

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

JUSTICE SUJOY PAUL

&

JUSTICE VIVEK JAIN

ON THE 8th FEBRUARY, 2024

WRIT APPEAL No.1652 OF 2023

BETWEEN:-

1. LIFE INSURANCE CORPORATION OF INDIA, THROUGH ITS CHAIRMAN, HEAD OFFICE, YOGAKSHEMA, LIFE INSURANCE ROAD, MUMBAI (MAH.) 400021
2. THROUGH ITS MANAGING DIRECTOR, LIFE INSURANCE CORPORATION OF INDIA, HEAD OFFICE, YOGAKSHEMA, LIFE INSURANCE ROAD, MUMBAI (MAH.) 400021
3. THE EXECUTIVE DIRECTOR (PERSONNEL), LIFE INSURANCE CORPORATION OF INDIA, HEAD OFFICE, YOGAKSHEMA, LIFE INSURANCE ROAD, MUMBAI (MAH.) 400021
4. THE MANAGER, S. R. NO.214422 (CUSTOMER ZONE) DIVN. OFFICE, JABALPUR (MP)

.....APPELLANT

(BY SHRI N. S. RUPRAH - ADVOCATE)

AND

.....RESPONDENT

**(BY MRS. SHOBHA MENON – SENIOR ADVOCATE WITH SHIR RAHUL
CHOUBEY – ADVOCATE)**

.....

*This Arbitration Appeal coming on for admission this day,
JUSTICE SUJOY PAUL passed the following :-*

J U D G M E N T

This *Intra Court* appeal filed under Section 2(1) of Madhya Pradesh Uchcha Nyalaya (Khand Nyapeeth Ko Appeal) Adhiniyam, 2005, assails the order dated 18/07/2023 passed in Writ Petition No.11643 of 2017 (Shri Yeshwant Singh Garewal vs. Life Insurance Corp. of India & others) wherein the writ Court considered the ambit and scope of Clause 39(1)(d) of Life Insurance Corporation of India (Staff Regulations 1960).

2. Draped in brevity, the admitted facts are that the respondent/petitioner was subjected to a disciplinary proceeding which ended with issuance of order dated 27/02/2016 imposing punishment of *'reduction to the **minimum** in the time scale of pay applicable to his cadre.'* This punishment order became subject matter of challenge before learned Single Bench mainly on the ground that in the teeth of Regulation 39(1)(d) such punishment is impermissible. The interpretation advanced by the petitioner was accepted by writ Court and

it was held that in the light of judgment of Supreme Court in the case of **Vijay Singh vs. The State of Uttar Pradesh and others (2012) 5 SCC 242**, the disciplinary authority cannot impose the punishment which is not prescribed under the relevant rules/regulations. While examining the aforesaid penalty on the anvil of Regulation 39(1)d), it was opined that the penalty imposed upon the petitioner is not one of penalty which is provided in Regulation 39(1)(d). Accordingly, the impugned orders of disciplinary authority and appellate authority were set aside and matter was remanded back from the stage inquiry report was received.

3. Shri N. S. Ruprah, learned counsel for the appellants submits that so far *ratio decidendi* of judgment of **Vijay Singh (supra)** is concerned, there is no scintilla of doubt that disciplinary authority cannot impose a punishment which is not prescribed by the enabling provision. While not disputing the said principle, Shri Ruprah strenuously contended that the Regulation 39(1)(d) covers the punishment imposed. He emphasized that ‘minimum’ is certainly ‘lower’ than the existing scale. Thus, writ Court has committed an error in interpreting the Regulation 39(1)(d).

4. Mrs. Shobha Menon, learned Senior Advocate, on the other hand, urged that the writ Court has rightly interpreted the relevant regulation and rightly came to hold that the word ‘minimum’ cannot be treated to be equivalent to word ‘lower’.

5. Parties confined their arguments to the extent indicated above.

6. We have heard the parties at length and perused the record.

Findings :

7. Before dealing with the rival contentions, it is apposite to reproduce the relevant portion of order of writ Court :-

“11. In order to deal with the rival contention first it is germane to taken note of the penalty which is provided in terms of the Regulation 39 (1)(d) of Regulations, 1960, the same is reproduced as under :

*"Regulation 39 (1)(d) - reduction to a **lower** service, or post, or to a **lower** time scale, or to a lower stage in a time-scale."*

12. A perusal of Regulation 39 (1)(d) of Regulations 1960 reflects that the same provides for punishment of reduction to a **lower** service, or post, or to a lower time scale, or to a **lower** stage in a time-scale. Therefore, the nature of the punishment which is provided in Regulation 39 (1)(d) of Regulations 1960 stipulate that by imposing the said penalty, the employee has to be put at loss to a stage of either scale or post which is lower then the existing stage or scale of the employee. The term "**lower**" which has been used in Regulation 39 (1)(d) of Regulations 1960 is required to be considered in the present case while placing the impugned order in juxtaposition with the same.

13. The impugned order which has been passed against the petitioner reflects that there is a penalty of reduction to the **minimum** in the time scale of pay applicable to cadre of the petitioner. Thus, to appreciate the submission advanced on behalf of the petitioner, **it is first required to deal with the question as to whether the term ‘minimum’ is equivalent to term ‘lower’ which is provided in Regulation 39 (1) (d) of Regulations 1960.** The word “Lower” can be antonym of “Higher” or it can be comparative degree of adjective “Low”. The term “Low” which is an adjective has following comparative and superlative degree in its grammatical term.

<u>Adjective</u>	<u>Comparative</u>	<u>Superlative</u>
Low	Lower	Lowest

Hence to find out whether a particular Pay Scale is lower or lowest than its all higher stages are required to be considered. If there are only two stages of Pay Scale or Stages of time scale of pay then the same can be treated to be 'higher' and 'lower' Stages of scale as there are no other stages of scale. But, if there are more than two stages of payscale or stages of time scale of pay then certainly a lower stage or scale of pay can not be at par or equivalent to its lowest stage of scale and obviously the "Lower" would be higher than the 'Lowest'.

14. The said Regulation specifically deals with the comparative stage of the term 'Low' as an employee is required to be brought down to a lower stage of post or scale. Meaning thereby, if there is another stage of scale which is the lowest. The Regulation 39(1) (d) of Regulation of 1960, does not stipulate punishment to the lowest of scale. The "Lowest" scale or stage of time scale is to be construed as minimum of scale or stage or time scale. But 'Lower' Scale can not be equivated with 'minimum' scale. If the Regulation 39 (1) (d) would have provided for penalty of reduction to 'Lowest' stage of Pay Scale then the impugned order of reduction to minimum scale might have been justified.

[Emphasis supplied]

8. A plain reading of aforesaid paragraphs makes it clear that the writ Court tried to distinguish the word 'lower' from 'lowest'. In the instant case, the punishment imposed is reduction to the minimum in the time scale of pay applicable to his cadre, whereas relevant Regulation talks about reduction to a 'lower' service, or post, or to a 'lower' time scale, or to a 'lower' stage in a time-scale.

9. The Writ Court opined that power to place in a 'lower' stage of scale cannot be at par or equivalent to its 'lowest' stage of scale. 'lower' must be higher than 'lowest'. We are unable to agree with this reasoning. We find substance in the argument of Shri Ruprah, learned counsel for the appellant that 'minimum' is certainly 'lower' than the existing pay scale. The word 'lower' employed in the relevant regulation is wide enough to place the employee to the 'minimum' of the scale. Such 'minimum' will certainly be 'lower' to the existing scale, which is being enjoyed by the delinquent employee before imposition of the punishment.

10. We find support in our view from a Division Bench judgment of Delhi High Court reported in **2011 SCC OnLine Del 4697 (S.C. Singh vs. Union of India & another)**. The Rule 34(iv) of CISF Rules, 2001 was considered in the light of similar argument advanced by counsel for delinquent employee. It was held as under :-

“20. The next plea on behalf of the petitioner by the learned counsel is that under Rule 34(iv) of CISF Rule, 2001, the petitioner could not be awarded the penalty of reduction of pay to the lowest stage and that the petitioner instead could have been awarded at the most only the penalty to place him in the lower grade by one stage of immediately below his pay scale or grade. On plain reading of Rule 34(iv) of CISF Rules, it is apparent that the said rule does not contemplate that the penalty of reduction to a lower time scale of pay grade can be restricted by one grade only. Under Rule 34(8) dealing with minor penalties, it is clearly stipulated that the penalty of reduction to a lower stage would be by one stage only. Whereas, no such restriction is stipulated in Sub Rule (iv) of the said Rule. In the circumstances, it is apparent

that wherever the penalty of reduction of pay to lower stage by one stage is to be imposed, it is specially stipulated. This cannot be disputed by the petitioner that the penalty imposed was a major penalty and not a minor penalty. The respondents had imposed a major penalty of compulsory retirement from service as against the petitioner which was, however, modified by the Revisional Authority to reduction of his pay to the lowest stage from the date of his compulsory retirement as contemplated under Rule 34(iv) of said Rule. In the circumstances, the penalty imposed upon the petitioner cannot be held to be contrary to the relevant rules and the petitioner is not entitled for any interference by this Court in the facts and circumstances.

(Emphasis supplied)

11. Hon'ble Justice Sudhanshu Dhulia (as His Lordship then was) speaking for High Court of Uttarakhand considered regulation 63(5) of the Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 which reads as under :-

“63. Penalties.— The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee, namely -
Minor Penalties.

(1)

(2)

(3)

(4)

Major Penalties

(5) Reduction to a **lower grade** or post or to a lower stage in a time scale;”

The High Court opined as under :-

“11. In view of this Court, the administrative instructions has no legal force. These are Regulations which are absolutely clear that one can be reduced to a lower pay scale, which does not mean only to the next lower scale. In view thereof, if an employee is reduced to the lowest pay scale of the post, there is no anomaly in the same and such a penalty can be imposed, as such penalty is provided in the Regulations itself. Therefore, the reliance on the administrative orders is totally misplaced and the petitioner shall get no benefit out of it.”

(Emphasis Supplied)

12. An interesting question cropped up before this court in the case of **Gurudayal Gupta Vs. Satpura Narmada Kshetriya Gramin Bank, Chhindwara and other reported in 2010 (4) M.P.L.J.** in the light of Regulation 30(c) whether the expression ‘to a lower stage’ in the incremental scale can be construed to hold that employer can place the employee only to a next lower stage. This Court in **Gurudayal Gupta (supra)** held as under :-

“15. In view of the aforesaid, the words "**a lower stage in the incremental scale**" can only mean to any one of the lower stages in the incremental scale. In my considered opinion it cannot be given a restrictive meaning or be interpreted as "one lower stage in the incremental scale". Had the rule making authorities intended to make the rule a restrictive one, they would have clearly stated by "one" stage in the incremental scale instead of making an open ended rule by stating a lower stage in the incremental scale. "A lower stage in the incremental scale" **can only mean any one of the lower stages in the incremental scale including the lowest and that is the only meaning that can be assigned to the rule.**”

(Emphasis supplied)

13. We are in respectful agreement with the view taken by this Court in **Gurudayal Gupta (supra)** and we deem it proper to draw an analogy from this judgment to hold that had it been the intention of regulation makers to restrict the punishment only to lower grade/post and not to the minimum/lowest grade, they would have clearly provided so by employing necessary words in the regulation. We are unable to give such restrictive meaning to the language employed in Regulation 39(1)(d). The punishment imposed, in our considered judgment falls within the four corners of enabling Regulation 39(1)(d). Resultantly, the order passed in W.P. No.11643 of 2017 dated 18.7.2023 is **set aside**.

14. The writ appeal stands **allowed**.

(SUJOY PAUL)
JUDGE

(VIVEK JAIN)
JUDGE

manju