

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 579 of 2007**

- Shyamlal Tiwari, Son of Shri Kaushal Prasad Tiwari, aged 50 years, Manager, Chhattisgarh Khadi Gramodyog Board, Bilaspur (C.G.)

---- Petitioner**Versus**

- Manager Director, Chhattisgarh Khadi Gramodyog Board, 27/520, Praveen Bhawan, New Shanti Nagar, Raipur, Chhattisgarh

---- Respondent

For Petitioner
For Respondent

Shri N. Naha Roy, Advocate
Shri Malay Bhaduri, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****26/04/2017**

1. Assail in this petition is to the order of punishment passed by the Disciplinary Authority of the Chhattisgarh Khadi Gramodyog Board (henceforth 'the Board'), Raipur vide Annexure-P-9 on 26.12.2006 lowering the petitioner's pay scale from Rs.3050-75-3950-80-4590/- to the scale of Rs.3950/- and holding him not eligible for any promotion for a period of 5 years.

2. At the relevant time, the petitioner was working as Manager of the Khadi Bhandar, Satyam Complex, Bilaspur. He was suspended on 19.09.2005 and thereafter charge sheet was issued on 30.09.2005 and eventually, the departmental enquiry was constituted against him on 13.01.2006. On completion of the enquiry, the Enquiry Officer submitted the enquiry report on 28.07.2006 vide Annexure-R-2, which was accepted by the Disciplinary Authority and another show cause notice was issued to the petitioner on 28.09.2006 along with copy of the enquiry report. Considering the petitioner's reply to the second show cause notice, the impugned order of punishment was passed against the petitioner on 26.12.2006.
3. Shri N. Naha Roy, learned counsel for the petitioner, would urge that the imputations and particulars of charges, even if they are accepted in totality, would not amount to any "misconduct", therefore, the very basis of the charge sheet is without any foundation. In addition, he would submit that the petitioner was not supplied relevant documents either at the time of issuance of first show cause notice before constituting the enquiry or during the course of enquiry or even with the second show cause notice. According to him, the documents, which were not supplied to the petitioner, have been relied by the Disciplinary Authority, therefore, it is not a case where the petitioner was seeking for any such

document which had no bearing on the issue. He would also submit that the finding recorded by the Enquiry Officer is perverse, therefore, the impugned order of punishment deserves to be quashed.

4. Per contra, Shri Malay Bhaduri, learned counsel for the Board, would argue that the imputation amounts to “misconduct” and that this Court has limited jurisdiction in the matters arising out of findings recorded against the delinquent in a full fledged disciplinary proceeding. He would further submit that the petitioner was granted proper opportunity of hearing and all the relevant documents were supplied to him, therefore, the enquiry is not vitiated. He would next submit that the petitioner has participated in the enquiry proceedings without raising any protest, therefore, it is too late for him to challenge the order of punishment on these grounds. It is also argued that the petitioner has directly filed the writ petition without availing the appellate remedy, therefore, the writ petition deserves to be dismissed on this ground alone.
5. True it is that when the appellate remedy is available against the order of disciplinary authority, this Court should ordinarily not entertain any writ petition, however, at the same time, it is required to be kept in mind that when a writ petition has been entertained and has remained pending in this Court for

last 10 years, instead of relegating the petitioner to avail the remedy and drag on the litigation, it would be appropriate for this Court to proceed to decide the matter finally.

6. Leaving aside all other grounds, this Court shall first dwell on the ground that the imputations and particulars of charges do not constitute any “misconduct”, because if the said issue is decided in favour of the petitioner, the other grounds concerning irregularity in the enquiry proceedings may not be required to be decided.
7. To appreciate as to what were the nature of charges against the petitioner, it would be apt to quote hereunder the charges in seriatim:-
 - I. Petitioner failed to achieve the sales target for the Khadi Board Store at Bilaspur.
 - II. Petitioner did not submit stock verification report within time and the reports sent by him were incomplete.
 - III. Annual accounts of the year 2002-03, 2003-04 & 2004-05 were not submitted within time.
 - IV. Petitioner did not submit the depreciation value of the items stored in his shops, due to which old stock could not be disposed off causing loss to the Khadi Board.
 - V. Stock registers were not maintained properly.
 - VI. Despite availability of funds in the bank

account of the Bilaspur Store, the petitioner failed to pay the rent within time, which has tarnished Board's reputation in the mind of the landlord.

VII. Petitioner illegally obtained travel advance without approval from the competent authority.

VIII. Petitioner did not open the bundle containing national flag for one year.

8. It is not disputed by learned counsel appearing for the parties that the Board being a State Instrumentality, it has followed the Chhattisgarh Civil Services (Conduct) Rules, 1965 (henceforth 'the Rules, 1965') and the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (henceforth 'the Rules, 1966') for conducting the departmental enquiry against the employee working under the Board.
9. The charge sheet (Annexure-P-2) would refer to violation of Rule 3 (1) (i) and (ii) of the Rules, 1965, at the end of each of the charge. The said Conduct Rule says that every government servant shall at all times (i) maintain absolute integrity; (ii) maintain devotion to duty. For attracting Clause (i), there has to be an allegation that the petitioner indulged in misappropriation of funds or was leaking secrets of the business of the Board to the rival stores or was doing such things which had caused financial loss to the Board. Such allegations have not been levelled against the petitioner in

any of the charge. The charges are general in nature, like failing to achieve target; not maintaining accounts, registers etc.; not sending reports; obtaining travel advance without prior approval from competent authority etc. but not to the effect that after obtaining the advance, the petitioner did not travel for the official work or has raised forged bills without undertaking the journey. If we may call it in the language of charges in criminal law, the imputations against the petitioner are of omnibus nature without specifically attributing any particular act, which may be brought within the term 'non maintaining of integrity or non maintaining of devotion to duty'. It is a matter of common knowledge and this Court would take judicial notice of the fact that sales of articles in the stores run by the Board have generally fallen throughout the country, but that does not mean that the Chairman of the Board or for that matter, the Officers in the entire hierarchy should be proceeded departmentally because the Board is running into losses.

10. The term 'misconduct' has not been defined under the Rules, 1965. It only provides for certain norms which a government servant is required to adhere while discharging duties or to maintain probity in public life even while he is not on duty so that any of the act should not be branded as an act unbecoming of a government servant.

11. The Supreme Court had time and again considered as to what would be a “misconduct” within the particular service rules so that it may attract initiation or constitution of departmental enquiry for punishing the erring government servant.
12. In the matter of **Union of India and others vs. J. Ahmed**¹, the concerned IAS Officer was posted as Deputy Commissioner and District Magistrate in an area which faced large scale disturbances leading to considerable damage to property. The Officer was charge-sheeted for failing to take effective measures to control the large scale disturbances and other related charges. Referring to several of its earlier decisions, the Supreme Court held that the 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 the 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”. A disregard of an essential condition of the contract of service may constitute “misconduct”. The Supreme Court then considered the definition of “misconduct” in Stroud's Judicial Dictionary, which runs as under:-

1 (1979) 2 SCC 286

“Misconduct means, misconduct arising from ill motive; acts of negligence, errors or judgment, or innocent mistake, do not constitute such misconduct.”

13. Further, according to the Supreme Court, in industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in **Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik**², 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**³, 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 the Supreme Court in **P. H. Kalyani v. Air France, Calcutta**⁴, 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

² AIR 1966 SC 1051

³ AIR 1967 SC 1274

⁴ AIR 1963 SC 1756

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 stationary 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 Co- op. Department Stores Ltd.**⁵. But in any

5 (1978) 19 Guj LR 108, 120

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.”

14. In the matter of **M. M. Malhotra vs. Union of India and others**⁶, the Supreme Court held that the range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.”

6 (2005) 8 SCC 351

15. In the matter of **Baldev Singh Gandhi vs. State of Punjab and others**⁷, the Supreme Court has held that the expression “misconduct” means unlawful behavior, misfeasance, wrong conduct, misdemeanour etc. Similarly, the Supreme Court in the matter of **State of Punjab and others vs. Ram Singh Ex-Constable**⁸ has held that the term 'misconduct' may involve moral turpitude, it amounts to improper or wrong behavior, unlawful behavior, 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.
16. 'Misconduct' as stated in *Batt's Law of Master and Servant* (4th Edn. at p.63) comprised positive acts and not mere neglects or failures. The definition of the word as given in *Ballentine's Law Dictionary* (148th Edn.) is : 'A transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness.

7 (2002) 3 SCC 667

8 (1992) 4 SCC 54

17. In the matter of **Ravi Yashwant Bhoir vs District Collector, Raigad and others**⁹, the Supreme Court held thus in paras 18 & 19:

18. The expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous as mis-demeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces.

19. Further, the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest."

18. When the set of charges or imputations against the petitioner is tested on the anvil of the observations made by the Supreme Court as also the dictionary meaning, it would clearly appear that the nature of charges are not only general in nature but they can only be construed as a little

⁹ (2012) 4 SCC 407

bit of negligence in performing duty which *per se* would not be termed as “misconduct” in the subject and the context, in which a government servant is alleged to have committed “misconduct”. There being absolutely no charge against the petitioner of doing such forbidden act or misdemeanor lowering image of the Board amongst the members of public or the allegation that any of his act was against the public interest damaging the Board either financially or reputationally, the nature of charges cannot be termed as “misconduct” within Rule 3 (i) and (ii) of the Rules, 1965. Though Charge No.1, 5 & 6 have been proved partially, the other charges have been found to be fully proved, yet the charges not being misconduct, the order of penalty deserves to be quashed.

19. Accordingly, the writ petition is allowed and the order of penalty is quashed. The petitioner shall be entitled to all consequential benefits including the difference of pay etc. The petitioner shall also be entitled to interest @ 9 % per annum on the amount of arrears, if the payment of arrears is not made within a period of three months from today.

Sd/-

JUDGE
PRASHANT KUMAR MISHRA