

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**W.P. No. 25492 of 2010**

**ORDER:**

Heard Sri M.S.N.Prasad, learned counsel for the petitioner and Sri Bathula Raj Kiran, learned standing counsel appearing for the respondents' corporation.

2. The petitioner filed this writ petition to issue a writ of Mandamus or any other appropriate writ, order, or direction declaring the order of the 2<sup>nd</sup> respondent dated 27.08.2010 confirming the orders dated 28.06.2000 which confirmed the orders dated 04.08.1999 (E.R. Discipline) and consequentially direct the respondents to release all pensionary benefits taking into consideration the 'two' promotions and to refund the sum of Rs.2,15,202.89 recovered from the petitioner.

3. On 08.10.2010 in W.P.No.32559 of 2010, in W.P.No.25492 of 2010 the Hon'ble Court was pleased to pass interim orders as follows :

*"Pending further orders, it is directed that the respondents shall release the pension payable to the petitioner and other retirement benefits except to the extent of Rs.1,75,000/- in case his retirement was accepted".*

4. W.V.M.P.No.5399 of 2010 in W.P.M.P.No.32559 of 2010 in W.P.No.25492 of 2010 has been filed by the respondents in November 2010 and the Writ itself has been heard finally on 17.08.2022.

5. The counsel for the Petitioner refers to letter/representation dated 02.12.1987 of the Petitioner addressed to the Zonal Manager, LIC of India, Southern Zonal Office, Madras, wherein the Petitioner had requested the said Officer to reopen his appraisals from 81 to 82 to 85 to 86 and contends that the Petitioner had an implied permission in his favour and therefore, the plea of the respondents that the petitioner failed to take the requisite approval of the Competent Authority as per rules to reopen such appraisal files which were already settled is totally incorrect and false.

**PERUSED THE RECORD.**

**6. A bare perusal of the relevant paragraphs of the enquiry report dt. 09.06.1995 extracted below clearly indicates that the petitioner alone cannot be held responsible for the mistakes.**

**7. Page 3 of the Enquiry Report reads as under :**

*"Thus there are omissions in the exhibits viz., the signatures of the persons who prepared or checked the*

*authenticity of the documents produced were not questioned either by the charge-sheeted employee or by the witnesses during the course of the enquiry. In fact the witnesses have identified the documents and deposed that they were prepared by them".*

**8. Page 10 of the Enquiry Report reads as under :**

*"The main issue, therefore, is whether proper verification was done while reopening of the appraisals by the BO/DO with the available records. It is to be gathered from the evidence that though some effort was made to check the correctness of the omission claims made by the Dev. Officers full effort was not put in by the Branch or the Branch Manager concerned. The entire transaction has gone on the supposed oral instructions of the Branch Manager and there is no recording of the orders obtained at any point of time. The Branch Manager according to the deposition of the witnesses has advised them not to verify the omissions claims statement and as such proceeded further. In fact the witnesses depose that some verification has been done to verify the omission claims statement submitted by the Dev. Officers and that full efforts were not pressed into service to verify the correctness of the claims made by the Dev. Officers. This lapse was not recorded anywhere, and any written instructions were obtained by the concerned. The charge-sheeted employee in his defence pointed out to the contradictions in the evidence and submits that nobody has told him that anything is amiss. This statement puts the responsibility on the Department and that he acted only believing that everything has been done according to the prescribed procedure. There is no doubt in my mind that the*

*rules and regulations are not followed strictly in accordance with the provisions for reopening of appraisals and that too when substantial amounts are involved as missing premiums. The Department should have obtained written instructions and in the absence of which the evidence of one witness is to be weighed with the version of the CSE who is the Branch Manager. However, the passing authority, in my opinion, has to satisfy himself regarding the correctness of the payment”.*

**9. Para 2 of page 14 of Enquiry Report of the Enquiry officer dt. 09.06.1995 reads as under :**

*“From my examination of the pages of exhibits and also the deposition of the witnesses it is evident that the transactions involved in the appraisals of these two Dev. Officers are very heavy and main source of business of the Dev. Officers is under Salary Savings Scheme. The charge sheeted employee mentions that actual recovery made from the Dev. Officers is much less than what is communicated to him in the chargesheet. This fact may also be looked into”.*

**10. The conclusion arrived at page 14 of the Enquiry Report of the Enquiry Officer is extracted below :**

*“In conclusion, after examination of the voluminous documents produced as exhibits and on examining the evidence on record, the omission claims statements were not verified by the Branch thoroughly and mistakes have crept in this premium income. In fact, substantial premium income was added by the D.O. also after verification. **This only show that the machinery available to examine these***

statements has not done its job and the Branch Manager alone cannot be held responsible for the mistakes. As mentioned by me earlier, when the volume of transactions are very heavy, it is not possible for Branch Manager to verify and he has to depend on the Department for guidance. No written instructions were issued by the Branch Manager nor sought by the Department. I, therefore, hold, that Branch Manager has relied on the information given by the Department and his actions cannot be totally found fault with, though he is responsible for payment of the amount. The Branch Manager has not perhaps, ascertained from the Department the full facts before passing the payment vouchers and thus responsible for the excess payments. To this extent I hold the charge is proved”.

11. It is relevant to note that the LIC of India (Staff) Regulations, 1960 were framed in exercise of the powers vested in the Corporation by Section 49(2)(b) and (bb) of the Life Insurance Corporation Act, 1956. Therefore, these Regulations partake a statutory flavour. It was under Regulations 39(1)(c) and 39(1)(d) that the LIC of India imposed punishment upon the petitioner. Aggrieved thereby, he filed an appeal under Regulation 40.

**12. Relevant portion of Regulation 46 which speaks of consideration of appeals reads as under:**

*"Consideration of Appeals:*

*46.(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Regulation 36 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the order accordingly.*

*(2) In the case of an appeal against an order imposing any of the penalties specified in Regulation 39, the appellate authority shall consider—*

*(a) whether the procedure prescribed in the Regulations has been complied with, and if not, whether such noncompliance has resulted in failure of justice:*

*(b) whether the findings are justified; and*

*(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders—*

*(i) setting aside, reducing, confirming or enhancing the penalty; or*

*(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.*

13. The above regulation, therefore, envisages that the appellate authority should apply its mind and consider the various aspects detailed under Sub-clauses (a), (b) and (c) of Clause (2) of Regulation 46.

14. A bare perusal of the order impugned of the 2<sup>nd</sup> Respondent in the present Writ Petition dated 27.08.2010 confirming the orders dated 28.06.2000 which confirmed the orders dated 04.08.1999 (E R Discipline) clearly indicates that the same is contrary to the spirit of the earlier orders of this Court dt. 13.04.2010 passed in W.P.No.2032/2001. It is submitted that the relevant portions of the Enquiry Report dt. 09.06.1995 of the Enquiry Officer extracted above clearly indicates that the Petitioner alone cannot be totally found fault with and that the machinery available to examine the bank statements had not done its job and therefore the Petitioner alone cannot be held responsible for the mistakes.

15. The order impugned in the present Writ Petition does not justify the findings arrived at through its reasoning. The 2<sup>nd</sup> Respondent, who is statutorily required to verify whether the procedure had been complied with, whether the lower Authorities findings were justified and whether that the punishment imposed was proportionate failed to verify the same. A

bare perusal of the order impugned clearly indicates that the Appellate Authority i.e. the 2<sup>nd</sup> respondent did not consider the relevant portions of the Enquiry Report, which held clear observations in favour of the petitioner and observed that the petitioner alone is not responsible for the mistakes and did not record its findings in respect of any of the three aspects which it was required to do under Regulation 46(2). The order impugned clearly indicates that the 2<sup>nd</sup> Respondent did not apply its mind and consider the various aspects detailed under Sub-clauses (a) (b) and (c) of Clause 2 of Regulation 46.

16. On an earlier occasion in W.P.No.2032/2001 filed by the Petitioner herein the Court vide its order dated 13.04.2010 was pleased to observe as follows :

*"It is manifest that the minutest aforestated do not reflect consideration of the petitioner's appeal in accordance with the Regulation 46(2). Once a statutory right of appeal is made available to an employee, it is incumbent upon the appellate authority to deal with the appeal in accordance with the statutory Regulation. The employee having availed such appellate remedy is entitled to know as to what way the appellate authority to take the decision that it chose to. In the present case, the appellate authority was statutorily*



*required to verify whether the procedure had been complied with, whether the lower authorities findings recorded by the disciplinary authority were justified and whether the punishment imposed was proportionate. The communication addressed by the LIC of India to the petitioner<sup>9</sup> extracting the minutes of the appellate Executive Committee reflect that the Appellate Body did not record its finding in respect of any of the three aspects which it was required to do under Regulation 46(2). The appellate remedy provided to the petitioner under the statutory Regulation cannot be rendered nugatory by the casual and indifferent approach adopted by the Appellate Body as in the present case. The order of the appellate authority in the meeting held on 20.04.2000, the result of which was communicated to the petitioner under the letter dated 28.06.2000 addressed by the Executive Director of the LIC of India is accordingly set aside. The matter is directed to the appellate authority for fresh consideration in accordance with Regulation 46(2) of the LIC of India (Staff) Regulations, 1960. As the matter has been pending for sufficiently long time, it is in the interest of justice that the appellate authority shall dispose of the appeal expeditiously and in any event not later than three months from the date of receipt of a copy of this order.*

**17. A bare perusal of the order dated 27.08.2010 passed by the 2<sup>nd</sup> respondent, confirming orders dated 28.06.2000 which confirmed the orders dated 04.08.1999 (E.R Discipline) clearly indicates that the same is not passed in compliance to the true spirit of**

earlier orders of the High Court dated 13.04.2010 in W.P.No.2032 of 2001 and is in fact, contrary to the said orders. Therefore, under these circumstances, the impugned order dated 27.08.2010 passed by the Appellate Authority i.e. the 2<sup>nd</sup> respondent herein, confirming the orders dated 28.06.2000, which confirmed orders dated 04.08.1999, is accordingly set aside and the matter is remitted back to the Appellate Authority i.e., the 2<sup>nd</sup> Respondent herein for fresh consideration, in accordance with Regulation 46(2) of the LIC of India (Staff) Regulations, 1960. As the matter has been pending for a sufficiently long time, it is in the interest of justice that the 2<sup>nd</sup> Respondent shall dispose of the Appeal of the petitioner dated 23<sup>rd</sup> August, 1999 expeditiously and in any event not later than 3 months from the date of receipt of the copy of the order. The Writ Petition is accordingly allowed in part, but in the circumstances of the case, without costs.

18. The interim orders of the Court dated 08.10.2010 in W.P.M.P.No.32559 of 2010 in W.P.No.25492 of 2010

**shall be in force till the 2<sup>nd</sup> respondent disposes of the appeal of the petitioner dated 23.08.1999 within the stipulated period of three months from the date of receipt of the copy of the order.**

Miscellaneous petitions, if any, pending shall stand dismissed.

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**SUREPALLI NANDA, J**

Date: 11.10.2022

Note: L.R. Copy to be marked  
b/o  
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