

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On: 12<sup>th</sup> August, 2010  
Judgment Delivered On: 30<sup>th</sup> August, 2010

+ **W.P.(C) 9493/2009**

UOI ..... Petitioner  
Through: Mr.H.K.Gangwani, Advocate

Versus

ANIL PURI ..... Respondent  
Through: Mr.D.S Mehandru, Advocate  
Ms.Surbhi Popli, 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. Vide impugned judgment and order dated 19.9.2008 the Central Administrative Tribunal has allowed OA No.1915/2007 filed by the respondent and has quashed the charge sheet issued against the respondent on the ground that there has been delay in initiating the disciplinary proceedings, secondly that it is a case where a decision has already been taken to punish the respondent and the proposed disciplinary proceedings are a mere ruse and lastly that the misdemeanour alleged against the respondent did not attract moral turpitude and since the respondent had retired from service penalty as contemplated by Rule 9 of the CCS Pension Rules 1972 could not be inflicted.

2. It may be noted at the outset that the Inquiry

Officer was yet to complete the inquiry when the proceedings got interdicted as a result of the respondent petitioning the Central Administrative Tribunal.

3. Employed as a Superintending Engineer (Electrical) certain lapses pertaining to the working of the respondent and one Sh.O.P.Nayer, Executive Engineer came to the notice of the superior authorities in the year 1998. The alleged lapses pertained to certain decisions taken by the respondent on 5.5.1993. Accordingly, the matter was scrutinized at the departmental level resulting in a memo dated 4.9.1998 being served upon the respondent seeking his explanation regarding approval granted by him on 5.5.1993 for procurement of Mirror Optics Fluorescent Fittings alleging that existing fittings in working condition were unnecessarily replaced by purchasing expensive fittings and that too without examining the technical/financial stability. It was further alleged against the respondent that on 8.6.1993, 7.7.1993 and 25.8.1993 he accorded five approvals to five estimated works totaling Rs.9,52,516/- in contravention of Section 1.8 of CPWD Manual Vol. II. The respondent was called upon to furnish explanation within 10 days.

4. The respondent did not furnish any explanation within the stipulated period of 10 days. Reminders were sent to him on 16.10.1998, 4.12.1998, 15.1.1999, 1.2.1999, 1.3.1999, 8.4.1999, 1.6.1999, 24.6.1999, 13.7.1999 and 9.12.1999.

5. It was only on 18.7.2000 that the respondent furnished a reply in which he gave what according to him was his justification for what he did.

6. Suffice would it be to note that the petitioner consumed one year, ten months and fourteen days to furnish a reply to the memorandum dated 4.9.1998.

7. The reply furnished by the respondent was analyzed and the file was sent to the Ministry of Urban Development on 25.1.2001 for first stage advice from the Central Vigilance Commission and after processing the file the Commission recommended initiation of minor penalty proceedings against the respondent which led to a charge sheet dated 6.2.2002 being issued to the respondent requiring his response to be submitted within 10 days.

8. The charge sheet was served upon the respondent on 28.2.2002 and vide letter dated 30.5.2002 he sought inspection of certain documents stating that the same was necessary for his defence. The respondent was intimated that he could inspect the documents on 28.6.2002. He did not do so. Reminder was sent to him on 20.9.2002 to inspect the documents, inspection whereof was sought by him. A further reminder was sent to him on 1.10.2002 to do the needful. Another reminder was sent on 6.1.2003. Another reminder was sent on 4.11.2003. Vide letter dated 25.11.2003 the respondent requested for two months' time to file a response to the charge sheet. The time was extended at the request of the respondent and he finally submitted the response on 28.5.2004.

9. Relevant would it be to note that in this manner the respondent delayed the matter by one year and eleven months.

10. Along with the charge sheet and the reply filed by the respondent, containing the comments of the department on the reply filed by the respondent the file was sent to the Nodal Ministry on 10.8.2004 which referred the same to the Union Public Services Commission for a second stage advice and this resulted in the commission advising that the gravity of the charges warranted an inquiry for major penalty

proceedings. On 24.1.2006 a charge sheet was issued under Rule 14 of the CCS (CCA) Rules 1965 alleging the following article of charge:-

“The said Shri Anil Puri, Superintending Engineer (E) accorded approval on the note dated 1.5.93 of Executive Engineer (E), ECD-III for procurement of expensive (i) 2032 nos. of 2 x 40w and lii) 672 nos. of 1 x 40w fluorescent mirror optic fittings costing approximately Rs.23,36,864/- out of which 1510 nos. mirror optics fittings worth Rs.13,44,540/- were procured and installed in the CGO Complex by the Executive Engineer (Elect.)/ECD-III.

3 Nos. Supply Order as per detail given in Appendix-I were placed by Executive Engineer (E), ECD-III for 1550 Nos. mirror optic fittings costing Rs.13,84,540/- out of which sanction for 40 Nos. fittings (12 Nos. surface and 28 Nos. recessed type 4 x 20 w fitting costing Rs.40,000/-) was only available. Thus unwarranted & unauthorized large scale purchases of 1510 nos. mirror optics fittings (excluding 12 nos. surface and 28 nos. recessed type 4 x 20 w fittings) during 1993-94 were made without any requisition and without obtaining Administrative Approval and Expenditure Sanction from the competent authority, through THREE supply orders, as per details given in Appendix I.

The said Shri Anil Puri, Superintending Engineer (Electrical) allowed mass scale replacement of existing 1510 Nos. of box type fluorescent electrical fittings in CGO complex which were installed during 1982-83 as indicated in the five detailed estimates for special repairs amounting to Rs.9,52,516/-, by way of approving the estimates prepared by Executive Engineer (E), ECD-III, as per details given in Appendix II. Such mass scale replacement of fittings, which were in working order and were within 10 years of their installed life was uncalled for without preparing any detailed justification for such a replacement. More importantly, Shri Anil Puri allowed such a mass replacement of fittings without making any cost analysis to see whether the cost involved is justified by the better illumination provided and without considering whether the design based on which the light fittings were originally provided was adequate or

not.

The said Shri Anil Puri allowed the procurement of mirror optics fittings costing Rs.13,44,540/- besides the labour cost involved in replacing the fittings being charged to "Special Repairs" to EI & Fans at CGO Complex, New Delhi. The mass scale replacement of existing/working box type fittings with twice expensive mirror optics fittings, by charging the expenditure to "Special Repairs" to EI & fans at CGO Complex, New Delhi, is not in order. Since the replacement of existing box type fittings in bulk, resulted in increase in the capital cost of the buildings, the expenditure should have been charged to "Original Works". Even if the replacement was warranted, Shri Anil Puri should have followed proper procedure and not formal Administrative Approval and Expenditure Sanction from the competent authority. Thus Shri Anil Puri contravened the provisions of Para 1.8 & para 2.2. of CPWD Manual Vol.II (1988 Edition).

By his above acts, Shri Anil Puri, Superintending Engineer (Elect.) exhibited lack of devotion to duty thereby contravening Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964."

11. Inquiry Officer was appointed who fixed 22.9.2006 as the date for preliminary hearing which was not attended to by the respondent in spite of prior intimation. The Inquiry Officer directed the respondent to submit list of defence documents latest by 31.2.2006, which was not done. Only on 24.11.2006 the respondent furnished the list of defence documents. Thereafter, the respondent got the matter repeatedly postponed on ground of poor health and finally he filed a petition before the Central Administrative Tribunal praying that the disciplinary proceedings be quashed.
12. It be noted that in the meanwhile the respondent superannuated on 31.1.2006.
13. This is the factual backdrop relevant to be noted to decide the issues involved in the instant writ petition.

14. Let us deal with the issue of delay as a ground held as a good ground by the Tribunal to quash the charge sheet.

15. At the outset it may be recorded by us that the starting point while considering delay is not the date or the period when the misdemeanour alleged took place. The starting point, as observed by the Supreme Court in the decision reported as AIR 1990 SC 1308 State of MP Vs. Banni Singh (para 4) is when the department gains knowledge of the relevant facts constituting misdemeanour.

16. In the instant case this date is somewhere in the year 1996. The charge sheet, as noted above was finally issued on 24.1.2006. Nearly ten years were consumed.

17. We have already noted hereinabove that for two different periods, firstly when he was called upon to submit a reply to the memo dated 4.9.1998 the respondent delayed the matter by one year and ten months and secondly when the earlier charge sheet was served for a minor penalty proceedings the respondent consumed one year and eleven months. Thus, out of nearly ten years' time the respondent consumed nearly four years. The remaining nearly six years were consumed by the department and in respect thereof, what route was chartered by the file has been noted by us. As observed by the Supreme Court in the decision reported as 1995 (2) SCC 570 State of Punjab Vs. Chaman Lal Goyal the department has to be fair to its employee and must investigate the correctness or otherwise of the allegation against its employee before resorting to a departmental action and should not rush to the same. As observed in the decision reported as 1995 (6) SCC 749 B.C.Chaturvedi Vs. UOI the department must collect the necessary material in this regard and thus sufficient ply has to be given to the department in the time consumed to verify the correctness of the allegations

against an employee and requisite time taken to collect the relevant material. In the decision reported as 1998 (4) SCC 154 State of AP Vs. N.Radhakishan it was observed that the delay caused by the employee has to be duly considered. It was observed that if the delay is unexplained or prejudice to the employee is writ large on the face of it, these alone would justify the disciplinary proceedings to be terminated. In the decision reported 1995 (3) SCC 134 Deputy Registrar Cooperative Societies Faizabad Vs. Sachindra Nath Pandey & Ors. as also the decision reported as 1997 (4) SCC 255 Secretary to Government Vs. K.Munniappan it was observed that where charges were serious, notwithstanding delay, the inquiry must be permitted to be taken to its logical conclusion.

18. In the decision dated 29.10.2003 deciding LPA No.39/1999 DDA Vs. D.P.Bambah & Anr. a Division Bench of this Court after taking note of the aforesaid decisions, summarized the legal position as under:-

“15. In our opinion the legal position, when an action is brought seeking quashing of a charge-sheet on grounds of issuance of the charge-sheet or grounds of inordinate delay in completion of the disciplinary inquiry may be crystalised as under:-

**(i)** Unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is not period of limitation for initiating the disciplinary proceedings;

**(ii)** Since delay in initiating disciplinary proceedings or concluding the same are likely to cause prejudice to the charged employee, courts would be entitled to intervene and grant appropriate relief where an action is brought;

**(iii)** If bone fide and reasonable explanation for delay is brought on record by the disciplinary authority, in the absence of any special equity, the court would not intervene in the matter;

**(iv)** While considering these factors the court has to consider that speedy trial is a part of the facet of a fair procedure to which every delinquent is entitled to vis-a-vis the handicaps which the department may be suffering in the initiation of the proceedings. Balancing all the factors, it has to be considered whether prejudice to the defence on account of delay is made out and the delay is fatal, in the sense, that the delinquent is unable to effectively defend himself on account of delay.

**(v)** In considering the factual matrix, the court would ordinarily lean against preventing trial of the delinquent who is facing grave charges on the mere ground of delay. Quashing would not be ordered solely because of lapse of time between the date of commission of the offence and the date of service of the charge-sheet unless, of course, the right of defence is found to be denied as a consequences of delay.

**(vi)** It is for the delinquent officer to show the prejudice caused or deprivation of fair trial because of the delay.

**(vii)** The sword of damocles cannot be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary inquiry should be completed against him within a reasonable time. Speedy trial is undoubtedly a part of reasonableness in every disciplinary inquiry.”

19. 40% time has been consumed by the respondent and discounting the same the period attributable to the department is about six years and noting the steps taken by the department in pursuing the matter, we are afraid, we cannot accord our imprimatur to the impugned decision with respect to its reasoning predicated on the issue of delay.

20. As regards the finding in para 10 that the advice from UPSC has to be treated as the final decision of the President to hold the respondent guilty and thus the departmental proceedings are a mere formality requiring the

same to be quashed, we wonder as to wherefrom can the said conclusion be drawn.

21. As noted hereinabove the matter was sent to UPSC for second stage advice pertaining to the response of the respondent to the charge sheet dated 16.2.2002 when proceeding for minor penalty were initiated. UPSC opined that considering the gravity and the seriousness of the charge it was not a case to levy a minor penalty but was a case attracting major penalty. This advice is obviously with reference to the prima facie view which one takes with reference to the allegations in the charge sheet and cannot ever be the final view which must await the evidence being brought on record and the findings returned by an Inquiry Officer.

22. Thus, the impugned order, with reference to the second line of reasoning adopted by the Tribunal, is liable to be set aside.

23. It then remains to be answered whether the charge is ex facie not grave misconduct and hence the proceedings have to be dropped for the reason the respondent superannuated with effect from 31.1.2006 and the only penalty which can be levied upon him is a cut in pension and that too not merely for being found guilty of a misconduct, but found guilty of a serious misconduct.

24. Rule 9 of the CCS (Pension) Rules 1972 (here- in- 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."

25. 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.

26. 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.

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.”

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.”

27. 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.

28. In the decision reported as 1992 (4) SCC 54 State Bank of Punjab & Ors. Vs. Ram Singh Ex. Constable, discussing misconduct the Supreme Court spoke thus: *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.*

29. Thus it could be said 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.

30. Deciding W.P.(C) No.2292/2010 Union of India vs Dr.V.T.Prabhakaran, on 26.7.2010 we had discussed whether lack of moral turpitude is an essential ingredient of a grave misconduct and had opined in the negative. Discussing various judgments, in para 33 and 34 of the said decision, we had observed as under:-

“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 contacting 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*'."

31. Having noted the misdemeanour alleged against the respondent, the gravamen is of unwarranted and unauthorized large scale purchase of mirror optic fittings without any requisition or administrative approval or expenditure sanctioned. The financial implication is Rs.13,84,540/-. It is alleged that mass scale replacement of fittings which were in working order and were within ten years of their installed life was uncalled for. It is alleged that the respondent manipulated the head under which the expenditure could be adjusted i.e. the charge suggests that the respondent knew that what he was doing was wrong for only then would he have contrived to do what he did.

32. The charge has yet to be investigated. The Inquiry Officer has yet to submit a report and thus the correctness or otherwise thereof cannot be commented upon at this stage. However, with rampant abuse and disabuse of financial power which is spreading like a cancer in public life, it cannot be said that if proved, such kind of misadventures are not grave misconduct.

33. We may note that upon the co-delinquent, O.P.Nayer Executive Engineer penalty levied is 15% cut in pension for a period of five years.

34. Thus, disagreeing with all three reasons given by the Tribunal and reciting the mantra that nothing said by us would be treated as an expression on the merits of the charge sheet issued against the respondent and that our observations with respect to the charge sheet are prima facie and are the

result of the question which we have to answer: if proved, would the misconduct be a grave misconduct, we allow the writ petition and quash the impugned order dated 24.1.2006.

35. Noting that the matter has been sufficiently delayed, it is hoped and expected that Inquiry Officer would conclude the inquiry as expeditiously as possible, of course subject to the condition that the respondent cooperates.

36. No costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(MOOL CHAND GARG)**  
**JUDGE**

**AUGUST 30, 2010**  
mm / dk