

Mr.S.P.S.Chauhan vs The Oriental Insurance Company on 26 March, 2025

Author: Prateek Jalan

Bench: Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on

+ W.P.(C) 23747/2005
MR.S.P.S.CHAUHAN

Through: Mr. Subrat Birla, Ad

versus

THE ORIENTAL INSURANCE
COMPANY

.....Respon

Through: Mr. Rahul Ranjan Verma and
Mr.Abhinav Akash, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The petitioner has filed this writ petition under Article 226 of the Constitution, assailing orders dated 03.09.2004, 25.11.2004 and 16.05.2005 passed by the Disciplinary Authority, Appellate Authority, and the Reviewing Authority, respectively in disciplinary proceedings against him.

A. Facts:

2. The petitioner was employed as a Development Officer with the respondent-Oriental Insurance Company Limited ["Company"] in 1985.

3. The proceedings concern a cover note bearing No. 744028, issued by the petitioner to one Mr. Ram Prakash Yadav, [hereinafter, "the insured"] for insurance of a moped bearing registration No. UP-28-6608.

The gravamen of the charge against the petitioner is that he issued an ante dated cover note, bearing an effective date of 12.04.1994, although it was in fact issued only on 13.05.1994. Consequently, the date of expiry of insurance was also erroneously mentioned as 11.04.1995 instead of 12.05.1995.

4. The petitioner's case is that he entered the wrong dates of commencement and expiry of insurance

by an inadvertent mistake. In this connection, he claims to have addressed a communication on the very same day [13.05.1994], to his Branch Manager, one Mr. Om Jahanabadi, which stated that the cover note was issued on that day, but he had erroneously entered the date of 12.04.1994. It was also stated that the petitioner has corrected the dates in the office copies of the cover note.

5. The matter came to light in the course of a claim instituted under the said insurance policy before the Motor Accident Claims Tribunal ["MACT"], Pilibhit. It appears that the moped in question met with an accident on 10.05.1994, as a result of which one Mr. Noor Mohammed was fatally injured. The wife and children of Mr. Noor Mohammed instituted a claim in MACT, against the insured and the Company. They relied upon the copy of the cover note supplied to the insured, which bore the effective date of 12.04.1994, thus covering the date of accident within the period of insurance.

6. The Company resisted the claim inter alia on the ground that the cover note in the company records, and the insurance policy finally issued by it, bore the effective date of 13.05.1994, and the vehicle was, therefore, not covered by the insurance policy on the date of the accident. An issue was framed on this point, which was decided against the Company by judgment of the MACT dated 21.09.2000. Although MACT came to the conclusion that the cover note could not have been issued by the petitioner on 12.04.1994, it held the Company liable in view of the dates mentioned in the cover note issued to the insured. MACT inter alia held as follows:

"....Though, it has been tried to show by the insurance company that since above Covernote no. 744028 was not available with the employee of the company Shri S. Chauhan on 12.04.1994, therefore, the above Covernote dated 12.04.1994 could not be issued in the name of Shri Ram Prakash and if above Covernote has been issued in the name of Shri Ram Prakash, then it shows the mistake and malafide intention of that employee, which mistake has been corrected as per the records by the company. In this regard, there are two important facts. Shri S. Chauhan is definitely an employee / authorized agent of the Insurance company. Thus, any representation made by him to Shri Ram Prakash Yadav, respondent No.1 shall be binding on the insurance company. Second fact is that if it is assumed that employee of the Insurance Company Shri S. Chauhan by mistake or under malafide intention, had issued the cover note No. 744028 Doc. No. C-81, which mistake was corrected subsequently by the insurance company. In that event, it was important for the insurance company that they must prove before this Tribunal that respondent No. 1 Shri Ram Prakash was fully aware of the above rectification and above rectification was carried out with the consent of respondent No.1 Ram Prakash. In the present case, it does not appear from the records and evidences produced by the insurance company as to on which date the above rectification was made by the insurance company or whether intimation regarding above rectification was given to respondent No. 1 Shri Ram Prakash or not or whether consent of Shri Ram Prakash was obtained regarding such rectification or not. Though the signatures of Shri S. Chauhan are there below the overwriting made in the carbon copy of Covernote No. 744028 by the insurance company, yet no date is mentioned below those signatures, which could show that above rectification etc. was carried out on which date. No

documentary or verbal evidence has been produced in this regard on behalf- of the insurance company that whether any intimation regarding above rectification was given to the respondent No.1 Shri Ram Prakash Yadav by the insurance company or not."1 Emphasis supplied.

The insured did not appear before MACT. MACT awarded a sum of Rs.2,09,800/- to the claimants against the Company.

7. The judgment of MACT has been challenged by the Company before the Allahabad High Court in FAO No. 1883/2000, which remains pending. Allahabad High Court has granted a conditional order of stay on 02.01.2000.

8. The petitioner has also annexed a copy of the statement, which was apparently made by him to the officers of the Company on 21.06.2000, during the pendency of MACT proceedings. The statement reads as follows:

"I, S. P. S. Chauhan, R/o 5015 B Awas Vikas Colony, Pilibhit, am posted as Development Officer in Oriental Insurance Co. Ltd., Branch Office, Pilibhit. I had issued the Covernote No. 744028 dated 13.05.1994 at 11.00 a.m. after inspecting the vehicle in the office and besides this, I had seen the registration plate of the vehicle, but I had not checked the Engine No. and Chassis No. of the vehicle. Date 12.04.1994 was inadvertently recorded on the Covernote No. 744028. Only after informing the former Branch Manager, Shri Om Jahanabadi, I had replaced the date 13.05.1994 with 12.04.1994 and thereafter I had handed over the docket alongwith premium to the former Branch Manager. Thereafter, I came to know that I had recorded the wrong date, which was corrected by me."2

9. After the judgment of MACT, on 21.09.2000, the concerned Branch Manager [who had by then replaced Mr. Jahanabadi], recorded another statement of the petitioner with regard to the issuance of the cover note in question. Suffice it to note that the statement records that the cover note was issued by the petitioner from his office, that he had himself filled up the proposal form, and that the "[p]olicyholder got inspected the vehicle". It is stated that the cover note was issued on Emphasis supplied.

13.05.1994, but that incorrect dates had been entered inadvertently. He had corrected the dates in the office copies, after informing Mr. Jahanabadi, but had not informed the policy holder in writing. It is further stated that the petitioner was not aware of the accident, which had taken place on 10.05.1994. A specific question has been asked as to the following effect:

"Ques. In the order dated 18.05.1994 passed by the Hon'ble Court, Pilibhit that concerned vehicle No. UP 26 6608 is under the custody of PS since the date of accident I.e. 10.05.1994?

Ans. Policyholder himself brought the vehicle and got done the Inspection thereof and number plate was also checked. I am not aware as to how the Inspection of the vehicle lying under the custody of the police was got Inspected by the policyholder?"

10. In the context of the aforesaid facts, major penalty proceedings under Rule 25 of the General Insurance [Conduct, Discipline and Appeal] Rules, 1975, were initiated by the respondent against the petitioner. A memorandum was issued on 02.08.2002, and the accompanying articles of charge mentioned that the petitioner dishonestly and with malafide intention, issued the cover note in backdate, whereas he deposited office copies of the cover note by overwriting the dates, and that the respondent had to bear a loss on account of compensation awarded by MACT as a result of "fraudulent action" of the petitioner. The statement of imputation of misconduct records the facts narrated above, including the allegation that the petitioner had represented that he had issued the cover note after physical inspection of the vehicle, whereas the vehicle in question was under police custody following an accident on 10.05.1994, and was not available for physical inspection.

11. An Inquiry Officer was appointed, after considering the petitioner's response. The inquiry was held against both the petitioner herein and Mr. Jahanabadi.

12. As far as the petitioner is concerned, the Inquiry Officer recorded the following three questions put by him to the petitioner:

"Q.1. When you have issued all other covernotes giving correct dates then why only in this cover note No.744028 where the vehicle has already met with an accident you could mention wrong dates? Ans. When I issued the covernote I had no knowledge about the accident nor insured informed me.

Q.2. What efforts had you made to contact the insured to rectify the cutting on dates on the concerned covernote before and after giving in writing to the Br. Manager?

Ans. Before giving in writing I tried to contact him on his residence and after getting Addresses of his known persons I went there but he was not available. It took me 1.5. to 2.00 hrs. After giving in writing to the Br. Manager I made no efforts to contact the insured. Q.3. How and why you felt yourself absolved of all the responsibilities without rectifying the dates on the original covernote or bringing it back and cancelling it, specially when you have issued the same, after giving in writing to the Branch?

Ans. Since I had no knowledge of accident, I did not care to rectify the dates on the Original covernote."

The Inquiry Officer also noted that the petitioner admitted signing the cover note, and also the overwriting thereupon, but considered it his duty only to inform the Branch Manager.

13. On the second aspect, as to inspection of the vehicle, the Inquiry Officer recorded as follows:

"His [the petitioner] statement that he has inspected the vehicle before granting cover on 13.5.94 is not tenable as has been testified by Mr. V.K. Garg (PW-3) that the vehicle in question was in Police custody on 13.5.94(1.3) and it was beyond inspection (Q.4) of Examination in Chief. Even the Court Order (PD-15) also confirms that the vehicle was in Police custody on 13.5.1994. The case was investigated by Sh. Kamal Budhiraja (PW-2) who during his examination in chief also confirmed on the basis of his investigating, a case of back dating to cover the accident (Q-4). In the cross examination by Sh. SPS Chauhan his DA Mr. Budhiraja has deposed, "As looking into the facts of 5 preceding & 5 succeeding cover notes details there is no error in mentioning dates then why only in the date of said Covernote under which the accident took place. This point in itself makes the sound doubt about the attempt to back date the cover" (.20). Even in his investigation report, dated 29.11.2004 (PD-4) Mr. Budhiraja has opined/concluded that the Dev. Officer issued the cover note 744028 on or after 12.5.94 but dated the same from 12.4.94 to 11.4.95 for the reasons best known to him. However it can be assumed that he tried to cover the date of accident i.e. 10.5.94 under the guise of mistakes in the dates (para 13a). From the cover note (PD-2A) it is clear that the overwriting is on the period of insurance as well as on the Date of Issue (both month & Date) which cannot be termed as human error but is an intentional one).

In general question No.2 raised by EO Mr. Chauhan confirmed that after giving in writing to the Branch Manager, he made no efforts to contact the insured itself proves his intention."

14. On these findings, the Inquiry Officer has held the charges against the petitioner to be proved. The charge against Mr. Jahanabadi was also found to be proved.

15. The disciplinary authority accepted the report of the Inquiry Officer and imposed a penalty of "reduction of basic pay to the lowest stage in the time scale of pay, applicable to Development Officer Grade- 1, and recovery of Rs.50,000/- upon the petitioner". The petitioner's appeal was rejected by an order of the Appellate Authority dated 25.11.2004, and a memorial to the Chairman-cum-Managing Director was also rejected by order dated 16.05.2005.

16. During the pendency of the present petition, this Court passed an order dated 19.12.2005, restraining the Company from giving effect to that portion of penalty, which reduced the petitioner to the lowest pay, while permitting the Company to recover the sum of Rs. 50,000/- in reasonable instalments. During the pendency of the present petition, the petitioner has retired in March 2020, upon attaining the age of superannuation.

B. Submissions:

17. Mr. Subrat Birla, learned counsel for the petitioner submits as follows:

a) The incident in question occurred on account of an inadvertent mistake by the petitioner, which was immediately conveyed to the Branch Manager. The Branch Manager, in turn, accepted the petitioner's version, and the office copies of the cover note with the corrected dates were submitted under the instructions of the Branch Manager.

b) Disciplinary proceedings against the petitioner were initiated in the year 2002, whereas the incident is of the year 1994. The delay in institution of proceedings constitutes waiver of the alleged misconduct, as held by the Supreme Court in *State of M.P. v. Bani Singh & Anr.*³ and in *State of M.P. & ors. v. R.N. Mishra & Anr.*⁴.

c) Mr. Birla also relies upon the principle of parity, submitting that the petitioner has been reduced to lowest grade in the time scale of pay, whereas Mr. Jahanabadi has ultimately suffered only a reduction of one grade in the time scale of pay. Although the original disciplinary authority had imposed the penalty of reduction of four grades upon Mr. Jahanabadi, this was reduced to three grades by the Appellate Authority, and to only one grade by the 1990 Supp SCC 738.

(1997) 7 SCC 644.

Reviewing Authority. It is contended that on a principle of parity, the punishment imposed upon the petitioner must also be accordingly reduced.

d) The last submission on behalf of the petitioner is that the quantum of punishment is entirely disproportionate to the penalty. In this connection, Mr. Birla submits that the amount of Rs. 50,000/-, imposed by way of penalty, has already been recovered, in addition to the sum of Rs.82,250, which was recovered during the period before the order of stay was passed by this Court. According to the Mr. Birla, the pension he has been receiving since superannuation has also been reduced by Rs. 500 per month, as a result of which the additional sum of Rs. 30,000 has been recovered.

18. Mr. Rahul Ranjan Verma, learned counsel for the respondent, however, makes the following submissions:

a) The charges against the petitioner have been duly established, including the charge of deliberate backdating of a cover note. The cover note was, in fact, issued three days after the accident in question, whereas it was backdated by approximately one month, so that the date of accident falls within period of insurance. In these circumstances, the charge against the petitioner is not just of dereliction of duty, but of breach of integrity. The overwriting in the office copies of the cover note has been admitted by the petitioner.

b) The petitioner has also made a false statement before the authorities of the Company to the effect that the cover note was issued only after physical inspection of

the vehicle. Such a contention is belied by the fact that the vehicle was, in fact, in the custody of police at the relevant time. The petitioner has not provided any explanation for the same.

c) The question of delay is also contested on the basis that the Company was resisting MACT proceedings. Mr. Verma states that disciplinary proceedings were initiated only after MACT proceedings were concluded, having regard to the observations made by MACT. In these circumstances, Mr. Verma contends that no waiver can be attributed to the Company.

d) The petitioner's claim of parity with Mr. Jahanabadi is incorrect, as the role of the petitioner, was different from that of Mr. Jahanabadi, who was his supervising officer. The charge proved against the petitioner imputes his integrity.

e) The imposition of a reasonable financial penalty, in the facts of this case, cannot be regarded as disproportionate.

C. Analysis:

19. Having heard learned counsel for the parties, I am of the view that the petitioner has failed to make out a case for interference with the impugned orders. The fact that the petitioner issued the cover note in question only on 13.05.1994, but it bore an effective date of 12.04.1994, is not disputed. The petitioner attributed this to a mistake, but the inquiry report found otherwise. The petitioner's case is that a "mistake" was committed inadvertently, despite the fact that there were errors in four places - in the date and month of commencement of insurance, and correspondingly in the date and month of expiry of insurance. The matter has come to light only because the vehicle was involved in an unfortunate fatal accident, three days before the cover note was actually issued. Thus, the incident resulted in issuance of a cover note for a period which included the date of the accident, and exposed the respondent to liability. The Inquiry Officer has disbelieved the petitioner's case that all these events were an unfortunate coincidence, and I find no arbitrariness or perversity in that conclusion, or upon the reliance of the respondent- authorities on the said findings.

20. The petitioner's misconduct is compounded by the fact that he overwrote the correct dates on the office copies of the cover note, thus creating a discrepancy between the copy in the hands of the insured, and the copy available with the company. The petitioner does not appear to have made an adequate effort to communicate this modification to the insured, leave alone to obtain his concurrence. These facts, even if it is assumed that the genesis of the episode lay in an inadvertent mistake, were sufficient to constitute grave dereliction of duty, as against an employee of an insurance company. This is also the finding upon which MACT has imposed liability upon the Company.

21. The dereliction of duty is exacerbated by a blatantly false narrative, propounded by the petitioner when the matter came to light. He specifically stated that he had physically inspected the vehicle in question prior to issuance of the cover note on 13.05.1994, whereas the Inquiry Officer has found

such a factual assertion to be untenable, as the vehicle was in police custody at the time. This, if nothing else, belies the petitioner's claims of innocence. His submission before the Inquiry Officer was that he did not know of the accident prior to issuance of the cover note, but his effort to disown all responsibility for informing the insured of the modification in the cover note, and his statement that he does not know how the vehicle was produced before him for inspection when it was in police custody, are sufficient to support the finding against him.

22. Factual findings in disciplinary proceedings, so long as they are based upon some evidence produced in the inquiry, do not call for interference of the writ Court⁵. I do not find any such defect in the impugned orders, which are based primarily upon the petitioner's own statements.

23. The petitioner's case of waiver, on account of the delay in institution of proceedings, is similarly unmerited. The incident is of the year 1994, but there is nothing on record to show that the officials of the company, other than the petitioner and his co-delinquent, Mr. Jahanabadi, were aware of the discrepancy. Even when the proceedings commenced before MACT, the company resisted the proceedings, relying upon the cover note available in its records and the policy issued pursuant thereto. The judgment of MACT was rendered only on 21.09.2000, in which the Tribunal observed that, at the very least, the insured should have been made aware of the mistake/mala-fide action of the petitioner. The disciplinary proceedings having commenced by the chargesheet dated 02.08.2002, the delay is not such as to constitute waiver on the part of the respondent. The judgments cited by Mr. Birla on this point, thus do not apply on the facts of this case.

B.C. Chaturvedi v. Union of India (1995) 6 SCC 749, paragraphs 12 and 13 [hereinafter "B.C. Chaturvedi"]; State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584, paragraph 7; Union of India v. Subrata Nath, 2022 SCC OnLine SC 1617, paragraphs 14 and 27 [hereinafter "Subrata Nath"]

24. On the point of parity also, I do not find any equivalence between the role of the petitioner and that of Mr. Jahanabadi, so as to reduce the penalty imposed upon the petitioner to the same penalty as was imposed upon Mr. Jahanabadi. The petitioner has been found to be the direct perpetrator of misconduct; the charges found to be proved against him include charges of lack of integrity and dishonesty. In contrast, the charges proved against Mr. Jahanabadi, who was the petitioner's superior officer, are of dereliction of duty and negligence. There is no justification in treating the two uniformly, and the authorities of the Company have quite rightly made this distinction.

25. Having regard to the nature of the charges proved against the petitioner, I do not find any reason to interfere with the quantum of punishment either. Interference with the quantum of penalty arises only in extreme cases, where the Court's conscience is shocked⁶. In the present case, as held above, the petitioner himself admits negligence in recording one of the fundamental attributes of an insurance policy, i.e. the period of cover. Even more so, his plea that this was an innocent mistake has been disbelieved, which is corroborated by his false statements, disproven by police records. The imposition of only a financial penalty cannot be termed as disproportionate in any circumstances.

26. For the aforesaid reasons, I find no ground to interfere with the impugned orders. However, having regard to the fact that this Court had passed an order of stay, which has held the field for almost 20 years, the recovery of excess amounts paid over the long period, at this stage, would B.C. Chaturvedi, paragraph 18; Subrata Nath, paragraph 21; Union of India v. K.G. Soni, (2006) 6 SCC 794, paragraph 15.

be too onerous upon the petitioner. He has superannuated five years ago, and any such recovery would be made from his pension. The respondent is, therefore, directed not to recover any amounts already paid to the petitioner, but may implement the impugned order of penalty henceforth. D. Conclusion:

27. The writ petition is, therefore, dismissed, but subject to the direction that no amount already paid to the petitioner shall be recovered from him.

PRATEEK JALAN, J MARCH 26, 2025/uk/AD/SD/