

(10)

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.635/2004**

**New Delhi, this the 3<sup>rd</sup> day of January, 2005**

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.A.Singh, Member (A)**

ASI Nafe Singh  
4589-D  
Special Branch  
New Delhi.

... Applicant

**(By Advocate: Sh. Arun Bhardwaj)**

**Versus**

1. Commissioner of Police  
Police Headquarter  
ITO, New Delhi.
2. Joint Commissioner of Police  
Traffic, Northern Range  
PHQ, I.P.Estate.  
New Delhi.
3. Deputy Commissioner of Police  
Traffic, (NR) Civil Line  
Delhi. ... Respondents

**(By Advocate: Sh. Rishi Prakash)**

**O R D E R(Oral)**

**By Mr. Justice V.S.Aggarwal:**

Applicant (Nafe Singh) is Assistant Sub-Inspector in Delhi Police. By virtue of the present application, he seeks quashing of the order passed by the disciplinary authority dated 30.5.2002 and of the appellate authority of 20.11.2003 whereby the conduct of the applicant, after disciplinary proceedings, had been censured. He also seeks quashing of the order of 21.5.2003 by virtue of which his name has been kept in the secret list of doubtful integrity. The applicant prays for consequential benefits.

*VS Ag*

(11)

-2-

2. Some of the relevant facts are that a departmental inquiry had been initiated against the applicant pertaining to the following charge:

"I, R.K.Singh, Enquiry Officer charge you ASI Nafe Singh No.4589-D, Ct. Pratap Singh No.1466/T, Ct. Rajesh Kumar No.1158/T and Ct. Sunil Kumar No.3840/T that all of you were found flagging down all heavy commercial vehicles (HTCs) in both carriage ways on Outer Ring Road by a PRG Team surveillance on 27.06.2001. While Ct. Rajesh Kumar and Ct. Sunil Kumar fled away from the spot. You ZO/ASI Nafe Singh could not give any satisfactory reply about the unauthorized illegal morning checking of vehicles.

On scrutiny of the challan book, it was found that you ZO/ASI Nafe Singh had issued 15 challans without mentioning the time because unauthorized and illegal checking of the vehicles was being conducted. Neither the senior officer, nor the Traffic Control Room were informed about the early morning checking. It shows that all of you had assembled at the spot with common malafide intention to collect illegal and entry money from commercial vehicles. You ZO/ASI Nafe Singh instead of restraining your subordinates from indulging in illegal activities, were involved yourself actively in conducting unauthorized checking of commercial vehicles with malafide intention for personal gains.

The above act on the part of you ZO/ASI Nafe Singh No.4589-D, Ct. Rajesh Kumar No.1158/T, Ct. Sunil Kumar No.3840/T and Ct. Pratap Singh No.1466/T amounts to gross misconduct, malafide, negligence and dereliction in the discharge of your official duty, which render you liable to be dealt with departmentally under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980."

3. The disciplinary authority had appointed the inquiry officer. The inquiry officer recorded the evidence and held that the act of the applicant was a minor aberration. The charge was not proved beyond any reasonable doubt.

4. On receipt of the report of the inquiry officer, the disciplinary authority had recorded a 'note of disagreement' which

*Ms Ag*

- 3 -

was communicated to the applicant. After considering the reply of the applicant, the disciplinary authority imposed the penalty of censure. The appeal filed by the applicant was dismissed. Hence the present application.

5. In the reply filed, the application is being contested. Learned counsel for the applicant, at the outset, argued that the note of disagreement was not a tentative note of disagreement and, therefore, the proceedings deserve to be quashed.

6. The Supreme Court in the case of **YOGINATH D. BAGDE** v. **STATE OF MAHARASHTRA AND ANR.**, JT 1999 (6) SC 62 in unambiguous terms held that when there is a note of disagreement, it should relate only with the findings of the Inquiry Officer. The findings of the Supreme Court in this regard are:

“....The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the “TENTATIVE” reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of “not guilty” already recorded by the Inquiring Authority was not liable to be interfered with”.

7. The Division Bench of the Delhi High Court had considered a similar controversy in the case of **COMMISSIONER OF POLICE** v. **CONSTABLE PRAMOD KUMAR**, in CWP Nos.2665/2002 and 4563/2001, decided on 12.9.2002. Like in the present cases, a note of disagreement was recorded by the Disciplinary Authority. The Delhi High Court had set aside the punishment that had been imposed and concluded:

“However, while disagreeing with such findings, he must arrive at a decision in good

ls Ag

10

-4-

faith. He while disagreeing with the findings of the Inquiry Officer, was required to state his reasons for such disagreement but such a decision was required to be tentative one and not a final one. A disciplinary authority at that stage could not have pre-determined the issue nor could arrive at a final finding. The records clearly suggest that he had arrived at a final conclusion and not a tentative one. He proceeded in the matter with a closed mind. An authority which proceeds in the matter of this nature with a pre-determined mind, cannot be expected to act fairly and impartially."

8. In the present case before us, note of disagreement clearly indicates that it was not a tentative note of disagreement but a total disagreement and, therefore, the note of disagreement and proceedings thereafter cannot be sustained. The note of disagreement reads:

"I have carefully gone through the entire evidence brought on D.E. file viz.-a-viz. defence statement of the delinquents and findings of the E.O. **I disagree with the findings of the E.O. on the following grounds:-**"

9. On this short ground, therefore, the application was liable to be allowed. However, the applicant's learned counsel contended that on merits of the matter also, there is precious little against the applicant. He urged that there is no 'misconduct' that can be attributed to the applicant.

10. According to the learned counsel, though the applicant and his associates were on duty from 8 A.M to 8. P.M. and if they reached earlier, noticed certain traffic violations and challaned those persons, they were duty bound to do so and, therefore, it cannot be taken to be a misconduct. The basic fact, which was not in dispute, was that the applicant was put on duty for traffic checking from 8 AM onwards but he conducted certain traffic challans before 8 AM.

18 Ag

11

-5-

11. Misconduct is an expression, which is not capable of precise definition. The Supreme Court in the case of **STATE OF PUNJAB AND OTHERS v. RAM SINGH EX-CONSTABLE**, (1992) 4 SCC 54 referred with advantage to the definition of 'misconduct' in *Black's Law Dictionary, Sixth Edition* and thereupon further held that the misconduct is one which includes the delinquency in performance 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 error of judgment, carelessness or negligence can come within the purview of the misconduct. We reproduce the relevant portion of the decision of the Supreme Court in this regard:

"5. 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 behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, 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, 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."

P.Ramanatha Aiyar's *Law Lexicon*, Reprint Edition 1987 at page 821 defines 'misconduct' thus:

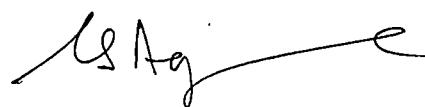
"The term misconduct implies, a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word

*S. Aiyar*

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."

6. 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, willful 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."

12. In earlier decision rendered in the case of UNION OF INDIA AND OTHERS v. J. AHMED, (1979) 2 SCC 286, the facts were little different. Shri J.Ahmed was a member of the Indian Administrative Service. He was posted as Deputy Commissioner and District Magistrate in Nowgong District, Assam. There were



-7-

large scale disturbances. He was served with charges that he failed to take the effective preventive measures. He did not show leadership qualities and did not personally visit the scene of the disturbance. The Supreme Court held that 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.

The Supreme Court held:

"11. 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 *Pierce v. foster* [17 QB 536, 542]). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle indicator Newspapers* ((1959) 1 WLR 698)]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur* (61 Bom LR 1596), and *Satubha K. Vaghela v. Moosa Raza* (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; acts of negligence; errors of judgment, or innocent mistake, do not constitute such misconduct."

13. In the present case before us, the traffic challans conducted by the applicant have not been taken to be illegal in terms that they were not the illegal traffic challans. It is apparent that he was over zealous to do more work in a day to show that he has conducted more traffic challans.

*As Ag*

(S.A.Singh)

-8-

14. During the course of the inquiry, no malafides had been shown in terms that he charged any illegal gratification or that he did not challan proper people.

15. The police officers are duty bound to prevent traffic crimes at all times. If he was, therefore, a little before his duty time and saw certain traffic violations, in our considered opinion, it cannot be taken to be a misconduct of the nature that a person should be penalized.

16. Our attention was drawn to the fact that no Daily Diary entry had been made by him in this regard. But even on that count, no misconduct is being attributed as it is only a link evidence. But in the absence of any other mala fides, the chain is not complete. It is interesting to note that team, which detected the applicant, even has not made any Daily Diary entry. There is a more thin line in such like matters between the conduct of persons to be termed as misconduct. Necessarily, misconduct should mean conduct arising out of ill motives; error of acts or of negligence, but innocent mistake should not constitute such misconduct. In the present case, as already referred to above, in the absence of any ill motive, if he endeavoured exuberance conduct to show more work done, there is precious little more against him. In the facts of the present case, it cannot be termed to be a misconduct.

17. For these reasons, we allow the present application and quash the impugned orders.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/NSN/