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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 26th July, 2018

Pronounced on: 10th August, 2018

+ W.P.(C) 4587/2002

ARUNA SINGAL Petitioner

Through Mr. S. S. Ray, Mr. Vaibhav
Gulia and Mrs. Rakhi Ray,
Advocates

versus

THE SECRETARY GEN.(LOK SABHA) Respondent

Through Mr. Pramod Gupta, Ms. Mudita
Sharda and Ms. Manogya
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT

C. HARI SHANKAR, J.

1. This writ petition, at the instance of the petitioner Aruna Singal, impugns an order, dated 18th December, 2000, issued by the Secretary General of the Lok Sabha (as the petitioner's disciplinary authority), which holds that the petitioner had "failed to maintain integrity and indulged in acts unbecoming of an officer unauthorizedly with effect from 13.08.1996" and, as a sequitur, imposes, on the petitioner, the "penalty of removal from service which shall ordinarily not be a

disqualification for her future employment in the Lok Sabha Secretariat”. The said order further directs that the period of the petitioner’s alleged unauthorised absence from duty w.e.f. 13th August, 1996, would be treated as *dies non*. The appeal, preferred by the petitioner against the said order of removal, was rejected, by the appellate authority, *vide* order dated 26th July, 2001 which, too, therefore, forms subject matter of the challenge in the present writ petition.

2. It is the case of the petitioner that, w.e.f. 13th August, 1996, she remained sick on account of pulmonary tuberculosis, and was unable to attend to her official duties. Accordingly, she applied, on 13th August, 1996, for being sanctioned leave on medical grounds. Apparently, no such leave was sanctioned by the respondent which, instead, directed the petitioner to get herself examined by a medical board of the Ram Manohar Lohia (RML) Hospital. The petitioner had herself examined by the medical board in the RML Hospital, which, consequent thereupon, addressed the following communication, dated 3rd January, 1997, to the respondent:

“No. 13-9/96-RMLH (MII) 144 New Delhi, the 3-1-97

To

Sh. A Louis Martin
Under Secretary
Lok Sabha Secretariat
Parliament Annexe
New Delhi 110001

Sub: Medical Examination of Smt. Aruna Singhal

Sir,

With reference to your letter No. PF2132 (7)/AN-I/96 dated 13.9.96 on the above-mentioned subject, Smt. Aruna Singhal has been medically examined by Dr. B.P. Gupta, Consultant in Medicine and his opinion is as under:

She is suffering from pulmonary tuberculosis (as shown by X-ray chest No 33494 dated 5.11.96) with anaemia. Therefore, she cannot be declared fit, she is not willing to take treatment from this hospital. She is advised to take treatment from medical specialists/TB Specialist of a recognised Government Hospital. After proper treatment, she may obtain medical fitness certificate from the treating doctor.

Dr B.B.Gupta
Consultant in Medicine
Addl Medical Superintendent
Dr R.M.L.Hospital, N.D.”

(Emphasis supplied)

3. The use of the word “therefore”, in the above certificate of the RML Hospital, makes it apparent that the reason for not declaring the petitioner fit was the fact that she was suffering from pulmonary tuberculosis. The certificate also makes it clear that she would be fit only after proper treatment.
4. On 26th February, 1998, the respondent wrote to the petitioner, asking her to rejoin duty.

5. The petitioner responded, *vide* communication dated 10th March, 1998, submitting that she was bedridden and was, consequently, unable to rejoin duty. She asserted, in the said letter, that she had been directed, in October, 1997, to again appear before the medical board of the RML Hospital and that, on her doing so, she was advised to undergo treatment for two years, which was still continuing. She annexed, with the said letter, her “medical record” which consisted of a lone prescription, dated 7th March, 1998, issued by the Dispensary of the Municipal Corporation of Delhi (MCD), which opined that “active lesions” were noticed in the petitioner’s X-ray, and advised her, consequently, to undergo an AFB test and restart anti-tubercular treatment.

6. On 8th October, 1998, the petitioner was issued a charge-sheet, by the Secretary General of the Lok Sabha, proposing to initiate disciplinary proceedings, against her, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and requiring her to show cause thereagainst. The charge-sheet contained two articles of charge. Article I alleged unauthorised absence from duty, on the part of the petitioner, since 13th August, 1996, whereas Article II alleged that she had unauthorizedly sublet the residential premises allotted to her, which had resulted in eviction of the petitioner from the said quarter on 3rd September, 1998, pursuant to orders passed by the Estate Officer on 27th August, 1998. These acts, it was alleged, violated Rules 15 and 16 of the Lok Sabha Secretariat (Allotment of Residences) Rules, 1974 (hereinafter referred to as the

“Allotment of Residences Rules”) and Rule 23, 3(1)(i) and (iii), read with Rule 33 (1) of the Lok Sabha Secretariat (Conduct) Rules, 1955.

7. Regarding Article I, the charge-sheet alleged that (i) the petitioner had absented herself from duty, since 13th August, 1996, without prior sanction of any kind of leave, (ii) there was no material produced, by the petitioner, to support the assertion, in her letter, dated 10th March, 1998, to the respondent, to the effect that the Medical Officer in charge, RML Hospital had advised her to continue treatment for a scheduled period of two years; rather, while the RML Hospital had advised her to continue treatment, it had not stipulated any timeframe in this regard, (iii) advice for continuing treatment would not be construed as advise for rest, unless and until it was specifically so mentioned, (iv) the MCD Dispensary was not a recognised Central Government Hospital for CGHS beneficiaries such as the petitioner, (v) there was no document, produced by the petitioner, which could establish that she was undergoing treatment between 4th January, 1997 and 6th March, 1998, and (vi) Mr. C.M. Nathan, who was found staying at the petitioner’s official residence, as well as the petitioner’s brother-in-law, stated that the petitioner was hale and hearty.

8. Regarding Article II, the charge-sheet alleged that (i) when, on 30th April, 1998, the official residence of the petitioner was visited, it was found to be in the possession of Mr. Nathan, who confirmed, in writing, that he was the tenant of the said premises, and was paying ₹

1500/-, in cash, to the petitioner as rent, (ii) in her letter, dated 10th March, 1998, the petitioner mentioned her address as 54, Mandir Wali Gali, Azadpur, Delhi, instead of her official residential address and (iii) this resulted in the proceedings before the Estate Officer, which culminated in the eviction, of the petitioner, from the said official residence on 3rd September, 1998, pursuant to order dated 27th August, 1998, of the Estate Officer.

9. The petitioner replied, *vide* letter dated 23rd October, 1998, requesting for being provided a copy of the various Rules, and order, cited and invoked, against her, in the charge-sheet. This was followed by another communication, dated 6th November, 1998, in which the petitioner expressed dismay at the charges levelled against her, submitting that it was a well-known fact that she was suffering from pulmonary tuberculosis with anaemia, and other diseases, for which she was undergoing treatment. She denied the allegations of unauthorised absence as well as subletting, but reserved the right to submit a detailed response to the allegations after copies of the relevant rules were made available to her.

10. The respondent proceeded to appoint an Inquiry Officer (hereinafter referred to as "IO") to enquire into the charges against her, as well as a Presenting Officer to present the case of the respondent, *vide* two orders, both dated 10th March, 1999.

11. It is not necessary to refer to the proceedings in the enquiry against the petitioner *ad nauseam*. However, the following incidents, thereof, are relevant:

(i) A written reply, in response to the charge-sheet, was submitted by the petitioner on 11th October, 1999. Unfortunately, however, no copy, thereof, has been placed on record in the present proceedings.

(ii) The petitioner was permitted to be represented by her father, a practising advocate, as Defence Assistant.,

(iii) In the proceedings which took place on 22nd December, 1999, the deposition of Vipin Kumar, Executive Officer, Administration Branch-II of the respondent, was recorded, as PW-1. He confirmed having inspected the flat allotted to the petitioner, for residents, along with 3 other officials of the respondent, on 30th May, 1998, and having found Mr. Nathan residing there. He further stated that, on enquiry, Mr. Nathan admitted that the flat belonged to the petitioner and that he was residing there on rent of ₹ 1500/-, paid every month to the petitioner. He further deposed that a Memorandum was issued, to the petitioner, to vacate the accommodation but that, on no response being received thereto, the matter was referred to the Estate Officer, who passed an order of eviction, dated 27th August, 1998, whereupon the petitioner vacated the premises,

possession whereof was taken over by the CPWD on 3rd September, 1998. PW-1 was cross-examined by the petitioner's Defence Assistant; however, nothing substantial turns thereon.

(iv) The deposition of PW-1 Vipin Kumar was corroborated and supported by V.K. Shah, Security Officer and Hakim Singh, Assistant, deposing as PW-2 and PW-3 respectively, who had visited the premises of the petitioner on 30th May, 1988, and found Mr. Nathan staying there. As in the case of PW-1 Vipin Kumar, the cross-examination of PW-2 and PW-3, by the petitioner's Defence Assistant, was unremarkable. The depositions of PW-2 and PW-3 were further supported by the evidence of Harkesh Singh, Dispatch Rider, deposing as PW-4 and Mangal Sen, Welfare Assistant in the office of the respondent, deposing as PW-5. PW-5 also deposed that he had been given to understand, by Rajneesh Singh, the brother-in-law of the petitioner, on 30th April, 1998, that she was hale and hearty, and had proceeded outside Delhi on holiday. The petitioner's Defence Assistant, however, categorically denied the petitioner having any brother-in-law by name Rajneesh Singh, as well as the allegation that Mr. Nathan was residing at the flat allotted to the petitioner. It was reiterated, by him, that the petitioner was actually unwell.

(v) Additional documentary evidence, in the form of a communication, dated 1st March, 2000, from the Mahanagar

Telephone Nigam Ltd (MTNL), to the effect that a telephone connection, bearing No. 3364241, had been opened, in the name of Mr. C. M. Nathan, giving the petitioner's official residence as their address, was produced by the respondent before the IO, and put to the petitioner's Defence Assistant, who acknowledged the receipt of the said evidence, but did not choose to make any submissions thereon.

(vi) Final proceedings, in the enquiry, were conducted on 4th April, 2000, on which date the defence witnesses (DWs) cited by the petitioner, were also examined.

(vii) Dr. Gopal Dua, CMO in-charge UHC Nimri Colony, deposed as DW-1. He claimed to be a specialist in chest diseases and tuberculosis, and stated that the petitioner was under his treatment from 19th September, 1996 to 20th March, 1999. He deposed that she was suffering from tuberculosis of both lungs, and that the disease was in the 3rd stage. He submitted that, in normal cases, treatment for the said deceased took around 2 years, but that it could take longer, if the case was complicated. He further testified that the petitioner had develop drug resistance, and had to be treated till she was free of her symptoms. Workload and mental tension were cited, by him, as factors which aggravated the situation in such patients. He stated that he had advised isolation of the petitioner, as tuberculosis was infectious. To a pointed question as to whether

he was competent to treat tuberculosis patients, DW-1 answered in the affirmative. The Presenting Officer stated that he did not wish to cross examine DW-1.

(viii) Sunil Jain, who was cited by the petitioner as DW-2, claimed to have been visiting the petitioners defence Assistant, i.e. her father, at the petitioner's flat, during the period 9th October, 1996 to October 1998. The Presenting Officer did cross examine DW-2, but superficially, in view of the documentary evidence available in the form of the installation of telephone connection, at the flat allotted to the petitioner, in the name of Mr. Nathan.

12. The IO, in his Inquiry Report dated 15th May, 2000, observed, in respect of the allegations against the petitioner, thus:

(i) On the allegation of unauthorised absence of the petitioner, from duty, the findings of the IO were as under:

“23. On examination of documentary evidence including the report of the Medical Board, Dr. Ram Manohar Lohia Hospital, dated 3.1.1997, *it is clear that the CO was suffering from pulmonary tuberculosis with anaemia and therefore, in the opinion of the Medical Board, could not be declared fit though she was not willing to take treatment from the hospital.* The Medical Board had further advised her to take treatment from Medical Specialists/TB Hospital of a recognised hospital and after proper treatment, she was advised to obtain Medical Fitness Certificate from the treating Doctor. As per the testimony of Dr. Gopal Dua, Defence Witness (DW-1), CMO In-charge,

Urban Health Centre, Nimri Colony, daily 54, the CO was under his treatment from 19 September, 1996 to 20 March, 1999. *He stated before the IO that the CO was suffering from Tuberculosis of both the lungs and the disease was at the third stage. He also stated that she had developed drug resistance to TB and therefore, her treatment had to continue till found clinically symptomless and had therefore, prescribed "rest, diet, medicine and isolation" to the patient. On being queried, he described himself as a qualified Doctor with a specialisation in chest diseases and treatment and a Member of International Academy of Chest Physicians and Surgeons. He also stated that she was once referred to RBTB Hospital, Kingsway Camp, Delhi in July, 1999. In view of the deposition of the CMO (DW-1) and also the report of the Medical Board, Dr Ram Manohar Lohia Hospital, the IO has no reason to disbelieve that the CO was not suffering from Tuberculosis. As to the question of taking treatment from a qualified Doctor of Urban Health Centre, Delhi, it is felt that it is the prerogative of a patient as to from where to take the treatment. It is a matter of faith, confidence and convenience based upon a person's response to the treatment. The CGHS rules as adopted by the Lok Sabha Secretariat only specify the names of Hospitals/Referral Centres where employees could avail treatment as also the admissible ceiling of expenditure reimbursable. The point of enquiry is not "reimbursement" but whether or not the CO was suffering from tuberculosis and whether she had taken leave of absence.*

24. The point of "unauthorised absence" from office from 13.8.1996 however could not be explained by the CO except her blanket denial. She could not show any documentary evidence in support of her contention that she had applied for leave. Presuming for a moment that she had applied for leave, her contention that "non-refusal to grant her leave tantamounts to sanction of leave", cannot be accepted as valid defence. The DA was not able to reply to the

question of IO whether the said statement was based on judicial dictum or contained a maxim of law. Obviously, the IO cannot agree with such a view. A mere submission of application for grant of leave does not confer any right as to the leave having been sanctioned. If such a flawed premise is accepted, it will annihilate the very purpose of sanction of leave by competent authority. Apparently, there was no willingness or inclination to resume duty even after prolonged treatment. She was medically examined by the Medical Board, RML Hospital on 5.11.1996 and the Secretariat gave her opportunity to join duty vide their memorandum dated 26 February, 1998. The inescapable conclusion is that the CO was absent unauthorizedly from 13.8.1996 onwards *though she was certainly suffering from tuberculosis irrespective of the fact of her having taken treatment from Urban Health Centre of MCD Delhi.*”

(Emphasis supplied)

(ii) Qua the 2nd Article of Charge against the petitioner, i.e. of subletting, it was observed, by the IO in his Inquiry Report, that the charge stood established by the evidence of the various PWs, as also the communication from the MTNL.

(iii) Following on the above observations, the IO held both Articles of Charge proved against the petitioner.

13. A copy of the aforementioned Inquiry Report, dated 15th May, 2000, was forwarded, to the petitioner, for her response thereto, under cover of Memorandum dated 25th May, 2000.

14. The petitioner responded, *vide* letter dated 16th June, 2000. She categorically denied the allegation of her having sublet the official

residence allotted to her, asserting that the evidence on record was insufficient to establish that Mr. Nathan was staying at the said premises in the capacity of a tenant. She also asserted that she had never been on unauthorised absence, as she was away from duty only because of her undisputed medical condition, which was supported by requisite certificates.

15. The Secretary General of the Lok Sabha, in his capacity as disciplinary authority, accepted the observations and recommendations of the IO, as contained in his Inquiry Report and, as has already been noted hereinabove, awarded, to the petitioner, the penalty of removal from service, with the caveat that it would not be a disqualification for her future employment in the Lok Sabha Secretariat, *vide* the impugned Order dated 18th December, 2000.

16. The appeal, preferred by the petitioner thereagainst, having been rejected *vide* order dated 26th July, 2001, was rejected by the Speaker of the Lok Sabha, in his capacity as appellate authority. It is significant to note that, on the issue of unauthorised absence of the petitioner, the order passed by the appellate authority accepts that “the appellant was indeed suffering from tuberculosis as certified by the Medical Board, RML Hospital on 05.11.1996 and advised rest” but, nevertheless, holds the charge against her to stand proved as she had exhausted the maximum period of leave admissible in such circumstances.

17. The appellant, consequently, has moved this court by means of the present writ petition.

18. Detailed arguments were advanced, before me, by Mr. S.S. Ray, learned counsel for the petitioner and Mr. Pramod Gupta, learned counsel for the respondent. I have considered the said submissions and perused the material on record.

19. On the allegation of unauthorised absence from duty, Mr. Ray has taken me through the medical certificates, which establishes that the petitioner was undoubtedly suffering from pulmonary tuberculosis, and had been advised rest. He emphasised the findings, of the IO, extracted hereinabove, which, in his submission, clearly established that the petitioner was not deliberately absenting herself from duty, but was medically incapacitated. Regarding the allegation of subletting, Mr. Ray advanced the submission that, in the proceedings conducted before the Estate Officer, the residence allotted to the petitioner had not only been vacated, but the petitioner had also been penalised monetarily. As such, in his submission, proceeding against her, departmentally, and punishing her, for the same act, would tantamount to “double jeopardy”.

20. Arguing *per contra*, Mr. Gupta submits that there could be no question of showing any sympathetic treatment to the petitioner, especially in view of the finding of unauthorised subletting, by her, of her official residence. He also sought to contend that the medical

evidence produced by the petitioner only testified to her medical condition, but did not amount to prescription of continuous rest. As such, in the submission of Mr. Gupta, no unfairness or injustice could be said to have been meted out to the petitioner, by removing her from service.

21. Before proceeding to examine the merits of the findings, of the authorities below, on the allegations against the petitioner, I may observe that the submission, of Mr. Ray, that awarding of punishment, to the petitioner, consequent on the findings of the IO and the acceptance, thereof, by the plenary authority, amounted to “double jeopardy”, in view of the outcome of the proceedings taken, against her, before the Estate Officer, is thoroughly misconceived. The nature of the two proceedings is completely different. Proceedings under the Allotment of Residence Rules, which took place before the Estate Officer and culminated in the eviction of the petitioner from the flat allotted to her, and imposition, on her, of penalty in that regard, cannot be regarded as even analogous, far less equivalent, to disciplinary proceedings, for commission of “misconduct”. It is axiomatic, in law, that one aberrant act might invite more than one penal consequence; that, however, would not amount to “double jeopardy”, in any understanding of the law. A simple case, in point, would be of corruption, on the part of a government servant. An act of corruption would expose the government servant to prosecution, under the Prevention of Corruption Act, 1988, and, if established, to award of appropriate punishment consequent upon; however, that

would not insulate the delinquent employee from disciplinary proceedings for the same act. The Estate Officer, exercising powers under the Allotment of Residence Rules, is not concerned with whether the delinquent employee did, or did not, commit “misconduct”. He does not adjudicate on the said issue, either directly or indirectly. As such, the “aspect”, of the two proceedings, being entirely different and distinct, the petitioner, by being exposed to both, had not suffered any “double jeopardy”, as understood in law.

22. This position is also borne out from Rules 15 and 16 of the Lok Sabha Secretariat (Allotment of Residences) Rules, 1974 which reads thus:

“15. Subletting and sharing of residences. (1) No officer shall share the residence allotted to him or any of the out-houses, garages and stables appurtenant thereto except with the officers of the Lok Sabha Secretariat eligible for allotment of residences under these rules. The servant’s quarters, out-houses, garage and stables may be used only for the bona fide purposes including residence of the servants of the allottee or for such other purposes as may be permitted by the Estate Officer.

(2) No officer shall sublet the whole of his residence:

Provided that any officer proceeding on leave may accommodate in the residence any other officer eligible to share the Lok Sabha Secretariat Pool accommodation, as a caretaker for the period specified in sub-rule (2) of rule 8, but not exceeding six months.

(3) Any officer who shares or sublets his residence shall do so at his own risk and responsibility and shall remain personally responsible for any licence fee payable in respect of the residence and for any damage caused to the residence or its precincts or grounds or services provided therein by the

Government or the Lok Sabha secretariat beyond their wear and tear.

16. **Consequences of breach of rules and conditions.-** (1) If an officer to whom a residence has been allotted, unauthorisedly sublets the residence or charges rent from the sharer at a rate which the Estate Officer considers excessive or erects any unauthorized structure in any part of the residence or uses the residence or any portion thereof for any purposes other than that for which it is meant or tampers with the electric or water connection or commits any other breach of these rules or of the terms and conditions of the allotment or uses the residence or premises or permits or suffers the residence or premises to be used for any purpose which the Estate Officer considers to be improper or conducts himself in a manner which in his opinion is prejudicial to the maintenance of harmonious relations with his neighbours or has knowingly furnished incorrect information in any application or written statement with a view to securing the allotment, the Estate Officer may, without prejudice to any other disciplinary action that may be taken against him, cancel the allotment of the residence.”

Rule 16 (*supra*) makes the position clear, by entering the caveat that action, under the said Rules, would be “without prejudice to any other disciplinary action that may be taken against him”.

23. This submission, Mr. Ray, is, therefore, rejected.

24. Before proceeding to the allegations against the petitioner, it would be appropriate to appreciate what exactly constitutes “misconduct” in service jurisprudence. “Misconduct” necessarily connotes aberrant behaviour; every aberrant behaviour, however, does not connote “misconduct”. One can do no better, on this issue, than to extract the following passages, from the judgement of the Supreme

Court in ***Ravi Yashwant Bhoir v. Collector (2012) 4 SCC 407***, which are eloquently instructive on the issue:

“11. “Misconduct” has been defined in *Black's Law Dictionary*, 6th Edn. as:

“A transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement offence, but not negligence or carelessness.”

“Misconduct in office” has been defined as:

“Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. 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.”

12. P. Ramanatha Aiyar's *Law Lexicon*, Reprint Edn. 1987 at p. 821 defines “misconduct” 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 unskilfulness 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.

Thus it could be seen that the word ‘misconduct’ though not capable of precise definition, on reflection receives 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, wilful 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....”

(emphasis supplied)

(See also *State of Punjab v. Ram Singh* [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435 : AIR 1992 SC 2188].)

13. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office-bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds, etc. constitutes a serious misconduct, inviting severe punishment. (Vide *Disciplinary Authority-cum-Regl. Manager v. Nikunja Bihari Patnaik* [(1996) 9 SCC 69 :

1996 SCC (L&S) 1194] , Govt. of T.N. v. K.N. Ramamurthy [(1997) 7 SCC 101 : 1997 SCC (L&S) 1749 : AIR 1997 SC 3571] , Inspector Prem Chand v. Govt. of NCT of Delhi [(2007) 4 SCC 566 : (2007) 2 SCC (L&S) 58] and SBI v. S.N. Goyal [(2008) 8 SCC 92 : (2008) 2 SCC (L&S) 678 : AIR 2008 SC 2594] .)

14. In *Govt. of A.P. v. P. Posetty* [(2000) 2 SCC 220 : 2000 SCC (L&S) 254] , this Court held that since acting in derogation to the prestige of the institution/body and placing his present position in any kind of embarrassment may amount to misconduct, for the reason, that such conduct may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an incumbent of the post.

15. In *M.M. Malhotra v. Union of India* [(2005) 8 SCC 351 : 2005 SCC (L&S) 1139 : AIR 2006 SC 80] , this Court explained as under: (SCC p. 362, para 17)

“17. ... 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.”

A similar view has been reiterated in *Baldev Singh Gandhi v. State of Punjab* [(2002) 3 SCC 667 : AIR 2002 SC 1124] .

16. Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for punishment. (See *Union of India v. J. Ahmed* [(1979) 2 SCC 286 : 1979 SCC (L&S) 157 : AIR 1979 SC 1022] .)

17. It is also a settled legal proposition that misconduct must necessarily be measured in terms of the nature of the misconduct and the court must examine as to whether misconduct has been detrimental to the public interest. (Vide ***Bank of Indiav. Mohd. Nizamuddin [(2006) 7 SCC 410 : 2006 SCC (L&S) 1663 : AIR 2006 SC 3290]*** .)

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 misdemeanour 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.”

25. This specification, in the Allotment of Residences Rule, completely eviscerates the argument of Mr. Ray, founded on the “double jeopardy” principle.

26. Applying the above principles to the facts of the present case, this Court is of the opinion that, while the allegation of unauthorized absence from service could not have invited the punishment of removal from service, the allegation of sub-letting, the findings in

regard whereto appear to be unexceptionable, could certainly have done so. The IO, the disciplinary authority and the appellate authority, have all accepted, as a fact, the ailment of pulmonary tuberculosis with anemia, from which the petitioner was suffering. Though the certificates, on which the petitioner relied, did not specifically prescribe “rest”, the appellate authority, i.e. the Speaker of the Lok Sabha, has accepted her submission that rest was impliedly to be read into the medical advice given to her. That apart, it is seen, from the communication, dated 3rd January, 1997 (*supra*), addressed to the respondent, by the R.M.L. Hospital, that the petitioner could not be declared fit to resume duty as she was suffering from pulmonary tuberculosis with anemia. The fact that she continued to suffer from the said ailment, is not disputed by any of the authorities below. As such, while it may be technically correct that the petitioner remained absent from work without proper sanction of leave, it cannot be said that such action was deliberate, as she was, apparently, seriously indisposed. I am not willing to countenance the reliance, in this connection, of the respondent, on the purported statement of Mr. Rajneesh Singh, stated to be the petitioner’s brother-in-law. The said gentleman never entered the witness-box, and his purported statement could, therefore, at best be regarded as hearsay. Man, it is trite, may prevaricate, but documents would not. I am not, therefore, willing to accept the alleged statement of Mr. Rajneesh Singh, in preference to the evidence emerging from the documents relating to the medical treatment of the petitioner.

27. As such, I am of the view that the allegation of unauthorized absence from duty, by the petitioner, could, in view of the evidence that led before the IO, be said to have been established only to the extent of violation of a technical requirement of obtaining prior sanction before proceeding on leave; however, no punishment of removal from service could be justified thereon.

28. The allegation of sub-letting, by the petitioner, of the official residence, allotted to her, is, however, another matter altogether. The material available on record, to which detailed allusion has been made hereinabove, clearly establishes the fact that Mr. Nathan was actually residing in the said quarters, allotted to the petitioner. The statement, of Mr. Nathan, to the effect that he was paying rent of Rs. 1,500/- to the petitioner, has gone unrebutted. The defence, of the petitioner, to the extended stay of Mr. Nathan, in the premises officially allotted to her, can best be characterized as moonshine. It is not the case of the petitioner that Mr. Nathan was a close relative, who was, in that capacity, staying in the said premises. The reliance, by the respondent, on the telephone connection installed in the said premises, as well as the communication, from the MTNL, in respect thereof, which clearly indicated that the connection had been applied for, in the name of Mr. Nathan, is also well-taken.

29. Accordingly, I find no basis, whatsoever, to disturb the findings of fact, entered by the IO and accepted by the disciplinary authority and appellate authority, to the effect that the petitioner had, indeed,

sublet the official residence, allotted to her, to Mr. Nathan, against monetary consideration.

30. Sub-letting of official accommodation is a serious matter, and amounts, in a way, to corruption, as the sub-lessor benefits, monetarily, at the expense of the sub-lessee. Rule 16 of the Allotment of Residences Rules itself makes it clear that sub-letting of official residences is regarded as an actionable misconduct, in the establishment of the respondent. The decision, of the disciplinary authority, to punish the petitioner for having sub-let the official residence, allotted to her, cannot, therefore, be faulted in any manner.

31. Clutching at the proverbial last straw, Mr. Ray prays, at the conclusion of the hearing, that, if nothing else, the punishment awarded to his client be reduced to compulsory retirement. This court regrets that it is powerless to do so. Interference, with the quantum of punishment awarded consequent to disciplinary proceedings would, in a case, whether the charge admittedly stands established, be justified only where the punishment is “shockingly disproportionate” to the misconduct. Sub-letting of official accommodation against monetary consideration, is an act of corruption, and with respect to acts of corruption, the Supreme Court has repeatedly emphasized that continuance, in service, of the officer, is unacceptable. As such, the decision to remove the petitioner from service cannot be said to be legally flawed in any manner. Substitution of such punishment, by any other, by this Court, would be justified only where a finding could be

returned, on facts, that the punishment awarded is shockingly disproportionate to the misconduct proved. I regret that I am not in a position to return any such finding. Given the fact that the charge of sub-letting stands proved, the petitioner could not have been allowed to continue in service, and it cannot, in my opinion, be said that the decision to remove the petitioner from service was shockingly disproportionate to the misconduct committed by her.

32. Resultantly, I find no reason to interfere with the impugned order, dated 18th December, 2000, removing the petitioner from service, or the appellate order dated 26th July, 2001, dismissing the appeal, filed by the petitioner, thereagainst.

33. This order would not, however, disentitle the petitioner to apply to the respondent, if she so chooses, for reduction of the punishment awarded to her, to compulsory retirement, as was prayed by learned counsel before me. Any such request, if made would, needless to say, be considered by the respondent on its own merits.

34. With the above observations, the writ petition is dismissed without any order as to costs.

**C.HARI SHANKAR
(JUDGE)**

AUGUST 10, 2018

rk/dsn