

\$~

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

Reserved on : 10th May, 2018

Pronounced on: 16th May 2018

+ W.P.(C) 776/2003

CHANDER MOHAN KHANNA

..... Petitioner

Through Mr.Apurv Lal and Ms.Meenu Pandey,
Advs.

versus

STATE OF PUNJAB & ANR.

..... Respondents

Through Ms.Avnish Ahlawat and Ms.Palak
Rohmetra, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

%

JUDGMENT

C.HARI SHANKAR, J.

1. Chander Mohan Khanna, the petitioner, initially joined as Clerk, on ad hoc basis, with the State of Punjab, on 20th June, 1972. In 1978, he was permanently absorbed. Thereafter, he was transferred to Delhi, and posted at Punjab Bhawan where he was working as Storekeeper-cum-Supervisor.

2. On 25th January, 1983, the petitioner was placed under suspension “on account of serious irregularities committed by him in the accounts of Kapurthala House Canteen”. This was followed by the issuance, to the petitioner, of a charge-sheet, dated 20th April, 1983, alleging commission, by him, of misconduct, in the matter of issuance of credit bills instead of cash vouchers on the catering side, and fraudulent usage of such credit bills. It is not necessary, in view of the march of events since then, to allude, any

further, to the specifics of the said charge-sheet.

3. Inquiry proceedings followed, resulting in the passing, by the Chief Secretary to the Government of Punjab, as disciplinary authority of the petitioner, of Office Order, dated 8th March, 1984, ordering removal of the petitioner from service.

4. The petitioner, appealed, *albeit* unsuccessfully, as, *vide* order, dated 29th June, 1985, the Chief Secretary to the Government of Punjab on behalf of and in the name of Hon'ble President of India, rejected the petitioner's appeal.

5. This led the petitioner to move this court by way of WP(C) 1006/1986, which was disposed of, by a learned Single Judge of this court, by judgment dated 25th May, 1998, on the ground that the petitioner was entitled to a second Show Cause Notice, under Rule 9(4) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, inviting the response, of the petitioner, to the punishment proposed to be awarded to him. On this ground, the orders dated 8th March, 1984 (*supra*) and 29th June, 1985, passed by the disciplinary authority and appellate authority, respectively, were quashed and set aside, and the matter was remanded to the respondent, for issuing a Show Cause Notice under Rule 9(4), to the petitioner, intimating him of the proposed punishment, and calling for his response thereto.

6. Consequent upon the above judgment, Office Order, dated 25th July, 1998, was passed by the Chief Secretary to the Government of Punjab, setting aside the order dated 8th March, 1984 (*supra*), removing the

petitioner from service. Needless to say, this Office Order was entirely superfluous in view of the judgment passed by this court; nevertheless it was issued; ergo, it has to be noted.

7. As directed by this court in its judgment, dated 25th May, 1998 (*supra*), notice, dated 5th August, 1998, was issued, by the respondent to the petitioner, requiring the petitioner to show cause as to why he be not removed from service.

8. The petitioner submitted his detailed response, dated 17th August, 1998, to the said Show Cause Notice, resulting in the passing, by the Chief Secretary to the Government of Punjab, of a fresh order, dated 31st August, 1998, entirely exonerating the petitioner of culpability. The operative portion of the said order merits reproduction, as under:

“Whereas after having gone through the detailed charges leveled against Shri Chander Mohan Khanna, findings of the Inquiry Officer, reply to the show cause notice filed by Shri Khanna and other relevant material available on record, I find that any embezzlement or misappropriation of government money is not involved and nor it is attributable to Shri Khanna, as alleged in charges No.; (i) and (ii); and that an amount of Rs. 1247.95 showed in charge No. (iii) alleged to have been misappropriated by Shri Khanna pertained to unpaid bills of the guests, which had been realized in due course of time. Similarly, nothing in charges No. (iv), (v), (vi) and (vii) is indicative of any financial irregularity and malafide on the part of Shri Khanna; but, I have come to the conclusion from the facts and circumstances of the case that it was lack of knowledge and experience on his part that made him to commit certain procedural errors and irregularities during the course of his posting in Kapurthala House, for which he deserves to be awarded the punishment of censure.

Now, therefore, in the circumstances of the case, I, R.S.

Mann, Chief Secretary to Government of Punjab , hereby order that Shri Khanna may be censured for his lapse.

And, consequently, Shri Khanna is reinstated in service on his substantive post of clerk in the Punjab Civil Secretariat with immediate effect.

However, a decision with regard to the period he remained under suspension will be taken separately.”

9. Though the above mentioned order, dated 31st August, 1998, passed by the appellate authority, is not under challenge, I may note that there was no justification, whatsoever, for the appellate authority to censure the petitioner, in view of the findings returned by him and extracted hereinabove. A reading of the said findings reveals that all that is attributed to the petitioner is “lack of knowledge and experience on his part that made him to commit certain procedural errors and irregularities”. This cannot, by any stretch of imagination, be treated as misconduct, in view of the law in that regard, as contained in the following passages from the judgment of the Supreme Court in ***Ravi Yashwant Bhoir vs. Collector, (2012) 4 SCC 407***:

“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 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....”

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)

10. The petitioner submits that, consequent on the passing of the above order on 31st August, 1998, by the appellate authority, he joined service immediately. His grievance stems from a subsequent Office Order, dated

23rd May, 2000, issued to him by the Superintendent, Secretariat Establishment-IV Branch, Department of General Administration of the Government of Punjab, which reads as under:

“In continuation of Government of Punjab, Department of General Administration order issued vide No. 12/12/83-3 Estt. (IV)/14624-14625 dated 31st August, 1998 vide which Shri Chander Mohan Khanna, Store Keeper-cum-Supervisor, Punjab Bhawan, New Delhi, was reinstated on the substantive post of Clerk in the Punjab Civil Secretariat, it has now been decided that the intervening period of suspension/dismissal from 25.1.83 to 31.8.1998 is treated as leave of kind due admissible to him as on 24.1.83 as under:-

Sr. No.	Kind of leave	Period
i.	Earned Leave	from 25.1.83 to 21.3.83 (56 days under rule 8.116 of Punjab C.S.R.Vol.I, Part-I.
ii.	Half Pay leave	from 22.3.83 to 16.9.83 (179 days) under rule 8.119 of Punjab C.S.R. Vol.I, Part-I.
iii.	Extra-ordinary leave	from 17.9.83 to 31.8.98 (14 yrs. 11 months & 14 days) under rule 8.121 of Punjab C.S.R. Vol.I. Part-I.

2. This issue with the concurrence of the Department of Finance conveyed vide its I.D. No. 1/9/99-3FP2/1364 dated the 14th Oct. 1998 and I.D. No. 1/9/99-3FP2/200, dated 26.4.2000.”

11. Aggrieved by the aforementioned order, dated 23rd May, 2000, the petitioner moved this court, by way of CM 4388/2002, in his earlier writ petition (WP(C) 1006/1986), praying for issuance of a direction, to the respondents, to grant him the benefit of seniority as well as arrears of pay for the period 25th January, 1983 to 31st August, 1998.

12. Inasmuch as this claim of the petitioner constituted a fresh cause of action, this court, *vide* order, dated 13th January, 2003, permitted the petitioner to withdraw CM 4388/2002 with liberty to file a substantive writ petition seeking the reliefs claimed therein.

13. The present writ petition was filed by the petitioner in pursuance of the liberty so granted by this court.

14. A bare glance at the facts stated hereinabove makes it apparent that the impugned order cannot sustain either on facts or in law. The order, dated 23rd May, 2000, passed by the Chief Secretary to the Government of Punjab, by order and in the name of the President of India, completely exonerates the petitioner of commission of any misconduct. There are positive findings, in the said order, to the effect that no embezzlement or misappropriation of Government money could be attributed to him, the amount of ₹ 1247.95 alleged to have been misappropriated by him actually related to unpaid bills of guests, which had been duly realised subsequently, and there was no evidence of any financial irregularity or malafides on the part of the petitioner. All that has been laid at his door are certain “procedural errors and irregularities”. As already observed by me hereinabove, no punishment, whatsoever, could have been awarded to the petitioner on these findings; nevertheless, the punishment of censure, which was awarded, not having been challenged, this court cannot interfere therewith, and the petitioner would have to suffer the same – even if it stands eviscerated by afflux of time. In any event, there could be no question of the respondents treating the period of absence of the petitioner – which was attributable entirely to their

own action, subjecting the petitioner to an unwarranted and unjustified disciplinary proceeding, resulting in his having been to suffer removal from service without any misconduct having been committed by him at all – as leave. As the petitioner has rightly contended, he never sought any leave, and was forced to remain without work owing to the vagaries of the attitude of the respondent. To allow the respondent to completely withdraw, from the petitioner, his wages, for the period of his forced absence from duty, i.e. for the period 25th January, 1983 to 31st August, 1998, would amount to adding insult and injury, and would result in the respondent being permitted to take advantage of its wrong; which, it is trite, is impermissible in law.

15. The impugned order, dated 23rd May, 2000, is, therefore, totally illegal and unjustified, and is accordingly set aside.

16. Having said that, this court has, with it, two options; namely, either to refer the issue of the manner in which the period of absence of the petitioner is to be treated back to the respondent for taking a fresh decision thereon, or to pass orders, on the said issue, itself. Ordinarily, no doubt, this court would prefer the former option, as the decision, regarding the manner in which the period of absence of the petitioner would have to be treated especially lies within the realm of discretion of the respondents. However, given the entirely arbitrary manner in which the respondent has acted qua the petitioner, coupled with the fact that this writ petition has remained pending since 2003, during which period the petitioner has superannuated from service, this court is of the opinion that relegating the petitioner to the respondent for the above purpose would result in injustice. It would be

desirable to put a quietus to the controversy at this stage itself.

17. On the issue of whether reinstatement, consequent on termination of an employee being held illegal, necessarily entails, in its wake, award of full back wages, there is wealth of authority. In ***A.L. Kalra vs. Project and Equipment Corporation of India Ltd. (1984) 3 SCC 316***, it was held that, ordinarily, if termination of service is held to be bad, denial of back wages would amount to awarding punishment for no reason and would, therefore, be impermissible; consequently, the workman or employee, in such a case, would be entitled to full back wages. The ordinary rule of award of full back wages, where termination of an employee is found to be illegal, also stands expressed, by the Supreme Court, in ***K.C. Joshi vs. Union of India and Ors. (1985) 3 SCC 153***, wherein it has been held that where an order of termination is found to be illegal, it must be followed by a declaration that the employee continues to be in uninterrupted service, while in ***Pyare Lal Sharma vs. Managing Director AIR 1989 SC 1854*** it has been held that when the termination order is set aside by courts, normally the servant becomes entitled to back wages and other consequential benefits. However, if, during the period of inability to serve the employer, the employee or workman has obtained other gainful employment, the back wages awarded to him would stand reduced by the salary or wages drawn by him consequent on such gainful by employment as has been held in ***Om Prakash Goel v. H.P. Tourism Development Corpn. Ltd., (1991) 3 SCC 291. Ibrahim Shahabuddin Shaikh vs. Sangli Distt. Central Cooperation Bank JT 1991 (5) SC 189*** also reiterates that, in the absence of a finding that the employee was not gainfully employed, during the period consequent to his

illegal termination, full back wages could not be granted while in *State of U.P. v. Atal Behari Shastri, 1993 Supp (2) SCC 207* it has been held that lumpsum compensation to the employee is justified on the ground that the employer had not followed principles of natural justice. It has been further held in *Syed Hussaini vs. Andhra Bank Ltd. AIR 1995 SC 1352* that in the case of an employee of a bank, who had been illegally terminated 24 years prior to the matter being decided by the Supreme Court, it would not be conducive to the proper functioning of the bank to direct reinstatement of the employee, and that the interest of justice would warrant awarding a lumpsum amount, in lieu of reinstatement and back wages. In *Manorama Verma v. State of Bihar, 1994 Supp (3) SCC 671*, it was held that quashing of illegal termination would ordinarily necessitate a consequential order of grant of full back wages, in absence of any reason justifying a departure therefrom and in the absence of any evidence that the employee was gainfully employed elsewhere. This judgment, therefore, places the onus, to establish that the employee was not gainfully employed elsewhere, on the party so urging, and makes it clear it is not for the employee to have to prove otherwise. Further, in *Anil Kumar Puri vs. Presiding Officer, Labour Court, Chandigarh, (2000) 9 SCC 129* and *Municipal Corporation of Delhi (MCD) vs. Prem Chand Gupta AIR (2000) SC 454* it has been held that where the termination of the employee was not attributable to any fault either of the employer or the employee, awarding full back wages would not be justified. In a more recent decision of a Division Bench of this court, *Ajyodha Prasad vs. Union of India & Ors. 2016 SCC Online Del 6536* various authorities of the Supreme Court were digested, resulting in a conclusion that there could be no *strait jacket* formula on the quantum of

back wages to be awarded consequent to dismissal or termination of services being found to be illegal, and that the matter would have to be left to the judicious discretion of the authority concerned, or the court sitting in judicial review over the said decision.

18. The *summum bonum* of the various judicial pronouncements on the issue appears to be that while, in the absence of any evidence of the employee concerned having been in gainful employment, consequent to his illegal discretion of termination of the service, quashing of the said dismissal or termination would result in the employee being entitled to reinstatement with full back wages. Howsoever, it is also clear that this is not a rule etched in gold, and competing factors, which may tilt the equities of the case one way or the other, would have to be borne in mind, while arriving at a conclusion regarding the quantum of back wages, if any, to be awarded. Among these would be the consideration of the period for which the litigation has remained pending, for no fault of employer or employee, the ground for setting aside the order of dismissal or termination, i.e. whether the order has been quashed on the ground of illegality or, whether it has suffered extinction only on technical grounds, and the like.

19. In the present case, the discussion hereinabove clearly reveals that no misconduct was attributable to the employee, and that, ultimately, the appellate authority, no less than the President of India, found the employee to be blameless in the entire affair; indeed, it would not be stretching the realities of the situation too far, were this court to even observe that the finding, in the order, dated 31st August, 1998, of “lack of knowledge and

experience on the part of the petitioner”, is entered almost by way of an apology. In any event, as has been observed by me hereinabove, lack of knowledge and experience, or any action or inaction, by the employee, which is faulted on that ground, cannot constitute “misconduct” and cannot, therefore, invite any punishment whatsoever, even in the form of a censure.

20. Having said that, as also noted hereinabove, the petitioner has not chosen to challenge the order of censure. The findings, in the aforementioned order, dated 31st August, 1998, faulting the petitioner for having committed “procedural irregularities” on account of “lack of knowledge and experience”, and the censuring of the petitioner on that ground, has, therefore, attained finality.

21. Keeping in view this fact, as also the fact that the present writ petition has, owing to no fault of either party, remained pending over a decade and a half, it would not, in my opinion, be in the interests of justice to award full back wages to the petitioner.

22. Resultantly, while quashing and setting aside order, dated 25th January, 1998 (*supra*), the respondents are directed to disburse, to the petitioner, as a consequence, thereof, 75% of the salary and allowances, to which the petitioner would have been entitled, had he continued in service from 21st January, 1983 to 31st August, 1998. This would include all increments and statutory revisions of pay, to which the petitioner would have been entitled during the said period. This would also necessarily entail all revisions of pay as well as increments, which would have accrued to him,

had he continued in the respondent's service without being removed. Needless to say, the pension and other retiral benefits being paid to the petitioner consequent upon his superannuation would also require to be suitably revised. These arrears should also be quantified and paid, by the respondent, to the petitioner.

23. The prayer, of the petitioner, to seniority, promotion, etc., is, however, rejected, as such reliefs would be dependent on several other factors such as availability of vacancies, whether the promotional posts were selection posts or non-selection posts, and *inter se* seniority, which have, at this stage, become imponderables, with the passage of time.

24. Payments to the petitioner, in accordance with para 22 (*supra*) shall be made within a period of four weeks from today. The writ petition is allowed in the above terms.

25. There shall be no order as to costs.

**C.HARI SHANKAR
(JUDGE)**

**MAY 16, 2018
rohit**