

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 22nd July, 2010
Judgment Delivered On: 26th July, 2010

+ **W.P.(C) NO.2292/2010**

UOI & ORS. Petitioners
Through: Mr.Keshav Dayal, Senior Advocate
with Mr.Sanjay K.Singh, Advocate
and Mr.Gagan Mathur, Advocate

versus

DR.V.T. PRABHAKARAN Respondent
Through: Mr.Sanjay Parikh, Mr.Abhinash
K.Mishra and Mr.Anish Shah,
Advocates.

% Judgment Reserved On: 21st July, 2010
Judgment Delivered On: 26th July, 2010

W.P.(C) NO.559/2010

THE SECRETARY, MINISTRY OF URBAN DEVELOPMENT
..... Petitioner
Through: Mr.Sachin Datta, Advocate.

versus

SHRI TEJ RAM Respondent
Through: Mr.Maneet Singh Reen, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The respondent of WP(C) No.2292/2010 Dr.V.T.Prabhakaran was working as Principal Scientist at Indian Council for Agricultural Research (ICAR) New Delhi, when a memorandum containing five articles of charge was issued to him under Rule 14 of the CCS(CCA) Rules 1965. He challenged the charge sheet by and under OA No.395/2004 which was disposed of vide judgment and order dated 6.1.2005 quashing the first three articles of charge and allowing the proceedings to be continued on the remaining two charges against him.

2. Relevant would it be to note that the gravamen of the two surviving articles of charge was that while working as the Principal Scientist he misused the internet system of the office by displaying objectionable materials on the electronic board and e-mail; made derogatory and disrespectful remarks against his superior officers by publishing undesirable material on public notice board and that he made false and baseless allegations against the Director and the other officers of IASRI. It was indicated that the misdemeanour pertained to lack of devotion to duty i.e. an infringement of Rule 3 of the applicable Service Rules.

3. When the inquiry officer was holding the inquiry, the respondent superannuated on 28.2.2009 and since the CCS (Pension) Rules 1972 were applicable, it is apparent that the further inquiry was under Rule 9 of the said Rules.

4. The respondent was indicted by the inquiry officer and the disciplinary authority served the report upon the respondent and rather than respond to the disciplinary authority, the respondent rushed to the Central Administrative

Tribunal and filed OA No.1055/2009 alleging that since the inquiry officer has not held that the misdemeanour proved is a grave misconduct nor has the disciplinary authority while issuing him the memorandum requiring him to respond to the report of the inquiry officer alleged that it is a case of a grave misconduct, the proceedings had to be terminated for the reason under Rule 9 of the CCS (Pension) Rules 1972 the only penalty which could be imposed upon him was a cut in pension but on the condition that the misdemeanour proved was a grave misconduct or culpable negligence and since neither the inquiry officer held so, nor while calling upon him to respond to the inquiry report the disciplinary authority held so, the proceedings must terminate. Additionally, it was averred that the memorandum of charge alleged a violation of Rule 3 of the applicable service rule i.e. the offence of 'failure to maintain devotion to duty' and 'conduct unbecoming of a government servant'.

5. The Tribunal has concurred with the stand taken by the respondent and ignoring the plea of the petitioner that the disciplinary authority had yet to take a decision, has proceeded to hold that the charge proved cannot be held to be a grave misconduct inasmuch as the material put on the website of the petitioner was already in public domain. It has additionally been held that there is not even a whisper of the charge being of the nature of a grave misconduct in the report of the inquiry officer and thus for said additional reason, no action could be taken under Rule 9 of the CCS (Pension) Rules 1972.

6. The respondent of WP(C) No.559/2010 was served with a charge memo dated 17.8.2004 listing two articles of charge, the gravamen of which was that while working as a

Superintendent in the Lease IV Section in the Land and Development Office of the petitioner he failed to take necessary steps to file a Second Appeal within the period of limitation upon the first appeal filed by the department against the judgment and decree passed in Suit No.54/1983 being dismissed, and additionally that even after the limitation period was over and the specific attention was drawn for the appeal to be filed and inspite of being enquired from whether the second appeal was filed, he did not do so. The respondent retired from service before the proceedings were over and since CCS (Pension) Rules 1972 were applicable, the proceedings continued under Rule 9 thereof.

7. The inquiry officer exonerated the respondent but disagreeing with the findings returned by the inquiry officer, the disciplinary authority forwarded the note of disagreement to the respondent and after obtaining his response held him guilty and proceeded to impose the penalty of 10% cut in pension for a period of five years.

8. The departmental appellate remedies failing, the respondent filed a petition registered as OA No.1602/2009 before the Central Administrative Tribunal alleging that the disciplinary authority has simply returned a finding that the respondent failed to maintain absolute devotion to duty and acted in a manner unbecoming of a government servant inasmuch as he failed to take steps to ensure that the dealing hand concerned with the case, who was under the control and authority of the respondent got filed the Second Appeal; and not that the misdemeanour was a grave misconduct and hence the penalty imposed vide order dated 2.3.2009 was liable to be set aside. The respondent succeeded.

9. Now, Rule 9 of the CCS (Pension) Rules 1972 (herein-after referred to as the Rules) reads as under:-

“9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole period, and of ordering recovery from a pension or a gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

2(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they are commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, --

(i) shall not be instituted save with the sanction of the President,

(ii) shall not in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) *Deleted.*

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decided not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.”

10. A bare reading of the Rule shows that the order which can be passed under the Rule is to recover the pecuniary loss caused to the government or impose a cut in the pension payable or gratuity or both, in full or in part, upon proof of guilt but pertaining to a grave misconduct or negligence.

11. Learned counsel for the petitioners in the two writ petitions did not dispute that in the instant two cases the charge against the respondents was of failing to maintain devotion to duty and conduct unbecoming of a government servant. It was also conceded that no pecuniary loss was alleged to have been caused. It may be noted by us that the charge against the respondent of WP(C) No.559/2010 was of a twin nature i.e. of negligence as also of not taking the steps to file the second appeal inspite of his attention being drawn and to that extent failure to maintain devotion to duty.

12. The issue which was debated at the Bar was whether to attract Rule 9, the report of the inquiry officer must hold that it is a case of a grave misconduct or negligence or the memorandum issued by the disciplinary authority seeking the response to the report of the inquiry officer or the note of disagreement must allege that it was a case of grave misconduct or negligence or that it was sufficient that the order levying penalty so records.

13. Whereas learned counsel for the respondents urged that unless the inquiry officer held it to be a case of grave misconduct, no further proceedings under Rule 9 of the CCS (Pension) Rules 1972 could be continued. Alternatively, counsel alleged that where it could be demonstrably shown that the misdemeanour was ex-facie not a grave misconduct, the Tribunal could quash the further proceedings. Counsel alleged that only where the misdemanour attracted a moral turpitude or dishonesty or corruption could it be classified as a grave misconduct and that a misconduct of failure to maintain devotion to duty could never be a case of grave misconduct.

14. Per contra learned counsel for the petitioner of WP(C) No.2292/2010 urged that the stage of recording the finding that the misconduct was grave was when the disciplinary authority imposed the penalty. It was urged that thus OA No.1055/2009 filed by the respondent of said writ petition was premature. Attacking the finding returned by the Tribunal that the acts of the respondent were not grave misconduct, counsel urged that merely because the offence proved is failure to maintain devotion to duty or acting in a manner unbecoming of a government servant, it could not be said that on this ground alone the matter has to be considered qua the issue of the misdemeanour being a grave misconduct. Counsel urged that the nature of the allegations constituting the offence, and which were proved, would determine whether the misconduct was a grave misconduct. Counsel urged that rank indiscipline by an officer which lowered the authority of the head of the institution in the eyes of the other employees is a serious act of indiscipline inasmuch as if not controlled, it can destroy the administrative command of the organization and hence prejudicial to not only the organization but even

public interest served by the organization. Counsel urged that if government servants were allowed to interfere with the computer system of the office by inserting news articles, it would be ex facie an act of grave misconduct. Counsel urged that the respondent had no business to access the password of the computer network in the office of the petitioner and paste or post therein information which may be already in public domain and was of a kind which fuelled unrest in the organization.

15. Learned counsel for the petitioner in WP(C) No.559/2010 urged that as long as it could be inferred that the misconduct proved was a grave misconduct, it was sufficient for the penalty of cut in pension to be imposed.

16. Let us peep into the precedents of the past. What do they say?

17. In the decision reported as 1990 (4) SCC 314 D.V.Kapoor vs. UOI & Ors., with reference to Rule 9 of the CCS (Pension) Rules 1972 the Supreme Court held that it was apparent that the President had reserved to himself the right to withhold pension in whole or in part, permanently or for a specified period, but, upon the condition that in the departmental inquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of a service. In para 9 of the decision it is observed: *“As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental inquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority*

of law to impose penalty of withholding pension as a measure of punishment.”

18. It were these observations in para 9 which were highlighted by learned counsel for the respondents.

19. It may be noted that the challenge in the proceedings which were considered by the Supreme Court was after the disciplinary authority had imposed the penalty and the order imposing the penalty had not opined that the misdemeanour proved against D.V.Kapoor was a grave misconduct.

20. We need not make a catalog of various decisions which have simply noted the aforesaid decision of the Supreme Court and have read para 9 thereof to mean that unless the inquiry report or the decision at the criminal trial indicts the government servant by expressly holding that it was a case of grave misconduct, penalty under Rule 9 of the Pension Rules cannot be imposed.

21. The other view is as expounded in the decision reported as 2007 (5) SCALE 421 Inspector Prem Chand vs. Govt. of NCT of Delhi & Ors. Where in para 12 it was held that the stage of so holding is when the disciplinary authority arises at a finding of fact qua the guilt.

22. We refrain from cataloging said decisions.

23. With the two viewpoints noted above, it assumes importance to note that evidenced by the decision of the Supreme Court reported as 1999 (7) SCC 739 Yoginath D.Bagde vs. State of Maharashtra & Ors., the jurisprudence in service law is that the disciplinary authority should not prejudge the gravamen of the allegations or for that matter even the charge, and should not use language which shows that the disciplinary authority has already made up its mind. It

is only after the inquiry is over and the delinquent is heard with respect to the report of the inquiry officer; and when exonerated at the inquiry but the disciplinary authority not agreeing with the report, upon hearing him qua the note of disagreement, the final opinion has to be rendered. It is important to highlight that in Yoginath D.Bagde's case (supra) conclusive determination of the guilt by the disciplinary authority before giving an opportunity to the delinquent to respond to the note of disagreement was held to be a case of a closed mind qua the response of the delinquent, resulting in the disciplinary authority denuding himself the jurisdiction to decide with reference to the response of the delinquent to the note of disagreement.

24. Thus, requiring the law to be interpreted that either the charge sheet must allege the misconduct to be grave or the inquiry officer must hold so or the disciplinary authority should hold so while calling upon the delinquent to respond to the indictment, would mean that the disciplinary authority would be compelled to form an opinion without hearing the delinquent and if he would do so, would attract the charge that the disciplinary authority has already foreclosed its mind.

25. Rules, whether of procedure or of substance, have to be evolved harmoniously and not in a contradictory manner. Law cannot evolve in a manner where two legal principles clash head on with each other.

26. Thus, we hold that the correct principle of law is that the stage for the disciplinary authority to hold that it is a case of a grave misconduct is when the penalty, by way of cut in pension or gratuity is inflicted under Rule 9 of the Pension Rules, and at no prior stage. This interpretation would be in harmony with the legal principle in Yoginath D.Bagde's case

(supra) and would also be in conformity with the well known recognized judicial principle that the decision maker must take/make the decision after hearing the party likely to be affected by the decision and should not pollute his mind by prejudging the issue.

27. Now, can it be said that an offence of failure to maintain devotion to duty and/or unbecoming of a government servant can never be a grave misconduct?

28. 'Misconduct' has been defined in *Black's Law Dictionary*, Sixth Edition at page 999, thus:

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.

29. 'Misconduct in office' has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

30. In P.Ramanatha Aiyar's Law Lexicon, 3rd Edition, at page 3027, the term 'misconduct' has been defined as under:-

"The term 'misconduct' implies, a wrongful intention, and not involving error of judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. 'Misconduct' literally means wrong conduct or improper conduct."

31. The Supreme Court in the case reported as 1992 (4) SCC 54 State Bank of Punjab & Ors. vs. Ram Singh Ex Constable discussed and decided what misconduct is. The relevant paras of the judgment are reproduced below:-

“In usual parlance, misconduct means transgression of some established and defined rule of action, where no discretion is left, except that necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where, some direction is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.”

“Thus it could be seen that the word ‘misconduct’ though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.”

32. Having understood what misconduct is, it becomes easy to understand what a grave misconduct would be. It has to be the aggravated form of misconduct.

33. Acts of moral turpitude, acts of dishonesty, bribery and corruption would obviously be an aggravated form of misconduct because of not only the morally depraving nature of the act but even the reason that they would be attracting the penal laws. There would be no problem in understanding the gravity of such kind of offences. But that would not mean that only such kind of indictments would be a grave misconduct. A ready example to which everybody would agree with as a case of grave misconduct, but within the realm of failure to maintain devotion to duty, would be where a fireman sleeps in the fire office and does not respond to an emergency call of fire in a building which ultimately results in the death of 10 persons. There is no dishonesty. There is no acceptance of bribe. There is no corruption. There is no moral turpitude. But none would say that the act of failure to maintain devotion to duty is not of a grave kind.

34. It would be difficult to put in a strait jacket formula as to what kinds of acts sans moral turpitude, dishonesty, bribery and corruption would constitute grave misconduct, but a ready touchstone would be where the *'integrity to the devotion to duty'* is missing and the *'lack of devotion'* is gross and culpable it would be a case of grave misconduct. The issue needs a little clarification here as to what would be meant by the expression *'integrity to the devotion to duty'*. Every concept has a core value and a fringe value. Similarly, every duty has a core and a fringe. Whatever is at the core of a duty would be the integrity of the duty and whatever is at the fringe would not be the integrity of the duty but may be integral to the duty. It is in reference to this metaphysical concept that mottos are chosen by organizations. For example in the fire department the appropriate motto would be: *'Be*

always alert'. It would be so for the reason the integrity of the duty of a fire officer i.e. the core value of his work would be to be '*always alert*'. Similarly, for a doctor the core value of his work would be '*duty to the extra vigilant*'. Thus, where a doctor conducts four operations one after the other and in between does not wash his hands and change the gloves resulting in the three subsequent patients contracting the disease of the first, notwithstanding there being no moral turpitude involved or corruption or bribery, the doctor would be guilty of a grave misconduct as his act has breached the core value of his duty. The example of the fireman given by us is self explanatory with reference to the core value of the duty of a fireman to be '*always alert*'.

35. What we have stated in para 34 above is best understood with reference to the example in para 33 above.

36. Since the respondent of WP(C) No.2292/2010 has approached the Tribunal at a premature stage without awaiting a decision by the disciplinary authority, we are of the opinion that WP(C) No.2292/2010 has to be allowed and the impugned order dated 10.11.2009 passed by the Tribunal is required to be set aside with further observations that the opinion expressed by the Tribunal that the misdemeanour alleged and proved is not a grave misconduct stands obliterated and that the disciplinary authority would decide the issue uninfluenced by the observations made by the Tribunal and as guided by the present decision.

37. As regards WP(C) No.559/2010 we note that while passing the order imposing the cut in pension the disciplinary authority has not returned a finding that the misconduct proved is grave misconduct and neither has the appellate authorities so found, no case is made out to interfere with the

findings returned by the Tribunal. We may simply add that the file in question for purposes of a second appeal to be filed was with an Office Assistant and the respondent in said writ petition was the Superintendent of the branch i.e. was not directly dealing with the file. The respondent, at best, would be guilty of failing to exercise proper supervision, which may be a misconduct but would prima face be a case not of grave misconduct.

38. The writ petitions stand disposed of as under:-

- (a) WP(C) No.559/2010 is dismissed.
- (b) WP(C) No.2292/2010 is allowed. Impugned order dated 10.11.2009 passed by the Central Administrative Tribunal is set aside. OA No.1055/2009 is dismissed. The Disciplinary Authority would pass the necessary order after receiving the response of the respondent. Needless to state, further course would be chartered as per law.

39. In both cases there shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

JULY 26, 2010
dk