

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

Judgment reserved on: 6th September, 2011
% **Judgment pronounced on: 19th September, 2011**

+ **WP(C) No.3667/2011**

SANJAY PRASAD Petitioner
Through: Mr.Shankar Raju, Advocate.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr.Anuj Aggarwal, Adv. for R-1.
Mr.R.V.Sinha with Ms.Sangita
Rai, Advs. for R-2 to 5.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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

DIPAK MISRA, CJ

By this writ petition preferred under Articles 226 and 227 of the
Constitution of India, the petitioner has called in question the legal

pregnability of the order dated 2.2.2011 passed by the Central Administrative Tribunal, Principal Bench (for short 'the tribunal') in O.A. No.439/2011 whereby the tribunal has declined to interfere with the order of punishment imposed by the disciplinary authority and the stamp of approval given to it by the appellate authority.

2. The facts, in a nut shell, are that the petitioner was working as a Daftari in the Income Tax Department and was posted in the office of Chief Commissioner of Income Tax-VIII, ITO, New Delhi. A prosecution was launched against him for offences punishable under Sections 419/467/468/471/120-B/511 of the Indian Penal Code (for short 'the IPC'). During the pendency of the trial, the petitioner had preferred a criminal revision before the learned Additional Sessions Judge assailing the order framing charge under Section 419 of the IPC. During the pendency of the revision, the criminal trial proceeded with the other charges. The learned Additional Sessions Judge, vide order dated 22.2.2006, quashed the charge framed under Section 419 of the IPC on the ground that no offence under Section 419 of the IPC had been disclosed against the revisionist. Despite the said order, the petitioner was convicted for offences under Section 419

read with Section 120-B of the IPC along with the offences under Sections 511 and 471 of the IPC. Being grieved by the said judgment of conviction and the order of sentence, the petitioner preferred an appeal and the appellate Court, while affirming the conviction, extended him the benefit under Section 360 of the Code of Criminal Procedure (for short 'the CrPC'). Eventually, he executed a bond and was released on probation of good conduct.

3. After the petitioner was released on probation of good conduct, he submitted a representation on 27.8.2007 to revoke his order of suspension and to reinstate him. The authorities, instead of considering his representation, decided to proceed against him and, accordingly, issued a memorandum on 3.10.2007 and thereafter, vide notice dated 23.11.2007, asked him to submit a representation on the proposed penalty of removing him from service.

4. Being dissatisfied with the said notice, the petitioner preferred O.A. 86/2008 which was disposed of on 28.5.2008 with the direction to the competent authority that in the event the applicant prefers a representation

against the memorandum dated 3.10.2007, it should be decided by passing a reasoned order within one month. As the factual narration would further uncurtain, the petitioner submitted a reply to the show cause notice dated 9.6.2008. The disciplinary authority, on consideration of the fact that the petitioner had been convicted on criminal charges, found that the petitioner was unfit to be retained in service. Being of this view, the punishment of removal was imposed on him.

5. Aggrieved by the order of removal, the petitioner filed a statutory appeal and as there was delay in disposal of the appeal, he preferred O.A. No.970/2010 wherein the tribunal directed the appellate authority to dispose of the appeal by passing a cogent and germane order within a period of two weeks. Thereafter, the appellate authority passed an order on 8.9.2010 affirming the decision of the disciplinary authority. The said orders came to be assailed before the tribunal.

6. It was contended before the tribunal that when the learned Additional Sessions Judge had discharged him for the offence punishable under Section 419 of the IPC, the trial court could not have proceeded with the said

charge. The tribunal took note of the fact that the petitioner was working as a Daftari and had committed fraudulent encashment of refund order and hatched a criminal conspiracy in pursuance of which he went to the Reserve Bank of India to deliver the fraudulent refund order and the same would clearly come within the ambit of moral turpitude and hence, the order of removal is justified. Being of this view, the tribunal declined to interfere.

7. We have heard Mr.Shankar Raju, learned counsel for the petitioner, Mr.Anuj Aggarwal, learned counsel for the respondent No.1 and Mr.R.V.Sinha along with Ms.Sangita Rai, learned counsel for the respondents No.2 to 5.

8. Mr.Shankar Raju, learned counsel for the petitioner, has contended that the tribunal should have taken note of the fact that despite the petitioner having been discharged, he is illegally convicted under Section 419 of the IPC and, therefore, it would have been advisable to remit the matter to the disciplinary authority to reconsider the whole thing regard being had to the doctrine of proportionality. It is also urged by him that as the petitioner was extended the benefit of probation, the said aspect should have weighed with

the tribunal. It is canvassed by Mr.Raju that the finding recorded by the tribunal that the petitioner was convicted in respect of the offences involving moral turpitude is not sustainable in law as the conviction in respect of the offences do not relate to moral turpitude.

9. Mr.Anuj Aggarwal, learned counsel for the respondent No.1 and Mr.R.V.Sinha along with Ms.Sangita Rai, learned counsel appearing for the respondents No. 2 to 5, contended that even if the petitioner is deemed to be acquitted under Section 419 of the IPC, the other offences are grave in nature and, hence, the conclusion arrived at by the disciplinary authority cannot be found fault with. The learned counsel for the respondents would further submit that the offences do come within the sphere of moral turpitude and, therefore, the service of the petitioner has been rightly dispensed with.

10. To appreciate the complete scenario, it is appropriate to refer to the judgment passed by the learned Magistrate. True it is, that the petitioner had been discharged under Section 419 of the IPC but the learned Magistrate in the trial had passed the following order:

“I have considered the rival contentions made before me. In view of the fact that the accused Sanjay Prashad is a first time offender a lenient view is taken against him. He is sentenced to **Rigorous Imprisonment** for a period of 2 months for the offence **u/s. 419 IPC read with 120-B IPC**. Further I sentenced the accused Sanjay Prashad **Rigorous Imprisonment** for a period of **2 months** for the offence **u/s. 420 IPC read with section 511 IPC**. I also sentenced the accused **Rigorous Imprisonment** for a period of **2 months** with fine for a sum of **Rs.10,000/-** for the offence **u/s. 471 IPC**, in default of payment of fine the accused shall undergo Simple Imprisonment for a period of one month. It is clarified that all the sentences shall run concurrently and benefit of section 428 Cr.P.C. is being given to the accused for the period already undergone by him.

In view of the fact that the accused Sunil Kumar is involved in as many as 5 other cases, I am of a considered view that he does not deserve any leniency. He is sentenced to **Rigorous Imprisonment** for a period of **three years** for the offence **u/s. 420/511 IPC**. I further sentenced him **Rigorous Imprisonment** for a period of **three years** for the offence **u/s. 467/120-B IPC** and fine for a sum of **Rs.10,000/-**, in default of payment of fine the accused shall undergo simple imprisonment for a period of one month. The accused is further sentenced to **Rigorous Imprisonment** for a period of **three years** and fine for a sum of **Rs.10,000/-** for the offence **u/s. 468/120-B IPC**, in default of payment of fine the accused shall undergo simple imprisonment for a period of one month. I also sentenced the accused

Rigorous Imprisonment for a period of **three years** for the offence **u/s. 471/120-B IPC.**”

11. In the appeal, the learned Additional Sessions Judge maintained the judgment of conviction and proceeded to state as follows:

“ 10. So far as sentence is concerned, this appellant Sanjay Prasad were given RI for the period of 2 months for the offence U/s 419 IPC R/W section 120-B IPC. Further he was sentenced RI for the period of 2 months for the offence U/s. 420 R/W section 511 IPC and RI for two months and a fine of Rs.10,000/- for the offence punishable U/s. 471 IPC. He was also given benefit of section 428 of Cr.P.C. Since he has already remained in J/c for two months so he is sentenced for the period already undergone. The fine he has already deposited.

11. The Ld.Counsel for the appellant and appellant both request that since this is his first offence and he is a government servant working in I.T.Department and offence has been committed might be due to some misunderstanding etc. So the appellant may be given benefit of Probation of Offender Act and of section 360 of Cr.P.C.

12. I considered all the facts and circumstance of the matter and found that this is a case where benefit of section 360 of Cr.P.C. can be given to the appellant. I consider the antecedents and also the circumstance in which the offence was committed. I am of the view that it would be

proper if the appellant is released on Probation of good conduct instead of sentencing to him at-once any punishment. Accordingly, I grant him the benefit of section 360 of Cr.P.C. The appellant is directed that he would be released on his entering into a bond of Rs.20,000/- with one surety in the like amount as he is to appear and hear the sentence if called upon during the period of 3 years and in the meantime he is to maintain good conduct and behavior. The fine amount deposited by the appellant would be taken as cost of litigation.”

12. The disciplinary authority, by the order dated 7.7.2008, referring to Rule 19 of the CCS (CCA) Rules, had passed the following order:

“ AND WHEREAS Shri Prasad, by presenting the refund order to RBI on 17.05.2005 for encashment, criminally conspired and attempted to commit offences of cheating by impersonation and to dishonestly induce delivery of cash by presenting a forged refund order as genuine. He had not gone to the bank to discharge his official duty assigned by his supervisory officer. He had no obligation to take and present the said refund order to RBI. The criminal offence committed by Shri Sanjay Prasad is of grave nature and cannot be taken lightly as it involves conduct of a Government servant attempting misappropriation of tax payer’s money by illegal and fraudulent means. Shri Prasad has been found guilty of the charges under sections 419, 420 & 471 of IPC read with sections 120B & 511 of IPC which have been

proved and the conviction upheld both by the Trial Court and the Sessions Court. He deserves a major penalty by way of removal from service. Being a case involving criminal charge, it would not be proper to allow Shri Prasad to work as public servant. I am, therefore, satisfied that keeping in view the gravity of criminal conduct, Shri Sanjay Prasad deserves to be removed from the service.”

The appellate authority has given reasons to concur with the order passed by the disciplinary authority.

13. In this regard, we may refer with profit to the decision in *In re ‘P’ An Advocate*; AIR 1963 SC 1313 wherein the Constitution Bench, while dealing with the facet of moral turpitude in the context of delinquency by an ‘Advocate-on-record’, has held thus:

“It is true that mere negligence or error of judgment on the part of the Advocate would not amount to professional misconduct. Error of judgment cannot be completely eliminated in all human affairs and mere negligence may not necessarily show that the Advocate who was guilty of it can be charged with misconduct, vide *In re A Vakil*, ILR 49 Mad 523: (AIR 1926 Mad 568) and in the matter of an Advocate of Agra, ILR (1940) All 386: (AIR 1940 All 289 (SB)). But different considerations arise where the negligence of the Advocate is gross. It may be that before condemning an Advocate for misconduct, courts are inclined to examine the

question as to whether such gross negligence involves moral turpitude or delinquency. In dealing with this aspect of the matter, however, it is of utmost importance to remember that the expression “moral turpitude or delinquency” is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude. A willful and callous disregard for the interests of the client may, in a proper case, be characterised as conduct unbefitting an Advocate. In dealing with matters of professional propriety, we cannot ignore the fact that the profession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude. The Advocate-on-record like the other members of the Bar are Officers of the Court and the purity of the administration of justice depends as much on the integrity of the Judges as on the honesty of the Bar. That is why dealing with the question as to whether an Advocate has rendered himself unfit to belong to the brotherhood at the Bar, the expression “moral turpitude or delinquency” is not to be construed in an unduly narrow and restricted sense.”

[Emphasis supplied]

14. In *J.Jaishankar v. Government of India & Anr.*, 1996 SCC (L&S) 1372, the appellant was convicted for an offence under Section 509 IPC and sentenced to pay a fine of Rs.100/-. The employee sought a reference under Section 10 of the Industrial Disputes Act, 1947 for adjudication of his dismissal from service. The Central Government declined to refer the dispute. Being dissatisfied, a writ petition was filed before the learned Single Judge. The learned Single Judge allowed the petition. In appeal, the Division Bench modified the order and on the basis of a concession given by the respondent, the order of dismissal was converted into discharge from service without retiral benefits. However, the Division Bench directed to pay him gratuity, as payable, in accordance with law. In appeal, reliance was placed on the decision in *Pawan Kumar v. State of Haryana & Anr.*, AIR 1996 SC 3300. Their Lordships have held thus:

“In view of the admitted position that the conviction of the petitioner for an offence under Section 509 IPC had attained finality, it undoubtedly involves moral turpitude as it is impermissible for such an employee to continue in service. When a government servant is dismissed from service on conviction by a criminal court involving moral turpitude, it automatically leads to removal from service, without further enquiry.

Can a worker be put on a higher pedestal than as a government servant? The obvious answer is ‘No’. In view of the conviction for moral turpitude of the petitioner and due to conviction for an offence under Section 509 IPC, the order of dismissal was rightly passed. The recommendation made by this Court was made after noticing the trivial offences like traffic offences, municipal offences and other petty offences under the IPC which do not involve moral turpitude. This Court recommended to Parliament to step in and make necessary alteration in law so that consequence of the conviction and sentence would suitably be modulated and mitigated in the light of the judgment. That ratio is clearly inapplicable to the facts of this case. As a fact, on the basis of concession made by the learned counsel for the respondents, the Division Bench of the High Court modified the order of dismissal to one of discharge from service without consequential retiral benefits but with payment of gratuity in accordance with law. The learned Single Judge was obviously in error in directing reference to the Industrial Tribunal. We do not, therefore, find any illegality warranting interference.”

[Emphasis added]

15. In *Durga Singh v. The State of Punjab*, AIR 1957 Punjab 97, it has been opined thus:

“The term “moral turpitude” is a rather vague one and it may have different meanings in different contexts. The term has generally been taken to

mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow-man or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not. Even if the words “involving moral turpitude” are held to be implied in “conviction on a criminal charge” in Proviso to Art. 311(2) it appears to me clear that if a member of the Police Force is guilty of having been found drunk at a public place or to have become habituated to liquor and if he is convicted by a criminal Court, then his conviction should be held as involving moral turpitude. It appears to me rather incongruous that persons who are habituated to liquor and are found drunk in public places should be allowed to remain in Police Force to bring such persons to book. I have, therefore, no hesitation in rejecting this contention on behalf of the petitioner. I accordingly hold that the petitioner in the present case was not entitled to protection under Art. 311(2) of the Constitution.”

16. In *Allahabad Bank & Anr. v. Deepak Kumar Bhola*, (1997) 4 SCC 1, the respondent was visited with an order of suspension which was challenged on the ground that solely because there was an allegation that the employee had entered into a criminal conspiracy, it could not be regarded that an offence involving moral turpitude had been committed by him and, therefore, the Bank had no jurisdiction to pass the order of suspension. The

High Court quashed the order of suspension and directed full payment of salary and allowances to the respondent. In that case, their Lordships posed a question as to what is an offence involving moral turpitude in the context of handling of accounts of the bank and expressed the view as follows:

“8. What is an offence involving "moral turpitude" must depend upon the facts of each case. But whatever may be the meaning which may be given to the term "moral turpitude" it appears to us that one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw.

9. This Court in *Pawan Kumar v. State of Haryana* (1996) 4 SCC 17: 1996 SCC (Cri) 583 (SCC at p.21) dealt with the question as to what is the meaning of expression "moral turpitude" and it was observed as follows:

“ ‘Moral turpitude’ is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity.”

This expression has been more elaborately explained in *Baleshwar Singh v. District Magistrate and Collector* where it was observed as follows:

“The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or goods morals. It

implies depravity and wickedness of character of disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.”

17. In *State of Punjab & Ors. v. Ram Singh*, AIR 1992 SC 2188, a three-Judge Bench was dealing with the dismissal of an employee on the ground that he had misconducted himself as per Rule 16.2(1) of the Punjab Police Manual, 1934 inasmuch as he was heavily drunk and had become uncontrollable. Their Lordships referred to the clause which provided that dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service, and in making such an award, regard shall be had to the length of service of the offender and his claim to pension.

In that context, their Lordships referred to the meaning given to the term “misconduct” in Black’s Law Dictionary and in P. Ramanatha Aiyar’s Law Lexicon, Reprint Edition 1987 and eventually expressed the view as follows:

“Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful bahaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error 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.”

18. We have referred to the said decision as it highlights that a misconduct may involve moral turpitude and the whole ambit has to be construed with reference to the subject matter.

19. In *Mahak Singh v. State of UP & Ors.*, AIR 1999 Allahabad 274, the Bench referred to the decision in *Harsukh Lal v. Sarnam Singh*, 1964 ALL LJ 1118 wherein the observations of Hon'ble V.Broome, J. were reproduced which read as follows:

“ ‘Turpitude’ is a word of high emotional significance, suggesting conduct of such depravity as to excite feelings of disgust and contempt. The crime of simple hurt does not normally provoke any such reaction and consequently cannot be classed as an offence involving moral turpitude and it seems to me that there is no logical reason why the offence of murder, which in essence is only an aggravated form of hurt, should be held necessarily to involve moral turpitude. I am willing to concede that murders which are premeditated and planned in cold blood, those which are perpetrated for some base motive and those which are carried out with extreme ferocity and cruelty do involve moral turpitude, as they naturally evoke a spontaneous feeling of repulsion and condemnation in the mind. But a murder committed in the heat of a fight or in response to serious provocation could hardly be placed in the same category.”

20. In the said case, as the petitioner had committed murder of his step mother, the Bench expressed the view that the act was one of moral turpitude.

21. Regard being had to the concept of moral turpitude, as has been enunciated in the afore-mentioned authorities, there can be no scintilla of doubt that in the case at hand, when the petitioner has been convicted for offences under Sections 471, 420, 511, 467/120-B and 468/120-B of the IPC, the same definitely comes within the concept of moral turpitude. Mr.Raju, learned counsel for the petitioner, has contended that when he has been extended the benefit of release on probation, a lenient view should have been taken. It is worth noting, there is difference between a judgment of conviction and eventual order of sentence. The learned appellate Judge has affirmed the judgment of conviction passed by the learned trial Judge but has extended the benefit under Section 360 of the Code of Criminal Procedure. As long as the conviction remains, the facet of moral turpitude remains alive.

22. We will be failing in our duty if we do not take note of the additional submission of Mr.Raju, learned counsel for the petitioner, to the effect that the tribunal would have been well advised to take note of the decision in ***Roop Chand v. Gopi Chand Thelia, AIR 1989 SC 1416*** that when the petitioner could not have been convicted under Section 419 of the IPC and

the authorities have adverted to the same, in this factual backdrop, the doctrine of proportionality should have been invoked. True it is, the petitioner was discharged under Section 419 of the IPC but the conviction in respect of rest of the offences did remain and, therefore, the factum of moral turpitude could not have been ignored. In such a circumstance, the punishment of dismissal passed against the petitioner does not shock our judicial conscience and he does not deserve to be leniently dealt with and, therefore, the doctrine of proportionality does not get remotely attracted.

23. In view of the aforesaid analysis, we do not perceive any merit in this writ petition and, accordingly, the same stands dismissed without any order as to costs.

CHIEF JUSTICE

SEPTEMBER 19, 2011

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SANJIV KHANNA, J.