

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3941 of 2014 (O&M)
Date of Decision: February 12, 2018

Swaran Singh

... Appellant

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. P.K. Bansal, Advocate,
for the appellant.

Mr. Rajbirinder S. Chahal, Addl. A.G., Punjab.

P.B. Bajanthri, J. (Oral)

1. In the instant appeal, appellant has questioned the validity of appellate Court's order dated 11.02.2014.
2. Appellant was subjected to disciplinary proceedings while working as a conductor. Respondent-department had assigned certain targets of collecting money in respect of route between Zira to Milak Kanga. For not reaching the target assigned to appellant, he was subjected to disciplinary proceedings. Disciplinary authority imposed penalty of compulsory retirement. Appellate Authority modified penalty of compulsory retirement to that of withholding of two annual increments with cumulative effect. Further, during the intervening period from the date of compulsory retirement till modification of penalty order i.e. on 20.09.2006, appellant is not entitled to any monetary benefits. Thus, aggrieved by the order of appellate authority, appellant filed a civil suit before trial Court. Suit was

decreed in favour of appellant. Respondents preferred an appeal against the decree and order of decree was reversed in part on 11.02.2014. Hence, present appeal.

3. Learned counsel for the appellant vehemently submitted that appellate authority held that charges leveled against appellant were not proved. He has also apprised reasons for not reaching the target by appellant that due to bad condition of old buses of the Punjab Roadways, passengers prefer to travel in private or new buses of other States. Despite these factual aspects, appellant authority modified penalty from compulsory retirement to withholding of two annual increments with cumulative effect and further appellant is not entitled to any monetary benefit during the intervening period, such decision is arbitrary and illegal.

4. Per contra, learned State counsel while resisting the claim of the appellant submitted that no doubt, appellant authority has assigned the reasons for not reaching the target at the same time sympathetically penalty order has been modified, therefore, there is no infirmity, so also in the appellant authority's order.

5. Heard learned counsel for the parties.

6. Crux of the matter in the present appeal is whether appellant has committed any misconduct and misdeed in not reaching the target assigned to him to collect particular amount as assigned by his superiors?

7. Appellant authority has assigned the reasons that due to bad condition of old buses, passengers may not prefer to travel by old buses etc. Supreme Court in the case of **Union of India and others vs. J. Ahmed**, reported in **(1979) 2 SCC 286** held that employer fixing any target and if an employee fails to reach particular target that does not amount to misconduct.

Para no. 11 of **J.Ahmed's case** reads as under:-

“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, 17 QB 536, 542]. A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle . (Indicator Newspapers), (1959) 1 WLR 698]. This view was adopted in [Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division](#), Nagpur, 61 Bom LR 1596(1), and [Satubha K. Vaghela v. Moosa Raza](#), 10 Guj LR 23. 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 [Management, Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik](#), AIR 1966 SC 1051, 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](#), AIR 1967 SC 1274, 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, AIR 1963 SC 1756](#), 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 stationary train causing headlong 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., (1978) 19 Guj LR 108]. 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.”

Having regard to the factual aspect that appellate authority has concluded its decision that there is no misconduct, further modifying penalty would be arbitrary and illegal. The appellate Court has not appreciated the above factual aspects which has been recorded by the appellate authority as well as Supreme Court's decision that misconduct definition is not attracted where an employer fixes target and if employee fails to meet the target.

8. In view of these facts and circumstances, appellate Court's order dated 11.02.2014 is set aside. Appellant is entitled to consequential benefits including monetary benefits from the date of compulsory retirement till appellate authority's order. The said benefits shall be calculated and released within a period of four weeks from today.

9. Instant appeal stands allowed.

February 12, 2018
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No