
(2004) 1 ALD 819 : (2004) 2 ALT 152

Andhra Pradesh High Court

Case No: Writ Petition No. 15247 of 2003

B. Vani Kumari

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Nov. 7, 2003

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 & Rule 9#Railway Services (Conduct) Rules, 1966 & Rule 3

Citation: (2004) 1 ALD 819 : (2004) 2 ALT 152

Hon'ble Judges: S. Ananda Reddy, J; G. Bikshapathy, J

Bench: Division Bench

Advocate: Nooty Rama Mohana Rao, for the Appellant; R.S. Murthy, SC for Railways, for the Respondent

Final Decision: Allowed

Judgement

G. Bikshapathy, J

1. The writ petition is filed challenging the Order of Central Administrative Tribunal in O.A. No. 194 of 2003, dated 8.7.2003.

2. The petitioner is the Applicant before the Tribunal. She filed the application challenging the disciplinary proceedings initiated against her by the

3rd respondent Chief Personnel Officer, South Central Railway dated 28.10.2002 as being illegal, arbitrary and unsustainable and for

consequential declaration that she is liable to be treated to have been promoted as Senior Personnel Officer from 31.1.2003, the date on which

Mr. S. Subba Rayudu was promoted to the said post and for attendant benefits.

3. Certain facts leading to the filing of O.A. by the Applicant are narrated thus:

Petitioner joined the Railways as Clerk in 1980 and she was being promoted to higher posts from time to time. Finally, she was promoted to the

post of Assistant Personnel Officer with effect from 21.7.1994. It is the case of the petitioner that she was deputed as Member to represent the

Personnel Branch to the Selection Committee for filling up 33 1/3% posts from Group-D employees by promotion. According to notification

issued by the Railways, 18 posts were to be filled up and brake up thereof was O.C. 14 S.C. 3, and S.T.-1 respectively. The selection committee

was headed by Mr. Manish Arora, District Controller of Stores, P. Rama Rao, Senior System Manager representing the reserved community and

the petitioner. Interviews were conducted on 7.12.2001 and 33 candidates were interviewed, panel of 18 names were prepared based on the

selection process. 7 candidates belonging to S.C. category and one candidate belonging to S.T. were also in the selected panel. The candidates

cleared by the selection committee were promoted to the post of Junior Clerks by an Order dated 13.12.2001 by the competent authority. It

appears that some enquiry was conducted by the Vigilance Department relating to the selection of the candidates for promotion to the post of

clerks from Group-D category and the petitioner was also asked to furnish some information, which was supplied by her. Subsequently, it appears

that the respondent issued Orders on 20.6.2002 cancelling the panel prepared on the alleged grounds, that some irregularities were observed in the

selection process. Aggrieved by the said cancellation, some of the employees filed O.As. before the Tribunal and the Tribunal passed Orders on

20.6.2002 allowed O.A. cancelling the promotion Orders. Thereafter, the petitioner has been served with a major penalty charge memo under

Rule 9 of the Railway Service (Discipline and Appeal) Rules, 1968 dated 28.10.2002. Two charges were framed against the petitioner. It is stated

that the petitioner committed irregularities in selecting the candidates for promotion from the post of clerks without following the principle of

reservation thereby 2 O.C. candidates were denied the promotion. The petitioner submitted explanation to the charge-sheet and tried to vindicate

her action by stating that the selection process was in accordance with rules and she also stated that the charges as framed would not fall within the

description of misconducts attracting the disciplinary provisions as at the most, it would be error of judgment, but not an act of delinquency. She

also stated that the procedure following was not only in conformity with the guidelines issued by the Railways, but also in accordance with the

judgment of the Supreme Court in R.K. Sabharwal and others Vs. State of Punjab and others, as the department was proceeding further with the

departmental enquiry, she filed O.A. before the Tribunal for quashing the departmental proceedings. The learned Tribunal after considering the

matter and relying on the judgment of the Supreme Court in Union of India (UOI) and Others Vs. Upendra Singh, and Union of India v. Ashok

Kocker, (1995) 29 ATC 145, dismissed the O.A. as premature. Against the said Order, the present writ petition has been filed.

4. The learned Counsel for the petitioner Mr. Nooty Rama Mohana Rao submits that the very initiation of disciplinary proceedings is illegal and

incompetent, inasmuch as no misconduct can be attributed to the petitioner. He further submits that when no misconduct is alleged issuing a

charge-sheet and proceeding further with the departmental enquiry is nothing but humiliation and harassment to the petitioner. He continues to

submit that the promotion panel was prepared by the Committee consisting of three members including the petitioner and therefore, the petitioner

cannot be proceeded with on the ground that she has committed certain misconducts warranting major punishments. Even on merits also, he

submits that the panel prepared by the Committee is quite legal and valid and it is in accordance with rules. The learned Counsel would also submit

that when the charges as framed against the petitioner would not comprehend within the four corners of misconduct, subjecting further enquiry is

wholly without jurisdiction. But, however, the Tribunal erred in observing that it is premature basing on the judgment referred to above. Thus, he

submits that the Order of the Tribunal is liable to be set aside and the charge-sheet is liable to be quashed.

5. On the other hand, the learned Standing Counsel for the Railways, however, submits that when once the charge-sheet has been issued, it is open

for the petitioner to submit the explanation and face the departmental enquiry. But, she cannot challenge the same which is nothing but pre-empting

the right of management to proceed against her in a departmental enquiry. The Tribunal has quite correctly observed that the O.A. as filed was

premature and therefore, the Order passed by the Tribunal is quite legal and valid. He also submits that the Committee consisting of three

members, the petitioner, being the Personnel Officer is expected to guide the Committee members for preparing the panel in accordance with the

Rules. The S.C. candidates were unduly placed in the panel with the result, the O.C. candidates, who ought to have been promoted as Clerks

were denied the same. Therefore, the preparation of panel is contrary to the guidelines issued by the Railways and it is a misconduct attracting the

disciplinary proceedings against the petitioner. Thus, he submits that the Order of the Tribunal is quite legal and valid and the same is unassailable.

6. The issue that arises for consideration is the Order of the Tribunal in dismissing the application on the ground of premature is sustainable?

7. The facts are not much in dispute. The Committee consisting of three members inferred to above was constituted for preparing the panel of

promotees from the Group-D posts to clerical cadre. Panel of 18 candidates has to be prepared with reservation. 3 S.C., candidates, 1 S.T.

candidate and balance open competition. It is also not in dispute that the panel was prepared. Ultimately, the competent authority promoted the

candidates who were empanelled in the promotion list, but when the said promotions were sought to be cancelled, they were challenged by the

promotees before the Central Administrative Tribunal and the O.As. were allowed by the Tribunal on the ground that the Order was in violation of

the principles of natural justice. But, however, it is not known as to what further proceedings were initiated in the matter. But, the Railway

Administration issued charge-sheet to the members of the Committee alleging misconduct under Rule (3) of the Conduct Regulations. We are not

concerned with the charges framed against the other members. As far as the petitioner is concerned, the charge-sheet was issued with the following

charges:

Article-1

That the said Smt. B. Vana Kumari, APO/ Rules/HQ, while functioning as a Member of the Selection Committee for selection to the post of Jr.

Clerks from Group "D" to Group "C" against 33 1/3% quota in Stores Department held in December, 2001, had committed serious misconduct,

in that, she failed to adhere to the rules governing empanelment of candidates that result irregular empanelment of two ineligible S.C. candidates

against UR posts in the selection depriving 2 eligible UR candidates from being empanelled.

Thus, Smt. B. Vana Kumari, APO/Rules/HQ, failed to maintain devotion to duty and acted in a manner unbecoming of a Railway Servant violating

Rule No. 3 (1)(ii) and (iii) of the Railway Services (Conduct) Rules, 1966.

Article-1I:

That the said Smt. B. Vana Kumari, APO/ Rules/HQ, while functioning as a Member of the Selection Committee for selection to the post of

Jr.Clerks from Group "D" to Group "C" against 33 1/3% quota in Stores Department held in December, 2001, had committed serious

misconduct, in that, she recommended a panel of 18 employees consisting names of two ineligible employees, as detailed in the statement of

imputations, contrary to the Selection Rules resulting cancellation of the so formed panel of 18 employees for promotion to the post of Jr. Clerk-

cum-Typist from Group "D" to Group "C" causing unwarranted situation to the Administration.

Thus, Smt. B. Vana Kumari, APO/Rules/HQ has failed to maintain devotion to duty and acted in a manner unbecoming of a Railway Servant

violating Rule No. 3(1)(ii) and (iii) of the Railway Services (Conduct) Rules, 1966.

8. The issue that arises for consideration is whether the charges alleged against the petitioner are falling within the parameters of the misconduct?

9. The Railway Servants are governed by the provisions contained in the Railway Services Conduct Rules, 1960. Various misconducts have been

specified under the said Rules warranting initiation of disciplinary proceedings and imposing punishment in accordance with the procedure

contained in Railway Servants (Discipline and Appeal) Rules, 1968. However, Rule 3 is general in nature specifying certain misconducts of general

nature. The misconduct alleged against the petitioner are grouped in Rule (3) which is extracted below:

3. General :--(1) Every Railway Servant shall at all times:

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Railway Servant.

(2) (i) Every Railway Servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Railway

Servants for the time being under his control and authority;

(ii) Every Railway Servant shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in the

best judgment except when he is acting under the direction of his official superior;

(iii) The direction of the official superior shall ordinarily be in writing, and where the issue of oral direction becomes unavoidable, the official

superior shall confirm it in writing immediately thereafter, and

(iv) A Railway Servant, who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible

whereupon it shall be the duty of the official superior to confirm the direction in writing.

10. The issue relating to interpretation of misconduct as to its applicability has come up for consideration before the Supreme Court in catena of

decisions. Similar expression of general nature of misconduct is also contained in Industrial Standing Orders as well as the Conduct Rules of the

Government Servants. In Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, , the Supreme Court was dealing

with the interpretation of Standing Orders Act with reference to Standing Order Nos. 10, 16 and 30, which reads thus:

(10) Drunkenness, fighting, indecent or disorderly behaviour, use of abusive language, wrongfully interfering with the work of other employees or

conduct likely to cause a breach of the peace or conduct endangering the life or safety of any other person, assault or threat of assault, any act

subversive of discipline and efficiency and any act involving moral turpitude, committed within the premises of the establishment, or in the vicinity

thereof;

(16) Conduct of a workman singly or in combination with- others endangering the lives or the safety of other workmen or endangering the safety of

the Company's premises, machinery or equipment;

(30) Being rude towards officers, employees, customers of and visitors to the company.

11. The Company has proceeded against the workmen alleging that the Workmen resorted to illegal strike near the factory gate and intimidated

and obstructed the other workers desirous of joining duty. Thereupon, Company approached the Civil Court and obtained ex parte injunction

restraining the workmen indulging in unfair and illegal activities. It was alleged that some of the striking men including the delinquent-workman

boarded the bus and during the journey in the bus at different places manhandled the loyal workmen. This part on the part of the workman was

treated as misconduct under clause 10, 16 and 30 of the Standing Orders. Accordingly, they were charge-sheeted and removed from service.

When the matter came up for consideration before the Labour Court, the Labour Court held that the Company was not entitled to charge-sheet

the delinquent workman for the alleged misconduct said to have been committed by them outside the establishment and not in the vicinity thereof

and a writ petition filed by the Company, the Division Bench of Allahabad High Court affirmed the findings of the Tribunal. Therefore, the matter

was carried before the Supreme Court. The Supreme Court primarily considered the question as to whether various acts of misconduct collocated

in clause 10 would attract misconduct punishable under Standing Order 23, if committed within the premises of the establishment or in the vicinity

thereof or irrespective of the time-place content, they are per se such acts of misconduct that they would be punishable notwithstanding where and

when they were committed. The Supreme Court after referring to various decisions on this point, however, upheld the findings of the Labour

Court. Thus, holding that the alleged misconduct would not comprehend within the misconduct enumerated in the Clause 10 of the Standing

Orders. One of the contention raised before the Supreme Court was that expression misconduct committed within the premises of the

establishment or in the vicinity thereof can qualify only the expression ""any act subversive of discipline and efficiency and any act involving moral

turpitude" but not the earlier portion of the clause. But, this was rejected by the Supreme Court by observing as follows:

13. After reading Clause 10, Mr. Shanti Bhushan contended that the expression "committed within the premises of the establishment or in the

vicinity thereof can qualify only the expression "any act subversive of discipline and efficiency and any act involving moral turpitude" but not the

earlier portion of the clause. Numerous acts of misconduct have been collocated in Clause 10 such as drunkenness, fighting, indecent or disorderly

behaviour, use of abusive language, wrongfully interfering with the work of other employees etc. Says Mr. Shanti Bhushan that these acts of

misconduct are per se misconducts that each one of them cannot have any correlation to the time or place where it is committed and each one of

them is an act of misconduct irrespective of the time and place where it is committed. Expanding the submission, it was urged that drunkenness is

such a socially reprehensible action that if it is committed within the premises of the establishment or in the vicinity thereof or anywhere else at any

point of time it would nonetheless be an act of misconduct comprehended in Clause 10 and punishable, under Standing Order 23. If this

construction were even to be accepted the employer will have more power than the almighty State because State chooses to punish drunkenness in

public place. But on the construction canvassed for if a man consumes liquor in his own house with the doors closed and gets drunk, the employer

can still fire him. If a man uses abusive language towards his close relation in his own house with closed door, the employer would be entitled to fire

him, and this approach overlooks the purpose of prescribing conditions of service by a statute. To enable an employer to peacefully carry on his

industrial activity, the Act confers powers on him to prescribe conditions of service including enumerating acts of misconduct when committed

within the premises of the establishment. The employer has hardly any extra-territorial jurisdiction. He is not the custodian of general law and order

situation nor the Guru or mentor of his workmen for their well regulated cultural advancement. If the power to regulate the behaviour of the

workmen outside the duty hours and at any place wherever they may be was conferred upon the employer, contract of service may be reduced to

contract of slavery. The employer is entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within

the premises where the workmen gather together for rendering service. The employer has both power and jurisdiction to regulate the, behaviour of

workmen within the premises of the establishment, or for peacefully carrying the industrial activity in the vicinity of the establishment. When the

broad purpose for conferring power on the employer to prescribe acts of misconduct that may be committed by his workmen is kept in view, it is

not difficult to ascertain whether the expression "Committed" within the premises of the establishment or in the vicinity thereof would qualify each

and every act of misconduct collocated in Clause 10 or the last two only, namely, "any act subversive of discipline and efficiency and any act

involving moral turpitude". To buttress this conclusion, one illustration would suffice. Drunkenness even from the point of view of prohibitionist can

at best be said to be an act involving moral turpitude. If the misconduct alleging drunkenness as an act involving moral turpitude is charged, it would

have to be shown that it was committed within the premises of the establishment or vicinity thereof but if the misconduct charged would be

drunkenness the limitation of its being committed within the premises of the establishment can be disregarded. This makes no sense. And it may be

remembered that the power to prescribe conditions of service is not unilateral but the workmen have right to object and to be heard and a

statutory authority namely, Certifying Officer has to certify the same. Therefore, keeping in view the larger objective sought to be achieved by

prescribing conditions of employment in certified Standing Orders, the only construction one can put on Clause 10 is that the various acts of

misconduct therein set out would be misconduct for the purpose of Standing Order 22 punishable under Standing Order 23, if committed within

the premises of the establishment or in the vicinity thereof.

12. In *Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another*, , an employee was appointed in Ahmedabad Municipal

Corporation was proceeded with departmental enquiry. He suppressed the factum of his employment prior to his appointment and therefore, it

constituted a misconduct. The employee was terminated from service by Ahmedabad Municipal Corporation on the ground that he was guilty of

suppressio veri and suggestio falsi. Before the Labour Court and the High Court he was not successful and therefore, he filed SLP before the

Supreme Court. The High Court observed while dismissing the writ petition that though the alleged misconduct does not constitute misconduct

amongst those enumerated in the relevant service regulations, yet, the employer can attributed what would otherwise per se a misconduct though

not enumerated and punish him for the same. But, this proposition was not accepted by the Supreme Court. It observed that even though either

under certain Standing Orders or Service Regulations, it is necessary for the employer to prescribe what would be the misconduct so that the

workman/employee knows the pitfall he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the

unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post

facto determination by the employer. Supreme Court further observed that it is a well-settled canon of penal jurisprudence that removal or

dismissal from service on account of the misconduct constitutes penalty in law that the workman sought to be charged for misconduct must have

adequate advance notice of what action or what conduct would constitute misconduct and observed that unless either in the Certified Standing

Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as

misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct. The

High Court observed that:

The conduct of the petitioner in suppressing the material facts and misrepresenting his past on the material aspect cannot be said to be a good

conduct. On the contrary it is unbecoming of him that he should have deliberately suppressed the material fact and tried to obtain employment by

deceiving the Municipal Corporation. It is clearly a misconduct.

The Supreme Court disagreed with the said observations.

13. In *Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others*, , the Collector of Central Excise, who is the appellate authority was alleged to have

disposed of an appeal in favour of an assessee by not imposing penalty under Rule 173-Q of Central Excise Rules, 1944 after holding that the

applicant has clandestinely and wilfully evaded the excise duty and ordered only the confiscation of goods. He was issued with a charge-sheet

under Rule 14 of the Central Excise (C.C.A.) Rules proposing to hold an enquiry against the officer. Thereupon, he approached the Tribunal for

quashing of the enquiry proceedings. However, when the matter was pending before the Tribunal, as the stay was already granted by the Tribunal

was vacated. The petitioner filed the writ petition before the Bombay High Court and the same was dismissed and therefore, he approached the

Supreme Court by filing a Special Leave Petition. The applicant has challenged the initiation of proceedings on the ground that it is not misconduct

under the C.C.A. Rules. The statement of imputation annexed to the charges suggested that the petitioner having committed an error of law, which

favoured the party, he has shown favour to the party. It was contended for the Officer that on the face of it, such an act cannot constitute

misconduct. The submission of the Officer was that the error of law does not amount to showing favour, which is *sine qua non* for maintaining the

charge. An error of law can be corrected only by an appellate forum. It was the contention of the Counsel for the Government that there was

sufficient material to proceed against the Officer and that the Central Administrative Tribunal was not right in not interfering with the disciplinary

proceedings. He contended that the appellant would have an opportunity to defend himself in the disciplinary proceedings which have been initiated

against him. He also relied on the decision reported in *Union of India and Others Vs. K.K. Dhawan*, . The Supreme Court referred to the

following decisions:

Union of India and Others Vs. K.K. Dhawan, ; *V.D. Trivedi v. Union of India*, (1993) 2 SCC 55 ;

Union of India v. R.K. Desai, (1993) 2 SCC 49 ;

Union of India and others Vs. A.N. Saxena,

Govinda Menon Vs. Union of India (UOI),

Union of India (UOI) and Others Vs. Upendra Singh, D.I.G. of Police v. K.S. Swaminathan (1986(11) S.C.C. 498)

M.S. Bindra Vs. Union of India and Others, ; Hindustan Steel Ltd. Vs. State of Orissa,

Madan Mohan Choudhary Vs. The State of Bihar, ; State of Madhya Pradesh and others Vs. Bharat Heavy Electricals,

Government of Tamil Nadu v. K.N. Ramamurthy (1997 S.C. 3571) State of Punjab and Others Vs. Ram Singh Ex. Constable,

Taking into consideration the aforesaid judgments, two issues arose for consideration before the Supreme Court:

(1) If levy of penalty under Rule 173-Q is obligatory? And

(2) Was there enough any background material for the Central Government to form a prima facie opinion to proceed against the Officer on the

charge of misconduct, on his failure, to levy penalty under Rule 173-Q?

The Supreme Court observed in Para 36 as follows:

The question is : If such a stance by the appellant was to ""favour"" the assessee or the officer was rightly of the view that it was not a case of levy

of penalty. It is a quasi-judicial order. Merely because penalty imposable has not been imposed, which was obligatory for the officer to impose,

could it be said that it is a case of misconduct and he is liable to be proceeded against?

The officer did impose the excise duty and also ordered

confiscation of the goods. What is the evidence before the authority to come to prima facie view of levying charge of misconduct on the officer? He

was served with the memorandum dated September 2, 1997. It was accompanied with Annexure I (Article of charge), Annexure II (Statement of

Imputations of misconduct or misbehaviour in support of (he Article of Charge), Annexure HI (List of documents) and Annexure IV (List of

witnesses). Article of charge we have reproduced above. Statement of Imputations of misconduct or misbehaviour referred to the Order in

Original passed by the officer and his explanation as to why he did not think it fit to impose penalty. List of documents mentions only three

documents, namely, Order-in-original, (2) order of the Board u/s 129 of the Act for filing appeal and (3) explanation dated November 18, 1996 of

the Officer. There is no witness mentioned in the list of witnesses. So the Order in Original, the explanation of the officer and the direction of the

Board for filing appeal are the basis for the charge of misconduct or misbehaviour.

Deliberating on the jurisdiction of the authority to initiate disciplinary proceedings in respect of the negligence in discharging of a quasi-judicial

adjudication, the Supreme Court observed in Para 40 thus:

When we talk of negligence in a quasi-judicial adjudication, it is not negligence perceived as carelessness inadvertence or omission but as culpable

negligence. This is how this Court in State of Punjab and Others Vs. Ram Singh Ex. Constable, , interpreted ""misconduct"" not coming within the

purview of mere error in judgment, carelessness or negligence in performance of the duty. In the case of Union of India and Others Vs. K.K.

Dhawan, , the allegation was of conferring undue favour upon the assesseees. It was not a case of negligence as such. In Union of India (UOI) and

Others Vs. Upendra Singh, , the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the

assessee. Case of Dy. Inspector General of Police Vs. K.S. Swaminathan, , was not where the respondent was acting in any quasi judicial

capacity. This Court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked

into by the Court to see whether they support the charge of the alleged misconduct. In M.S. Bindra Vs. Union of India and Others, , where the

appellant was compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the

order is arbitrary or mala fide or based on no evidence. Again in the case of Madan Mohan Choudhary Vs. The State of Bihar, , which was also a

case of compulsory retirement this Court said that there should exist material on record to reasonably form an opinion that compulsory retirement

of the officer was in public interest. In Government of Tamil Nadu Vs. K.N. Ramamurthy, , it was certainly a case of culpable negligence. One of

the charges was that the officer had failed to safeguard Government revenue. In Hindustan Steel Ltd. Vs. State of Orissa, , it was said that where

proceedings are quasi judicial penalty will not ordinarily be imposed unless the party charged had acted deliberately in defiance of law or was guilty

of conduct contumacious or dishonest or acted in conscious disregard of its obligation. This Court has said that the penalty will not also be

imposed merely because it is lawful so to do. In the present case, it is not that the appellant did not impose penalty because of any negligence on

his part but be said it was not a case of imposition of penalty. We are, however, of the view that in a case like this which was being adjudicated

upon by the appellant imposition of penalty was imperative. But then, there is nothing wrong or improper on the part of the appellant to form an

opinion that imposition of penalty was not mandatory. We have noticed that Patna High Court while interpreting Section 325, I.P.C. held that

imposition of penalty was not mandatory which again we have said is not a correct view to take. A wrong interpretation of law cannot be a ground

for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides.

The Supreme Court further observed in Paras 41, 42, 43 and 44 as follows:

41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the

assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie.

Record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion

that the appellant showed "favour" to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can

be corrected in appeal. That cannot always form basis for initiating disciplinary proceedings for an officer while he is acting as quasi-judicial

authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.

42. Initiation of disciplinary proceedings against an officer cannot take place on an 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 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.

43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like

the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet

on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a

quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration

influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if

sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative

adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such

functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

44. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the

appellant. Charge of misconduct against him was not proper. It has to be quashed.

Thus, the Supreme Court held that the initiation of disciplinary proceedings is illegal and unwarranted.

14. In A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., , the Supreme Court was interpreting the conduct of disciplinary appeal

rules framed by Project and Equipment Corporation of India Limited. A similar charge was framed against the employee. The charges reads thus:

Article I

Shri A.L Kalra while functioning as Deputy Finance Manager-Grade II in the Finance Division of the PEC during April, 1979 applied and drew an

advance of Rs. 16,050/-for purchase of a plot of land at Faridabad. But he did not furnish the relevant documents in the office nor did he refund

the amount of advance to the Corporation within two months of the date of drawal of the advance as required under Rule 10(1)(c)(i) of PEC

House Building Advance (Grant and Recovery) Rules.

Shri Kalra by his above act exhibited lack of integrity and conduct unbecoming of a public servant and violated Rule 4(1) and (iii) and Rule 5(5) of

the PEC Employees" (Conduct, Discipline and Appeal) Rules and Rule 10(1)(c)(i) of PEC House Building Advance (Grant and Recovery) Rules

and thereby committed misconduct punishable under the PEC Employees" (Conduct, Discipline and Appeal) Rules, 1975.

Article-1I

Shri A.L. Kalra drew a conveyance advance of Rs. 11,000/- in July, 1979 for purchasing a motor-cycle, but did not utilise the amount for the

above purpose and did not furnish cast receipt etc., evidencing purchase of the vehicle within one month as required under Rule 8 of the PEC

Conveyance Advance (Grant and Recovery) Rules. Nor did he refund the amount of advance to the Corporation as required under Rule 10 (1)

ibid

Shri A.L. Kalra by his above act exhibited lack of integrity and conduct unbecoming of a public servant and violated Rule 4(1)(i) and (iii) and Rule

5(5) of PEC Employees" (Conduct, Discipline and Appeal) Rules and also violated Rule 8 and Rule 10(i) of the PEC Conveyance Advance

(Grant and Recovery) Rules and thereby committed misconduct punishable under the PEC Employees" (Conduct, Discipline and Appeal) Rules,

1975.

The appellant was also asked to submit his defence statement within 10 days from the date of the receipt of the memorandum. The appellant by his

letter dated February, 13, 1980 requested for extension of time to file the defence statement. It appears that he sought further extension of time by

three weeks which request was declined by the memorandum dated February 23, 1980. The Committee of Management in exercise of the powers

conferred by Sub-rule (4) of Rule 27 of the 1975 Rules appointed Shri A.S. Nangia, Chief Marketing Manager as the Enquiry Officer to enquire

into the charges against the appellant. The appellant submitted on June 13, 1980 a detailed statement pointing out that the inquiry was the outcome

of malice for various reasons therein mentioned and also explaining why there was delay in refunding the advances and specifically pleaded that in

view of the fact that the first advance was sought to be recovered by withholding his salary and adjusting the pay towards advance and charging

penal interest and in the second case by accepting the document evidencing purchase of scooter, no misconduct could be said to have been

committed by the appellant and the disciplinary enquiry was uncalled for. Various other contentions were also raised in the defence statement. The

Enquiry Officer conducted the enquiry in respect of the aforementioned two charges. One U.S. Aggarwal, Finance Manager of the Corporation

appeared as Presenting Officer. The appellant conducted his own defence.

On the basis of the report of the Enquiry Officer, the disciplinary authority imposed punishment of removal from service. His appeal before the

Board was also negated. On a writ petition filed before the Delhi High Court, the contention raised before the High Court inter alia was that the

enquiry was held in violation of principles of natural justice and the disciplinary authority failed to give reasons in support of the Order and

therefore, it is in violation of Articles 14 and 16 of the Constitution of India. Further, it was also contended that the charges themselves do not

conduct within the expression of the Rules. The Division Bench dismissed the writ petition observing that the writ petition itself was not

maintainable as no writ petition could be filed against the Company. On a Special Leave Application filed by the employee, the Supreme Court

held that the writ petition was maintainable. While delving upon the facts, the Supreme Court observed in Paras 22 and 23 thus:

22. Rule 4 bears the heading "General". Rule 5 bears the heading "misconduct". The draftsmen of the 1975 Rules made a clear distinction about

what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation

culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of

the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to

telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a

public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute

conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where

misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and

accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point

in view of a recent decision of this Court in Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, , where this

Court held that "everything which is required to be prescribed has to be prescribed with precision and, no argument can be entertained that

something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to

say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a

misconduct not strictly failing within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a

penalty". Rule 4 styled as "General" specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is

nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. It

would therefore appear that even if the facts alleged in the two heads of charges are accepted as wholly proved, yet that would not constitute

misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes

penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule

4 does not specify a misconduct.

23. Mr. Ramamurthi learned Counsel for the appellant further contended that the very initiation of the disciplinary enquiry and imposition of

punishment of removal from service is thoroughly arbitrary and discloses a vindictive attitude on the part of the respondent-Corporation. It was

urged that the two heads of charges per se do not constitute any misconduct and they can be styled, as trumped-up which even, if held provide

would not render the appellant liable for any punishment. The two heads of charges have been extracted hereinbefore. Charge No. 1 refers to the

drawal of a House Building Advance and failure to comply with the requisite rules prescribed for House Building Advance. According to the

finding recorded by the Inquiry Officer, the failure of the appellant to refund the amount of advance to the respondent-Corporation within two

months of the date of the drawal would be violative of Rule 10(1)(c)(i) of the House Building Advance Rules and it would constitute misconduct

within the meaning of the expression in Rule 4(1)(iii) of 1975 Rules. Rule 10(1) provides that the advance shall be drawn in installments as

prescribed in various sub-clauses. The relevant sub-clause in this case is Sub-clause (c) which provides that ""when advance is required partly for

purchase of land and partly for constructing a single storied new house thereon, (i) not more than 20% of the sanctioned advance on execution by

the applicant employee an agreement in the required form for repayment of the advance. The amount will be payable to the applicant only for

purchasing a developed plot of land on which construction can commence immediately and sale deed in respect thereof be produced for the

inspection of CPM/RM within two months of the date on which 20% of the advance is drawn or within such further time as the CPM/RM may

allow in this behalf failing which the employee shall be liable to refund at once the entire amount to the Corporation together with interest thereon"".

A bare reading of the relevant rule will show that it provides for obtaining advance, which in this case was taken for purchasing a plot. The Inquiry

Officer accepts the evidence of Mr. Chugh that the appellant had negotiated with him for purchase of a plot but some dispute arose about some

additional expenditure and the negotiations protracted over a period of six months. Now para 1 Sub-clause (c) confers on CPM/RM/power to

extend the time for finalising the deal or call upon the employee to refund the entire amount and he is liable to pay interest thereon. This is the only

consequence of taking advance and failure to keep to the time-schedule. The relevant rule is a self-contained provision, providing for the condition

for grant of advance, time table for repayment and consequence of failure to keep to the time schedule. The House Building Advance was drawn

on April 4, 1979. On November 13, 1979 the appellant was asked to refund the entire amount. Immediately on November 16, 1979, an order

was made withholding the entire salary of the appellant. Even the Inquiry Officer was constrained to observe that the appellant was exposed to

double jeopardy inasmuch as his salary as a whole was withheld and he was being removed from service. It is also pertinent to note that the

Inquiry Officer is not clear when he said "that once the power to extend the time to repay the advance is conferred and penal interest is charged, is

any rule violated". This is not an attempt to reappreciate evidence in the case but the entire thing is being analysed to point out that the action apart

from being arbitrary is motivated and unjust. If the rules for granting the advance themselves provided the consequence of the breach of conditions,

it would be idle to go in search of any other consequence by initiating any disciplinary action in that behalf unless the 1975 Rules specifically

incorporate a rule that the breach of House Building Advance Rules would by itself constitute a misconduct. That is not the case here as will be

presently pointed out. Seeking advance and granting the same under relevant rules, is at best a loan transaction. The transaction may itself provide

for repayment and the consequence of failure to repay or to abide by the rules. That has been done in this case. Any attempt to go in search of a

possible other consequence of breach of contract itself appears to be arbitrary and even motivated. However, the more serious infirmity in framing

this head of charge is that according to the inquiry officer this failure to refund the advance within the time-frame in which it was sanctioned

constitutes violation of Rule 4(1)(iii). Let us turn to the charge-sheet drawn-up against the appellant. Under the first head of charge it was stated

that the appellant was guilty of misconduct as prescribed in Rule 4(1)(i) and (iii). Rule 4(1)(i) provides that every employee shall at all times

maintain absolute integrity. How did the question of integrity arise passes comprehension. The appellant applied for House Building Advance.

Inquiry Officer says that the appellant had negotiated with Mr. Chugh for purchase of a plot. There is not even negative evidence or evidence

which may permit an inference that the house building advance was utilised for a purpose other than for which it was granted. Therefore Rule 4(1)

(i) is not only not attracted but no attempt was made before us to sustain it. And as far as Rule 4(1)(iii) is concerned, we fail to see how an

advance not refunded in time where it was recovered by withholding the salary of a highly placed officer discloses a conduct unbecoming of a

public servant. Therefore, the first head of charge is an eyewash. It does not constitute a misconduct if it can be said to be one even if it remains

unrebutted. The Inquiry Officer has not said one word how the uncontroverted facts constitute a conduct unbecoming of a public servant, or he

failed to maintain absolute integrity.

Finally, the Supreme Court held in Para 26 thus:

No if what is alleged as misconduct does not constitute misconduct not by analysis or appraisal of evidence, but per se under 1975 Rules the

respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct. An administrative

authority who purports to act by its regulation must be held bound by the regulation. "Even if these regulations have no force of law the

employment under these corporations is public employment, and therefore, an employee would get a status which would enable him to obtain a

declaration for continuance in service, if he was dismissed or discharged contrary to the regulations". Sukhdev Singh, Oil and Natural Gas

Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II.

Officers, Shyam Lal, Industrial Finance Corporation, .

While summing up, the Supreme Court observed that (i) that the action is thoroughly arbitrary and is violative of Article 14(ii) that the alleged

misconduct does not constitute misconduct within the 1975 Rules; (iii) that the Inquiry Officer himself found that punishment was already imposed

for the alleged misconduct by withholding the salary and the appellant could not be exposed to double jeopardy; and (iv) that the findings of the

Inquiry Officer are unsupported by reasons and the order of the Disciplinary Authority as well as the Appellate Authority suffer from the same vice.

15. Therefore, a reading of the aforesaid decisions in respect of the jurisdiction of the disciplinary authority to initiate action would be available only

if the act is alleged or complained of against the Officer falls within the enumerated misconduct. Admittedly, in the instant case, misconduct was

grouped on the general type of misconducts. Therefore, it has to be necessarily scanned whether the alleged omission or commission on the part of

the petitioner is a general misconduct attracting the expression ""unbecoming of an Officer of the Railways"", as to facts are already narrated above

would clearly establish that she was the member of the selection committee and selection committee prepared panel of promotees. The thrust of

the argument of the Railways was that the panel was not prepared in accordance with rules and therefore, two O.C. candidates were denied the

promotion. But, this contention is wholly unsustainable inasmuch as, the competent authority to promote the employees is not the petitioner when

the panel of promotees placed before the competent authority, it is the bounden duty of the competent authority to ensure whether the panel has

been prepared properly or whether there was any omission or commission. If it finds that there are any commissions or omissions, it is always open

for the competent authority to send back the selection list to the selection committee or set right by himself. But, can it be said that the members of

the Committee have committed any misconduct in the absence of any allegations of mala fide, corruption or misconduct touching the integrity of the

Officer. Obviously, no such allegation on those lines were made except stating that the preparation of panel has denied the promotion to two O.C.

candidates. Further, it is also on record that the petitioner had been contending throughout that the panel was prepared in accordance with rules

and also the principles laid down by the Supreme Court. But, the preparation of panel even assuming that it is not in accordance with the guidelines

cannot be said to be a misconduct, when the higher authority is ultimate authority, who is competent to issue promotion Orders. It cannot be found

fault with the members of the selection committee. Admittedly, in the instant case, the reason for initiating the disciplinary proceedings appeared to

be extraneous. When the promotion Orders were cancelled by the authority on the presumption that they were not in accordance with the rules or

regulations by the Railway Board, they were challenged by the promoted employees and the Tribunal has set aside the Orders of cancellation on

the ground that no opportunity was given. Obviously, the Orders were passed in violation of principles of natural justice. But, to evade the

responsibility on the part of the Administration, and without proceeding further with the matter by issuing notice to the promotee candidates, axe

was sought to be turned on the selection committee members on the premise that the panel was prepared in contravention of the rules. As already

observed that there was no charge of the collusion, favouritism or corruption in preparing panel. In such case, it cannot be held that it is a

misconduct within Clause 3 of the Conduct Rules. When the competent authority failed to discharge his duties and to scrutinise the panel if at all he

finds some omissions or commissions, it is always within his competence to set right the panel. Finding fault with the members of the D.P.C. would

be nothing, but passing deficiencies on the part of the competent Officer so as to save himself from the situation, it was created on account of the

cancellation of the promotion Orders without notice. It is also not in dispute that when the charges as framed do not fall in the expression

misconduct"" it would be appropriate for the employee to challenge the same even before the departmental enquiry is initiated as held by the

Supreme Court referred to above. Otherwise, it would be an humiliation to the honest and devoted Officers to face the departmental enquiry in

respect of the act which is not a misconduct within the Conduct Rules. Even in Union of India (UOI) and Others Vs. Upendra Singh, , the

Supreme Court held that a Tribunal or a Court can interfere at pre-enquiry stage if the charge read with imputation, no misconduct or other

irregularity alleged can be said to have been made out or the charge framed is contrary to law. Thus, we are of the considered view that the

charges as framed against the petitioner are wholly unsustainable and they do not fall within the category of misconduct. When the acts alleged are

not misconducts ex facie, the question of initiation of disciplinary proceedings would not arise. It would not only be an empty formality, but it

demoralises the Officers of integrity and good conduct. In such an event, it is always open for the employee to challenge the charge-sheet itself

before the commencement of the disciplinary proceedings. When the authority lacks jurisdiction itself to initiate disciplinary action on the ground

that it would not fall within the misconduct, the judgment of the Supreme Court referred to above would not apply.

16. Under those circumstances, we are of the view that the Tribunal failed to consider this aspect in proper prospective and rendered an erroneous

judgment.

17. Accordingly, we set aside the Order of the Tribunal and quash the charge-sheet dated 28.10.2002. However, it is stated in the O.A. filed by

the petitioner that on account of the pendency of the charge-sheet, her case for further promotion was withheld and her juniors were promoted. In

view of our finding that the charge itself is incompetent, the authorities are directed to consider her case for promotion to higher post from the date

when her immediate junior was promoted ignoring the charge-sheet dated 28.10.2002. This exercise shall be done within a period of two months

from the date of receipt of a copy of this Order.

18. The writ petition is allowed accordingly.

19. No costs.