CASE NO.:
Appeal (civil) 1815 of 2007

PETITIONER:
Inspector Prem Chand

RESPONDENT:
Govt. of N.C.T. of Delhi and Others

DATE OF JUDGMENT: 05/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1815 OF 2007
[Arising out of SLP(C) No.15192 of 2006]

S.B. Sinha, J.
Leave granted.

The appellant was at all material times and still is working with the Delhi Police. He was posted in Anti-Corruption Branch in 1997. While posted in the said Branch, he was detailed as a Raid Officer. Allegedly, the complainant Kamlesh Kumar Gupta s/o Prabhu Dayal Gupta, resident of Lajwanti Garden, Delhi, lodged a complaint with the Anti-Corruption Branch of Delhi Police that Preet Pal Bansal, Inspector (Malaria), MCD, was demanding a sum Rs.3,000/- by way of illegal gratification from him for not challaning the godown of the complainant (PW-2). The complainant wanted a raid to be conducted in the said Preet Pal Bansal. Appellant constituted a raiding party consisting of the complainant Kamlesh Kumar Gupta (PW-2) and Devender (PW-4) and other police officers including himself. In the preparation of the said operation, the complainant produced a sum of Rs.3000/- in denomination of Rs.500/- each whereupon Phenolphthalein powder was applied and the tainted money was handed over to the complainant. When the complainant attempted to pay the said amount to Shri Preet Pal Singh at his godown, he did not accept the same. The tainted money was, therefore, not seized. It was allegedly given out by him that the complainant may give the same to one Devender (PW-4) and he in turn would accept the money from him. Whereafter, PW-4 sat on the pillion of the scooter and they reached at the Petrol Pump situate at the Mall Road, Delhi. He was arrested.

However, the tainted money was returned to the complainant by the Investigating Officer. In the criminal proceedings which was initiated against Preet Pal Bansal, the Criminal Court recorded a judgment of acquittal holding :

"\005These inconsistencies in respect of place of return of tainted money to the complainant raises speculation if at all the money was returned to PW-2 by PW-4 or the same was handed over to him as claimed. Thus, different versions with regard to talks in the godown and place with regard to return of the money by PW-4 to PW-2 coupled with the fact that the accused did not accept the bribe money either from PW-2 or PW-4 sans requisite corroboration as to the testimony of PW-2 complainant in respect of the prior demand of the bribe money and with regard to demand of money by the accused from PW-4 at the time of petrol pump and that the accused had already challaned the complainant

previously on 2/3 occasions cast shadow of doubt on the veracity of the testimony of PW-2, PW-4 and PW-5 and creates doubt about the claim of the prosecution that the accused ever demanded the bribe from the complainant. The possibility of P-2 having grudge against the accused on account of having challaned the complainant for 2/3 occasions in respect of his godown and got him fined which fact is not disputed, cannot be ruled out. In my opinion, it would not be expedient to act, accept or rely upon the testimony of PW-2 and PW-4. In addition to this, it is also possible that the mind of PW-4 was not free from at the time of deposing in the court due to fear of departmental enquiry."

During pendency of the said criminal proceedings, however, a departmental proceedings was initiated against the appellant on or about 19.2.2002 wherein the following allegations were made:

"It is alleged that you Inspector Prem Chand, No.D-I/413 while posted in A.C. Branch was detailed as raid officer on 10.10.97 on complaint of Shri Kamlesh Kumar Gupta S/o Sh. Prabhu Dayal Gupta R/o WZ-71-B, Gali No.7, Lajwanti Garden, Delhi. The complainant brought the bribe money to the A.C. Branch, phenolphthalein powder was applied on these currency notes in the presence of panch witness Sh. Devender Singh S/o Sh. Sukhbir Singh, LDC E-III, Education Department, Old Sectt., Delhi. You, Inspr. Prem Chand, No.D-I/413 organised a raid on Sh. Preet Pal Bansel, Inspector Malaria, CLZ, MCD for demanding Rs.3000/- as bribe. He got case FIR No.40 dated 10.10.97 U/S 7/13 POC Act, P.S. A.C. Branch registered against Sh. Preet Pal Bansel, Inspr. Malaria, CLZ, MCD. The tainted money, although not accepted by the accused Sh. Preet Pal Bansel was not seized by you being the raid officer Inspr. Prem Chand despite being an important piece of evidence. The accused was acquitted by the Hon'ble Court of Sh. S.S. Bal, Spl. Judge, Tis Hazari, Delhi in the above noted case.

The above act on the part of you, Inspr. Prem Chand, No.D-I/413 amounts to gross misconduct, negligence and dereliction in the discharge of his official duties and rendering you liable for departmental action under Delhi Police (Punishment and Appeal) Rules, 1980."

He was held guilty of the said charges. A second show-cause notice was issued to the appellant to which cause was shown by him. By an order dated 28.3.2005, a punishment of forfeiture of one year's approved service was imposed upon the appellant. He preferred an appeal thereagainst. The appellate authority, being the Commissioner of Police, while dismissing the appeal of the appellant held:

"I have examined the appeal, the D.E. File and other relevant documents available on the file. Due procedure was followed by the E.O. During the departmental proceedings. The appellant was given mandatory opportunities to defend his case and he had availed of the same. The E.O. While submitting his findings had proved the charge framed against the appellant. The disciplinary authority after having gone through the D.E. file evidence on record as well as written/oral submissions of the appellant had passed his final order awarding him the punishment under appeal which is self

speaking and reasoned order. The appellant being a raiding officer should have seized the tainted money as case property but he had failed to bring an important piece of evidence on record, resulting the acquittal of the accused by the Hon'ble Court. Though, the trial court had not passed any adverse remarks against the appellant while passing the judgment, it is quite clear that the appellant had failed to discharge of his official duties as per law, which amounts to serious misconduct on the part of the appellant. Therefore, the punishment awarded to him is justified and is commensurate with the gravity of misconduct committed by him. No infirmities were committed either by the E.O. or by the disciplinary authority. None of the appellant's pleas has any force. Hence, the appeal of the appellant is rejected."

The original application filed by the appellant before the Central Administrative Tribunal, Principal Bench, Delhi, questioning the validity or legality of the said order of punishment as also the appellate order was dismissed by the Tribunal by its judgment dated 15.2.2005. A writ petition preferred thereagainst by the appellant has been dismissed by a Division Bench of the Delhi High Court opining:

"\005We have also noted that in such a matter, if the plea of the petitioner is accepted and the accused not accepting the bribe money is to be a reason for not seizing the bribe money there was no need to launch prosecution against the accused. This not having been done resulted in the acquittal of the accused. The reasoning given by the Tribunal, therefore, does not warrant interference under Article 226 of the Constitution of India. The learned counsel for the petitioner has further submitted that even if it is assumed that there is failure to seize the currency notes, this does not amount to misconduct. The Tribunal has analyzed various definitions of the word "misconduct" and we are in agreement with the conclusion of the Tribunal. Furthermore, misconduct need not be founded on a positive act but can also be based upon an omission of duty required to be done by the public servant."

The contention of the learned counsel for the appellant is that in the peculiar facts and circumstances of this case, the appellant cannot be said to have committed any misconduct.

Mr. A. Sharan, learned Additional Solicitor General appearing on behalf of the respondents would, on the other hand, support the impugned judgment.

Before adverting to the question involved in the matter, we may see what the term 'misconduct' means.

In State of Punjab and Ors. vs. Ram Singh Ex. Constable [1992 (4) SCC 54], it was stated:

"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 misdemeanor, misdeed, misbehavior, delinquency,

impropriety, mismanagement, offense, but not negligence or carelessness.'

Misconduct in office has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the officer holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

In P. Ramanatha Aiyar's Law Lexicon, 3rd edition, at page 3027, the term 'misconduct' has been defined as under:

"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."

[See also Bharat Petroleum Corpn. Ltd. vs. T.K. Raju, [2006 (3) SCC 143].

It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In Union of India & Ors. vs. J. Ahmed (1979 (2) SCC 286), whereupon Mr. Sharan himself has placed reliance, this Court held so stating:

"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 Q.B. 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."

[Emphasis supplied]

The Tribunal opined that the acts of omission on the part of the appellant was not a mere error of judgment. On what premise the said opinion was arrived at is not clear. We have noticed hereinbefore that the appellate authority, namely, the Commissioner of Police, Delhi, while passing the order dated 29.8.2003 categorically held that the appellant being a raiding officer should have seized the tainted money as case property. In a given case, what should have been done, is a matter which would depend on the facts and circumstances of each case. No hard and fast rule can be laid down therefor.

The Criminal Court admittedly did not pass any adverse remarks against the appellant. Some adverse remarks were passed against the Investigating Officer, who examined himself as PW-4 as he had handed over the tainted money to the complainant PW-2.

A finding of fact was arrived at that the accused did not make demand of any amount from the complainant and thus no case has been made out against him. This Court in Zunjarrao Bhikaji Nagarkar vs. Union of India & Ors., [1999 (7) SCC 409], has categorically held:

"Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty."

We, therefore, are of the opinion that in the peculiar facts and circumstances of this case, the appellant cannot be said to have committed any misconduct.

Impugned judgment, therefore, in our opinion cannot be sustained, It is set aside accordingly. The appeal is allowed. No costs.