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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.719/2004

New Delhi, this the 17th day of November, 2004

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

Mr. S.K.Chauhan
A-26, Ram Enclave
Sector VII
P.O. Chandra Nagar
Ghaziabad
Uttar Pradesh. ... Applicant

(By Advocate: Sh. Hari Shanker)

Versus

1. Union of India through
the Secretary
Ministry of Welfare
Shastri Bhawan
New Delhi – 110 001.
2. Union of India through
The Secretary
Department of Personnel & Training
Ministry of Personnel, Public
Grievances and Pensions
North Block
New Delhi – 110 001.
3. Union Public Service Commission
Through The Secretary
Dholpur House
Shahjahan Road
New Delhi – 110 011. ... Respondents

(By Advocate: None)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (S.K.Chauhan) was the Managing Director of Tribal
Cooperative Marketing and Development Federation of India
Limited (in short 'TRIFED') from 6.8.1987 to 25.10.1990. He was

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served with three Articles of Charge. Suffice to say that Inquiry Officer had held that only Charge No.1 is proved. The same reads:

“Article-1

“Shri S.K. Chauhan, IAS (HP: 62) was the Managing Director of TRIFED for the period from 6.8.87 to 25.10.90. TRIFED is under administrative control of the Ministry of Welfare. The authorized share capital of TRIFED is Rs.100 crores and paid up capital is Rs.59.98 crores. Out of the paid up capital, the share of the Govt. of India is Rs.59.75 crores.

In its resolution dated 3.7.1989 the Board of directors of TRIFED approved the proposal, in principle for establishing of a Herbal Mart in or around Delhi subject to subsequent approval of the project in detail in due course. Shri Chauhan failed to take follow-up action on the Resolution dated 3.7.89 as he did not place it before the Board of Directors in its subsequent meeting held on 29.1.90 the detailed project feasibility report when he got authorization for arranging funds for purchase of the land from New Okhla Industrial Development Authority (NOIDA).

Shri Chauhan failed to ascertain the difference in rates between land to be used for a research project, for promotional purposes and commercial activity. He also failed to ascertain the exact cost of the project including the cost of land, before depositing a premium of Rs.8.50 crores with NOIDA.

Shri Chauhan failed to bring before the Board of Directors a communication dated 4.12.89 received from Ministry of Welfare containing reservations of the Planning Commission, on the proposed Herbal Mart thereby he deprived the Board of another opportunity to reconsider and review its decision contained in the resolution dated 3.7.89. The proposed project became ultimately unviable and had to be dropped. This resulted in a loss of Rs.1.14 crores by way of interest paid on the loan of Rs.7.00 crores received from the Syndicate Bank.

By the grave acts of omission and commission, Shri S.K.Chauhan had been extremely negligent in the discharge of his duties and thereby caused avoidable pecuniary loss to the TRIFED/ Govt. of India. Shri Chauhan failed

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to maintain devotion to duty and exhibited conduct unbecoming of a member of the service and thereby contravened Rule 3 of the All India Services (Conduct) Rules, 1968."

2. Pertaining to the said charge, the Inquiry Officer held that the applicant had failed to bring communication of Ministry of Welfare, on Planning Commission's reservations on the project, before the Board of Directors. He did not ascertain the difference in rates for different land usages and advanced a large sum of Rs.8.5 crores to NOIDA for purchase of land for establishing an International Herbal Mart, without ascertaining the cost of the project. This resulted in heavy loss to TRIFED. Before finalizing the agreement, no market survey or product study was conducted. He failed to exercise commercial judgment and prudence before finalizing a long-term contract, which was against the interests of TRIFED.

3. Pertaining to the said fact, the Union Public Service Commission (in short 'UPSC') had been consulted. The UPSC came to the conclusion that there appeared to be no mala fides on the part of the applicant but he was reckless and incautious in his zeal to pursue what must have seemed to him to be an attractive project. As a result of the lack of prudence of the applicant, an infructuous expenditure of Rs.1.14 crores had to be incurred by TRIFED by way of interest on the loan availed. The findings of the UPSC are:

"6.4.2 The Commission further observe that the MOS, in his capacity as the Managing Director of TRIFED, was responsible both for giving shape to projects and proposals for approval of the Board, as well as for implementing the approved programmes effectively, and with due prudence. In his defence, the MOS has pointed out that the project for the establishment of the IHM had

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initially been mooted by the officers of the Ministry themselves. It had been approved by the Board, albeit only in principle, and the Board had also approved the procurement of land, even if only between 15-25 acres. (Subsequently the Board had also ratified the procurement of 50 acres of land). The Ministry were fully cognizant that this proposal was being pursued, as the Ministry themselves had both taken it up with the Planning Commission seeking its approval, as well as initiated a proposal for securing Govt. guarantee to the bank loan. MOS had only initiated with Chairman, NOIDA the question of allotting land suitable for the project, and had initiated the process for securing a loan, and tying up financial arrangements. It is true that in December 1989 the Planning Commission's rejection of the proposal had been communicated to TRIFED, but as per MOS the matter was informally discussed in the meeting of 29th January, 1990 when the key officers of the Ministry, who were Directors of the Board of TRIFED, were also present. The course of action conceived of then was that the matter should be taken up again with the Planning Commission, not that the project should be given up. *[However, this is not a part of the official record, and indeed the charge against the MOS is that no follow-up action was taken in this meeting, pursuant to the resolution in the meeting of 3.7.1989 regarding this project, nor its status qua the Planning Commission brought to the notice of the Board. On the other hand, in his defence, the MOS had wanted the two JSs of the Ministry to appear as witnesses, inter alia to clarify these aspects of the matter. The officers concerned did not appear.]* The MOS's case seems to be that, in this background, he continued to pursue the question of allotment of land from NOIDA, because if this were not done, the option would have been foreclosed. As a corollary, it was also necessary to secure the loan from the Syndicate Bank in order to be able to make the necessary payment. As things turned out, it was possible to make the payment to NOIDA just before the expiry of the extended date, and that by availing of the bank loan in anticipation of the Govt. guarantee. Till this point of time, NOIDA had indicated various prevailing rates, but it was also the understanding that the precise question of rates could always be negotiated subsequently as between two Govt. agencies (viz. TRIFED and NOIDA). Finally, it is MOS's claim that the Sub-committee of November, 90 which decided to recommend shelving of the project, did not

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explore all available options, nor was a working paper prepared for the consideration of the Sub-committee by the Executive Director, TRIFED, and its Secretariat. According to MOS, viable options could have been worked out but the two Joint Secretaries of the Ministry had their minds made up that the project deserved to be shelved.

6.4.3 The Commission are of the view that the MOS was guilty of being reckless, and incautious, in his zeal to pursue what must have seemed to him to be an attractive project. Clearly, there is no question of any ulterior motive in his action, and the transactions were between TRIFED and another Govt. agency, namely, NOIDA on one side, and with a bank on the other. However, the bottom line remains that, as a result of his lack of prudence, and his disregard for the customary conservatism which has traditionally imbued the actions of bureaucracy at large, an infructuous expenditure of Rs.1.14 crores had to be incurred by TRIFED, the organization of which he was in charge, by way of interest on the loan availed."

4. The advice of the UPSC was accepted by the Central Government holding that ends of justice would be met if a penalty of 10 per cent cut in the monthly pension of the applicant was imposed for a period of five years with immediate effect. This was for the reason that the applicant had since superannuated.

5. By virtue of the present application, he seeks to assail the order passed by the disciplinary authority.

6. The sole argument advanced by the learned counsel for the applicant was that the Inquiry Officer as well as the Disciplinary Authority, on the advice of the UPSC, had found that there was no ulterior motive on the part of the applicant and at best, therefore, it was an error of judgment. In decision making process, that cannot be described to be grave misconduct or negligence during the period of service and consequently, the impugned order cannot be sustained.



7. The application has been contested. The respondents plead that disciplinary proceedings for major penalty under Rule 8 of All India Service (Discipline and Appeal) Rules, 1969 were initiated against the applicant in respect of three charges. The applicant was alleged to have committed misconduct while functioning as Managing Director in TRIFED. Charge No.1 was held to have been proved by the Inquiry Officer. The conclusions drawn with respect to Charge No.1 were:

“(i) The Charged Officer failed to take follow-up action on the Board’s resolution;

(ii) The Charged Officer failed to bring the communication of the then M/o Welfare on Planning Commission’s reservations before the Board;

(iii) The Charged Officer did not ascertain the difference in rates for different land usages and advanced a large sum of Rs.8.5 crores to NOIDA, without ascertaining the cost of the project for the proposed Herbal Mart.”

8. It is reiterated that the applicant was reckless and not cautious. It is denied that there was no grave misconduct or negligence on the part of the applicant. Resultantly, according to the respondents, the impugned order passed is in order.

9. As already pointed above, the sole contention raised was that in the facts of the present case, there was no grave misconduct or negligence on the part of the applicant.

10. 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

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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 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 unskillfulness are transgressions of some established, but indefinite, rule of action, where

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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."

11. 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 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 seen 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."

12. When the present case is examined on the touchstone of the aforesaid, it must follow that the applicant cannot escape the finding that there was misconduct on his part. As already referred to above, there was no follow up action on the Board's resolution. He did not bring the communication of Ministry of Welfare on Planning Commission's reservation. He did not ascertain the different rates for different land usages and advanced a large amount for purchase of land for establishing an International Herbal Mart, without ascertaining the cost of the project. It was clearly thus an act in disregard of the conditions of service. He was reckless and therefore, it would amount to a grave misconduct and negligence on his part.



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13. Applicant strongly relied upon the decision of the Supreme Court in the case of **BHAGWATI PRASAD DUBEY v. FOOD CORPORATION OF INDIA AND ANOTHER**, 1987 (Supp) SCC 579. In the cited case, the charge was about purchase of material at rate higher than the prescribed rate. The purchases at the higher rate had to be made by the concerned officer under pressure of necessity. He acted to the best of his judgment. He made payments to the supplier only at the rate at which another public undertaking had purchased the same material. His work has been appreciated. It is in those facts that the Supreme Court held that there was an error of judgment. Therefore, the decision rendered to, is clearly confined to those peculiar facts. In the present case, as already referred to above, it cannot be stated that there was no grave misconduct on the part of the applicant. Resultantly, we find no ground to interfere.

14. For these reasons, the Original Application being without merit must fail and is accordingly dismissed.



(S.A. Singh)
Member (A)



(V.S. Aggarwal)
Chairman

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