

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 28, 2015.

+ W.P.(C) 7699/2013

S.K. JASRA

Through

Mr. S. Rajappa &
Chand, Advocates

..... Petitioner
& Dr. Puran

versus

UNION OF INDIA AND ORS.

.....Respondents

Through:

Mr. Manish Mohan, Ms. Sidhi
Arora, Ms. Manisha Rana Singh &
Ms. Mira Shaheen, Advocates

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

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KAILASH GAMBHIR, J.

1. By way of this present Writ Petition, the Petitioner seeks the issuance of a writ of certiorari to set aside the order dated 10.09.2013 passed by the Central Administrative Tribunal (hereinafter referred to as “the learned Tribunal”) in O.A being No. 3577/2012 and also the penalty order dated 28.09.2012.

2. For better appreciation of the case at hand, it would be worthwhile to turn to the facts of the case:

“The petitioner was working as a Joint Director in the Directorate of Pay, Pension and Regulations (Directorate of Education of PP&R), Air Headquarters, Ministry of Defence at the relevant time i.e. June 2004 to 30th June 2013. Mrs. Nirmala Devi (complainant) was also posted as a Peon at the same Directorate as that of the Petitioner since 1998, who was attached with Director PP& R. She had a daughter named Sona Bala. The petitioner was asked by the Director, PP& R to lend a helping hand to the Complainant as she had been facing some problems in the Women Cell where her daughter Sona Bala had filed a complaint against her estranged husband. The petitioner extended whatever possible help he could to the complainant as well as her daughter. On 01.08.2006, the petitioner manhandled the daughter of the Complainant, when the petitioner accompanied them to Tiz Hazari Court in connection with filing of a Court case. On 07.08.2006, when Mrs. Nirmala Devi and her daughter had gone to the petitioner’s house to meet the lawyer, the petitioner inappropriately caught hold of Ms. Sona Bala’s hand and offered her Rs. 2000/- to work for him full time. On 29.08.2006, while returning from Gole Market, the petitioner was travelling with Mrs. Nirmala Devi and her daughter Mrs. Sona Bala in his car. He dropped Mrs. Nirmala Devi at her office but insisted to drop Mrs. Sona Bala at home despite her request to drop her at the bus stand. He pressed her thigh in the car which was objected to by her. On 08.12.2006, the petitioner misbehaved with her daughter in the premises of the office of the DCP (South), Hauz Khas. On 28.05.2007 the complainant barged into the office of the petitioner and started calling him names. She filed a complaint with the Grievances Cell of Office of Joint Secretary (Training) & Chief Administrative Office, Ministry of Defence on 31.5.2007 alleging harassment, which was followed by another complaint, dated 11.06.2007 addressed to the Chairperson, Women Complaints Committee, Ministry of Defence. The Complaints Committee which conducted internal enquiry on the complaint of Mrs. Nirmala Devi submitted its report to the effect that it was not a case of sexual harassment of women at work place warranting initiation of departmental action under Rule-3 –C (1) of CCS (Conduct) Rules, 1964, but that it is a case of sexual harassment of kins of a working woman. After a gap of 14 months, in March 2009 a charge memo was issued to him for

behaving in a sexually in-appropriate manner with the daughter and daughter-in-law of the Complainant.”

3. Thereafter, Disciplinary Proceedings were initiated against the petitioner. After following the due procedure, the Inquiry Officer concluded the inquiry finding the charges against the petitioner as proved. The petitioner made a detailed representation on 05.02.2010 against the inquiry report. Another representation on 15.03.2010 was made by the petitioner. After considering the facts, circumstances and the representations of the petitioner, the competent authority imposed upon him the “Penalty of reduction of pay by three stages for a period of two years with further orders that he will not earn increments during these two years and his future increments will remain postponed”.

4. The petitioner submitted a review application dated 11.10.2010 under Rule 29(A) of the Rules 1965 against the penalty order which was rejected vide order dated 10.01.2011.

5. The petitioner thereafter filed an O.A. No. 654/2011 before the learned Tribunal assailing the order of penalty and rejection of the review petition. The learned Tribunal allowed the aforesaid O.A. in terms of the order dated 28.02.2012, the operative para of which is reproduced herein

under:

*“21....Having been guided by the trite law on the subject, we quash and set aside the impugned order of penalty dated 21.09.2010 by which the punishment was inflicted on the applicant and remand back the case to the Disciplinary Authority, to re-examine the evidence available in the enquiry and the grounds taken by the applicant during the enquiry, keeping in mind, our observations in the foregoing paragraphs that there are **contradictory evidences which go in support of the applicant’s claim, and to pass a fresh speaking and reasoned order within a period of three months from the date of receipt of certified copy of this order”***

6. The order passed by the learned Tribunal was challenged by the respondents before the Delhi High Court by filing W.P. (C) No. 3820/2012. The operative para is reproduced as under:

“We find that the Tribunal has merely remanded the matter to the disciplinary authority to re-examine the evidence available in the enquiry and the grounds taken by the respondent during the enquiry. The Tribunal has also directed that the disciplinary authority shall keep in mind the observations made by the Tribunal in the impugned order. The disciplinary authority is also required to pass a fresh speaking order within a period of three months from the date of receipt of the certified copy of the impugned order. We feel that this course of action does not require any interference from us save and except concerning the direction that the observations made by the Tribunal in the impugned order shall not be looked into by the disciplinary authority. In other words, the disciplinary authority will have a relook at the matter and pass a speaking and reasoned order without being influenced by any observations contained in the impugned order.

We make it clear that the disciplinary authority shall take into account all the material available on the record. We also modify the order by extending the time for passing speaking order by a further period of two months from today.”

7. Thereafter, the Disciplinary Authority imposed a more severe penalty. The Disciplinary Authority vide order No. A/28137/CAO/DD/08 dated 28.09.2012 inflicted upon the petitioner the penalty of reduction in rank from Joint Director (in-situ) to that of Deputy Director. The order was made effective from the date of its issue. The petitioner had retired from service on 30.06.2013.

8. The petitioner filed another O.A. being O.A. No. 3577/2012 before the learned Tribunal. The learned Tribunal vide the impugned order dated 10.09.2013 stated that it found “*force in the contention of the learned counsel for applicant (petitioner in the present case) that when earlier on the same facts, the lesser penalty was imposed upon the applicant, there could be no justification for subjecting him to severe penalty.*” However, in terms of the judgment in ***B.C. Chaturvedi v. Union of India & others, (1995) 6 SCC 749***, the Tribunal held that Disciplinary Authority is the best judge regarding imposition of penalty and it is not for the Court/Tribunal to interfere in the matter, and therefore, the learned Tribunal did not give any direction to the respondents to impose/reduce the penalty which was initially imposed and refused to interfere with the

order of Disciplinary Authority. The operative para of the aforementioned order is reproduced as under:

“15. In view of the aforementioned, while declining to grant reliefs prayed for by the applicant in the Original Application, we direct respondents to take a view regarding penalty imposed upon the applicant. It is made clear that such view to be taken by them would not be considered as a fresh penalty order. Either of the penalty to be decided by the disciplinary authority and imposed upon the applicant would be effective from the date of speaking order dated 28.09.2012.”

9. The learned CAT vide order dated 28.02.2012 quashed the penalty order dated 21.09.2010 and remanded the case back to the Disciplinary Authority to pass a fresh speaking order. Thereafter, the respondents challenged the order dated 28.02.2012 vide W.P (C) No. 3820 of 2012. This Court did not interfere with the order of the learned Tribunal, but directed the Disciplinary Authority to reconsider the matter and take into account all the material available on record without being influenced by the observations of the learned Tribunal. The Disciplinary Authority, passed the impugned penalty order dated 28.09.2012 enhancing the penalty. He challenged the impugned penalty order before the learned Tribunal. The learned Tribunal in its order dated 10.09.2013 declined to interfere with the penalty order and directed the respondents to take a

view regarding penalty imposed upon the petitioner.

10. The learned counsel for the petitioner contended that the question that arises for consideration by this Court is whether the Department can construe an objectionable conduct of an employee not committed in course of employment as 'misconduct'. He further contended that the test for detecting misconduct is not whether the act or omission is committed in the course of the discharge of his duties as a government employee, but the test is whether the misconduct of charged employee has a reasonable nexus with the nature and conditions of his service.

11. The learned counsel further contended that the petitioner should not be liable for any penalty which may be imposed upon him in pursuance of disciplinary proceedings as the alleged acts of the petitioner are in no way connected to the discharge of his official duties.

12. In support of his arguments learned counsel for the petitioner placed reliance on the following judgments:

a) Krishnankutty v. Senior Superintendent Post Office, (1976) ILLJ 175 Ker.

b) N.H. Lamani v. Central Government Ministry of Railways and Ors., 1993 (2) ALT 436.

c) Bodu Tarmamad v. Dt. Supdt. Of Police,

Jamnagar and anr. (1998) 1 GLR 101.

d) M/s Glaxo Laboratories India Ltd. v. Presiding Officer, Meerut AIR 1984 SC 505.

13. Contentions of the petitioner were fervently refuted by the counsel for the respondents and he submitted that the order passed by the Ld. CAT is a well reasoned order and the same doesn't suffer from the vice of illegality, arbitrariness or perversity.

14. We have heard the learned counsel for the parties and gone through the material placed on record.

15. The issue before this Court is whether the conduct of the petitioner was “unbecoming of a government servant” within the meaning of Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964.

16. The aforementioned conduct of the petitioner was held to be unbecoming of a Government servant and violative of Rule 3(1) (iii) of CCS (Conduct) Rules, 1964. Rule 3 of the CCS (Conduct) Rules, 1964 is reproduced herein under:

“3. General. –

(1) Every Government servant shall at all times-

(i) maintain absolute integrity;

- (ii) *maintain devotion to duty; and*
- (iii) *do nothing which is unbecoming of Government servant.”*

17. The term “unbecoming” has not been defined by the CCS (Conduct) Rules. Dictionary meaning of the word 'unbecoming' is 'indecorous, 'not proper or befitting', 'not appropriate or acceptable' for a person in a particular job or position. In the context of the rules, it would mean any conduct which is indecorous, not appropriate or befitting the position of a government servant. A government servant is expected to maintain high moral rectitude and decent standard of conduct in his personal/private life and not bring discredit to his service by his misdemeanours. Government expects that the conduct of its employees should conform to the ordinary norms of decency and morality prevailing in the society and one should not violate the laws of the land (***Ref: Session 4.1 and 4.2: The Central Civil Services (Conduct) Rules, 1964***).

18. In ***S. Govinda Menon v. Union of India AIR 1967 SC 1274*** in para 6 of the judgment the apex court has observed that :

"In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words, if the act or omission

is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant. We are of the opinion that even the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the Service". The Court relied on the observations made by Lopes, L. J. in *Pearce. v. Foster*, (1886) 17 QBD 536 at p. 542:

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

19. The Hon'ble Supreme Court while interpreting the interplay between the Service Rule and Conduct Rules vide its judgment in ***Union of India v. J. Ahmed*** (1979) 2 SCC 286, in paragraphs 9 and 11 held as follows:

"9..... The words "act or omission" contemplated by Rule 4 of the Discipline and Appeal Rules have to be understood in the context of the All India Services (Conduct) Rules, 1954 (Conduct Rules for short). The Government has prescribed by Conduct Rules a code of conduct for the members of All India Services. Rule 3 is of a general nature which provides that every member of the service shall at all times maintain absolute integrity and devotion to duty. Lack of integrity, if proved, would undoubtedly entail penalty. Failure to come up to the highest expectations of an officer holding responsible post or lack of aptitude or qualities of leadership would not constitute as failure to maintain devotion to duty. The expression "devotion to duty" appears to have been used as something opposed to indifference to duty or easy-going or light-hearted approach to duty. If Rule 3 were the only rule in the Conduct Rules it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But Rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can be safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct.....

.....

*11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster*). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)*]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v.**

Divisional Superintendent, Central Railway, Nagpur Division, Nagpur, and Satubha K. Vaghela v. Moosa Raza. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S. Govinda Menon v. Union of India the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani v. Air France, Calcutta wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the

same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Coop. Department Stores Ltd.8)...."

20. In ***Madho Singh Daulat Singh v. State of Bombay AIR 1960 Bom 285***, a Division Bench of the Hon'ble Bombay High Court held that in order to enable an employer to take disciplinary action against his servant it is not a condition precedent that the misconduct on the part of the servant must arise within his employment and not outside his employment. The relevant paras of the said judgment are as under:

"The ratio deducible then is that in order to enable a master to take disciplinary action against his servant it is not a condition precedent that the misconduct on the part of the servant must arise within his employment and not outside his employment. The test in each case will be whether the servant himself in a way inconsistent with the faithful discharge of his obligations undertaken by him either expressly or impliedly in accepting the service. The inconsistency may arise on account of any act of the servant, wither in the course of his employment or outside it, which injures or has the tendency to injure his master's business or interests or reputation. There is no reason why this principle should not apply to public servants. There is however one very material difference between the two and that must be kept in view. In case of a private servant it is the master who in his own discretion decides the question of the disciplinary action to be taken against his servant. In the case of a public servant it is not the master but certain officers of the same master who decide this question but their powers in

that respect are regulated by the Act or rules framed thereunder.

In the instant case, as we have already shown, it was expected of the petitioner, being a police officer, to behave with civility and courteousness with a member of the public even in his private life. It has been found that he has very rudely behaved with Shri Desai. There is no doubt that the petitioner has conducted himself in a way inconsistent with the faithful discharge of his service inasmuch as he acted contrary to the discipline prescribed for a police officer in clause (11) of Regulation 64. Such a conduct is likely to bring disrepute to the police force. He has therefore exposed himself to a disciplinary action."

21. On the scope of power of the department to take action, the Supreme Court in *Union of India v. K.K. Dhawan* (1993) 2 SCC 56, had observed in paragraphs 28 and 29 as follows:

"28.....But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) and (ii) omitted

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) to (vi) omitted.

29. The instances above catalogued are not exhaustive....."

22. Apropos the question of there being a nexus, in the facts of the present case the present petitioner who was a senior officer, being in a dominating position misused and abused his said position by offering to

help a group 'D' employee, i.e. a peon, who was a widow and therefore did not have adequate support of her husband, with the ulterior motive of seeking sexual gratification from the daughter and daughter-in-law of the employee i.e. Mrs. Nirmala Devi. The fact that Mrs. Nirmala Devi was working in the same office premises and that she had sought help of the petitioner for her daughter, indubitably establishes the nexus between the improper conduct of the petitioner with his official position thereby making him liable to penalty under the relevant service rules. Government servants should at all times be epitomes of high moral values and should have utmost rectitude and should by no means misconduct themselves or indulge in any act which is "unbecoming of a government servant". The mere fact that the act was not committed in the course of the discharge of his duties as a government servant doesn't help the petitioner evade the fact that such conduct was subversive of discipline and harmful to the public interest; and that the conduct was wholly unbecoming of a Government servant.

23. The learned counsel for the petitioner contended that he cannot be subjected to any penalty in pursuance of the Departmental inquiry as the alleged conduct was not done in the course of his official duty as a

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government servant. To support his contention, the petitioner relied upon the decision rendered by the Kerala High Court in the case titled as ***Krishnankutty v. Senior Superintendent Post Office, (supra)***, wherein the Hon'ble Kerala High Court made the following observations:

“A conduct not in the course of employment cannot be a misconduct. Similarly, a conduct which is not a misconduct as per the conduct rules also cannot be the subject matter of disciplinary action against a Government servant. In that case, the conviction on a criminal charge for a conduct which is not a misconduct as per the conduct rules cannot be a reason for taking action against a Government servant under Rule 19(i) of the Rules. A domestic quarrel which has nothing to do with the employment of the Government servant cannot be a misconduct. Moreover, if the same occurs at a place far away from the place of employment, that cannot in any way be made the subject-matter of a disciplinary action against the Government servant. In this case, a scuffle between the petitioner-Government servant and his step-brother at the place where they live resulted in the criminal charge and the conviction thereon. If the conduct of the petitioner cannot be the subject-matter for taking disciplinary action against him under Rules 14 to 18 of the Rules, the mere fact that he was convicted on a criminal charge on the ground of that conduct cannot be a reason for invoking Rule 19(i) of the Rules.” (Emphasis Supplied).

24. Unfortunately, the aforementioned case cannot be of any aid to the petitioner. In ***Krishnankutty's case (Supra)*** the employee was involved in some domestic quarrels with his step-brother which was a personal matter of the employee. The present case is distinguishable from the aforementioned case in so far as the present petitioner who was a senior

officer, allegedly abused his dominating position by offering to help a group 'D' employee, i.e. a peon, who was a widow and therefore did not have adequate support of her husband, with the ulterior motive of seeking sexual gratification from the daughter and daughter-in-law of the employee i.e. Mrs. Nirmala Devi. The fact that Mrs. Nirmala Devi was working in the same office premises indisputably establishes the nexus between the alleged improper conduct of the petitioner with his official duties thereby making him liable to penalty under the relevant service rules.

25. Likewise, petitioner's reliance on judgment rendered by a single judge bench of the Hon'ble High Court of Andhra Pradesh in the case of *N.H. Lamani v. Central Govt., Ministry of Railways and Ors., (supra)*, to assert his contention, that there is no justification to inquire into the allegations which are totally unconnected with service conditions or nature of service, is misplaced. The relevant para of the judgment is reproduced herein under:

*"14. As discussed above and in the facts and circumstances of the case, I hold that the respondents **have no jurisdiction to enquire into the allegations which are totally unconnected with the service conditions or the nature of service of the petitioner.**"(Emphasis Supplied)*

The conduct of a government servant whereby he indulges in improper conduct with the female family members of his support staff cannot, by any stretch of imagination, be held to be “**totally unconnected** with the service or the "nature of service”.

26. The petitioner had further relied upon the decision rendered by the Hon’ble High Court of Gujarat in ***Bodu Tarmamad vs. Dt. Supdt. Of Police, Jamnagar and Anr., (supra)***. The judgment rendered by a Single Judge bench of the Hon’ble Gujarat High Court endeavours to define the term “unbecoming” albeit under the Gujarat Civil Service (Conduct) Rules, 1971. The relevant part of the judgment is extracted herein under:

“13. The word 'unbecoming' is not defined in the Rules in question. Therefore, we have to go by the dictionary meaning of the word. Dictionary meaning of the word 'unbecoming' is 'indecorous, not proper or befitting, not suited to the wearer'. In the context of the Rules it would mean either 'indecorous' or 'not proper or befitting'. However, while considering the conduct of a Government servant it is to be kept in mind that the conduct should be indecorous or improper as a Government servant. The disciplinary authority cannot determine the nature of conduct as indecorous or improper as per his own norms of behaviours and beliefs. Some guidelines are inherent in the Rules, and it is necessary that the same may be kept in mind. They are as follows:

(1) The aforesaid rule occurs in the Gujarat Civil Service (Conduct) Rules, 1971. Therefore the behaviour which is to be branded as misconduct should have nexus with the duties to be performed by the Government servant.

(2) Having regard to the office held by a Government servant he should be required to perform certain duties. If his conduct is such that it interferes or leads or interfere directly or indirectly with the honest discharges of his duty such conduct may be considered as unbecoming of a Government employee.

(3) The behaviour which is being viewed as misconduct may be a matter of personal belief or non-belief of the employee concerned. It may be such to the displeasure of the disciplinary authority concerned, but if the behaviour has no nexus with the duty to be performed by the Government employee, the same cannot be branded as misconduct under the rules.

(4) While considering a particular conduct as unbecoming of a Government servant one must bear in mind the status of Government employee as distinct from other employee and from other citizens. A Government servant must have taken oath under the Constitution or the might have been administered oath of secrecy, fidelity and sincerity while discharging his duty. A Government servant is bound by his oath; if his conduct is contrary to his oath, it may be considered indecorous or unbefitting to a Government servant.

(5) Is the behaviour or conduct of the Government servant concerned, runs counter of the aims and objects of the Constitution or is it against the spirit and object of any provision of law which he, as Government servant, is supposed to uphold and implement as a part of his duty ?

(6) In a given case even though a particular behaviour may be a matter of personal life of the employee concerned it may have direct or indirect repercussions on the duty to be performed by the employee as a Government servant. To illustrate, normally it would never be objected to if a Government servant, in leisure hours, visits the business premises of his relatives. But if a District Civil Supplies Officer every day visits and sits for couple of hours at the business premises of his relatives where the essential commodities are being stored and traded, this may be

considered objectionable. Other traders may think that he might be passing on some important information in advance, or that he might act with partiality and with bias in the case of this particular trader who happens to be his relative. Something which is quite normal and innocuous for others may not be permissible in his case. In such case, the employee may have to justify his conduct which in absence of good and sufficient explanation may be considered as 'misconduct'. Such instance cannot be enumerated. Each case has to be judged on the basis of its facts and circumstances.

Therefore, while branding a particular behaviour as misconduct, the first question which is required to be posed is, has this conduct any nexus with the duty to be performed by the Government servant? If so, is it merely a matter of personal belief regarding morals or immoral of the officer concerned? Even so, has it and direct or indirect bearing on the duties to be performed by the employee concerned? Answers to all these questions would determine whether particular behaviour is misconduct or not.

14. If these factors are not taken into consideration and any conduct which the disciplinary authority or the superior officer considers to be improper or indecorous for a Government employee is treated as misconduct, then the behaviour pattern, even in the personal life of Government employees, would be determined-rather dictated-as per the wishes and whims of the superior Government officers. This would create a society of sycophants. In such society top brass in service would behave as feudal lords and the employees in lower ranks, will have to mould their behaviour pattern so as to please their superior 'lords' (officers). In that case lower ranks in service will not be that of individual citizens having their own separate identity but they will become serfs or slaves. This can never be the intention of the Rules. If this interpretation is placed on the term 'unbecoming of a Government servant' it would simply mean 'behaviour' which causes displeasure to the superior's. Such absurd meaning cannot be ascribed to this phrase. If it is interpreted in that fashion, the provisions of the Rules would become arbitrary and ultra vires the Constitution. Therefore, the only interpretation which can

be placed on the phrase 'unbecoming of a Government servant' would be as indicated hereinabove.

*15. In the light of the aforesaid interpretation of the phrase 'unbecoming of a Government servant' what is stated in the report of the Inquiry Officer may be examined. It is evident from the record that the girl was staying in the premises and it was known to the wife of the petitioner. **The girl wanted to marry with the petitioner and, therefore, she had left her parental house after informing her mother and brother. The girl was major. Everyone concerned knew that the girl had come to the house of the petitioner voluntarily and the petitioner had not exercised any undue influence over her.** It is not the finding in the inquiry report nor was there any such charge that the petitioner exercised undue influence over the girl. From the record of the case it becomes clear that the girl had stayed at the house of the petitioner and was doing household work. The petitioner's wife was pregnant and she had gone to her parents' house. During this period the girl was doing the household work. This is clear from the deposition of Haziraben, wife of the petitioner, who has been examined as a witness in the departmental inquiry held by the department. It was under these circumstances that the girl had stayed with the petitioner in Police line quarter.*

*16. Even if the aforesaid finding is accepted in its entirety, it can never be said that the petitioner has committed any misconduct 'unbecoming of a Government servant'. There is no finding that aforesaid conduct of the petitioner had any nexus with the duty to be performed by him or that his conduct interfered or even tended to interfere with the honest discharge of his duties. Thus, the disciplinary authority has completely misdirected himself while coming to the conclusion that the petitioner was guilty of misconduct 'unbecoming of a Government servant'. **(Emphasis Supplied)***

The facts of the aforementioned case are distinguishable from that of the present case. Whereas in the present case, the allegations are that the

petitioner had behaved in an inappropriate way with the daughter and daughter-in-law of Mrs. Nirmala Devi who was an employee in his office, whereas, in ***Bodu Tarmamad's case (Supra)***, a girl who was not a minor, and not related to the charged officer was **living with him, voluntarily in the police quarters** and there was a complete absence of sexual harassment of any nature in the aforementioned case and therefore, the aforementioned case does not aid the present petitioner.

27. The petitioner has further relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***M/s Glaxo Laboratories India Ltd. v. Presiding Officer, Meerut AIR 1984 SC 505***, which again is misplaced. The aforementioned case relates to totally different legislation i.e. Industrial Employment (Standing Orders) Act, 1946 which had to be construed in favour of the workmen working in an industrial establishment. The Hon'ble Supreme Court made the following observation in the said case:

“The developing notions of social justice and the expanding horizon of socio-economic justice necessitated statutory protection to the unequal partner in the industry namely, those who invest blood and flesh against those who bring in capital. Moving from the days when whim of the employer was suprema tax, the Act took a modest step to compel by statute the employer to prescribe, minimum conditions of service subject to which employment is given. The Act was

*enacted as its long title shows to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. The movement was from status to contract, the contract being not left to be negotiated by two unequal persons but statutorily imposed. **If this socially beneficial act was enacted for ameliorating the conditions of the weaker partner, conditions of service prescribed thereunder must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief.***

(Emphasis Supplied)

The present case pertains to an officer governed by the Central Civil Services (Conduct) Rules and the ratio laid down in the ***Glaxo Laboratories India's case (supra)*** has no bearing whatsoever on the present case.

28. We need not go into the details of evidence as that is not required of us sitting in this jurisdiction under Article 226 of the Constitution of India. We are not required to re-examine the evidence to find out as to whether the conclusion arrived at by the disciplinary authority or by the appellate authority is right or wrong. We are only required to examine as to whether the correct procedure has been followed and the principles of natural justice have been applied. It is a settled legal position that the Courts shall generally not look into the evidence against the charged officer to affirm whether the punishment is proportional to the

misconduct of the officer. In *Union of India (UOI) v. P. Gunasekaran*, **AIR 2015 SC 545**, The Hon'ble Supreme Court made the following observations:

“The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence. Under Article 226/227 of the Constitution of India, the High Court shall not:*
 - (i). re-appreciate the evidence;*

(ii). *interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*

(iii). *go into the adequacy of the evidence;*

(iv). *go into the reliability of the evidence;*

(v). *interfere, if there be some legal evidence on which findings can be based.*

(vi). *correct the error of fact however grave it may appear to be;*

(vii). *go into the proportionality of punishment unless it shocks its conscience.*

In the case of ***State of Andhra Pradesh and Ors. v. Sree Rama Rao, AIR 1963 SC 1723***, the Hon'ble Supreme Court made the following observations:

“The High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some

considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or; where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art. 226 of the Constitution”.

29. Before we rest the case, we would like to bring to the fore and disparage the conduct of officers who hold high positions and abuse and misuse the power that flows from such authority, with impunity. In the words of the great American President, Abraham Lincoln- “Nearly all men can stand adversity, but if you want to test a man’s character, give him power”. In the instant case, the complainant-a widow being distraught sought help for her daughter, who was estranged from her husband. The petitioner on the pretext of offering her a helping hand not only shattered the trust of the person (Director, PP&R) who had reposed faith in him and bestowed him with the task of helping the Complainant, but misused the dominant position that he was holding , courtesy his being a senior officer at the place where the complainant was working. He misbehaved with the daughter and daughter-in-law of the complainant

in a sexually inappropriate manner. This abuse of dominant position by the petitioner outrightly reveals the nexus between the improper conduct of the petitioner with his official duties.

30. This is not a case of sexual harassment of a woman at workplace, but it is a clear case of misconduct or of a conduct that was 'unbecoming of a government servant' as stipulated under Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964. People with upright moral values and integrity should only make way into public service and not those, who are beasts in disguise. A public servant should at all times, be it in a professional set-up or otherwise conduct himself in a manner that is not subversive to discipline.

31. In view of the above observations, we find no infirmity with the order of the learned tribunal dated 10.09.2013 passed in O.A being No. 3577/2012 and the same is upheld.

32. The present Writ Petition is dismissed with cost of Rs. 50,000/- to be paid by the petitioner to the complainant within a period of four weeks from today. The proof of deposit of cost shall be filed by the petitioner, in compliance of this order, with the Registrar General of this Court and for

this purpose only, the matter shall be listed before the Registrar General on 08.09.15 for compliance of this order. It is ordered accordingly.

(KAILASH GAMBHIR)
JUDGE

(I.S.MEHTA)
JUDGE

MAY 28, 2015
v