**SUPREME COURT OF INDIA**

Diwan Singh

Vs.

Life Insurance Corporation of India

C.A.No.3655 of 2010

(Vikramajit Sen and Prafulla C. Pant JJ.)

05.01.2015

**JUDGMENT**

**PRAFULLA C. PANT, J.**

1. This appeal is directed against judgment and order dated 27.8.2009, passed by the High Court of Judicature at Allahabad, in Special Appeal No. 1167 of 1999, whereby said Court has partly allowed the appeal, and substituted the punishment of removal awarded to the appellant, by compulsory retirement from service.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Briefly stated, the facts are that the appellant was a cashier with Life Insurance Corporation of India (hereinafter referred to as "LIC") and posted at Bilaspur, District Rampur in U.P. A policy holder, Bhograj Singh, deposited with the appellant an amount of Rs.533/- towards half yearly insurance premium on 13.8.1990 but the same was not deposited with LIC nor credited in the account of the policy holder till 27.11.1990, though a receipt was issued on 13.8.1990 by the appellant. It appears that when the LIC agent did not get his commission out of the premium deposited, and made enquiries in this regard, aforesaid amount of Rs.533/- was shown deposited by the appellant with late fee of Rs.15.90/-, and entry was made in the cash register on 28.11.1990. Also, a forged entry was made in ledger sheet on back date. In connection with the above misconduct on the part of the appellant, a charge-sheet was served on him on 29.4.1991 on two counts, namely, temporary embezzlement of Rs.533/- for the period 13.8.1990 to 27.11.1990, and forging entry of Rs.533/- in the carbon copy of the ledger sheet dated 13.8.1990 between entry Nos. 12 and 13. On conclusion of the departmental

enquiry, the appellant was found guilty, and served with copy of enquiry report, whereafter he was removed from service vide order dated 21.1.1992. The departmental appeal appears to have been dismissed by the authority concerned on 22.2.1992.

4. Challenging the order of removal from service and that of the appellate authority, the appellant filed Civil Miscellaneous Writ Petition No. 10308 of 1999 before the High Court which was allowed by the learned Single Judge on 6.9.1999. Aggrieved by said order of the learned Single Judge, Special Appeal was filed before Division Bench of the High Court, by the employer (i.e. - L.I.C.). The Division Bench, after hearing the parties, came to the conclusion that the appellant appears to have committed the forgery to cover his mistake, and partly allowed the appeal by substituting punishment of compulsory retirement in place of removal from service. The appellant- employee has challenged the order of the Division Bench of the High Court by way of Special Leave Petition mainly on the ground that the punishment of compulsory retirement is disproportionate, unreasonable and harsh. Leave was granted by this Court on 19.4.2010.

5. Mr. Gaurav Agrawal, learned counsel for the appellant, drew our attention to Rule 23 of Life Insurance Corporation of India (Employees) Pension Rules, 1995, which reads as under:-

> "23. Forfeiture of service. - Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the Corporation shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

6. It is argued by learned counsel for the appellant that it is a case of temporary embezzlement of a small amount, as such awarding minor punishment of stoppage of increment etc. would have met the ends of justice. It is also submitted before us that the amount could not be credited by the appellant on 13.8.1990 as the cash actually paid by the policy holder on that day was short, as such the act on the part of the appellant was bonafide.

7. We have given thoughtful consideration to the above argument advanced on behalf of the appellant. The explanation put forth does not appear to be convincing, as the cashier would not have issued a receipt without counting the cash at the counter. Secondly, had the act on the part of the appellant been bonafide, he would not have made forged entry of Rs.533/- in the carbon copy of ledger sheet on 13.8.1990 between entry Nos. 12 and 13. As such, the finding of the enquiry

officer holding the appellant guilty, in our opinion, cannot be said to be against the evidence on record. As far as argument relating to quantum of punishment, as modified by the High Court, which results in consequential forfeiture of pensionary benefits in view of Rule 23, quoted above, is concerned, we do not find the punishment to be harsh or disproportionate to the guilt, in view of the nature of the charge of which the appellant is found guilty in the present case. Time and again, this Court has consistently held that in such matters no sympathy should be shown by the Courts.

8. In Divisional Controller, N.E.K.R.T.C v. M. Amaresh[1], this Court, in para 18 of the judgment has expressed the views on this point as under:

> " In the instant case, the misappropriation of the funds by the delinquent employee was only Rs 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who misappropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment.....".

9. In Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane[2] in which unaccounted amount was only Rs.93/- this Court expressed its opinion in para 12 as under:

> " Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal".

10. In Niranjan Hemchandra Sashittal and another v. State of Maharashtra[3], this Court has made following observations in paragraph 25 of the judgment: -

> "..... In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small, and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenets of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law...."

11. In Rajasthan State Road Transport Corporation and another v. Bajrang Lal[4], this Court, following the case of Municipal Committee, Bahadurgarh v. Krishnan Behari and others[5], has opined that in cases involving corruption there cannot be any other punishment than dismissal. It has been further held that any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. In said case (Rajasthan SRTC), the respondent/employee was awarded punishment of removal from service. In the present case it is compulsory retirement. Learned counsel for respondents submitted that on earlier occasion, appellant was awarded minor punishment, for his misconduct, regarding defalcation of stamps. And now he is found guilty for the second time. Therefore, in the above circumstances in view of the law laid down by this Court, as above, we are not inclined to interfere with the impugned order passed by the High Court. Accordingly, the appeal is dismissed with no order as to costs.

[1] (2006) 6 SCC 187
[2] (2005) 3 SCC 254
[3] (2013) 4 SCC 642
[4] (2014) 4 SCC 693
[5] (1996) 2 SCC 714