

Harish Kumar Dua vs Chairman-Cum Managing Director The New ... on 1 April, 2025

Author: Prateek Jalan

Bench: Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on 01.04.2025

+ W.P. (C) 349/2008
HARISH KUMAR DUA

.....Petit

Through: Mr. Hem C. Vashisht, Advocate.

versus

CHAIRMAN-CUM MANAGING DIRECTOR THE NEW INDIA
ASSURANCE CO. LTD & ORS

.....Respondents

Through: Mr. Dinesh Mathur, Mr. Aaditya
Vijay Kumar and Mr. Aryam
Chopra, Advocates for R1 to R5.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. By way of this writ petition under Article 226 of the Constitution, the petitioner assails an order of the respondent- New India Assurance Company Limited ["Company"] dated 20.06.2007, insofar as it deals with an audit recovery of Rs.3,83,815/- from him. The petitioner also seeks a direction for release of his terminal dues and retiral benefits, alongwith restitution of the amount of pension withheld on account of the recovery.

2. The petitioner joined the services of Liberty Insurance Company on 31.12.1969, which later merged with the respondent - Company. The petitioner then served in the Company and was promoted on more than one occasion, ultimately to the post of Assistant Manager.

3. In the year 2004, the Government of India issued a Special Voluntary Retirement Scheme ["Scheme"], in exercise of powers under Section 17A of the General Insurance Business [Nationalisation] Act, 1972.

4. The terms and conditions of the Scheme were contained in a notification dated 01.01.2004. It provided that all permanent, full-time officers would be eligible to opt for voluntary retirement, provided they had attained the age of forty years and completed ten years of qualifying service. The Scheme contemplated grant of an ex-gratia payment in addition to provident fund, gratuity, pension and leave encashment, as eligible.

5. Clause 3(2) of the Scheme dealt with officers under suspension or against whom disciplinary proceedings were pending or contemplated:

"3. Eligibility:

(2) An officer who is under suspension or against whom disciplinary proceedings are pending or contemplated shall not be eligible to opt for the Scheme:

Provided that the case of an officer who is under suspension or against whom disciplinary proceedings is pending or contemplated may be considered by the Board of the Company concerned having regard to the facts and circumstances of each case and the decision taken by the Board shall be final."

6. The Scheme also provided various general conditions in Clause 8, including the following:

"(ix) All payments under this scheme, and any other benefit payable to an officer shall be subject to prior settlement or re-payment or adjustment in full, of loans, advances, returning of Company's property and any other outstanding dues against him/her and payable by him or her to the company.

XXXX XXXX XXXX

(xiv) Save as provided in para 5(2) the benefits payable under this Scheme shall be in full and final settlement of all claims of whatsoever nature, whether arising under the regulation or otherwise to the officer (or to the nominee in case of death). An officer who voluntarily retires under this scheme shall not have any claims against the Company for re-employment or compensation or employment of any of his or her relative on compassionate grounds in the service of the company or for any other like benefits"

7. In the appendix to the Scheme, a form was prescribed, to be filled by the officer and thereafter certified by the Officer-in-charge of the Branch/Division and the Regional-in-charge of the Regional Office/Head Office. The certifications of the concerned authorities included a certification that no disciplinary action was pending or contemplated against the officer.

8. Pursuant to this notification, the Company circulated a procedure for implementation to its Regional Offices on 28.01.2004. The Circular incorporated the eligibility conditions contained in the Scheme, including the condition that officers against whom disciplinary proceedings were pending or contemplated, would not be eligible, subject to consideration by the Board of the Company.

9. In terms of the notification of Government of India, the petitioner made an application in the prescribed form on 21.01.2004, seeking Voluntary Retirement from the services of the Company. This was accepted by the Company's communication dated 16.03.2004, which also stated that the ex-gratia amount payable to the petitioner would be paid after deduction of other amounts due from

him, if not recovered from other terminal benefits in the meantime. It was further stated that if any discrepancy was noticed later in calculation of payment of ex-gratia, it would be rectified, and any excess payment would be adjusted against future dues payable to the petitioner.

10. On 30.03.2004, the Company also prepared a statement, entitled "Data for release of terminal dues", which stated that no audit recoveries were pending in respect of the petitioner, and that no disciplinary proceedings were in process.

11. The genesis of the present dispute lies in a subsequent communication dated 20.10.2004 addressed by the Company, which claimed that an amount of Rs.4,84,026/- was recoverable from the petitioner, even after adjusting various other recoveries outstanding against him from the ex-gratia payment paid to him. The Company claimed that the said amounts were not recovered from the petitioner's terminal dues [gratuity and commutation] due to an oversight.

12. As against this alleged outstanding of Rs.4,84,026/-, it was stated that a sum of Rs.4,27,340/- was received from the Company's Head Office towards the petitioner's provident fund settlement, which the Company had adjusted against the claimed recoveries. It sought a further deposit of Rs.56,686/- from the petitioner, failing which it was proposed that the matter would be referred to the Pension Cell.

13. As the communication contained no details of the alleged recovery, the petitioner addressed a letter dated 05.01.2005, requesting detailed break up, and stated that according to his records and knowledge, the claims contained therein were unjustified.

14. The Company, by its letter dated 11.01.2005, enumerated the various heads of recovery, amongst which only one which is under challenge in this writ petition, which is an "Audit Recovery" of Rs.3,83,815/-.

15. The petitioner challenged the purported recovery before this Court in W.P.(C) 14369/2006. The writ petition was disposed of on 18.05.2007, noting the petitioner's contention that he was not granted an opportunity of hearing. A time of hearing was fixed for the petitioner before the concerned officer of the Company, and he was also granted liberty to produce all relevant documents at that time. The Company was directed to pass a speaking order thereafter.

16. The petitioner submitted a representation dated 01.06.2007 to the Company, noting that several documents had been issued prior to his Voluntary Retirement Scheme settlement, including a no recovery certificate issued by Delhi Regional Office - II, and clearance letter dated 16.03.2004. He also stated that he was relieved on 26.03.2004, at which time he had no knowledge of any proposed recoveries. As far as the audit recovery is concerned, the petitioner's representation stated as follows:

"Outstanding against the Audit Recovery: -

The details of audit recovery has not been shown nor given to the applicant. So far as question of outstanding against audit recovery is concerned once the applicant was issued with No Dues Certificate by the Audit Department than asking for such recovery is neither justified nor legal. Even otherwise the applicant has not been provided with any detail of audit recovery by letter dated 11.1.2005. Therefore to the understanding of the applicant no such amount as stipulated by you is payable to you from the applicant."¹

17. Against this representation, the Company passed the impugned order dated 20.06.2007, in which the issue of audit recovery was dealt with as follows:

"I find that the following points arise for the purpose of determination by me in this case.

1. Whether after issuance of no recovery certificate by the Internal Audit Department whether any recovery can be made from Sh. H.K. Dua?

XXXX

XXXX

Emphasis supplied.

4. What is outstanding against Audit Recovery?

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18. As far as point No. 1 is concerned, the order only states that issuance of an Internal Audit Certificate does not absolve the petitioner of liability, if he is found to be liable to pay any amount on a subsequent date. The provisions of the Scheme noted above were referred to, in support of the conclusion that "even if a certificate was issued, which was a discrepancy, when such a discrepancy comes to the notice at any later time, the company is still within its right to recover the same". The only other discussion with regard to the audit recovery is as follows:

"Point No. 4:

As discussed while disposing off point No. 1 just because a letter was written to Shri. Dua that there is no personal recovery that does not absolve him if on a future date, Mr. Dua is found to be liable for any recovery because of his own short-comings.

Audit recovery which is sought be recovered from Shri. Dua are due to the fact that audit has raised objection on the short-comings of Shri. Dua's premium bookings either because of booking short premium of by applying wrong rates as per Company's policy. Since this loss has been attributed because of the sole negligence of Shri. Dua the same is being recovered from him."

19. I have heard Mr. Hem C. Vashisht, learned counsel for the petitioner, and Mr. Dinesh Kumar Mathur, learned counsel for the Company.

20. The principal question which requires consideration in this case is whether the impugned audit recovery is sought to be made in compliance with the principles of natural justice, whether in terms of the Company's Service Rules, the Scheme, or otherwise.

21. In this connection, it may be noted that no disciplinary proceedings were initiated against the petitioner prior to his retirement. The Scheme itself predicated that officers against whom disciplinary proceedings were pending, or even contemplated, would be ineligible. The Form annexed to the Scheme required certification that no proceedings were pending or contemplated. The petitioner's application for voluntary retirement having been accepted, the presumption is that this was the correct factual position. There is no pleading or document in the counter affidavit to show that any such proceeding was, in fact, held.

22. It may be noted that by order dated 13.09.2022, the Company was granted time to file an affidavit to bring on record whether any Show Cause Notice was issued prior to the proposed audit recovery. Pursuant to this order, the Company filed an affidavit dated 21.09.2022, in which it was contended that the audit recovery stemmed from the petitioner's negligence in booking short-premiums and applying incorrect rates, contrary to the Company's policy. However, the specific query raised by the Court has been answered as follows:

"4. While the Respondent did not issue a formal show cause to the Petitioner nor initiated a disciplinary enquiry during the course of his employment, the audit recovery was amply reflected in the Respondents letters dated 20.10.2004 and 11.01.2005 and specifically put to the Petitioner. For a period of 3 years from 20.10.2004 until 20.06.2007, the issue of audit recovery was never raised by the Petitioner.

5. In addition, in respect of the issue of audit recovery, the Respondent No. 3 gave a personal hearing to the Petitioner, pursuant to orders passed by this Court, and considered all the issues relating to the terminal dues of the Petitioner. Accordingly, the Respondents passed a detailed order dated 20.06.2007 stating the reasons of the recovery made against the Petitioner, including the factum of audit recovery.

6. Hence, the Petitioner has been provided full and adequate opportunity to defend himself in respect of the audit recoveries."3 Emphasis supplied.

Emphasis supplied.

23. The aforesaid affidavit of the Company fortifies the petitioner's case that the impugned audit recovery was not preceded by compliance of the rules of natural justice. Further, under the Scheme, the Company was empowered to withhold any amount due from the petitioner from the ex- gratia payment. The ex-gratia payment was, in fact, paid, and recoveries are sought to be made from his other retiral benefits. The legal basis for such a course of action has not been explained at all. Neither has the Company relied upon its Pension Rules to suggest that such a course was permissible, nor do the documents disclose such a position.

24. The order dated 20.06.2007, passed after disposal of the first writ petition, cannot improve the Company's case in this respect. The said communication simply brushes aside the Internal Audit Certificate issued prior to acceptance of the petitioner's application for Voluntary Retirement. The audit objection, on the basis of which the recovery was made, has not been placed on record.

25. The communication dated 20.06.2007, in fact, records a finding of "sole negligence" on the part of the petitioner. No such finding can stand in the absence of a proper opportunity being given to the affected party, to respond to the proposed personal recovery from him, on account of an audit objection. It need hardly be emphasized that recovery from an employee's terminal dues is an act with civil consequences, and the power to inflict such a recovery has to be supported by the relevant Rules, and accord with the rules of natural justice.

26. Mr. Mathur submitted that the contents of the writ petition themselves disclose that the petitioner was aware of the factual scenario in which the audit recovery was being made. While the rules of natural justice are flexible and can be moulded to suit the need of the occasion, I am unable to accept Mr. Mathur's contention in these facts. Even if it is presumed that the petitioner knew the factual background of the proposed recovery, the Company was required to give him an opportunity to address that factual background, and to consider his response properly. It is in the discharge of duty that the Company has failed.

27. For the aforesaid reasons, the writ petition is allowed to the extent that the audit recovery of Rs.3,83,815/-, mentioned in the communication dated 11.01.2005, is set aside. Mr. Mathur states, upon instructions, that the amount has been recovered by the Company. The Company is directed to remit the said amount to the petitioner, within a period of eight weeks from today. The amounts will carry simple interest at the rate of 8% per annum, from the date of recovery, until the date of payment.

PRATEEK JALAN, J APRIL 01, 2025 Bhupi/SD