

(2012) 08 DEL CK 0476

In the Delhi High Court

Case No : Writ Petition (C) 6614 of 1998

Shri Bishamber Nath

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Citation : (2012) 193 DLT 75 : (2012) 131 DRJ 336

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Jyoti Singh, Instructed by Ms. Saahila Lamba, Mr. Sanjeev Chaswal and Mr. Amandeep Joshi, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Pithily stated the factual matrix concerning the writ petition is that in the year 1984 the petitioner was working on the post of Assistant Commandant in CRPF and posted at Group Centre-I, CRPF, Ajmer where he was performing the duties of Accounts Officer. At that time, Additional DIGP S.P.Sharma, Insp.(M) D.H.K. aramchandani and SI(M) Ram Gopal Sharma were working as Head of Office, Head Clerk (Budget) and Cashier respectively. Whereas the petitioner was the in-charge of Accounts Section, Insp.(M) D.H. aramchandani was responsible for the proper functioning of cash section of the Group Centre. SI Ram Gopal Sharma used to work under the supervision of the petitioner and Insp.(M)D.H. Karamchandani. In the year 1984, SI(M) Ram Gopal Sharma, the cashier, is stated to have had embezzled money at the Group Centre-I. A Court of Inquiry was convened to inquire into the alleged embezzlement committed by SI(M) Ram Gopal Sharma, which Court of Inquiry submitted its report in the year 1996 and blamed the petitioner, Addl. DIGP S.P. Sharma and Insp.(M) D.H.K. aramchandani for lack of supervision and negligence. No evidence of said three officers being a party to the embezzlement surfaced.

2. Nearly 4 years thereafter, on August 07, 1990 a charge memo was issued to

the petitioner for initiating an inquiry under Rule 14 of the CCS (CCA) Rules, 1965 with respect to the embezzlement of money stated to have been committed by SI(M) Ram Gopal Sharma. Relevant portion of the charge as also statement of imputation reads as under:

That during the year 1984 Shri Bishambar Nath working as Asstt. Commandant GC-I, CRPF, Ajmer failed to maintain absolute integrity and devotion to duty in as much as:

He unauthorizedly allowed Shri R.G. Sharma to keep key of the Treasury Chest with him. He also allowed Shri R.G. Sharma to keep cash and fresh DDs favoring payee(s) to obtained against encashment of DDs received from H.O. and made false entries in this regard in Cash Book.

That on the dates given below Shri Bishambar Nath falsely certified payment of DD is given against the state to concerned payees, where as no payment was made to payees.

.....

No request was sent to State Bank of India, Ajmer for preparing the said DDs in favor of payees and therefore DDs were not issued by the Bank in favor of payees.

A D.D. No. T.T./A-22-890584 dt. 18.6.84 for Rs. 3,745/-was received for disbursement to following persons:

.....

Shri Ram Gopal was unauthorizedly allowed to take away DD TT/A-22-890584 for encashment and cash was falsely verified on 25.7.84 and 26.7.84 that no transaction took place whereas DD was encashed on 25.7.84 by Shri Bishambar Nath.

.....

D.D. No. DL/A-9-161976 dt. 9.3.84 for Rs. 14,109.43 was received for making payment to above mentioned payees. It was got encashed by Shri Bishambar Nath on 11.4.84. Shri Bishambar Nath falsely verified Cash Book showing pendency of D.D. No. DL/A-9-161976 in Cash Chest till 11.7.84 and he thereby contravened Rule 3(1)(i), 3(1)(ii) and 3 & 3(2)(i) of CCS (Conduct) Rules, 1964.

3. An Inquiry Officer was nominated by the Disciplinary Authority who submitted a report on 31.10.1991 exonerating the petitioner. The relevant portion of the report of the Inquiry Officer reads as under:

6.20 From a study of the rule position and the oral evidence as discussed above, it is apparent that the primary responsibility for the embezzlement lies with the Cashier. The task of checking each transaction entered in the Cash Book with reference to the basic records lies with the Head Clerk (Budget). The CO,s role was supervisory in respect of the transaction, and he was primarily concerned

with the entries on the credit side. It has also come on record that the CO as Asstt. Commandant (A/O) has to attend to multifarious duties as second in command of the Group Centre, Ajmer vide para 2.3(1-11) of CRPF GC & B officers Manual available in Ex.S-39. The documents like Ex.D-1 and D-2 and S-4 clearly indicate that the misappropriation by the Cashier was facilitated by the failure of the then Head Clerk (Budget) to carry out physical check, and the Cashier got opportunity to hoodwink the senior officers. To that extent the CO argument is quite logical. It appears that the Head Clerk (Budget) was obviously not carrying out detailed check and the CO because of his various other duties could not physically scrutinize and check each and every transaction. Nor was he required to do so as per rules. As he was initialing after Head Clerk (Budget) with regard to detailed checking on the payment side, no malafide role is held established against the CO. As the Head Clerk (Budget) as apparently not carrying out detailed check and the CO was depending upon him, there remained a gap in supervision, which the Cashier fully exploited to commit the embezzlement. However, as this gap in supervision was not the making of Shri Nath, the CO, nor was it an outcome of any negligent act on his part, no blame of an outcome of any negligent role on his part, no blame of supervisory lapse need be attached to his.

6.21 Coming to the specific transactions mentioned in the chargesheet, it is apparent that the requisitions for the BDs embezzled had been signed by the CO. The Cashier brought the cash from the SBI Extension counter by withdrawing the requisition without any authority from the CO. It was obviously wrong on the part of the concerned SBI official to allow the Cashier to withdraw the requisition without any authority for its cancellation or withdrawal or without any attestation in the respective lists for preparation of the BDs. Obviously Head Clerk (Budget) has not exercised any check with reference to the BDs that were entered with the Cash Book.

6.22 As regards the BD for Rs. 3745.15 the same was encashed by the Cashier on 25.7.84 by forging the CO,s signature. Ex.S-2 (Sl. No. 304) shows that the BD has been entered under the date 25.6.84. The CO contended that whenever a BD was sent to the Bank for encashment, he had entered date under Col. 11 and put his initials under Col. 12. In the instant case (col. No. 12 against Sl. No. 304) there was no initial of the CO. The CO,s argument that since he had not sent the BD for encashment and his signatures were forged by the Cashier, he had no knowledge about the transaction, and therefore, signed the remarks in the Cash Book as recorded by the Cashier vide page 148 of Ex.S-17, is applicable.

6.23 As regards the BDs for Rs.14,109.13 (actually encashed on 11.4.84) and for Rs.5,274/-(actually encashed on 23.5.84) having been shown as pending till 11.7.84, the CO contended that this could have been detected at the time of detailed checking by Head Clerk (Budget) which obviously had not been done. The Cashier had hoodwinked not only the AO but also the Addl. DIG, Ajmer and his Inspection party as well. Obviously the CO has not carried out any detailed

physical checking of the cash and BDs before putting his initials in Ex.S-17 and he has relied on the checking and initials of Head Clerk (Budget). This has been exploited by the Cashier to his advantage. This gap in supervision-lapse could possibly have been avoided by the CO. However, keeping in view his explanation, and also the multifarious duties he had to attend to as second in command, no malafides have been established against him.

6.24 As regards keeping of the keys of the Treasury chest para 1.8 of the Accounts Manual is relevant. The CO submitted during general examination as follows:

During the relevant time the keys were kept by the person authorized. The Treasury Chest had two keys for opening the chest, one key was always with the Cashier whereas the other key was with the AO. As and when the cash exceeded the security of the Cashier the key of inner chest was retained by me after office hours for which I used to sign "key kept by me" in the Cash Book for the key which was handed over to me by the Cashier of the inner chest if required by the Cashier is retained by the Cashier.

As stated earlier the BDs and credit orders are received by the Cashier and in the evening the bank drafts are kept in the inner chest.

6.25 The CO, further argued that one key of the outer chest always remained with the Cashier and the other with him as AO. If the key of the inner chest is retained by AO during office hours also, the duties assigned to the Cashier can never be performed by him. There is nothing on record to indicate that the CO allowed the Cashier to keep the second key of the outer chest, and also the key of the inner chest even after office hours when the amount of cash including bank drafts in the inner chest exceeded the amount of the security of the Cashier. Though no rule has been quoted regarding the retention of the key by the Cashier during office hours and by the CO after office hours, the arrangement appears to be plausible.

6.26 The ingredients No. 4(b) & (c) have already been covered in the previous paragraphs and hence not repeated here.

6.27 To sum up, the above analysis shows that misappropriation of ten drafts and temporary misappropriation of two drafts as narrated, and also highlighted in Ex.S-38 stands corroborated in the related documents. However, there is nothing on record to substantiate any malafide role, collusion or wrongful motive against the CO. The main responsible person was the Cashier who has obviously embezzled the amount. The absence of detailed checking before signing the cash book by Head Clerk (Budget) is significant contributory factor. The CO was relying on Head Clerk (Budget) as he initialed the cash book in a routine manner. Moreover, as far as payment side of the Cash Book is concerned, Head Clerk (Budget) has got a larger share of responsibility. The CO,s supervision was superficial in view of his multifarious duties as second in command of the Group Centre vide para 2.3 of CRPF GO & B officers Manual (Ex.S-39). The Cashier

exploited this gap in supervision to perpetuate the fraud. As the CO,s explanation is found acceptable and no malafides have been established, the charge of wrongful motive and acts against the CO is considered not substantiated.

(Emphasis Supplied)

4. Before the inquiry could conclude the petitioner superannuated from service on May 31, 1992 and since the CCS (Pension) Rules, 1972 were applicable to the service rendered by the petitioner, the further disciplinary proceedings continued under Rule 9 of the said Rules.

5. Nearly 4 years thereafter, the disciplinary authority i.e. the President, to whom the report of inquiry was submitted, did not agree with the findings returned by the inquiry officer and accordingly proceeded to issue a show- cause notice to the petitioner on February 15, 1995 and in the said show-cause notice recorded a note of disagreement. The relevant portion of the show-cause notice dated February 15, 1995 containing the note of disagreement reads as under:

In continuation of our letter of even number dated 3-9-1993, forwarding therewith a copy of the report of Inquiry Officer against you, the same was forwarded to the competent authority. The competent authority has not agreed with the report of Inquiry Officer.

2. During the year, 1984, while you were working as Assistant Commandant and functioning as Accounts Officer, in GC, CRPF, Ajmer, you were required to perform the duties mentioned in Para 1.5 sub para (b) (i to v) of the Accounts Manual namely:

i) Examine the Cash Book punctually on the day following that for which the accounts are written to see that the totals are correct, that all sums received and drawn have been properly shown on the credit side of the Cash Book and that no payment/remittance has been made without due authority.

ii) Initial Credit Orders where applicable on the front at the bottom right corner after comparing them with the Cash Book.

iii) Initial the two classification column on the receipt and payment side of the Cash Book for each item and sub-item after examining the payee,s receipt and seeing that the whole sum shown is accounted for.

iv) Mark each credit page with the letter "A, and his initials and date when all the items on the page have been fully disbursed and adjusted, and;

v) See that the sum in the Cash Book does not unnecessarily exceed the Accountant-cum- Cashier,s Security, that it is kept down to the lowest possible limit and that it agrees with the Cash Book.

3. But you failed to perform your laid down duties in that:

i) You allowed Shri R.G. Sharma, Cashier to keep keys of the Treasury Chest with him. You also allowed Shri R.G. Sharma to keep cash and fresh DDs favoring

payee(s) to obtain against encashment of DD received from H.O. and made false entries in this regard in Cash Book. That on 18-4-1984, 12-7-1984, 27-7-1984, 7-8-1984, 13-8-84, 23-8-84, 5-9-84 and 13-9-84, he falsely certified payment of DDs against the concerned payees, whereas no payment was made to payees. No request was sent to State Bank of India, Ajmer for preparing the said DDs in favor of payees and, therefore, DDs were not issued by the Bank in favor of payees. A DD No. TT/A-22-890584 for Rs.3,745/-was received for disbursement to the concerned payee. Shri Ram Gopal was unauthorizedly allowed to take away DD TT/A-22-890584 for encashment and cash was falsely verified on 25-7-1984 and 26-7-1984 that no transaction took place whereas DD was encashed on 25-7-1984 by you. DD No. DL/A-9-161976 dated 9-3-1984 for Rs.14,109.43 was received for making payment to the payees. It was got encashed by you on 11-4-1984.

4 If due care had been taken in checking the entries in the Cash Book, the fraud could have either not taken place or had been detected much earlier. Since this was not done, it continued for long resulting in embezzlement of a substantial amount. Thus the competent authority while disagreeing with the report of Enquiry Officer has come to the conclusion that you failed to exercise adequate supervision in accordance with the laid down procedure/system for dealing with Accounts matter while you were posted as Assistant Commandant (now re-designated as Deputy Commandant) and functioning as Accounts Officer in Group Centre No. 1, CRPF, Ajmer during 1984....

(Emphasis Supplied)

6. Responding to the show-cause notice dated February 15, 1995 containing the note of disagreement, the petitioner submitted a detailed response on March 26, 1995 wherein he highlighted that the note of disagreement did not justify any departure from the conclusion arrived at by the Inquiry Officer.

7. Vide order dated July 25, 1996 the Disciplinary Authority/President opined that the petitioner is guilty of the charge framed against him and imposed a penalty of 20% cut in pension for a period of 3 years. The relevant portion of the order dated July 25, 1996 reads as under:

7. In the case of Shri Bishamber Nath, Deputy Comdt. the President has considered the report of the Inquiry Officer and other relevant records of the case and also consulted the UPSC. After the said consideration the President has come to the conclusion that the charges framed against Shri Bishamber Nath, Dy. Commandant (now retired) are proved due to the following reasons/facts:

He was required to perform the duties mentioned in Para 1.5 sub para (b) (i to v) of the Accounts Manual. But he failed to perform his laid down duties in that he allowed Shri R.G. Sharma, Cashier to keep keys of the Treasury Chest with him. He also allowed Shri R.G. Sharma to keep cash and fresh DDs favoring payee(s) to obtain against encashment of DD received from H.O. and made false entries in this regard in Cash Book. On 18-4-1984, 12-7-1984, 27-7-1984, 7-8-1984,

13-8-84, 23-8-84, 5-9-84 and 13-9-84, Shri Bishamber Nath falsely certified payment of DDs against the concerned payees, whereas no payment was made to payees. No request was sent to State Bank of India, Ajmer for preparing the said DDs in favor of payees and, therefore, DDs were not issued by the Bank in favor of payees. A DD No.TT/A-22-890584 for Rs.3,745/-was received for disbursement to the concerned payee. Shri Ram Gopal was unauthorizedly allowed to take away DD TT/A-22-890584 for encashment and cash was falsely verified on 25-7-1984 and 26-7-1984 that no transaction took place whereas DD was encashed on 25-7-1984 by Shri Bishambar Nath. DD No. DL/A-9-161976 dated 9-3-1984 for Rs.14,109.43 was received for making payment to the payees. It was got encashed by him on 11-4-1984. If due care had been taken in checking the entries in the Cash Book, the fraud could have either not taken place or had been detected much earlier. Since this was not done, it continued for long resulting in embezzlement of a substantial amount. Being Officer Incharge Accounts, Shri Bishambher Nath was fully responsible to ensure the safety and accuracy of maintenance of accounts and he cannot absolve himself of this responsibility.

8. Review remedy invoked by the petitioner was unsuccessful when the Review Petition was dismissed on June 02, 1997.

9. Instant petition challenges the penalty of 20% cut in pension for three years inflicted upon the petitioner.

10. The incident of embezzlement of money stated to in pension for three years inflicted upon the petitioner. have been committed by Ram Gopal Sharma which forms the basis for initiating departmental inquiry against the petitioner took place in the year 1984. A Court of Inquiry was convened to investigate into the matter, which Court of Inquiry submitted its report in the year 1986 holding the petitioner blameworthy for the stated embezzlement committed by Ram Gopal Sharma i.e. lack of supervisory control. The respondents kept silent for 4 years till on August 07, 1990 a charge memo was issued to the petitioner. On October 31, 1991 the inquiry officer submitted his report exonerating the petitioner. The disciplinary authority kept silent for another period of 4 years and woke up from its slumber on February 15, 1995 when it issued a show-cause notice containing note of disagreement to the petitioner. The petitioner submitted his response to the show-cause notice dated February 15, 1995 on March 26, 1995. 16 months thereafter the disciplinary authority passed the order dated July 25, 1996 holding the petitioner guilty of the charges framed against him imposed the penalty of 20% cut in pension for a period of 3 years.

11. The delay by the department in conclusion of departmental action against the delinquent employee has always been frowned upon the courts. In several decisions the Supreme Court has quashed the departmental action on the ground of delay. (See the decisions of the Supreme Court reported as (The State of Madhya Pradesh Vs. Bani Singh and another, , (1998) 4 SCC 15 State of A.P. v N. Radhakrishnan and P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board,).

12. We would only add that whereas a civil servant is certainly liable to be made accountable for wrongs committed by him during service, but the process of seeking accountability cannot be converted to a test of the patience of the government servant. More so when the government servant has retired. The penalty is liable to be set aside on ground of inordinate delay alone, but we note that there are other factors which are more strong and thus we do not rest our conclusion on the delay in concluding the proceedings.

13. The show-cause notice dated February 15, 1995 containing the note of disagreement, the relevant portion whereof have been noted in para 5 above, is most unhappily worded, in that, the disciplinary authority has returned positive finding of guilt against the petitioner and not tentative reasons.

14. In the decision reported as *Yoginath D. Bagde Vs. State of Maharashtra and Another*, , pertaining to a similarly worded note of disagreement by the disciplinary authority vis-?-vis the finding of the inquiry officer, the Supreme Court held that where would be the occasion for the delinquent employee to respond if the disciplinary authority has already made up its mind and concluded upon the issue. The Supreme Court frowned upon a note of disagreement which concluded the issue by recording positive findings against the delinquent employee.

15. The decision of the Supreme Court in *Yoginath,s case (supra)* highlights the importance of recording prima facie and tentative findings if the disciplinary authority disagrees with the findings returned by the inquiry officer so that the mind of the disciplinary authority is open to consider the version given by the delinquent employee in response to the show-cause notice issued.

16. As already noted hereinabove, the petitioner submitted a response on March 26, 1995 to the show-cause notice dated February 15, 1995 containing the disagreement note.

17. A bare perusal of the order dated July 25, 1996 passed by the disciplinary authority inflicting penalty upon the petitioner, the relevant portion whereof has been noted in para 7 above, shows that not a word has been spoken of by the disciplinary authority with respect to the response of the petitioner to the note of disagreement furnished to him under the show-cause notice dated February 15, 1995.

18. Rule 15 of Central Civil Services (Control, Classification and Appeal) Rules, 1965 deals with the matter of taking action by the disciplinary authority on the report of the inquiry officer, sub-rules 2 and 2A thereof read as under:

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the

Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favorable or not to the Government servant.

(2A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

19. Sub-rule 2A of Rule 15 of CCS (CCA) Rules, 1965 casts a duty upon the disciplinary authority to consider the representation/response, if any, submitted by the delinquent employee before passing a final order in the matter.

20. In the decision reported as Ranjit Singh Vs. Union of India (UOI) and Others, the Supreme Court highlighted the importance of dealing with a response submitted by the charged officer to a show-cause post receipt of a report of inquiry.

21. In a nutshell, the decision brings out that to be called a speaking and reasoned order, the same must show that the authority concerned has come to grips with the issues raised in the response by the charged officer and with reference to the evidence on record proceeds to consider the same and records an application of mind while reaching the conclusion.

22. Rule 9(1) of the CCS (Pension) Rules, 1972 reads as under:

9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of whole period, and of ordering recovery from a pension or a gratuity of whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

(Emphasis Supplied)

23. A bare reading of the Rule shows that the order which can be passed under the Rule is to recover the pecuniary loss caused to the government or impose a cut in the pension payable or gratuity or both, in full or in part, upon proof of guilt; but pertaining to a grave misconduct or negligence.

24. It is a settled principle of interpretation of statutes that words occurring in a

statute ordinarily should take colour from the words in whose company they occur. Applying aforesaid principle of interpretation to Rule 9(1), the word "negligence, occurring in Rule 9(1) should take color from the expression "grave misconduct, occurring therein, meaning thereby that the negligence envisaged under Rule 9(1) is of a graver kind. In case the word "negligence, is not interpreted in the aforesaid manner a most anomalous situation would arise inasmuch as where a delinquent employee is held guilty of having committed misconduct no penalty under Rule 9 could be imposed upon him unless the misconduct committed by him is a grave misconduct whereas in case of negligence a penalty could be imposed upon a delinquent employee under Rule 9, however trivial be the negligence committed by him.

25. A perusal of the order dated July 25, 1996 passed by the disciplinary authority shows that in essence, two findings have been arrived by the disciplinary authority against the petitioner viz. (i) the petitioner was "negligent, in ensuring the safety and accuracy of the accounts at Group Centre-I, in that, he certified wrong entries made by cashier Ram Gopal Sharma in the cash book; and (ii) the petitioner did not exercise due supervision over his subordinate official Ram Gopal Sharma, Cashier resulting in embezzlement of money by Ram Gopal Sharma.

26. Assuming the aforesaid 2 findings arrived at by the disciplinary authority to be correct, can it be said that the conduct of the petitioner of being negligent in the supervision of maintenance of accounts at the Group Centre-I and not exercising due supervision over his subordinate official Ram Gopal Sharma amounts to "grave misconduct, and/or "grave negligence, so as to entail penalty under Rule 9 of the CCS (Pension) Rules, 1972.

27. In the decision reported Union of India (UOI) and Others Vs. J. Ahmed, the respondent joined service in Assam in the year 1945 and sometime in the year 1959 came to be promoted to the Indian Administrative Service. In that very year he was posted as Deputy Commissioner and District Magistrate, Nowgong District, Assam. While he was holding the aforementioned post, sometime in the beginning of year 1960 there were large scale disturbances in Nowgong city. A disciplinary enquiry was initiated against the respondent in respect of following 5 charges:

(i) Completely failed to take any effective preventive measures against widespread disturbances breaking out in Nowong District inspite 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 co-ordinate co-operations with the police to restore Law and Order.

(iii) Did not personally visit the scene 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 inaptitude, 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 rural areas Nowgong District. Thus you proved yourself completely unfit to hold any responsible position.

28. In Ahmed,s case (supra), the question examined by the Supreme Court was: Whether the aforesaid 5 charges framed against the respondent would amount to misconduct, which question was answered in the following terms:

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 No. 2 refers to the quality of lack of leadership and charge No. 5 enumerates inaptitude, 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.....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 of personal ability would not constitute misconduct for the purpose of disciplinary proceedings.

It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty. 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 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*(1)]. A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle*.(Indicator Newspapers) (2)]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional*

Superintendent, Central Railway, Nagpur Division, Nagpur(1), and Satubha K. Vaghela v. Moosa Raza(2). The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct". In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Management, Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik(3), 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 (4), 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 (5), wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see Navinchandra Shakerchand shah v. Manager, Ahmedabad Co-op. Department Stores Ltd.(1)]. 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. 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.

Having cleared the ground of what would constitute misconduct for the purpose of disciplinary proceeding, a look at the charges framed against the respondent would affirmatively show that the charge inter alia alleged failure to take any effective preventive measures meaning thereby error in judgment in evaluating developing situation. Similarly, failure to visit the scenes of disturbance is another failure to perform the duty in a certain manner. Charges Nos. 2 and 5 clearly indicate the shortcomings in the personal capacity or degree of efficiency of the respondent. It is alleged that respondent showed complete lack of leadership when disturbances broke out and he disclosed complete inaptitude, lack of foresight, lack of firmness and capacity to take firm decision. These are personal qualities which a man holding a post of Deputy Commissioner would be expected to possess. They may be relevant considerations on the question of retaining him in the post or for promotion, but such lack of personal quality cannot constitute misconduct for the purpose of disciplinary proceedings. In fact, charges 2, 5 and 6 are clear surmises on account of the failure of the respondent to take effective preventive measures to arrest or to nip in the bud the ensuing disturbances. We do not take any notice of charge No. 4 because even the Enquiry officer has noted that there are number of extenuating circumstances which may exonerate the respondent in respect of that charge. What was styled as charge No. 6 is the conclusion, viz., because of what transpired in the inquiry, the Enquiry Officer was of the view that the respondent was unfit to hold any responsible position. Somehow or other, the Enquiry Officer completely failed to take note of what was alleged in charges 2, 5 and 6 which was neither misconduct nor even negligence but conclusions about the absence or lack of personal qualities in the respondent. It would thus transpire that the allegations made against the respondent may indicate that he is not fit to hold the post of Deputy Commissioner and that if it was possible he may be reverted or he may be compulsorily retired, not by way of punishment. But when the respondent is sought to be removed as a disciplinary measure and by way of penalty, there should have been clear case of misconduct, viz., such acts and omissions which would render him liable for any of the punishments set out in rule 3 of the Discipline & Appeal Rules, 1955. No such case has been made out. Mr. Naunit Lal for the appellant contended that the word "misconduct" is nowhere used either in the Conduct Rules or in the Discipline and Appeal Rules and the Court should not import any concept of misconduct in this inquiry.

(Emphasis Supplied)

29. In WP(C) No. 2292/2010 titled Union of India & Ors v Dr.V.T.Prabhakaran decided on July 26, 2010, a Division Bench of this Court, of which one of us was a member; namely: Pradeep Nandrajog J., discussed the scope and amplitude of the expression "grave misconduct, arising in Rule 9 of the CCS (Pension) Rules, 1972 in the following terms:

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 behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.

Misconduct in office, has been defined as: "Any unlawful behaviour by a public officer in relation to the duties of his office, willful 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.

In P.Ramanatha Aiyar's Law Lexicon, 3rd Edition, at page 3027, the term "misconduct, has been defined as under:

The term "misconduct, implies, a wrongful intention, and not involving 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.

The Supreme Court in the case reported as State of Punjab and Others Vs. Ram Singh Ex. Constable, Ex Constable discussed and decided what misconduct is. The relevant paras of the judgment are reproduced below:

In usual parlance, misconduct means transgression of some established and defined rule of action, where no discretion is left, except that necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where, some direction 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 nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere 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.

Having understood what misconduct is, it becomes easy to understand what a grave misconduct would be. It has to be the aggravated form of misconduct.

Acts of moral turpitude, acts of dishonesty, bribery and corruption would obviously be an aggravated form of misconduct because of not only the morally depraving nature of the act but even the reason that they would be attracting the penal laws. There would be no problem in understanding the gravity of such kind of offences. But that would not mean that only such kind of indictments would be a grave misconduct. A ready example to which everybody would agree with as a case of grave misconduct, but within the realm of failure to maintain devotion to duty, would be where a fireman sleeps in the fire office and does not respond to an emergency call of fire in a building which ultimately results in the death of 10 persons. There is no dishonesty. There is no acceptance of bribe. There is no corruption. There is no moral turpitude. But none would say that the act of failure to maintain devotion to duty is not of a grave kind.

It would be difficult to put in a strait jacket formula as to what kinds of acts sans moral turpitude, dishonesty, bribery and corruption would constitute grave misconduct, but a ready touchstone would be where the "integrity to the devotion to duty, is missing and the "lack of devotion, is gross and culpable it would be a case of grave misconduct. The issue needs a little clarification here as to what would be meant by the expression "integrity to the devotion to duty,. Every concept has a core value and a fringe value. Similarly, every duty has a core and a fringe. Whatever is at the core of a duty would be the integrity of the duty and whatever is at the fringe would not be the integrity of the duty but may be integral to the duty. It is in reference to this metaphysical concept that mottos are chosen by organizations. For example in the fire department the appropriate motto would be: "Be always alert,. It would be so for the reason the integrity of the duty of a fire officer i.e. the core value of his work would be to be "always alert,. Similarly, for a doctor the core value of his work would be "duty to the extra vigilant,. Thus, where a doctor conducts four operations one after the other and in between does not wash his hands and change the gloves resulting in the three subsequent patients contracting the disease of the first, notwithstanding there being no moral turpitude involved or corruption or bribery, the doctor would be guilty of a grave misconduct as his act has breached the core value of his duty. The example of the fireman given by us is self explanatory with reference to the core value of the duty of a fireman to be "always alert.

30. Applying the ratio laid down in the afore-noted 2 decisions, it cannot be said that the conduct of the petitioner of being negligent in supervising the maintenance of the accounts and not exercising due supervision over cashier R.G. Sharma amounts to "grave misconduct, or "grave negligence, so as to attract the penalty under Rule 9 of the CCS (Pension) Rules, 1972.

31. As already noted hereinabove, SI(M) Ram Gopal Sharma was working under the supervision of the petitioner as also Insp.(M) D.H.K. aramchandani. A perusal of the counter affidavit filed by the respondents shows that no departmental inquiry whatsoever was initiated against Insp.(M) D.H.K. aramchandani. Minor penalty proceedings under Rule 16 of the CCS (CCA) Rules, 1965 were initiated against Addl. DIGP S.P.Sharma who was the Head of Office and responsible for overall functioning of the Group Centre-I for the similar supervisory lapses as alleged to have been committed by the petitioner, which proceedings were dropped by the disciplinary authority on the ground that he was overburdened with work as he was responsible for the entire administration of the Group Centre.

32. Thus, the penalty levied upon the petitioner has to be quashed and for which the factors would be:

- (i) Delay in concluding the disciplinary proceedings.
- (ii) The Note of Disagreement being a conclusive opinion and not a tentative reasoning and as a consequence the Disciplinary Authority working with a closed mind.
- (iii) No reasons being recorded after dealing with petitioner,s response to the Note of Disagreement in the penalty order levied.
- (iv) The charge proved being one of negligence in supervising the working of the cashier and there being no finding that the misconduct was of a grave specie.

33. The writ petition is accordingly allowed. The penalty imposed upon the petitioner is set aside. The 20% pension cut for a period of three years is directed to be paid to the petitioner within 6 weeks from today, and if not so paid we direct that the amount shall bear simple interest @10% per annum reckoned 6 weeks from today till when payment is made. No costs.