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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A. NO. 461/93

Date of order: 21/9/99

R.C.Chaturvedi, S/o Shri T.C.Chaturvedi, R/o C-59,
Sethi Colony, Jaipur, since retired D.E Phones
(Planning) O/O G.M.T.D, Jaipur.

...Applicant

vs.

1. Union of India through Secretary to the Government, Ministry of Communications, Deptt. of Telecommunications, New Delhi.
2. Desk Officer (Vig.II) Deptt. of Telecommunications, Govt. of India, Dak Bhawan, Sansad Marg, New Delhi.

...Respondents.

Mr. Man Singh Gupta - Counsel for applicant

Mr. V.S. Gurjar - Counsel for respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Judicial Member

Hon'ble Mr. N.P. Nawani, Administrative Member.

PER HON'BLE MR. S.K. AGARWAL, JUDICIAL MEMBER.

In this Original Application, the applicant makes a prayer to quash and set aside the order dated 16.4.1993 and to allow all benefits including arrears with interest @ 18% per annum as if no punishment order was passed against the applicant.

2. In brief the facts of the case as stated by the applicant are that while working as Divisional Engineer, Telegraphs, a charge sheet was served upon the applicant under Rule 14 of the CCS (CCA) Rules, 1965 to enquire into the following charges:

- (a) He rejected on invalid grounds the application of five candidates received in response to vacancy circular No.E-20/Class IV/Rectt./64 dated 20.7.82;
- (b) he invited applications only from casual mazdoors and part-time mazdoors, bypassing the genuine claim of non-test category group 'D' officials vide his circular No.E20/Group D/Rec./Test/82/1 dt. 12.11.82;
- (c) he failed to hold literacy test before convening a meeting of the DPC as prescribed; and
- (d) he altered the number of vacancies from three as announced earlier, to that of five in the later circular and subsequently selected seven candidates for test category group 'D' recruitment.

3. The Inquiry Officer held the applicant not guilty of any of the charges against the applicant but the disciplinary

authority disagreed with the findings of the Inquiry Officer vide memorandum dated 30.7.92. The applicant submitted a detailed reply but without considering the ground raised by the applicant, the impugned order dated 16.4.93 was passed. It is stated by the applicant that there was no material against the applicant to hold him guilty while disagreeing with the report of the Inquiry Officer by the disciplinary authority. No malafides/motive is proved against the applicant, therefore, no misconduct is said to have been established against the applicant. It is also stated that no charge sheet could have been given to the applicant for bonafide discharge of his duties and the applicant will suffer huge amount of financial loss if the impugned order is not quashed. It is, therefore, stated to quash and set aside the impugned order dated 16.4.93.

4. Counter was filed. It is admitted that the Inquiry Officer vide his enquiry report dated 10.6.92, held all the charges not proved against the applicant but the disciplinary authority did not agree with the findings of the Inquiry Officer and after recording reasons of disagreement, the disciplinary authority sought to file representation by the applicant vide memorandum dated 30.7.92. The applicant submitted his representation on 15.9.92 stating that it is a case of human error without any malafide intention. The advice of UPSC was also sought and the UPSC also held the charges against the applicant of grave nature. Therefore, President of India was pleased to pass the impugned order and by this order an amount of Rs.100/- was withheld from the monthly pension of the applicant for a period of six months. It is, further stated that this O.A is devoid of any merit and is liable to be dismissed with costs.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant vehemently argued that there is no evidence on record to warrant the disciplinary authority to hold the applicant guilty of the charges as there is no evidence of misconduct on record. Therefore, the findings of the disciplinary authority are perverse and the punishment imposed upon the applicant on the basis of this finding is liable to be quashed.

7. On the other hand the learned counsel for the respondents has argued that the disciplinary authority has the right to disagree with the report of the Inquiry Officer and on the basis of material available on record, the disciplinary

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authority has rightly disagreed with the report of the inquiry officer. He has further argued that generally High Court/Tribunal do not interfere with the findings/punishment imposed by the disciplinary authority, because the same is not a Court of appeal. Therefore, the applicant has no case.

8. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

9. Misconduct has not been defined in CCS(CCA) Rules, 1965 but 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, wilful in character, improper or wrong behaviour its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

Mis conduct in office has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office wilful in character. The 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 the Law Lexicon, Reprint Edition 1987 at p.821, 'misconduct' defines 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 subjectmatter 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 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. In the leading case Punjab Vs. Ram Singh, AIR 1992 SC 2183, Hon'ble the Supreme Court held that:

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 "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 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

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to the subject matter and the context where in the term occurs."

11. The facts of this case are not disputed, therefore, on the basis of the facts and circumstances of this case and in the light of the judgment of Hon'ble the Supreme Court, as mentioned above, we find that the finding of the disciplinary authority is not supported by any evidence and it appears to be merely an error of judgment/mistake, carelessness or negligence in performance of duties no malafides could be established against the applicant. Therefore, the action of the applicant cannot be characterised as misconduct.

12. Normally, the High Court/Tribunal would not interfere with the findings of fact as recorded by the Inquiry Officer/ Disciplinary Authority but if it is based on no evidence the finding will be perversed and would be amenable to judicial scrutiny.

13. In Nand Kishore Vs. State of Bihar, AIR 1978 SC 1277, it was held by Hon'ble the Supreme Court that if there is no evidence to sustain the charges framed against the delinquent, he cannot be held guilty as in that event the findings recorded by the Enquiry Officer would be perverse. The finding recorded in a domestic inquiry can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This view was also followed in so many cases by the Apex Court and ultimately in Rajinder Kumar Kindra Vs. Delhi Administration & Ors, AIR 1984 SC 1805 it was held that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

14. In B.C.Chatuvedi Vs. UOI, 1995 (6) SSC 749(3) the Apex Court held that the High Court or Tribunal while exercising the power of judicial review can not normally substantiate its own conclusion on penalty and impose some more other penalty. If the punishment imposed by the disciplinary authority or the appellate authority appears to be disproportionate to the gravity of charge for High Court or Tribunal, it would be appropriately mould to resolve by directing the disciplinary authority or appellate authority to reconsider the penalty

imposed or to shorten the litigation, it may itself impose appropriate punishment with cogent reasons in support thereof.

15. Similar view was also taken in Indian Oil Corporation Vs. Ashok Kumar Rora (1997) (3) SSC 72 and it was held that the High Court in such cases of departmental inquiry and findings recorded therein does not exercise the power of appellate court/ authority. The jurisdiction of the High Court in such cases is very limited. For instance, where it is found that domestic inquiry is vitiated by non-observance of the principles of natural justice, (2) denial of reasonable opportunity, if findings are based on no evidence, (3) punishment is disproportionate to the proved misconduct of the employee.

16. In Kuldeep Singh Vs. Commissioner of Police & Ors, 1999 (1) SLR 283, Hon'ble Supreme Court held that "normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry, but if the finding of guilt is based on no evidence it would be perverse finding and would be amenable to judicial scrutiny. The findings recorded in domestic enquiry can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on any evidence on record or no reasonable person could have come to such findings on the basis of that evidence." It is further held that a broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, however compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

17. On the basis of above legal propositions and in the facts and circumstances of this case, there is no evidence of misconduct against the applicant and finding of the disciplinary authority to impose the said punishment upon the applicant appears to be based upon no evidence. Therefore, these findings are perverse and liable to be set aside.

18. We, therefore, allow this O.A and set aside the impugned order dated 16.4.93 and direct the respondents to refund the amount so withheld within three months from the date of receipt of a copy of this order, with interest @ 12% per annum. No order as to costs.

N.P.Nawani
(N.P.Nawani)
Member (A).

S.K.Agarwal
(S.K.Agarwal)
Member (J).