IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 18586 of 2020

KOMAL PRASAD BURMAN
Versus
LIFE INSURANCE CORPORATION OF INDIA LTD & ORS.

……

Appearance:

Shri Narmada Prasad Choudhary, learned counsel for the petitioner.

Shri N.P.S.Ruprah, learned Senior Advocate along with Ms. Muskan Anand, learned counsel for the respondents.

……..

O R D E R

(Reserved on 07 / 08/ 2025)
(Pronounced on 14 / 08/2025)

The present petition was initially filed challenging the charge sheet issued to the petitioner vide (Annexure P-1) dated 07.10.2020. During pendency of the present petition, the petitioner has been removed from service vide order dated 29.07.2021 which has been confirmed in appeal vide order (Annexure P-17) dated 27.01.2022 and therefore, by way of amendment, the said orders have also been put to challenge.

2. The counsel for the petitioner has vehemently argued that the petitioner was working on the post of Assistant Administrative Officer (Marketing) and he was charged with certain irregularities alleged against him while working as Higher Grade Assistant (Finance and Accounts) Branch Office, Damoh under Jabalpur Division. It is contended that the

petitioner was only holding Ministerial post equivalent to Upper Division Clerk in the Corporation and he was not having any financial powers of drawing and disbursement officer. It is vehemently argued that charge sheet has been issued in the year 2020 whereas allegations against the petitioner relate to the year 2011 to 2017 which are between 3 to 9 years prior to the date of issuance of charge sheet and therefore, charge sheet having been issued with much delay, the same becomes vulnerable and had to be quashed on that very ground and the subsequent enquiry and all other actions including penalty orders passed thereupon have to be quashed as the same are based on a charge sheet issued alleging stale charges.

3. The learned counsel for the petitioner further argued that the enquiry officer did not take any evidence and the documents were not exhibited as per rules of evidence. By referring to the penalty order Annexure P-13 it is argued that the said order is not based upon any legal evidence which had been taken in the course of enquiry and even though the Evidence Act may not be applicable to departmental enquiry but still there has to be some cogent evidence to prove the charges.

4. It is further argued that the impugned order amounts to double jeopardy because not only penalty of removal has been imposed but further recovery of Rs.13.28 lakhs has been ordered from the petitioner which makes the order vulnerable.

5. As a last submission, it was argued that impugned order has been passed ordering removal under Clause 39(1)(i) of service regulations of the Corporation whereas the charge sheet mentioned that the petitioner may be punished with punishment under Clause 39(1)(a) to (g) of the said regulations. Therefore, it is argued that the orders being vulnerable be quashed.

6. *Per contra*, it was vehemently argued by learned senior counsel for the respondents that the charges against the petitioner duly stand proved in the enquiry because petitioner himself admitted to the charges and once there was admission by the petitioner then no further evidence was required to be taken. It is further argued that the delay has been duly explained by the respondents in their reply in the matter that when the financial irregularities of the petitioner were detected in surprise vigilance checking and internal enquiries then the entire matter was detected and immediately thereafter charge has been issued which does not suffer from such delay which can be said to be fatal to the charge sheet.

7. Heard.

8. The allegation against the petitioner in the charge sheet was of financial irregularities in the manner that the petitioner has withdrawn various monies from the funds of corporation and repaid loans in his own name or in name of his son or has paid insurance premium of some customers. It was further alleged that he misusing his official position effected various erroneous transactions and posted wrong encashment details against various cheques to mitigate the effect of fraudulent cheques which were used for repayment of loans against his name and against name of his son. By way of charge No.3, it was alleged that he tendered 9 cheques of his Axis Bank account at cash counter on different dates for repayment of loan and loan interest which were outstanding in his own name and name of his family members and therefore, committed pilferage of funds. Further allegations in the charge sheet were of replacement of 8 cheques collected at cash counters towards repayment of loan and payment of renewal premium under policies of his family members or he himself. In this manner the charges were framed levelling grave allegations of financial irregularities, fraud and forgery against the petitioner causing loss to the

Corporation to the tune of Rs.13.33 Lakhs. The charges against the petitioner are very exhaustive and mention each and every instance of financial irregularity and each and every transaction in very much detail.

9. The enquiry ensued in the charges and in the enquiry report which has been brought on record with additional return of the respondents as (Annexure R-2) it has been mentioned against each and every of the 8 charges that during the course of enquiry the petitioner has admitted to the charges and he has mentioned that he cannot state that under what circumstances he did the said act. He used to work under great work pressure and cannot explain under what circumstances he did the said act. In respect of each and every charge as mentioned from 58-68 of the additional return filed by the respondents the petitioner only submitted in respect of each and every charge that he even does not have any explanation to offer and in response to the presenting officer's brief he categorically replied in Hindi as under:-

> ''महोदय किन परिस्थितियों में मैने 10–11 वर्ष पूर्व ऐसी अनियमित्ताए की है मुझे याद नहीं''

10. The aforesaid contention made by the petitioner during the course of enquiry as recorded in enquiry report clearly amounts to admission of the petitioner. The allegations against the petitioner were of financial irregularities and providing benefit to he himself and to his close family members.

11. Learned counsel for the petitioner during the course of hearing when confronted with the aforesaid submission of petitioner made during the course of enquiry submitted that petitioner was assured of light punishment if he admits to the charges and he was led by the false assurance given by the officers. Such verbal assertion cannot be accepted by this Court at this

stage in judicial review of the order of penalty. Therefore, in view of admission of the petitioner to the charges, mere non examination of witnesses by the enquiry officer cannot be stated to be fatal to the case of Corporation.

12. On the question of delay, the learned counsel for the petitioner had vehemently relied on the judgment of the Supreme Court in the case of **UCO Bank v. Rajendra Shankar Shukla** reported in **(2018) 14 SCC 92** to submit that the delay is fatal in case of departmental enquiry and if the employer sits on the allegations against employee for a long period, thereafter it cannot wakeup and initiate enquiry after long lapse of many years. On the aforesaid allegation of delay in initiation of enquiry, in para-1 of the original reply filed by the respondents, they have categorically contended that the allegations at Branch Shahdol relate to period 30.05.2014 to 27.02.2017 and were pointed out in the surprise vigilance checking carried out on 23.06.2017 and thereafter matter was investigated and investigation reports dated 25.08.2017 and 05.03.2018 were submitted.

13. It is further mentioned that subsequently irregularities at branch office Damoh under Jabalpur Division for the period May, 2010 to December, 2013 were also revealed in the inspection report dated 27.09.2018 and therefore, the delay is not fatal. The judgment of the Hon'ble Apex Court in the case **of Dy. Registrar, Coop. Societies v. Sachindra Nath Pandey** reported in **(1995) 3 SCC 134** is relevant for the purpose because in the present case, the delay is on account of discovery of facts at later stage, hence the delay is not fatal because it is not a case where the employer sat over the information of misconduct committed by the employee and willfully did not take any action for long years but it is a case where the information was not available with the employer an as soon as the matter was detected, action has been taken.

14. Learned counsel for the petitioner thereafter argued that the petitioner cannot be the only person who committed so much financial irregularities and there must be other persons also involved. This Court cannot infer anything against any other person and once the petitioner has admitted to the charges then at least the petitioner cannot escape his own wrongs.

15. So far as the ground of double jeopardy raised by the petitioner is concerned, as it is a case of financial irregularities which was proved in the enquiry, therefore recovery of the amount of defalcation along with penalty of removal cannot be said to be double jeopardy because recovery of amount is compensatory to the Corporation while removal is penalty awarded to the petitioner. The purpose of recovery of loss and penalty of removal are different and distinct in the present case and it cannot be said to amount to double jeopardy.

16. So far as contention that the penalty of removal has been awarded under Clause 39(1)(i) whereas the charge sheet mentioned that he may be awarded penalty under Clause 39(1)(a) to (g) only and therefore the penalty has been awarded beyond the terms of the charge sheet is concerned, the said argument is also misconceived. This is because earlier the punishment of removal was laid down in Clause 39(1)(f) when the charge sheet was issued and therefore, the charge sheet mentioned that the petitioner may be awarded any penalty from Clause 39(1)(a) to 39(1)(g) . Later there was amendment in the service regulations in the year 2022 and clause (f) was re-numbered as clause (i) and therefore, the final punishment has been awarded under clause (i) of 39(1). This cannot be said to be a penalty which was not contemplated while issuing the charge sheet. Once the regulations stood amended and the earlier clauses stood renumbered by amendment of 2022 then mentioning the corresponding amended clause

cannot be stated to be quoting any clause which is beyond the terms of charge sheet itself.

17. Therefore, this Court is unable to interfere in the finding of the enquiry officer and the final order passed by the disciplinary and appellate authorities. It being a proven and admitted case of defalcation and misappropriation of funds of the employer to the tune of Rs.13.28 lakhs, declining interference, the petition fails and is hereby **dismissed.**

(VIVEK JAIN)
JUDGE

nks