सैटेलाईट कार्यालय से आपकी अनुपस्थिति के कारण शाखा प्रबंधक (प्रभारी), जीयनपुर द्वारा पत्र दिनांक 30.11.2018 के माध्यम से आपसे हेडक्वार्टर, जीयनपुर में निवास का स्थानीय पता उपलब्ध कराने हेतु अनुरोध किया गया परंतु आप द्वारा उक्त पत्र के प्रत्युत्तर में प्रेषित अपने पत्र दिनांक 02.12.2018 में स्थानीय पते की कोई जानकारी नहीं दी गयी।

3. यह कि, कार्यालय से आपकी अनधिकृत अनुपस्थिति के कारण शाखा प्रबंधक (प्रभारी), सैटेलाईट कार्यालय, जीयनपुर द्वारा पुनः पत्र दिनांक 06.05.2019 प्रेषित करते हुए आपसे आपकी अनधिकृत अनुपस्थिति के विषय में स्पष्टीकरण मांगते हुए अवकाश आवेदन प्रस्तुत करने का निर्देश दिया गया परंतु आप द्वारा इस सम्बंध में न तो कोई सम्यक स्पष्टीकरण प्रस्तुत किया गया और न ही अवकाश हेतु आवेदन प्रस्तुत किया गया।

4. यह कि, हेडक्वार्टर एवम सैटेलाईट कार्यालय से आपकी अनुपस्थिति के कारण शाखा प्रबंधक (प्रभारी), जीयनपुर द्वारा पत्र दिनांक 24.05.2019 के माध्यम से पुनः आपसे हेडक्वार्टर, जीयनपुर में निवास का स्थानीय पता उपलब्ध कराने हेतु अनुरोध किया गया परंतु आप द्वारा उक्त पत्र का कोई जवाब नहीं दिया गया।

5. यह कि आपकी अनधिकृत अनुपस्थिति के कारण शाखा प्रबंधक (प्रभारी), सैटेलाईट कार्यालय, जीयनपुर द्वारा पुनः पत्र दिनांक 08.11.2019 प्रेषित करते हुए आपसे आपकी अनधिकृत अनुपस्थिति एवम बीमा व्यवसाय के विषय में स्पष्टीकरण मांगते हुए आपके स्थानीय पते को सूचित करने का निर्देश दिया गया परंतु आप द्वारा इस पत्र का भी कोई जवाब नहीं प्रस्तुत किया गया।

6. यह कि, बिना किसी पूर्व सूचना एवम अवकाश आवेदन पत्र के कार्यालय से आपकी अनुपस्थिति के कारण आप दिनांक 08.10.2018 से दिनांक 09.12.2019 के मध्य Intermittently कुल 382 दिन अनधिकृत रूप से अनुपस्थित रहे हैं एवम पुनः दिनांक 12.12.2019 से दिनांक 30.06.2020 तक 202 दिन लगातार अनधिकृत रूप से अनुपस्थित रहे हैं।

7. यह कि, पूर्व में भी आपको सैटेलाईट कार्यालय में आकर उपस्थिति पंजिका में हस्ताक्षर न करने के सम्बन्ध में पत्र दिनांक 23.01.2013 द्वारा स्पष्टीकरण मांगा जा चुका है। सैटेलाईट कार्यालय से आपकी अनधिकृत अनुपस्थिति के सम्बंध में शाखा प्रभारी द्वारा पत्रों के माध्यम से बार बार अवगत कराया गया परंतु आपमें कोई परिवर्तन नहीं आया और शाखा प्रभारी को सूचित किये बिना आप लगातार अनधिकृत रूप से अनुपस्थित होते रहे।"

4. The petitioner asserts that the charge-sheet dated 19.09.2020, though shown to be issued by the Disciplinary Authority along with a covering letter dated 16.10.2020, was never served upon the petitioner. He was utterly unaware about the fact of issue of the charge-sheet during all the while that the disciplinary proceedings were in progress against the petitioner. The disciplinary proceedings went *ex parte* vide an order dated 15.12.2020 and an Inquiry Officer, to wit, P.K. Singh was

appointed to conduct the disciplinary proceedings under Regulation 39(3) of the Regulations of 1960. The petitioner says that a copy of the order dated 15.12.2020 was never served upon him and he secured a copy of the same after he had been punished. The Inquiry Officer says that he issued four letters/ notices dated 21.12.2020, 29.12.2020, 13.01.2021 and 25.01.2021, inviting the petitioner to the scheduled hearings at the inquiry, but the latter never received any of the said letters. The petitioner says there was no attempt to serve him by the Inquiry Officer and the inquiry was an empty formality.

5. The inquiry was held mechanically and *ex parte* behind the petitioner's back with no opportunity to him. A copy of the inquiry report dated 15.03.2021, shown to have been sent to the petitioner along with a covering memo dated 17.03.2021, was never served upon him. It is the petitioner's case that the respondents have no evidence whatsoever to show that the charge-sheet, the letters/ notices of the hearing before the inquiry or the one forwarding a copy of the inquiry report, were ever sent to him. The Disciplinary Authority, which took cognizance of the inquiry report, found all charges proved. He issued a show cause notice dated 17.04.2021, holding the petitioner provisionally guilty, and proposed to impose the penalty of removal from service. The petitioner was directed to submit his explanation within 15 days. The petitioner acknowledges that this was the first time that he received anything about the proceedings, to wit, the show cause notice dated 17.04.2021 and got opportunity to rebut the baseless allegations of whatever kind. He submitted a detailed reply on 31.05.2021. The total absence of opportunity and the holding of any inquiry, where witnesses were examined, were all urged by the petitioner in his reply.

6. The Disciplinary Authority proceeded to pass the order impugned dated 10.06.2021, ordering removal of the petitioner from service. The petitioner's departmental appeal, preferred to the Zonal Manager, failed on 31.01.2023 and his memorial was rejected by the Chairman of the LIC *vide* order dated 20.06.2023.

7. Aggrieved, this writ petition has been instituted.

8. This petition was admitted to hearing on 10.08.2023 and notice issued to the respondents. In course of time, parties exchanged affidavits.

9. Heard Mr. Vijay Kumar Singh, learned Senior Advocate assisted by Mr. Samarth Singh, learned Counsel for the petitioner and Mr. Mohan Srivastava, learned Counsel appearing on behalf of respondent Nos. 2, 3 and 4.

10. The foremost submission that has been advanced by Mr. Vijay Kumar Singh, learned Senior Advocate, is that this is a case of a wholesale denial of opportunity of hearing, inasmuch as, the petitioner was not served with a copy of the charge-sheet or any of the four letters/ notices dated 21.12.2020, 29.12.2020, 13.01.2021 and 25.01.2021, purporting to inform him of the dates scheduled in the inquiry, when proceedings of whatever kind are said to have been held.

11. Mr. Mohan Srivastava, learned Counsel for the respondents has rebutted the said submission and says that the petitioner was duly served with the charge-sheet as also the four letters/ notices to join the inquiry, which he did not do deliberately in order to create a ground of challenge.

12. Upon hearing learned Counsel for the parties, as regards question of violation of principles of natural justice, this is a

case where the denial appears to be wholesome and complete. It is not a case where there is a facet of denial of opportunity, but a denial the whole way.

13. There are averments in paragraph No.67 of the writ petition to the effect that the charge-sheet was never served upon the petitioner, and that this objection was raised before the Disciplinary Authority, who negatived it on the specious ground that it was delivered in the presence of two Class-I officers on 13.07.2020 and 06.10.2020. It is also said by the Disciplinary Authority, as per assertion in paragraph No.67, that the charge-sheet was displayed on the notice board on 07.11.2020. A perusal of the show-cause notice dated 17.04.2021, issued in the last lap of proceedings, when the proposed penalty was communicated to the petitioner, requiring his response, shows that it was said in the notice that the charge-sheet was delivered in person to him on 30.09.2020 and 06.10.2020 in the office at Jiyanpur, which the petitioner refused to acknowledge. It was sent to the petitioner at his permanent address through registered post No. RU-762413213IN on 17.10.2020, but the registered cover was returned undelivered on 02.11.2020. It was then that the charge-sheet was published on the notice board on 07.11.2020.

14. Answering paragraph No.67 of the writ petition, in paragraph Nos. 51 to 62 of the counter affidavit, there are averments about the various modes, through which the charge-sheet and the letters/ notices were served upon the petitioner, which include service by registered post, personal delivery in the presence of two officers, pasting on the noticeboard of the LIC office at Jiyanpur on 07.11.2020, again in the presence of two officers and communication by email to the petitioner on his official mail as well as personal mail i.e. sharda.prasad96@

licindia.com and spsingh.azamgarh@gmail.com on 19.11.2020 and the other dates, when the notices of the scheduled inquiry were sent. The case regarding service of the charge-sheet upon the petitioner and the notices of the inquiry, whenever scheduled, is no doubt well pleaded on behalf of the respondents, indicating the mode by which they served the petitioner. But, the fallacy lies in the fact that there is not a shred of evidence that the respondents have annexed to the counter affidavit to show that any of those modes were actually employed to serve the petitioner, either with the charge-sheet or the four notices of the scheduled inquiry. There is not even a copy of the postal receipt regarding dispatch of the charge-sheet by registered post or a photostat copy of the registered cover that was returned undelivered. In any case, the cover was returned with the remark that 'recipient does not live in Village Chhekva'.

15. It is also true that there is no evidence about production of the two officers, Raj Bahadur Ram and Brijesh Kumar Yadav, Satellite Officer Jiyanpur, Azamgarh at hearing before the Inquiry Officer, in whose presence the charge-sheet was delivered to the petitioner in the Jiyanpur office of the LIC on 30.09.2020 and 06.10.2020 and alleged to be refused. Before this Court as well, no evidence has been produced to show that in fact, the two officers witnessed the delivery and/ or refusal by the petitioner to accept a copy of the charge-sheet. The service of the charge-sheet by email, or for that matter, the four notices of the scheduled inquiry, could be easily substantiated by producing a copy of the mail forwarded to the petitioner on the official or the personal mail ID. There is not the slightest evidence about service by any of these modes annexed to the counter affidavit, except bald assertions, no doubt very specific

and detailed in this regard. In the absence of the slightest of evidence to show service of the charge-sheet or the four notices of the scheduled dates in the inquiry, it has to be held that the charge-sheet or the notices were never served. This then being the state of things, it has also to be held that this is a case of wholesome denial of opportunity of hearing, which goes to the root of the matter, vitiating the departmental inquiry and all orders impugned passed on its basis.

16. The other issue, that is raised by the petitioner, though could have been left undecided in view of our conclusions on the point of opportunity, we think that glossing it over would further complicate matters, if the respondents decide to hold an inquiry *de novo*. In paragraph No.74 of the writ petition, the specific case pleaded by the petitioner is that the seven charges against him, assuming that he was *ex parte*, were not proved by the establishment, producing evidence, documentary or oral, before the Inquiry Officer. No witness was examined to prove the charges at the inquiry. The contentions of the Presenting Officer were accepted as gospel and the charges held proved. Paragraph No.74 of the writ petition reads:

"74. That assailing the inquiry report dated 15.3.2021, the same would indicate the fact that the charges, which had been leveled against the petitioner, were not independently proved. No evidence was adduced by the Inquiry Officer and no witnesses were examined to prove the 7 charges, which had been leveled against the petitioner. The inquiry proceeded on a false pretext and the contentions of the Presenting Officer were accepted as a gospel in that regard and the charges were found to be proved without there being any actual adjudication by the Inquiry Officer. The said factum is conspicuous and on a bare reading of the inquiry report itself."

17. In the counter affidavit, paragraph No.74 of the writ petition has been answered in paragraph No.68, which reads:

"68. That the contents of paragraph no. 74 of the writ petition is incorrect, misconceived hence denied. The correct facts are that the charges levelled against Shri Sharda Prasad were established on the basis of documents adducted during the enquiry proceedings."

18. The denial is absolutely evasive. It is, therefore, a non-traverse, and, *a fortiori*, an admission of all that is asserted in paragraph No.74 of the writ petition. A perusal of the inquiry report does show that in the absence of the petitioner, the charges have been held proved upon the Presenting Officer producing documents, introducing them and submitting his written report to establish the case. None of the witnesses, that is to say, co-workers, with whom the petitioner worked during the period of his alleged absence, were produced or anyone to prove the documents, by which the charges were sought to be proved. Virtually, the charges were accepted due to the petitioner's absence, or so to speak, the finding of proof of charges was one based on the petitioner's default. In an inquiry, even held *ex parte*, the documentary evidence is required to be proved by producing relevant witnesses, if in consequence of the inquiry, a major penalty may be imposed. That is absent in this case. There was no witness produced by the Presenting Officer on behalf of the establishment at all. The Presenting Officer introduced the documents, which were handed over to him apparently as a brief. The findings on the seven charges are virtually a paraphrasing of the charges themselves, without showing how the documentary evidence bears on each of the charges and what it proves. There had to be some analysis of evidence done to reach the conclusions on each of the charges. Possibly, this was not done because the witnesses, who could have proved the documents, were not examined on behalf of the establishment. Apparently, the Presenting Officer was not himself a witness and as much a stranger to the

documents produced as the Inquiry Officer. It was imperative in this case to produce witnesses on behalf of the establishment to prove the charges as well as the documents, that had bearing on the charges during hearing at the inquiry, even if held *ex parte*. In this connection, reference may be made to the decision of the Supreme Court in **State of U.P. and another v. T.P. Lal Srivastava, (1996) 10 SCC 702**. In **T.P. Lal Srivastava** (*supra*), it has been held:

"4. This appeal by special leave arises from the judgment of the Allahabad High Court made on 15-3-1993 in Writ Petition No. 12480 of 1987. The admitted position is that while the respondent was working as a Senior Marketing Inspector, a charge-sheet was served on him on 23-11-1984 calling upon him to explain the charges for committing gross irregularities in the movement of wheat outside the State of U.P. Instead of submitting reply to the charge-sheet, he went on dilly-dallying in submitting the reply. Several letters addressed to the respondent proved ineffective. Resultantly, the appellants took a decision on 26-6-1987 holding that the respondent was found guilty of misappropriation. Consequently, he came to be dismissed from service. The respondent challenged the same in the writ petition. The High Court has set aside the order in the impugned order holding that the documents have not been supplied to the respondent and, therefore, the action was vitiated by error of law. We do not find any justification in the view taken by the High Court; the substratum of the result is that the appellants have not conducted any enquiry though the respondent had been avoiding to give the reply. Since the respondent had avoided to submit the reply, he has forgone his right to submit his reply. Nonetheless, the appellants are not absolved of the duty to hold an *ex parte* enquiry to find out whether or not the charge has been proved. In the event of the Enquiry Officer finding that the charge is proved, he would submit his report to the disciplinary authority. The disciplinary authority should communicate the copy of the enquiry report to the respondent and seek an explanation for the proposed action thereon. If the respondent submits any explanation, the same may be taken into consideration and appropriate order may be passed according to law. Until then, the respondent must

be deemed to be under suspension.”

19. As already remarked, the findings on the charges are virtually ones based on a default proof, though attempted to be camouflaged by a reference made to something said by the Presenting Officer in proof of the charges and submitting a written report. We do not think that what was produced at the inquiry, even if held *ex parte*, satisfied the requirement of necessary evidence being led by the establishment to prove the charges.

20. Reference in this regard may be made to the decisions of the Supreme Court in **State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772, Roop Singh Negi v. Punjab National Bank and others, (2009) 2 SCC 570 and State of Uttaranchal and others v. Kharak Singh, (2008) 8 SCC 236** and the Bench decisions of this Court in **State of U.P. and another v. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB), Smt. Karuna Jaiswal v. State of U.P., 2018 (9) ADJ 107 (DB) (LB) and State of U.P. v. Aditya Prasad Srivastava and another, 2017 (2) ADJ 554 (DB) (LB).**

21. The position of the law in this regard, that has withstood the test of time, has been recently endorsed by the Supreme Court in **Satyendra Singh v. State of U.P. and another, 2024 SCC OnLine SC 3325**, where it has been held:

“12. Learned counsel for the State was *ad idem* to the submissions of the appellant's counsel that no witness whatsoever was examined during the course of the inquiry proceedings. On a minute appraisal of the Inquiry Report, it is evident that other than referring to the documents pursuant to the so-called irregular transactions constituting the basis of the inquiry, the Inquiry Officer failed to record the evidence of even a single witness in order to establish the charges against the appellant.

13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to *Roop Singh Negi v. Punjab National Bank*, (2009) 2 SCC 570 and *Nirmala J. Jhala v. State of Gujarat*, (2013) 4 SCC 301."

22. In view of whatever has been said, we find for the petitioner on double count, that is to say, the case of wholesome denial of the principles of natural justice, and, failure of the Inquiry Officer to ensure proof of charges by the establishment, producing necessary evidence, particularly, witnesses, even if the inquiry proceeded *ex parte*, contrary to the principles in **T.P. Lal Srivastava**. We, particularly, hold that the Inquiry Officer, in his report dated 15.03.2021, has attempted to camouflage the non-production of evidence by the establishment by cleverly wording his report without there being any evidence of the kind and in the manner mandatory to be produced in a departmental inquiry, where a major penalty could be imposed. Since, we think that this is a case of a wholesome denial of opportunity and a fundamental flaw in the inquiry held, even *ex parte*, the respondents should have liberty to proceed afresh against the petitioner from the stage of the charge-sheet, if they so elect.

23. In the result, this writ petition **succeeds** and is **allowed**. The impugned order 10.06.2021 passed by the Senior Divisional Manager, LIC, Gorakhpur, the order dated 31.01.2023 passed by the Zonal Manager, LIC, Kanpur and the order dated 20.06.2023 passed by the Chairman, LIC, are hereby **quashed**. The Chairman, LIC, the Zonal Manager, LIC, Kanpur and the Senior Divisional Manager, LIC, Gorakhpur and each of them are ordered, amongst themselves, to ensure that the petitioner is reinstated in service forthwith and paid his

current salary/ remuneration from the date of communication of this order. It will be open to the respondents to hold disciplinary proceedings afresh against the petitioner from the stage of the charge-sheet, a copy of which the petitioner now has on him. If fresh proceedings are elected to be pursued, the petitioner will be served with a notice, requiring him to answer the charge-sheet, giving him necessary time to reply. The inquiry would then be held according to the law noticed in this judgment regarding the holding of departmental inquiry in matters, where a major penalty may be imposed. The entitlement to arrears for the period that the petitioner has remained out of employment will be determined, subject to the event in fresh disciplinary proceedings, if any, undertaken. In the event, the respondents elect not to pursue fresh proceedings against the petitioner, the petitioner shall be entitled to 50% of his emoluments, whatever due, for the period of his absence. In either case, the petitioner, upon reinstatement in service, will be entitled to the benefits of continuity and seniority.

24. There shall be no order as to costs.

25. Let a copy of this judgment be communicated to the Senior Divisional Manager, LIC, Gorakhpur, the Zonal Manager, LIC, Kanpur and the Chairman, LIC, Central Office, Mumbai by the Registrar (Compliance).

Order Date :- 24.4.2025
Anoop

(J.J. Munir)
Judge