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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 922/2004

New Delhi, this the 24th day of March, 2005

**HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.A. SINGH, MEMBER (A)**

Shri S.C. Sharma
S/o Shri O.P. Sharma,
R/o B-397, Delhi Administrative Flats,
Timar Pur, Delhi.

...Applicant

(By Advocate: Shri D.R. Gupta)

-versus-

1. Lt. Governor of Delhi,
Raj Niwas, Delhi – 110 054.
2. Governor of NCT of Delhi through
Chief Secretary,
Players Building,
I.P. Estates,
New Delhi.
3. The Commissioner,
Foods & Supplies,
I.P. Estate, New Delhi. ...Respondents

(By Advocate: Shri S.Q. Kazim with Sh. Falak Mohd. & Sh. Sunit
Sharma)

O R D E R

Justice V.S. Aggarwal, Chairman:

The applicant, by virtue of the present Original Application, seeks to assail the order passed by the disciplinary authority dated 10.01.2003 imposing a penalty of reduction of his pay by three stages with cumulative effect and of the Lieutenant Governor dated 17.2.2004 dismissing his appeal.

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2. The applicant has been served with the following charges:

"That the said Shri S.C. Sharma, Grade/I of DASS while functioning as Food & Supplies Officer during the period August, 99 in Circle No. 22, Bawana committed gross misconduct in as much as he without scrutinizing the contents of the application forms gave his approval for the issuance of six new food cards which subsequently proved to be bogus ones as these food cards were issued in favour of fictitious persons in the assumed names.

The above acts on the part of Shri S.C. Sharma reflects gross negligence and lack of devotion to duty and conduct unbecoming of a Govt. servant thereby violating the provisions of Rule 3 of the CCS (Conduct) Rules, 1964."

3. The enquiry officer had been appointed. He submitted a report dated 8.7.2002 recording that the charges against the applicant are not substantiated. It was a mistake, which happened because of his peculiar position. The findings of the enquiry officer are:

"He has further stated that before according his approval he has verified the address of the applicants as per record produced before him the documents attached with the application in support of the applications, the report of the Area Inspector and statement of witnesses. Since there were reports of Area Inspector for issue of food cards, he could not find any valid reason for not according the approval. He has also stated that as there was one clerk and only one Inspector in the Circle Office and due to exigency of public dealing, the work was assigned to a Class-IV employee. In addition, at that time, the other employee of the office was also on Election duty. The C.O. has produced the certificate issued by Ranjana Deswal, ARO/ERO of the Bawana Constituency stating therein that C.O. remained exclusively on election duty w.e.f. 9.8.99 to 14.8.99 in connection with the Ballot Machine Training Programme and hence he could not attend the office during the said period.

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From the above discussion and fact that Shri S.C. Sharma, F.S.O. was also looking after the work of ARO, it cannot be expected from him to see each and every paper so minutely. This was more so as he was sitting away from his office in the office of the ARO and signed the paper over there. Moreover, the prosecution has not submitted any instruction of the department wherein F.S.O. has been asked to conduct inquiry in such case. Shri S.C. Sharma, F.S.O. relied on the report of the area Inspector who was sitting in the Circle Office and any officer of ordinary prudence in his place would have done the same thing.

I am, therefore, convinced that charges against Shri S.C. Sharma, F.S.O. has not been proved and he has to be given the benefit of doubt of his peculiar position where he was placed at the time his incidence happened."

4. The disciplinary authority did not agree with the same. It was not disputed before us that a note of disagreement has been served on the applicant and thereafter, considering the reply disciplinary authority passed the impugned order. The disciplinary authority recorded:

"....Even if for the sake of argument, it is admitted that there are no specific instructions of the Department regarding issue of food cards in the assumed named of VIPs, it does not absolve the food card issuing authorities from their duty regarding properly scrutinizing the application forms as well as their contents. In the instant case, the Charged Officer had accorded his approval for the issuance of food cards in the name of S/Shri Devender Gupta, Prem Singh, Sudhir Yadav, Jitender Narayan and Kishan Lal. The details of the family members of the applicants were unusual as in one of the application form Sh. Devender Gupta has been shown applicant while Smt. Sharda Aggarwal as his wife and S/Shri M.A. Khan, R.K. Gupta, J.R. Narayanan, M.K. Gupta and I.S. Mehta as his sons. Likewise, in an application, Sh. Umesh Saigal was described as the resident of Bawana and Brother-in-law of Smt. Shiela Dikshit. In fact, the Charged Officer did not scrutinize the application forms and had

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accorded his approval in a most cavalier manner. Had he been a bit alert, he would have detected the flaws which were quite apparent and would have never accorded his approval to the issuance of such food cards, which were eventually resulted in the issue of bogus cards in respect of fictitious persons. For the aforementioned reasons, the undersigned is not inclined to accept the arguments advanced by the CO in his representation and hold him guilty of the charge of negligence."

5. As already referred to above, the appeal has since been dismissed, hence the present Original Application.

6. The Original Application has been contested. The basic facts, to which we have referred to above, are not in dispute. Respondents plead that had the applicant scrutinized the applicant forms he would not have accorded the approval to the issuance of said ration cards because the details of the family members of the applicants therein were unusual. Shri Devender Gupta has been shown applicant while Smt. Sharda Aggarwal as his wife and S/Shri M.A. Khan, R.K. Gupta, J.R. Narayanan, M.K. Gupta and I.S. Mehta as his sons. In another application Shri Umesh Saigal was shown as the resident of Bawana and Brother-in-law of Smt. Shiela Dikshit. All this, according to the respondents, shows the causal approach and carelessness of the charged officer, which resulted in issuance of the bogus ration cards.

7. We have heard the parties' counsel and have seen the relevant record.

8. The position in law is well settled that the scope of interference in judicial review is limited. This Tribunal will not sit as a court of appeal

but would only interfere if the findings arrived at are erroneous, perverse to which no reasonable person would come to a conclusion.

9. It is with this limited scope that we dwell into the controversy.

10. Learned counsel for the applicant urged that no loss or damage has been caused. The ration cards had been cancelled. Nothing had been withdrawn against the same.

11. So far as this aspect is concerned, one can only agree to this extent that the fact was discovered subsequently. But it is not the case of damage or loss having been caused. The charge framed against the applicant was pertaining to his gross negligence, which was a conduct unbecoming of a government servant. Therefore, the plea, so much thought of by the learned counsel, cuts a little ice in the peculiar facts of the present case.

12. Admittedly, the applicant at the relevant time was functioning as Food & Supply Officer during the period August 1999 in Circle 22. It was alleged that without scrutinizing the contents of the applications, he gave his approval for issuance of six new ration cards, which were proved to be bogus. We have already referred to above the ration cards, that had been issued in different names, on the face of it revealed that they were not correct.

13. To state that applicant was looking after certain other duties, he was sitting away from his office and, therefore, signed papers, would be one thing but to exercise due care and caution is another thing. The Punjab & Haryana High Court, in the case of **Bhagwat Parshad vs.**

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Inspector General of Police & Ors., AIR 1970 (P&H) 81, was concerned with the meaning of the expression "gravest acts of misconduct" under the Punjab Police Rules, 1934. The High court held that expression "misconduct" would be incapable of definition. The meaning has to be given to each of the same expression in light of actual deed, situation and circumstances. "Misconduct" is a generic term and it means to mismanage or to have an improper conduct.

14. Same controversy came up before the Supreme Court in the case of **Union of India and others vs. J. Ahmed**, AIR 1979 (SC) 1022. Shri J. Ahmed had joined the service in Assam State. The question before the Supreme Court was as to what would be "misconduct". We are not dwelling into the facts of the said case but the Supreme Court, while considering as to what would be "misconduct" held that in certain cases negligence would also be "misconduct". The Supreme Court held:

"11.....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 cabin man signaling in a train on the

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same track where there is a stationary train causing headlong collision; a nurse giving intravenous injunction 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."

15. Similarly in the case of **State of Punjab and others vs. Ram Singh**, AIR 1992 (SC) 2188, the Supreme court held that negligence in performance of duties can also be misconduct. The findings are:

"5. Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of 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."

16. It is on the touchstone of the aforesaid that necessarily one has to travel back to the facts of the case.

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17. The facts clearly establish that the applicant, at the relevant time, was Food & Supplies Officers in Circle 22, Bawana. It was his duty to scrutinize the contents of the application forms before giving his approval. He did not exercise due care and caution and resultantly it is because of his negligence that the said cards had been issued. It is a case of negligence and, therefore, in the context, in which the negligence had been committed, it would be 'misconduct'.

18. It was urged that applicant was posted at three places and this fact had been noticed by the enquiry officer and, therefore, there were sufficient circumstances for exonerating the applicant. As already referred to above, even if the applicant had been posted, due care and caution cannot be thrown to winds and in the peculiar facts, therefore, we find that it is not a fit case in which an interference is called for in judicial review.

19. For these reasons, the Original Application being without merit fails and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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