

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 19.01.2017

RSA No.1526 of 1994 (O&M)

The State of Punjab & others

...Appellants

Vs.

Jang Bahadur Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Dr. Puneet Kaur Sekhon, Addl. AG, Punjab.

Mr. Viney Saini, Advocate, for
Mr. G.S.Nagra, Advocate, for the respondent.

RAJIV NARAIN RAINA, J. (ORAL)

I find no palpable error in the interpretation of the phrases 'dereliction of duty' and 'gross negligence' placed by the learned Additional District Judge, Gurdaspur in the judgment and decree dated October 23, 1993 reversing the judgment and decree dated September 4, 1991 passed by the trial Court.

The charge-sheet was issued for dereliction of duty and for defalcation of Government funds. An inquiry was held and the plaintiff-respondent was exonerated of the charges. However, the disciplinary authority disagreed by a dissent note and proposed punishment. He called upon the plaintiff-respondent to furnish his reply, which he did. On a consideration of that reply, the delinquent was imposed punishment of stoppage of one increment with cumulative effect, which was a major penalty inflicted not for dereliction of duty as per charge, but for gross negligence.

Learned Additional District Judge, Gurdaspur reasoned that every act of negligence does not amount to misconduct and, therefore, the

disciplinary authority had travelled beyond the charge-sheet, which was not permissible in law. The plaintiff-respondent was not charged with gross negligence in the performance of his duties and, therefore, the disciplinary authority misdirected himself by creating a new cause of action for the first time in a dissent note which was not part and parcel of the charge memo.

I have no reason to disagree with the view taken by the learned Additional District Judge that there is a distinction between the phrases 'dereliction of duty' and 'gross negligence' in service law of domestic inquiries and punishments. Dereliction of duty is a serious offence signifying willful neglect of one's duty. Dereliction is the act of abandoning something, or the state of being abandoned, while negligence is the state of being negligent which is- "the tort whereby a duty of reasonable care was breached, causing damage: any conduct short of intentional or reckless action that falls below the legal standard for preventing unreasonable injury". "The breach of a duty of care: the failure to exercise a standard of care that a reasonable person would have in a similar situation. The breach of a duty of care is one element of the tort of negligence, but is also called negligence; one must therefore take care to clarify what is meant." Dereliction has serious ramifications in service law and means intentional or conscious failure in performance of duty.

The lower Appellate Court correctly applied the statement of law in the Allahabad High Court decision rendered in Vishwa Nath Mishra Vs. U.P. Public Services Tribunal & others, (1985) 2 SLR 708 [B.N.Sapru, J.] to support its view by borrowing from the judgment. In turn, the High Court relied on the ruling of the Supreme Court in Union of India Vs. J. Ahmed, AIR 1979 SC 1022. In this judgment the Supreme Court explained that deficiencies in personal character or personal ability do not constitute

misconduct for taking disciplinary proceedings. According to Stroud's Judicial Dictionary: "Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

The learned Additional District Judge, Gurdaspur read the evidence and found that the plaintiff-respondent employee was punished merely on suspicion of misconduct by changing the face of the charge-sheet.

It is well-settled proposition that mere suspicion cannot take place of proof and no one can be punished for a charge not brought against him as he has not had reasonable opportunity of defence and there thereby hangs the tale of prejudice. Otherwise, there would be a failure of justice occasioned by not knowing what the case is against a person in the dock. The test lies in the severity of the consequences of carelessness each of them would have in law. The disciplinary authority exceeded his jurisdiction in twisting the case out of proportion as a result of apparent anger and distaste of the enquiry report absolving the plaintiff-respondent of the charges levelled. No substantial question of law arises in this appeal preferred by the State of Punjab against its employee.

For the reasons recorded above, I find no error in the judgment and decree of the learned first Appellate Court and would dismiss the appeal being without any merit.

19.01.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes