

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.179 of 2017

=====

1. Jageshwar Mahto Son of Late Balram Mahto Resident of Village-Chokesereng,
P.O.-TutkiNawadi, Via-Silli, P.S.-Silli, District-Ranchi

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat,
Patna
2. The Director General of Police, Bihar, Old Secretariat, Patna
3. D.I.G. of Police, Military Police, Central Zone, Patna
4. Commandant, B.M.P.-5, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Adv.

For the Respondent/s : Mr. Manish Kumar- GP4

Mr. Ravi Kumar A.C. to G.P.4

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-03-2017

Heard Mr. Ram Hriday Prasad, learned counsel for the
petitioner and Mr. Ravi Kumar A.C. to G.P.4 for the State.

With the consent of the parties, the matter has been heard with
the view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 3.9.2015 of the
Commandant, Bihar Military Police-5, Patna whereby he has been
imposed a penalty of one black mark which is equivalent to stoppage
of increment for next six months. By the same order, the pay and
allowance for the suspension period has been restricted to the
subsistence allowance. The order is affirmed by the appellate
authority who vide order passed on 2.9.2016 impugned at Annexure-
P/8 has dismissed the appeal. The punishment apparently is under
Rule 824 of the Bihar Police Manual and Rule 828 thereof, terms the



punishment as a 'major punishment'.

Facts leading to the impugned order is that the petitioner an Assistant Sub Inspector in the uniformed service of the State was served with the charge memo dated 23.5.2015, a copy of which is enclosed as Annexure-P/1 and whereby he was charged with preparation of a list of such officers who had remained at the station for a period of more than three years but it did not include some officers which according to the complaint were favoured by the petitioner. Another charge is, set up that the list contained the names of officers belonging to a particular caste who were attempted to be shifted out of the station. The charge memo rests on a complaint, a copy of which is brought on record vide Annexure-B to the counter affidavit filed on behalf of the State.

The petitioner filed his reply before the Commandant, which is quite exhaustive at Annexure P/4, explaining the circumstances and while explaining that of the 10 examples given by the complainant, six were already on the list, of the remaining four, he has assigned reasons for their non inclusion. The petitioner thus has mentioned that the list is not prepared with any motive and that the complaint is without foundation. A similar reply has also been filed by the petitioner before the Conducting Officer at Annexure-P/5 disowning the charges, but the same has been disbelieved by the Enquiry Officer to uphold the charges. The Commandant, Bihar Military Police on



consideration of the complaint and the explanation given by the petitioner, has chosen to uphold the Enquiry Officer's opinion to impose the impugned penalty vide order dated 3.9.2015 at Annexure-P/6 which has been upheld by the appellate authority vide Annexure P/8 which is an order dismissing the appeal of the petitioner. Feeling aggrieved the petitioner is before this Court.

There are arguments and counter arguments advanced by the learned counsel for the parties but the only issue which comes up for consideration is, whether the action of the petitioner, complained of, would amount to misconduct.

Its a matter of record that of the 10 names given by the complainant, six were found to be false, so a major portion of the complaint alleging motivated action against the petitioner was found to be incorrect. In my opinion this itself was a ground drawn in favour of the petitioner. Even regarding the remaining four names, a possible explanation has been given by the petitioner for their non inclusion which may not be suiting the disciplinary authority or the Enquiry Officer but the issue would be whether this by itself would amount to misconduct.

Misconduct as such has not been defined in the service rules, although it has been a subject matter of catena of judgment. Reference in this regard is made to the judgment of the Supreme Court rendered in the case of **Union of India Vs. J. Ahmad** reported in (1979) 2



SCC 286 particularly paras 9 and 11 of the judgment. A somewhat similar situation came up for consideration before the Supreme Court where the delinquent failed to come up to the requirements and his action was found wanting on his supervisory role. While examining a similar issue of misconduct, the Supreme Court in paragraph 9 and 11 of the judgment have opined as follows:

“9. The five charges listed above at a glance would convey the impression that the respondent was not a very efficient officer. Some negligence is being attributed to him and some lack of qualities expected of an officer of the rank of Deputy Commissioner are listed as charges. To wit, Charge 2 refers to the quality of lack of leadership and Charge 5 enumerates ineptitude, lack of foresight, lack of firmness and indecisiveness. These are qualities undoubtedly expected of a superior officer and they may be very relevant while considering whether a person should be promoted to the higher post or not or having been promoted, whether he should be retained in the higher post or not, or they may be relevant for deciding the competence of the person to hold the post, but they cannot be elevated to the level of acts of omission or commission as contemplated by Rule 4 of the Discipline and Appeal Rules so as to incur penalty under Rule 3. Competence for the post, capability to hold the same, efficiency requisite for a post, ability to discharge function attached to the post, are things different from some act or omission of the holder of the post which may be styled as misconduct so as to incur the penalty under the rules. 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. Allegations in the various charges do not specify any act or omission in derogation of or contrary to Conduct Rules save the general Rule 3 prescribing devotion to duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings.

“11.....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 Vs. 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). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.”

A similar view was taken by the Supreme Court in a judgment reported



in **AIR 1992 SC 2188 (State of Punjab Vs. Ram Singh)**. Para 4 and 5 of the judgment reads thus:

“4. 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. The 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 the Law Lexicon, Reprint Edition 1987 at p.821, „misconduct’ defines thus: “The term misconduct implies a wrongful intention, and not a mere 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. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion 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.”

5. 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 behaviour, willful 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.
.....”

May be there was an error of judgment on the part of the



petitioner to not include some names and for which an explanation is found in his reply present at Annexure-P/2 and P/4. Now even when a major portion of the complaint has been found to be false and a possible explanation has been given by the petitioner for non inclusion of the names of the remaining, which may be an error of judgment on the part of the petitioner but certainly the action complained, in absence of any supporting reasons ipso facto cannot be termed a ‘misconduct’ for inviting the penalty in question. There is nothing on record to prove a motivated action by the petitioner except the complaint.

For the reasons aforementioned, the order dated 3.9.2015 passed by the Commandant, Bihar Military Police-5, Patna together with the order of the appellate authority dated 2.9.2016 impugned at Annexure P/8 cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed with consequential benefits.

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.03.2017
Transmission Date	NA

(Jyoti Saran, J)

