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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 20th April, 2018

+ W.P.(C) 4790/2002

T.C. JINDGAR Petitioner

Through Mr.Sanjay Mann, Adv.

versus

RURAL ELECTRIFICATION CORPORATION ...Respondent

Through Mr.Deepak Khurana and
Mr.Tejasv Anand, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **JUDGMENT(ORAL)**

C.HARI SHANKAR, J.

1. The petitioner T.C. Jindgar, while working as Deputy Chief (Engineering) in the office of the respondent-Corporation, was visited with a charge-sheet dated 28th February, 1999, proposing to hold an inquiry, against him, under Rule 25 of the REC (Conduct, Discipline and Appeal) Rules 1979 (hereinafter referred to “the 1979 Rules”) on the ground that he had failed to exhibit absolute integrity and honesty in connection with the business assigned to him and had, thereby violated Rule 5(1) and 5(9) of the 1979 Rules.

2. In view of the limited nature of the controversy raised by the petitioner in the present case, it is not necessary for this Court to embark on a detailed examination of the Articles of Charge contained in the said charge-sheet. Suffice it to state that the respondent-Corporation was engaged in project financing for various projects, for which it granted loans, and that, prior to such grant, due diligence was conducted with respect to the viability of the project in question. This, in turn, required technical evaluation of the project, and ascertainment of the conformity, of the equipment in question, to the project's specifications. Mr. Deepak Khurana, learned counsel for the respondent, submits that the lapse of duty, on the part of the petitioner, pertained to certain Wind Energy Financing projects, in respect whereof, the specification of the equipment involved was dissonant with the project's specifications, and that the gravamen of the charges against the petitioner were basically to the effect that the petitioner, who was entrusted with the task of assessing the viability of the project and ascertaining that the equipment was as per the specifications, defaulted. As a result, Mr. Deepak Khurana, would submit, the respondent ended up advancing a loan for a project which was not viable, resulting in considerable financial prejudice to it in the long run.

3. For ready reference, the Articles of Charge, against the petitioner, as framed in the charge-sheet dated 28th February, 1999 (*supra*), may be reproduced as under:

**“Sub: Statement of Articles of Charges framed against
Sh. T.C. Jindgar, Dy. Chief (Engg.)**

Article-1

That the said Sh. T.C. Jindgar, while functioning as Deputy Chief (Engg.) at Corporate Office of the Corporation was associated during the period September’94 to March ’95 with the work relating to sanction of Wind Mill projects to be sanctioned to private entrepreneurs in Tamil Nadu, as a member of the Empowered Project Management Committee (EPMC). Shri Jindgar, visited the scheme area in March ’95 to comment upon the availability of equipments in the field, their technical specifications, suitability to the schemes and other technical parameters. It is seen that Shri Jindgar, did not submit the factual report to the Competent Authority regarding installation of 27 Nos. X 410 KW WEGs in these projects instead of suitable numbers of 250 KW WEGs as originally proposed in the Project Reports. This resulted in undue benefit to the borrowers and also major deviations in implementation of these projects at the time of execution.

By his above act, Shri Jindgar exhibited lack of absolute integrity and honesty in connection with the business assigned to him and thereby violated Rules 5(1) and 5(9) of “REC (Conduct, Discipline & Appeal) Rules, 1979” and acted in a manner prejudicial to the interests of the Corporation.

Article-II

That Shri Jindgar, while monitoring the above projects of Wind Mills in Tamil Nadu, failed to verify the total number of WEGs, as proposed to be installed at Kayathar and Muppandal project sites in respect of M/s Subhash Projects & Marketing Ltd., and M/s Arihant Credit Capital Ltd. It is also seen that as a Member of the Monitoring Team, Shri. Jindgar submitted a report which was not based on facts and also not supported by the required documents in support of his submissions, thereby resulting in deviation in project sites and change of size of WEGs to be installed, their number and capacity, etc. This major deviation having been known to the

EPMC, release of loan amount to the extent of 90% of the cost of projects was recommended in favour of six entrepreneurs with a view to pass on undue financial benefits to these borrowers. It is also seen that as a technical officer in EPMC, Shri T.C. Jindgar failed to study the implications involved in the change of site of the projects, their number and other technical specifications and the same were not brought to the notice of the Competent Authority which resulted in undue haste in release of funds to the private entrepreneurs.

By the above act, Shri T.C. Jindgar acted in a manner prejudicial to the interests of the Corporation and thereby violated Rules 5(4) and 5(9) of the “REC (Conduct, Discipline & Appeal) Rules, 1979”.

Article-III

That Shri T.C. Jindgar visited the project sites on 16th March, 1995 as a member of the EPMC/Monitoring Team and noted deviations in the number of WEGs actually available at sites and as reported in the field report of REC Project Office, Chennai. However, Shri Jindgar did not bring the variations to the notice of the Competent Authority, which resulted in release of funds to the borrowers without completion of the required formalities, thereby giving illegitimate financial gains to the private entrepreneurs.

The above lapse of Shri T.C. Jindgar has resulted in wilful/undue financial benefit to the private entrepreneurs and he committed a misconduct under Rules 4.1 (1), 5(4) and 5(9) of the “REC (Conduct, Discipline & Appeal) Rules, 1979”.

4. The petitioner was subjected to a disciplinary inquiry, on the aforementioned articles of charge, resulting in an inquiry report, by the inquiry authority, which was forwarded to the petitioner under cover of a letter dated 16th May, 2000, regarding the three articles of charge

against the petitioner. As regards Article I, it was found that, while the petitioner was alert enough to notice the name plate readings of the Wind Electricity Generators (WEGs) as 2 x 150 KW against the claimed capacity of 410 KW, he had obtained the opinion of Mr. S.K. Tiwari, Wind Energy Expert and accepted which, according to the Inquiry Authority, the same was not justified. It was felt by the Inquiry Authority that the Petitioner ought to have explored this matter further with technical officers.

5. Regarding Article II, the petitioner was held to have defaulted in not obtaining confirmation from the Appraisal Team, which, according to the Inquiry Authority, was necessary in all matters relating to installation of the Wind Energy project. It was further opined that the petitioner ought to have had these issues examined by an expert appraisal team as a pre-condition before releasing funds.

6. Regarding Article III, which related to the visit to the generator site on 16th March, 1995 by the Empowered Project Management Committee (EPMC), the default of the petitioner was apparently with respect to having his TA bill passed without approval of the revised tour programme.

7. The disciplinary authority, after considering the findings of the Inquiry Authority as aforementioned, proceeded to pass an order, dated 5th July, 2000, the operative portion of which may be reproduced, thus:

“After carefully going through the case, the facts given by the Presenting Officer, defense statement of the charged officer and his final submission and the findings of the Inquiry Officer, I have come to the following conclusions:-

(1) Shri T.C. Jindgar was a member of the EPMC, entrusted with the responsibility of reviewing from time to time all matters relating to execution/implementation of the Windfarm project.

(2) Shri T.C. Jindgar was signatory of the facts mentioned in the fax dated 16-3-95, verifying the despatch schedule of 14 nos. Kenetech WEGs at Abon Loyd Works in Chennai. *However, this fact alone has not become the basis for release of funds.* Then GM(D&CP) and CPM, Chennai had verified despatch of materials by collecting challan nos. etc. of the Lorry receipts before recommending release of funds to the extent of Rs. 13.3914 crores.

(3) *The machines did reach site on time and all of them got commissioned by 31 March – 95* as substantiated by the commissioning certificates given by TNE 3.

(4) The change of destination for the tour of Shri T.C. Jindgar from site at Kayathar to Supplier's works at Chennai *seems to have been authorised by the competent authority.*

(5) According to the findings of the Inquiry, *no mala fide intentions are proved against the Charged Officer.* However, Shri T.C. Jindgar could have played a pro-active role which was expected by the Management and the change of site, size of WEGs and their effect on the viability of the project could have been got examined by the members of the appraisal team. Instead Shri Jindgar recorded in the minutes of the first EPMC meeting (dt. 22.2.95) that variations of certain parameters will not change the economic viability of the project and suitability of operation etc. And conditioned his own statement by recording “subject to confirmation by the appraisal team”. However, as a responsible member of the EPMC, he never followed it up with the appraisal team. As a matter of fact such a confirmation/examination should have been made a pre-condition for release of loan and followed up through his superior officer. He could have atleast sent a

specific note to the appraisal team through his controlling officer.

(6) As a Technical Member of the EPMC while Shri Jindgar was alert enough to notice the name plate ratings of WEG as 2x150 KW against the claimed capacity of 410 KW and he is reported to have obtained the opinion of the Consultant Dr. S.K. Tewari. However, it is not clear as to how he accepted and got convinced with the reply of the Consultant that the induction generator could be over loaded by 37% as a regular feature. There is no evidence on record that Shri Jindgar explored this further with the MNES or with the senior Technical Officers within REC. Therefore, Shri Jindgar failed in his duty to make full efforts to verify the correctness of the Technical Specifications of WEGs.

(7) The lapses on the part of Shri Jindgar have to be viewed in the background of the following facts:

- (a) *Shri Jindgar's past record of service in REC has been very good and his integrity has always been beyond doubt.*
- (b) *This was the first case of Wind Energy Financing in the history of REC and there was no experience within the organization to be vigilant on such crucial issues.*
- (c) *Though Shri Jindgar exhibited vigilance on his part, he got contented with the reply of Wind Energy Consultant Dr. S.K. Tewari taking his word as the last for which he can not be blamed beyond a point. He also seems to have fallen prey to the lack of coordination between Technical and Finance Wings and at his level he could not exert beyond a certain limit on technical issues which he honestly wanted to resolve.*

(8) Keeping in view the above extenuating circumstances, I therefore, in exercise of the powers conferred under Rule 24 read with Rule 23 of REC CDA Rules, 1979, impose the following penalty on Shri T.C. Jindgar, Dy. Chief (Engg.):

“One increment of his pay shall stand withdrawn from the date he earned it last i.e. on 1-1-2000 for a period of nine months without cumulative effect”.

I put my hand on this day the 4th July 2000 on this decision most consciously and with full conviction”.

8. It appears that, after the passing of the above order, dated 5th July, 2000, the Board of Directors of the respondent-Corporation decided to review the punishment imposed on the petitioner.

9. As a result, Show Cause Notice dated 15th December, 2000, was issued, to the petitioner, by the General Manager (P & A), for and on behalf of the Board of Directors of the respondent-Corporation. The said Show Cause Notice read as under :

“SHOW CAUSE NOTICE

Whereas an inquiry was instituted by the Competent Authority under Rule-25 of the REC (CDA) Rules, 1979 against Shri T.C. Jindgar, Dy. Chief (Engg), REC Corporate Office, New Delhi, vide Memorandum No. REC/Vig/ii(135)/97 dated 28th February, 1999;

Whereas the Disciplinary Authority found Shri T.C. Jindgar guilty of the charges levelled against him and imposed the penalty “One increment of his pay shall stand withdrawn from the date he earned it last, i.e. on 1.1.2000 for a period of 9 months without cumulative effect” vide order No. REC/IO/Wind/99 dated 5th July 2000;

Whereas the Chief Vigilance Officer, REC, under the powers vested in Clause 25.12 of the Special Chapter on Vigilance Management in Public Sector Enterprises, scrutinised the final orders passed by the Disciplinary Authority and found that the penalty imposed was not commensurate with the nature and the gravity of the lapses. The punishment imposed was inadequate and inappropriate and, therefore, recommended a modification thereof to the Reviewing Authority, i.e. Board of Directors, REC;

Whereas the Reviewing Authority considered and having satisfied that a case existed for review, has assumed jurisdiction over the case and proposed to enhance the existing minor penalty to a major penalty as “the pay of Shri T.C. Jindgar is reduced by four stages of increment, i.e. from 15,750/- to 14,250/- with immediate effect till the date of his retirement and the gratuity payable would be calculated on the basis of the pay thus reduced.”

Whereas Shri T.C. Jindgar, Dy. Chief (Engg), REC, is given an opportunity to defend his case and to show cause as to why the penalty thus proposed should not be imposed upon him. His reply should reach the undersigned within seven days from the date of receipt of this Show Cause Notice, failing which it will be presumed that Shri Jindgar has nothing to say in his defence and the penalty proposed would be confirmed on him.”

10. The petitioner responded, to the above show cause notice vide his reply dated 26th December, 2000, whereafter, the following order, dated 27th December, 2000 – the subject matter of challenge in the present writ petition – came to be issued by the General Manager (P&A) for and on behalf of the Board of Directors of the respondent-Corporation:

“ORDER

Whereas the penalty “One increment of his pay shall stand withdrawn from the date he earned it last i.e. on 1.1.2000 for a period of nine months without cumulative effect” was imposed on Shri T.C. Jindgar, Dy. Chief (Engg.) vide order NO. REC/IO/Wind/99 dated 5th July, 2000 on the ground of his having been found guilty of the charges levelled against him vide Memorandum No. REC/Vig/ii(135)/97 dated the 28th February 1999.

Whereas the Chief Vigilance Officer, REC under the powers vested in Clause 25.12 of the Special Chapter on Vigilance Management in Public Sector Enterprises issued by the Central Vigilance Commission scrutinised the final orders No. REC/IO/Wind/99 dated 5th July, 99 passed by the Disciplinary Authority and noted that the penalty imposed on Shri Jindgar was withdrawing of one increment from the date he earned it last i.e. with retrospective effect from 1.1.2000 and therefore, not in conformity with the extant rules on the subject. The penalty of withholding the increment takes effect from the date of increment accruing to the officer after the issue of the punishment orders. It cannot affect the increment which was due prior to the issue of the punishment orders even though it may not have actually been drawn due to the officer being on leave or other administrative reasons.

And whereas the case was initiated for a major penalty, the penalty imposed on Shri Jindgar was minor one in spite of the fact that the Disciplinary Authority in his judgment dated 4th July, 2009 confirmed that Shri Jindgar committed lapses. Therefore, the penalty imposed was not found commensurate with the nature and the gravity of the lapses. The punishment imposed was inadequate and inappropriate, and therefore, recommended as notification thereof to the Reviewing Authority i.e. Board of Directors, REC.

Whereas the Reviewing Authority considered the recommendations of the Chief Vigilance Officer, REC, and having satisfied that a case existed for review assumed jurisdiction over the case. After considering the proposal and having found that the penalty imposed on Shri Jindgar vide Order No. REC/IO/Wind/99 dated 5th July'99.

AND WHEREAS the said Shri T.C. Jindgar, was issued a Show Cause Notice vide No. REC/VIg/ii(135)/97/3673 dated 15.12.2000 returnable by 22nd December, 2000, giving him an opportunity to make a representation as he may wish to make, against the proposed penalty. Shri Jindgar submitted an interim reply on 22nd December, 2000 and sought extension of time. The request of Shri Jindgar was acceded to by the Competent Authority and extension of time was granted upto 26th December, 2000 vide

Memorandum dated 22nd December, 2000. The final reply submitted by Shri Jindgar on 26.12.2000 alongwith his interim reply dated 22.12.2000 has been carefully considered by the Competent Authority.

The Competent Authority having considered the replies dated 22.12.2000 and 26.12.2000 furnished by Shri Jindgar came to the conclusion that –

(i) The time allowed to Shri Jindgar for filing his reply was restricted by his pending superannuation. Nevertheless, he was accommodated to the maximum extent possible and he has filed his replies which have been considered.

(ii) The irregularities or infirmities in the conduct of inquiry, if any, should have been represented against by Shri Jindgar which he did not do and therefore the same are not relevant to the current proceedings.

(iii) The decision to review the punishment awarded by the Disciplinary Authority has been taken by the Board of Directors who are competent to do so and therefore the comments on CVO's authority in such matters are misplaced and irrelevant.

(iv) The penalty imposed by the Disciplinary Authority namely that of withdrawing one increment from retrospective date was incorrect on two accounts. Firstly, the proceedings against Shri Jindgar were for imposition of a major penalty while the penalty imposed by the Disciplinary Authority is not a major penalty. Secondly, withdrawing an increment already earned by Sh. Jindgar is not as per rules unless it is decided to reduce his pay to a lower level in his pay scale. In addition, the penalty imposed is not commensurate with misconduct that Sh. Jindgar has been found guilty of.

NOW THEREFORE, for reasons given above, in exercise of the powers conferred under Rule 33 of the REC (CDA) Rules, 1979, and the authorisation given by the Board of Directors, i.e. the Reviewing Authority to CMD, REC, in the case, has ordered enhancing the existing minor penalty to a major penalty as **the pay of Shri T.C. Jindgar, Dy.Chief (Engg.) is reduced by four stages of increment i.e. from**

Rs. 15,750 to Rs. 14,250 in the pay scale of Rs. 12,000-375-16,500 (CDA pattern) from the date of issue of orders of the Disciplinary Authority till the date of his retirement, i.e. 31.12.2000, and the retirement benefits calculable on the last pay drawn and payable to Shri Jindgar would be calculated on the basis of the pay thus reduced. In case the officer opts for the Industrial DA Pay Scale, the same penalty would be made effective in the revised scale.”

(Emphasis Supplied)

11. It is this order, dated 27th December, 2000, which is impugned before this court in these proceedings.

12. Mr.Sanjay Mann, learned counsel appearing for the petitioner, submits that there was no justification, whatsoever, for the decision to enhance the penalty, imposed on the petitioner by the disciplinary authority, and emphasizes the fact that the Show Cause Notice, as well as the order of enhancement, were totally unreasoned and non-speaking in nature. As a consequence of the said order, he points out, the petitioner, who had earlier been visited with a minor penalty, now had to suffer a major penalty. Mr. Sanjay Mann has relied on the judgment *Ravi Yashwant Bhoir vs. Collector, (2012) 4 SCC 407*.

13. *Per contra*, Mr. Deepak Khurana, learned counsel for the respondent, submits that the petitioner was undoubtedly guilty of lapse in duty, and that, therefore, if the reviewing authority felt the case to be appropriate for awarding a higher penalty than the penalty which had been imposed by the disciplinary authority, no exception could be taken thereto. Mr.Deepak Khurana has relied on the

judgment of the Supreme Court of India in *State of Punjab vs Ram Singh, (1992) 4 SCC 54*.

14. Mr. Deepak Khurana also draws my attention to the definition of the expression “misconduct” as contained in the 1985 Rules which reads as under:

“Rule 5. Misconduct

Without prejudice to the generality of the term ‘misconduct’, the following acts of omission and/or commission shall be treated as misconduct:

- (1) Theft, fraud or dishonesty in connection with the business or property of the Corporation or of the property of another person within the premises of the Corporation.
- (2) Taking or giving bribes or any illegal gratification.
- (3) Possession of pecuniary resources or property disproportionate to the known sources of income by the employee of the Corporation or on his behalf any other person, which the employee of the Corporation cannot satisfactorily account for.
- (4) Acting in a manner prejudicial to the interest of the Corporation.
- (5) Furnishing false information regarding name, age, father’s name, qualifications, ability or previous service or any other matter germane to the employment at the time of employment or during the course of employment.
- (6) Wilful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior.
- (7) Absence without leave or overstaying the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory explanation.

- (8) Habitual late or irregular attendance.
- (9) Neglect of work or negligence in the performance of duty including malingering or slowing down of work.
- (10) Damage to any property of the Corporation.
- (11) Interference of tampering with any safety devices installed in or about the premises of the Corporation.
- (12) Drunkness or riotous or disorderly or indecent behaviour in the premises of Corporation or outside such premises where such behaviour is related to or connected with the employment.
- (13) Gambling within the premises of the establishment.
- (14) Smoking within the premises of the establishment where it is prohibited.
- (15) Collection without the permission of the competent authority of any money within the premises of the Corporation except as sanctioned by any law of the land for the time being in-force of rules of the Corporation.
- (16) Sleeping while on duty.
- (17) Commission of any act which amounts to criminal offence involving moral turpitude.
- (18) Absence from the employee's appointed place of work without permission or sufficient cause.
- (19) Purchasing properties machinery, stores etc. from or selling properties, machinery, stores etc. to the Corporation without express permission in writing from the competent authority.
- (20) Commission of any act subversive of discipline or of good behaviour.
- (21) Abetment of or attempt at abetment of any act which amounts to misconduct.

NOTE: The above instances of misconduct are illustrative in nature and not exhaustive.”

15. He submits that, in view of the fact that there were findings, against the petitioner, to the effect that his actions were prejudicial to the interests of the respondent-Corporation, apparently Rule 5(4) of the 1985 Rules was invoked, and emphasizes the fact that the said clause is widely worded, not requiring any ulterior motive or intention, as the *sine qua non* to make out a case of commission of “misconduct”. As such, he would submit that the observations, of the disciplinary authority, regarding the *bonafides* of the petitioner, could not afford the petitioner a ground to escape the rigours of the definition of the “misconduct” as extracted hereinabove and as contained in the 1985 Rules.

16. I have heard learned counsel and examined the record.

17. While it is true that Rule 5(4) of the 1985 Rules is widely worded, and does not expressly incorporate, within it, any *mens rea*, on the part of an employee of the respondent-Corporation, as a pre-condition to justify a finding of misconduct against him, the law in this regard, by various pronouncements of the Supreme Court of India, is now well-settled. *State of Punjab vs Ram Singh (supra)*, normal which Mr. Deepak Khurana relies, is itself sufficient to underscore the legal position. Paras 5 and 6 of the report may, for ready reference, be reproduced as under:

“5. 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 behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, 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.”

P. Ramanatha Aiyar's *Law Lexicon*, Reprint Edition 1987 at page 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.”

6. 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. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.”

18. The same view was expressed, earlier in point of time, thus, in *UOI v. J. Ahmed, (1979) 2 SCC 286*. It is significant to note that, in *J. Ahmed (supra)*, the charges against the employee were the following:

“(i) Completely failed to take any effective preventive measures against widespread disturbances breaking out in Nowgong District in spite of adequate warning being conveyed;

(ii) Showed complete lack of leadership when the disturbances actually did break out and failed to give proper direction to your subordinate Magistrates and coordinate cooperations with the police to restore law and order;

(iii) Did not personally visit the scenes of disturbances within the town or in the rural areas, in time to take personal control of the situation and to exercise necessary supervision;

(iv) Did not keep Government informed of the actual picture and extent of the disturbances;

(v) Showed complete ineptitude, lack of foresight, lack of firmness and capacity to take quick and firm decision and

were, thus largely responsible for complete breakdown of Law and Order in Nowgong town as well as the rural areas of Nowgong District.

Thus you proved yourself completely unfit to hold any responsible position.”

The Supreme Court embarked on a detailed analysis of the concept of “misconduct” in service jurisprudence, holding in that regard, as under: (in paras 9 to 12 of the report)

“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.**

10. It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.

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], 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 *Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik* [AIR 1966 SC 1051 : (1966) 2 SCR 434 : (1966) 1 LLJ 398 : 28 FJR 131] 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* [(1967) 2 SCR 566 : AIR 1967 SC 1274 : (1967) 2 LLJ 249] 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 : (1964) 2 SCR 104 : (1963) 1

LLJ 679 : 24 FJR 464] 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. [(1978) 19 Guj LR 108, 120]*). 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.

12. The High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehaviour involving some form of guilty mind or mens rea. We find it difficult to subscribe to this view because **gross or habitual**

negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.”

(Emphasis Supplied)

J.Ahmed (supra) was followed by the Supreme Court in ***Inspec. Prem Chand (supra)***.

19. A detailed examination of the complexion and cantors of the expression “misconduct” was also undertaken by the Supreme Court in ***Ravi Yashwant Bhoir (supra)***. Paras 11 to 19 of the judgment speak for themselves, and may be reproduced as under:

“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, wilful 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 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.*

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....”

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 India v. 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.”

(Emphasis Supplied)

20. The many facets of the expression “misconduct”, as they stand revealed from the above three decisions of the Supreme Court, may be enumerated as under:

- (i) Mere negligence or carelessness is not “misconduct”.
- (ii) Incompetence, incapability to hold a post, and want of requisite efficiency are also not “misconduct”.

(iii) Failure to come up to the highest expectations of an officer holding a responsible post, lack of aptitude or qualities of leadership are also not “misconduct”. “Misconduct” implies *blameworthy* conduct.

(iv) Conduct inconsistent with due and faithful discharge of duty is “misconduct”.

(v) Disregard of a mandatory condition of the contract of service of an employee may constitute “misconduct”.

(vi) “Misconduct” means conduct arising from ill-motive.

(vii) A single act of omission, or error of judgment, would not ordinarily constitute “misconduct”; however, if such act or error results in serious or atrocious consequences it may amount to “misconduct”. Similarly, carelessness or negligence resulting in atrocious consequences, may, in exceptional circumstances, constitute “misconduct”. This would only apply in extreme cases, as is apparent from the illustrative examples given by the Supreme Court, akin to a sentry sleeping at his post; thereby allowing the enemy to slip through a railwayman signaling in a train on a track which there already stood a stationary train, resulting in a head-on collision, a nurse giving an injection intravenously instead of muscularly, thereby causing instantaneous death, or error on the part of a pilot in overlooking a snag in the engine, resulting in the crash of the aircraft, causing heavy loss of life. The consequences contemplated in these examples, i.e. the enemy slipping in through the border, head on collision between two trains, death owing to erroneous administration of an injection, and a crash of an aircraft

resulting in heavy loss of life, make it clear that it is only the most extreme and drastic consequences which could justify categorization of mere carelessness or negligence, on the part of an officer, as “misconduct”.

(viii) Gross or habitual negligence in performance of duty may constitute “misconduct” in the absence of *mens rea*.

(ix) Misconduct must ordinarily be willful in character, and not merely an error of judgment. It must involve a transgression of some established or definite rule of conduct, or doing of some act which is forbidden.

(x) Action which is detrimental to the prejudice of an institution, may in given cases, amount to “misconduct”.

21. The above examples, it may be reasonably stated, delineate, nearly exhaustively, the categories of conduct, on the part of an officer, which may be treated as “misconduct”.

22. To err is human; and every errant conduct of an employee of an organization, cannot be treated as "misconduct". There could be manifold instances in which employees make mistakes which, even if they may not be regarded as mere errors of judgment, suffer from no want of bona fides, and are committed in honest exercise of the powers conferred on the officer. The observations of the disciplinary authority, in the present case, clearly indicate that, in committing the acts which were characterized, by the respondent, as misconduct, no want of *bona fides* could be attributed to the petitioner. The

disciplinary authority has specifically found that the past record of service of the petitioner was very good, his integrity was always beyond doubt, and that the case in which the misconduct was attributed to the petitioner was the first case of Wind Energy Finances in the history of the respondent-Corporation, with no prior experience within the organization, as could warn an employee to exercise a greater degree of vigilance. The disciplinary authority further observed that the petitioner had for his part exhibited due vigilance, and that, in being contented with the reply the report of the Wind Energy Consultant Mr. S.K. Tiwari, he “could not be blamed beyond a point”. The disciplinary authority further holds that “the petitioner seemed to have fallen prey for the lack of co-ordination between technical finance wings and at his level “he could not exert beyond a certain limit on technical issue which he honestly want to resolve.”

23. These observations of the disciplinary authority are *ex facie* dissonant with the decision to impose punishment on the petitioner. However, as the petitioner has not chosen to challenge the punishment imposed on him by the disciplinary authority, I say no more on this aspect of the matter, and express no further opinion on the justifiability of the said order.

24. Be that as it may, there was obviously no reason or rationale, for the reviewing authority, in such circumstances, to review the punishment imposed on the petitioner and convert the penalty imposed on the petitioner from minor to major. Significantly, neither does the

Show Cause Notice dated 15th December, 2000, nor does the impugned order dated 27th December, 2000, express any disagreement with the “extenuating circumstances” observed by the disciplinary authority and referred to hereinabove. Without expressing any disagreement with these observations of the disciplinary authority, which clearly went to establish that no want of honesty, integrity or bona fides, or even lack of vigilance, could be attributed to the petitioner, it defeats comprehension as to how the reviewing authority could have regarded the case as one inviting major penalty. The Show Cause Notice dated 15th December, 2000, as well as the order dated 27th December, 2000, are both vague, regarding the ground on which the penalty, as imposed on the petitioner by the disciplinary authority, was, in the opinion of the reviewing authority, disproportionate to the misconduct found to have been committed by him. Interestingly, the reviewing authority also seems to take exception to the fact that, “whereas the case was initiated for a minor penalty, the penalty imposed on the petitioner was a major one”. To the knowledge of this Court, initiation of proceedings for major penalty does not disempower the disciplinary authority from imposing minor penalty on the employee concerned, though the reverse is not impersible.

25. It is also an axiomatic principle of law that every executive decision, be it quasi judicial or otherwise, which visits a citizen with civil consequences, is required to be informed by reasons. Reasons constitute the bulwark and the life-blood of every administrative decision, and, in the absence of reasons, the decision in question

becomes pregnable to challenge even on that sole ground. In the present case, we find no reasons, whatsoever, justifying the decision of the reviewing authority, to enhance the punishment imposed on the petitioner. *Prima facie*, the present case appears to be one in which the reviewing authority had exercised the power of review, to enhance the punishment imposed on the petitioner, merely because it was possessed of the said power, and for no other reason.

26. For all the above reasons, the impugned order, dated 27th December, 2000, as also the Show Cause Notice 15th December, 2000, wherefrom it emanated, cannot sustain the scrutiny of law and are, accordingly, set aside *in toto*.

27. The writ petition is allowed in the above terms, with consequential benefits in the form of disbursement of all benefits, of salary, pension and gratuity, which stand withheld from the petitioner. In the circumstances of the case, petitioner shall also be entitled to costs, which are assessed by this Court at Rs. 50,000/-.

28. Payments to the petitioner, in accordance with this judgment, are directed to be made within a period of four weeks from the date of receipt of a certified copy this judgment. The Registry is directed to ensure dispatch, of certified copies of this judgement, to the respondent, through counsel representing it, without delay.

29. Let the matter be listed for reporting compliance of directions contained in this judgment on 25th May, 2018.

C.HARI SHANKAR, J

APRIL 20, 2018

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