

Central Adminisrative Tribunal
Principal Bench

O.A.No.1480/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 1st day of May, 2003

K.S.Meena
s/o Shri G.L.Meena
r/o 10/11, Probyn Road
Mall Road
Delhi - 110 054. ... Applicant

(By Advocate: Sh. L.R.Khatana)

Vs.

1. Lieutenant Governor
Govt. of NCT of Delhi
Raj Niwas Marg
Civil Lines
Delhi.
2. Chief Secretary
Govt. of NCT of Delhi
Delhi Government Secretariat
Indraprastha Estate
New Delhi. .. Respondents

(By Advocate: Sh. Vijay Pandita)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 29.5.2001 imposing a minor penalty of censure upon him as well as appellate order dated 20.11.2001 maintaining punishment. He has sought quashment of these orders with all consequential benefits.

2. Applicant is an officer of the Union Territory Civil Service (UTCS) Grade-II. While functioning as Sub-Divisional Magistrate (hereinafter called as "SDM"), Patel Nagar, Civil Lines during the year 1995-96 as he attested the signatures of two imposters posing themselves as of SPG (Cabinet Secretariat and Under Secretary, Ministry of Planning and Programme Implementation and applicant had acknowledged and accepted the identity of imposters

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for which a memorandum under Rule 16 of the CCS (CCA) Rules, 1965 for a minor penalty has been issued to the applicant levelling the following allegations:

"The said Shri K.S.Meena while functioning as Sub-Divisional Magistrate, Patel Nagar-Civil Lines, New Delhi during the year 1995-96 committed misconduct in as much as he failed to apply his mind while attesting the signatures of imposters posing themselves as Vishwajeet Singh of SPG (Cabinet Secretariat) and Rajindra Bisht, Under Secretary, Ministry of Planning and Programme Implementation, Govt. of India on their applications for shifting of telephone connection from Sector-XIII, R.K.Puram to Arjun Nagar, New Delhi and further while attesting another set of applications for providing STD, ISD facility on their telephones at Arjun Nagar, New Delhi.

Shri K.S. Meena had acknowledged and accepted the identity of imposter/imposters, who had posed as Vishwajeet Singh and Rajindra Bisht without proper effort on identification and he, by attesting their applications for shifting of telephones and for providing the STD and ISD facility on the phones, granted some legitimacy to their identity and thus they in furtherance of their act, could succeed in shifting the phone connection and got the STD and ISD facility on them which they ultimately misused and caused a loss of Rs.47 lacs to the MTNL. This heavy loss of Rs.47 lacs to the MTNL could have been avoided, had Shri K.S.Meena exercised his powers of attestation diligently, but he failed to do so and acted in a most blatant irresponsible manner in this behalf.

Thus the said Shri K.S.Meena failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant thereby violating the provisions of Rule 3 of the CCS (Conduct) Rules, 1964."

3. Applicant tenders his explanation in response to the memorandum. By an order dated 29.5.2001 finding no nexus of the applicant with the imposters on his complete lack of application and utterly irresponsible use of powers of attestation, minor penalty of censure has been imposed upon him.

An appeal preferred against the punishment was considered and rejected by an order dated 20.11.2001, giving rise to the present OA.

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4. Shri L.R.Khatana, learned counsel assailed the impugned orders on the ground that the orders are perverse and both the disciplinary as well as appellate authorities have arrived at a finding of guilt merely on the basis of surmises rather proving the allegations against applicant as he could not defend the same, he has been punished.

5. Shri L.R.Khatana, further contended that during the period alleged due to the division of National Capital inasmuch as 27 sub-divisions were shifted to Tis Hazari and apart from all other works like the attestation work was entrusted to few SDMs. In this background, it is stated that attestation is to be done on the basis of ration cards and voter cards and as the imposters posed as senior Government Officers, on their showing identity cards, where the interpolation and forgery was not apparent, he has attested the same, and as everyday, hundreds of persons have come for attestation, it was humanly impossible to have identity of each and everyone.

6. Shri L.R.Khatana further contended that as per the Telephone Rules, a duty has been casted upon the MTNL officials while ordering shifting of phones and to provide any other facility to compare the signatures from their records and as no attestation of signatures is prescribed, they are not to be absolved of their statutory duty to effect change of phones

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etc. after verifying the identity of the subscribers and cannot blindly act upon on the basis of attestation of signature by SDM.

7. Shri L.R.Khatana further contended that mere negligence or bonafide act would not amount to a misconduct and as the applicant being a victim of deception practiced on him by the imposters and as no nexus has been found between the applicant and the imposters, the punishment imposed is not legally sustainable.

8. On the other hand, learned counsel for respondents, Shri Vijay Pandita, contested the OA and denied the contentions. Taking resort to several pronouncements of the Apex Court, i.e., B.C.Chaturvedi v. Union of India & Others, 1995(6) SCC 749, it is contented that in a disciplinary proceedings, standard of proof required is pre-ponderance of probability and in a judicial review, Tribunal cannot reappraise the evidence or act as an appellate authority over the findings arrived at by the Department.

9. It is further stated that a reasoned order has been passed by the disciplinary authority and admittedly on account of attestation by the applicant, as the subscribers were found to be imposters and loss of Rs.47 lakhs caused to the MTNL as such penalty is commensurate with the misconduct.

10. As the applicant being a responsible officer of the rank of SDM, should have been more vigilant and cautious in exercising the power of

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attestation which is prone to be misused and having failed to exercise due diligence and application of mind he irresponsibly used power of attestation.

11. It is further contended that appellate authority has recorded reasons to uphold the punishment. Applicant though might have acted bonafidely but his act amounted to negligence in discharge of his duties. The requirement of attestation through SDM is necessary, it is the responsibility of the SDM to ensure that authentication would be with extra care and caution, as the identity of the imposters was not got verified before attesting, their signatures, by applicant, OA deserves to be dismissed.

12. In rejoinder, applicant has reiterated his pleas taken in the OA.

13. Apex Court in Union of India v. J. Ahmed, 1979 (2) SCC Page 286 while dealing with the definition of misconduct observed as under:

"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 ... A disregard of an essential condition of the contract of service may constitute misconduct This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur, and Satubha K. Vaghela v. Moosa Raza. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

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"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgement, or innocent mistake, do not constitute such misconduct."

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik, 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, 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 judgement 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, 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 judgement 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 head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneou

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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 Shankerchand Shah v. Manager, Ahmedabad Co-op. Department Stores Ltd.). 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."

14. If one has regard to the aforesaid ratio, mere negligence and lack of efficiency or attainment of higher standards in discharging of duty attached to the public office would not constitute as misconduct but if such negligence ensues consequences, directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that degree of culpability would be very high, certainly it amounts to misconduct.

15. Applying the aforesaid ratio, in the circumstances of the present case, where SDM has been entrusted with one of powers to attest the documents while identifying the signatures of impostaers, he could have adopted laid down procedure of getting the identity of the person applying verified through the local police or could have asked for the proof of identification. One of the requirement of MTNL in case of shifting of telephone and availing new facilities, attestation by an SDM which has an object that the identity and the authenticity of the person applying is duly verified. If the attestation is done in a casual manner, clearly shows lack of deligence as well as performance of duty. Due to attestation of the signatures, the facilities availed by the impostaers caused a loss of Rs.47 lacks to the MTNL

which is a resultant heavy damage and the consequences are so high which makes the degree of culpability high proportionately indicating the grossness of negligence. In this view of the matter, I am of the considered view that alleged act of the applicant amounts to misconduct.

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16. I have also carefully perused the penalty order as well as the order passed by the appellate authority, the same are speaking issued with application of mind and do not suffer from any legal infirmity.

17. In so far as the punishment is concerned, the same is proportionate and commensurate with the misconduct alleged.

18. In a judicial review, it does not lie within the jurisdiction of this Court to either substitute its own views or to sit as an appellate authority to reappraise the evidence. As the finding arrived at is not perverse and passes the test of common reasonable prudent man, I do not find any infirmity in the orders passed by the respondents. Accordingly, OA is bereft of merit and is dismissed but without any order as to costs.

S. Raju
(Shanker Raju)
Member(J)

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