
(2017) 03 AHC CK 0134
In the Allahabad High Court
Case No : Service Bench No. 1977 of 1966

State of U.P.

APPELLANT

Vs

Sri Chunnu Khan

RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 4 ADJ 484

Hon'ble Judges : Sudhir Agarwal and Ravindra Nath Mishra-II, JJ.

Bench : Division Bench

Advocate : C.S.C. and Mohd. Tabrez Iqbal, Advocates, for the Petitioner; G. K. Pandey, A.K. Srivastava, C.S.C, K.P. Singh, Mohd. Tabrez Iqbal, Nalini Jain and Sanjay Kumar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Standing Counsel, appearing on behalf of petitioner and perused the record.
2. This writ petition under Article 226 of Constitution of India has been filed by State of U.P. and its authorities assailing judgment and order dated 21.07.1995 passed by State Public Services Tribunal, Lucknow (hereinafter referred as "Tribunal") in Claim Petition no. 368/F/III 1987.
3. Tribunal has allowed aforesaid claim petition filed by claimant respondent and set aside punishment order dated 25.06.1981 and directed for reinstatement with all consequential benefits.
4. Claimant respondent was Jeep driver and that vehicle was stolen on 23.06.1981. A report was also lodged about theft of aforesaid vehicle at P.S. Kotwali, Chowk, District Lucknow. Thereafter claimant respondent was placed under suspension and departmental enquiry was conducted after serving a charge sheet upon claimant respondent that he was negligent in taking care of vehicle as a result whereof it was stolen. The entire charge contained in charge

sheet dated 26.11.1991 is reproduced as under;;

"g fd tc vki fodkl [k.M efygkckn dh thi la0 ;wvkj,y&8650 ds pkyd in ij dk;Zjr Fks mlh vof/k esa fnukad 24-06-1981 dks vkus eq[; fodkl vf/kdkjh] y[kum ds dk;kZy; esa ,d fyf[kr lwpuk vius }kjk iqfyl esa fy[kk;h x;h fjiKSVZ dh izfrfyfi ds lkFk bl vk"K; dh fn"kk fd thi la0 ;w0vkj0,y0&8650 fnukad 23-06-1981 dks jkr yxHkx 09-00 cts dks us"oj efUnj ds ikl pksjh pyh x;hA tc lwpuk vkus ?kVuk ds 12 ?k.Vs ckn eq[; fodkl vf/kdkjh dks nh tc fd vki mudk fuokl LFkku Hkyh&Hkkafr tkurs Fks D;ksafd muds lkFk fM;wVh dj pqds FksA

[k.M fodkl vf/kdkjh] efygkckn us vkidks vkns"K ns j[kk Fkk fd xkM+h fnukad 23-06-1981 dks ftyk ifj"kn y[kum ds iflj esa [kM+h djsaxs vkSj fnukad 24-06-1981 dks lfoZflax djkus ds ckn efygkckn ys tk;saxs ysfdu vkus vkns"Kksa dh vogsyuk dj vuko";d :i ls LosPNk ls xkM+h dksus"oj ys x;s vkSj xkM+h pksjh pyh x;h tks vkidks LosPNkpkfjrk rFkk vkns"Kksa dh vogsyuk ds dkj.k gqvkA

vki fnukad 23-06-1981 dks fjifCyd lfoZflax LVs"ku gjnksbZ jksM+ dkus"oj y[kum x;s gh ugha u bl fnu vkus dksbZ Mhty fy;k] vkSj u iEi ij dksbZ dk;Z gh fd;kA M~kbZoj [kksus ds ukrs xkM+h ds j[k&j[kko rFkk lqj{kk dk nkf;Ro vkidk Fkka vkidh LosPNkpkfjrk vuqRrj nkf;Ro rFkk vkns"Kksa dh vogsyuk ds dkj.k gh thi la[;k&w0vkj0,y0&8650 pksjh x;h] vkSj "kklu dh bruh cM+h {kfr mBkuh iM+h ftuds fy, vki nks"kh gSA"

"That when you were posted as Driver of Jeep No. URL8650 of Development Block-Malihabad, in that same period you had given a written information, along with a copy of report got lodged to police by you, in the office of Chief Development Officer, Lucknow mentioning that Jeep No. URL8650 had been theft on 23.06.1981 at about 09.00 o'clock of the night from the place near to Koneshwar Mandir (Temple). You had given information to Chief Development Officer after 12 hours of incident while you were well aware of his residence because you had done duty with him.

The Block Development Officer, Malihabad had given you direction to park the vehicle in the premises of Zila Parishad Lucknow on 23.06.1981 and bring it to Malihabad after getting it serviced on 24.06.1981 but you disobeyed the orders and unnecessarily, arbitrarily took the vehicle to Koneshwar and the vehicle was theft which has happened due to your arbitrariness and disobedience of orders.

On 23.6.1981, even you had not visited Republic Servicing Station, Hardoi Road, Koneshwar, Lucknow nor you had taken diesel on this date nor done any work on the pump. Being the Driver of the vehicle you were liable for maintenance and security of the vehicle. Due to your arbitrariness, dereliction in duty and disobedience of orders, Jeep Number URL8650 was theft and the government suffered such huge loss for which you are responsible."

(English translation by Court)

5. There is no allegation that claimant respondent was indulged himself or is instrumental in getting the vehicle stolen or he colluded with the person who has

taken the vehicle. The mere fact that maintenance and security could not be taken care by claimant respondent, may be treated to be lack of efficiency on his part but by no stretch of imagination it can be said to constitute a "misconduct".

6. In our view, even if we read the entire charge as correct it does not constitute "misconduct". Therefore, no punishment could have been imposed.

7. "Misconduct" has been defined in Black's Law Dictionary, Sixth Edition at page 999:

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

8. "Misconduct in Office" has been defined as:

"Any unlawful behaviour 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."

9. 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."

10. The meaning of "misconduct" came up for consideration before the Apex Court in the case of Union of India v. J. Ahmed, AIR 1979 SC 1022, wherein, explaining the term "misconduct" the Hon'ble Court held as under :

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

"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 *Pearce v. Foster*) (1988) 17 QBD 536 (at p.542). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspaper)*]. (1959) 1 WLR 698. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Supdt., Central Railway, Nagpur Divn., Nagpur*, 61 Bom LR 1596: (AIR 1961 Bom 150) and *Satubha K. Vaghela v. Moosa RazaF*, (1969) 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; act 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*, (1966) 2 SCR 434: (AIR 1966 SC 1051), 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), 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*, (1964) 2 SCR 104 : (AIR 1963 SC 1756), wherein it was found that the two mistakes committed by the employee while checking the loadsheets 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 (examples) instances of which (are) a railway cabinman signalling in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intraveious injection which ought to be given

intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashing causing heavy loss of life. Misplaced sympathy can be a great evil (see *Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co.op. Department Stores Ltd.*, (1978) 19 Guj LR 108 at p.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." (para 11)

11. Again in the case of *State of Punjab and others v. Ram Singh ExConstable*, (1992) 4 SCC 54 the Hon"ble Apex Court has held as under:

"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." (para 6)

12. In the context of Section 31 of Advocates Act, 1961, the Apex Court in *Noratanmal Chouraria v. M.R. Murli & another* 2004 (5) SCC 689 said:

"Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour".

Misconduct is said to be 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."

13. In *Baldev Singh Gandhi v. State of Punjab & others* AIR 2002 SC 1124, with reference to the provisions of Punjab Municipal Act, the Apex Court, considering the term "misconduct" held as under :

" "Misconduct" has not been defined in the Act. The word "misconduct" is antithesis of the word "conduct." Thus, ordinarily the expression "misconduct" means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc."

14. The allegations at the best shows that the petitioner is a non serious employee. He was not very alert or careful hence vehicle was stolen. It shows that he is an inefficient official but in the absence of anything further, mere carelessness or lack of seriousness of an employee or failure to show better efficiency, upto desired level, ipso facto would not amount to "misconduct" warranting punishment under 1999 Rules as held in J. Ahmed (supra) that Lack of efficiency or failure to attain highest standards in discharge of duties attached to public office 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, which is not the case in hand.

15. In the present case the factum of theft of official vehicle is not disputed for which first information report was also lodged. There is no material to show that in the aforesaid theft, claimant-respondent was involved in any manner except the fact that he was driver of the said vehicle, and he was not present. Therefore, it is case of lack of efficiency on the part of driver but it does not constitute "misconduct" whatsoever so as to justify disciplinary action and punishment of dismissal.

16. In these fact and circumstances, in our view the ultimate decision taken by Tribunal in setting order of punishment cannot be faulted though we have given different reasons to reach the same conclusion.

17. Writ petition lacks merit.

18. Dismissed.