

(2009) 03 SC CK 0109

In the Supreme Court Of India

Case No : Civil Appeal No. 1536 of 2009 (Arising out of SLP (C) No. 18067 of 2006)

Praveen Bhatia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Air Force Act, 1950 — Section 19

Air Force Rules, 1969 — Rule 15

Army Rules, 1954 — Rule 14

Central Civil Services (Conduct) Rules, 1964 — Rule 3

Citation : AIR 2009 SC 2626 : (2009) AIRSCW 4045 : (2009) 57 BLJR 1253 : (2009) 3 BomCR 750 : (2009) 121 FLR 391 : (2009) 3 JT 549 : (2009) 3 KLJ 549 : (2009) 3 LLJ 9 : (2009) 3 SCALE 645 : (2009) 4 SCC 225 : (2009) 1 SCC(L&S) 801 : (2009) 3 SCR 1181 : (2009) 2 Shim

Hon'ble Judges : Asok Kumar Ganguly, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Manish Pitale and Chader Shekhar Ashri, for the Appellant; V. Shekhar Shilpa Ghose, D.S. Mahra and B.K. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the judgment of a Division bench of the Bombay High Court dismissing the writ petition filed by the appellant. Challenge before the High Court was to the order dated 24.6.1992 by which he was compulsorily retired in exercise of powers conferred by Section 19 of the Air Force Act, 1950 (in short the 'Act') and Rule 15 of the Air Force Rules, 1969 (in short the 'Rules').

3. Averments in the writ petition were to the following effect:

Appellant was granted commission in Air Force on 14.7.1973. After obtaining service in October, 1985, he got engaged with daughter of one Mulkh Rajh

Kakkar, a contractor undertaking contracts from respondents only. The marriage was performed on 14.1.1986. His father in law thereafter expected the appellant to help him in procuring other Government contracts particularly from Air Force and when the appellant refused to help him, the problem started. The marriage was not working out smoothly and ultimately in 1988, his father in law lodged a complaint in this respect with his employer. But by communication dated 8.12.1988 his employer refused to take cognizance of the matter on the ground that it was a personal dispute for which no departmental action could have been initiated. He was called upon to report to respondent No. 3 at New Delhi on 19.6.1990 and when he accordingly reported, he was kept in confinement and on 25.6.1990 a document already written was got signed from him and said document was purported to be terms of settlement of dispute between the appellant and his wife. The appellant was not even permitted to consult an advocate nor was he allowed to leave the room. The appellant was thereunder informed that Court of Enquiry would be held against him at Air Force Station, New Delhi, in February, 1991 and actually the terms of reference or any show cause notice in this regard was not communicated to him. As many as 27 witnesses were examined by both parties in these proceedings which were spread over for a period of five months and ultimately the Court of Enquiry submitted a report almost exonerating him on all counts. Thereafter a show cause notice dated 19.2.1992 was issued by respondent No. 3 calling upon him to show cause as to why he should not be dismissed or removed from service. The appellant had not received necessary documents and even he was not given inspection and hence the appellant approached the High Court by filing a writ petition. By an order passed on 12.3.1992, writ petition was dismissed by this Division Bench of the High Court observing that the appellant was at liberty to file appropriate representation before the authorities to highlight all his grievances-factual, legal and constitutional. Thereafter terms of reference dated 5.2.1991 were received by him and he also got copy of findings of Court of Enquiry dated 16.6.1991. Thereafter on 30.3.1992, he submitted his reply to show cause notice pointing out that there was no misconduct warranting any action from respondents and the failure to submit the property returns within time was not a misconduct serious enough to warrant such grave punishment. An additional reply to show cause notice was filed on 22.6.1992. On 24.6.1992, the order which was impugned before the High Court came to be passed and as already mentioned above, he was compulsorily retired.

Challenging the order of compulsory retirement the writ petition was filed. It was his stand that the court of enquiry has exonerated him on all counts except late filing of property returns. According to the appellant same was not of serious nature which would warrant compulsory retirement. The stand of the respondent before the High Court was that the transactions were between 1981 to 1986 and the return was belatedly filed after about six years on 23.3.1992 therefore the conduct was most unbecoming of an officer of the Air Force. Therefore the order of compulsory retirement was legal and valid. The High Court accepted the stand

of the respondent and dismissed the petition.

The stand taken before the High Court is reiterated in the present appeal.

4. Learned Counsel for the respondent pointed out that not only there was belated filing of the returns but also there were several other instances of misconduct which have been highlighted in the rejoinder affidavit filed before this Court.

5. According to him these misconducts were also taken note of while directing compulsory retirement.

6. The claim of the appellant for pension was also denied on the ground that at the time of compulsory retirement, he had put in 18 years and 11 months of service. As per the Pension Regulations for the Air Force minimum qualifying service for pension is 20 years. This statement was made with reference to the prayer of the appellant to convert the compulsory retirement in normal retirement with effect from the said date as that could not make the appellant eligible for pensionary benefits.

7. The Scheme of the disciplinary rules in general is to identify the conduct which is made punishable and then to provide for the various punishments which may be imposed for the acts which are inconsistent with such conduct. For example, the Central Civil Services (Conduct) Rules, 1964 contain provisions which pertain to the standards of conduct which the Government servant (within the meaning of those rules) are to follow whereas the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provide the punishment or penalties which may be imposed for misconduct. The conduct rules and the rules for punishment may be provided in separate rules or combined into one. Moreover, there are a host of departmental instructions which elucidate, amplify and provide guidelines regarding the conduct of the employees.

8. The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. 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.

9. In *Union of India and Others Vs. Harjeet Singh Sandhu etc.*, , in the background of Rule 14 of the Army Rules, it was held that any wrongful act or any act of delinquency which may or may not involve moral turpitude would be

"misconduct" under Rule 14.

10. In *Baldev Singh Gandhi Vs. State of Punjab and Others*, , it was held that the expression "misconduct" means unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc.

11. Similarly, in *State of Punjab and Others Vs. Ram Singh Ex. Constable*, , it was held that the term "misconduct" 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.

12. "Misconduct" as stated in *Batt's Law of Master and Servant* (4th Edition) (at page 63) is "comprised positive acts and not mere neglects or failures." The definition of the word as given in *Ballentine's Law Dictionary* (148th Edition) is "A transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness."

13. It may be generally stated that the conduct rules of the Government and public sector corporations constitute a code of permissible acts and behaviour of their servants.

14. The scheme of the Conduct Rules, almost invariably, is to first of all enunciate a general rule of conduct and behaviour followed by specific prohibitions and restrictions. For example, Rule 3 of the Central Civil Services (Conduct) Rules, 1964 which occurs under the heading "General" provides that every Government servant shall at all times:

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant. The aforesaid aspects were highlighted in *M.M. Malhotra Vs. Union of India (UOI) and Others*, .

15. The power of the court to interfere with the quantum of punishment is extremely restricted and only when the relevant factors have not been considered the Court can direct re-consideration or in an appropriate case to certain litigation, indicate the punishment to be awarded; and that can only be in very rare cases.

16. It is evident from record that the prescribed period for filing property return is six months and though appellant was aware of the requirement he did not choose to file any return, even during the course of enquiry no return was filed and ultimately after show cause notice was issued it was filed. That being so there is no merit in this appeal which is accordingly dismissed.