

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1114 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 21467 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/LETTERS PATENT APPEAL NO. 1114 of 2022

With

R/LETTERS PATENT APPEAL NO. 258 of 2023
In SPECIAL CIVIL APPLICATION NO. 21467 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL
sd/-

and

HONOURABLE MR. JUSTICE N.V.ANJARIA
sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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THE NEW INDIA ASSURANCE CO. LTD.
Versus
CHANDRAKANT GOKALBHAI PATEL

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Appearance:
MR VIBHUTI NANA VATI(513) for the Appellant(s) No. 1,2,3
MR RV DESHMUKH(300) for the Respondent(s) No. 1

**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE N.V.ANJARIA**

Date : 06/09/2023

COMMON CAV JUDGMENT

**(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL)**

1. Heard Mr. Vibhuti Nanavati, learned counsel for the appellants and Mr. R.V. Deshmukh, learned counsel for the respondent.

2. Out of these two connected appeals, Letters Patent Appeal No. 1114 of 2022 has been filed by the Insurance Company against the judgment and order dated 19.7.2022, whereby the learned Single Judge has set aside the order of dismissal dated 16.5.2017 of the petitioner from service as also the order passed in appeal dated 11.3.2019, confirming the same and held that the writ petitioner shall be entitled to all consequential benefits viz. terminal benefits as if the order of dismissal order has never been passed. The cross appeal filed by the writ petitioner is confined to the challenge to the order of the rejection of his claim for grant of interest on the

pension and other benefits due, resulting from quashing of the order of dismissal and its confirmation in appeal.

3. The brief facts relevant to decide the controversy at hand, are that the writ petitioner, while working as Senior Divisional Manager in the company namely, New India Assurance Company Limited at Gandhidham (hereinafter referred to as 'the appellant company'), was served with the charge-sheet dated 9.3.2016. The imputation of charges was with respect to settlement of 10 claims in the Lok Adalat during the year 2014-15, with the allegation that such settlements were made by the petitioner with ulterior motive. The statement of imputation of misconduct in support of the Article of charges dated 9.3.2016 framed against the writ petitioner reads that while settling 10 claims mentioned therein from Item No. 'I to X', the writ petitioner exhibited absolute lack of integrity and devotion of duty and has acted in a manner unbecoming of a public servant and also acted in a manner prejudicial to the interest of the Company. While settling the claim, he has deliberately acted, in grossly irregular manner, ignoring the norms / guidelines of the

company, terms and conditions of the M.V. Policy, provisions of the Motor Vehicles Act, 1988 and without ensuring that the liability of the company was absolute. The allegation was about the loss caused to the Company to the tune of Rs.66,81,105/- paid to the claimants on the premise that the writ petitioner had settled the claims knowing fully well that the company had no liability in such cases.

4. The inquiry report dated 25.10.2016 records that the writ petitioner did not produce any defence witness. The defence taken by the petitioner in his oral examination and documentary evidence was appreciated therein to note that the writ petitioner was trying to shift all his responsibility and attribute the responsibility for the settlement to the legal department of the Company, though he has confirmed that he signed compromise purshis and it was his responsibility to seek entire file before making his signature. It is noted therein that there was no office note / recommendation of the department before the date of signing of the purshis by the writ petitioner. The defence of the petitioner that he was not responsible and the legal department was responsible, as

such, does not exonerate him. It was further observed that the department had not recommended any of these claims rather there were contrary remarks for the claims. The writ petitioner, thus, deliberately with an ulterior motive, compromised to pay motor T.P. claims amounting to Rs.66,81,105/-, paid to the claimants, knowing fully well that the company had no liability in such cases.

5. A perusal of the charge analysis of the cases and findings shows that in all 10 charges related to compromise settlement in the Lok Adalat, the allegations were that the settlements were made in contravention of the provisions ignoring the fact that the company was not liable for the claims. There is a reference of the defence taken by the Company in the case file of those cases which were settled before the Lok Adalat, giving reasons as to why the claims were not acceptable to the company.

6. A perusal of the deposition of the witnesses of the company examined as PW1 and PW2 further indicate that in his deposition, PW2, during examination-in-chief, deposed

that the authority compromising under the T.P. scheme in the Lok Adalat, was required to follow the guidelines issued by the Company. In all 10 cases not only there were deviations from the policy but the Company was not liable at all. It was deposed that only such claims where the liability of the company was absolute, could be compromised. PW2 in his deposition in the examination-in-chief has further deposed that the official signing purshis has to follow the Lok Adalat compromise manual and other relevant circulars issued by the Headquarter from time to time. The opinion of the dealing Advocate is binding for compromising the cases in the Lok Adalat. The opinion of the company's legal retainer was also to be obtained. It was stated that if the opinion of the Advocate was not as per company's guidelines for compromise, the officer cannot go for compromise settlement based on Advocate's opinion. During cross-examination, on a query with regard to the responsibility of the legal officer, T.P. department's Head and officer of T.P. department, it was deposed by PW2 as under:

“ Any irregularities committed by the particular employee during the discharge of his duties is*

responsible for such irregularities.

** In reply to the query "do you confirm that Legal officer (Ms. Shipra Tanwar), TP Department's head (Ms. Bina Ramnani) and Officer (Ms. Lina Nair) of TP department are responsible for the functions they are assigned, PW-2 replied that Yes, they are responsible for subject matters which have been specifically processed / recommended by them.*

** Officer has to discharge his functions as per the financial authority given to him and Divisional In-charge has to act / differ with the recommendations made by the officers processing / dealing the subject matter.*

** In reply to the query of "Do you agree that compromising a case in Lok Adalat is a team work of TP department where every employee / officer is required to do and responsible for functions allotted to him?, PW-2 stated that Every function in any organization is always a team work.*

** That it is a practice every employee whosoever processes certain subject matter / makes any recommendations to higher authority for his consideration has to put his initial / signatures in token of such recommendations. Every page contained in the file may not bear signature / initials."*

7. The defence taken by the writ petitioner during the course of inquiry was that the decision of the compromises entered in the Lok Adalat was a team work, officers were allotted the portfolio for processing / unfit file and everyone in the team was responsible, in case, there are allegations of

settlement of unfit claims in the Lok Adalat, but the charge-sheet was issued to him only.

8. With respect to the charges pertaining to wrong settlement of 10 claims, a perusal of the inquiry report indicates that the stand of the Company to deny individual claims was noted therein to record that there was no liability of the Company in such cases. No finding has been returned with regard to the claim of the writ petitioner that he cannot be held solely responsible for settlement of claim only because of the fact that he had signed the compromise purshis, inasmuch as, processing of claim requires application of mind at different levels and it was a team work, which was comprised of the legal officer, T.P. department heads and office of T.P. department who were responsible for the functions which were assigned to them.

9. It may be reiterated, at this juncture, that the writ petitioner was a Senior Divisional Manager at the relevant point of time and was assigned to the task of putting his signature on the compromise purshis which was placed

before the Lok Adalat to arrive at the settlement. There is no allegation nor any charge against the writ petitioner that it was his sole decision or action which has resulted in arriving at the settlement before the Lok Adalat.

10. The procedure to process the files indisputedly was that, at the first stage, (i) Law Officer of the Company was required to scrutinise the file; (ii) then opinion of the panel lawyer was to be obtained; and (iii) the file is to be then placed before the Senior Divisional Manager (Law) who has power to sign the settlement; (iv) the file is again returned back to the law officer who prepares compromise purshis and countersigns the same; (v) the signature of Divisional Manager (Law) was then to be obtained on the compromise purshis. There is no allegation that the files pertaining to the claims mentioned in the imputation of charges of misconduct against the petitioner, were never processed. There is no charge of ulterior motive based on any extraneous considerations against the writ petitioner.

11. The discussion in the inquiry report shows that the

defence of the Company in contesting those claims before the Court has been highlighted. It was also highlighted that, at an earlier point of time, the petitioner in the capacity of the Manager, Legal Cell, Ahmedabad Regional Office had written a letter to the divisional office with respect to the claim No.1 that the company had no liability. The finding of the inquiry officer that the writ petitioner deliberately with an ulterior motive and *mala fide* intention compromised, is devoid of any cogent material on record other than the assertion that on the previous occasion, the opinion of the writ petitioner was contrary. With regard to other claims, the finding in the inquiry report is that those claims were not legally sustainable and the liability of insurer could not have been settled. The plea taken in defence in the written settlement of claim No.9 has been noted by the inquiry officer to reach at the conclusion that it was not a fit case for compromise.

- 12.** The learned counsel for the writ petitioner has invited the attention of the Court to page '184' of the paper book, which is the office order dated 15.9.2016 of the Disciplinary Authority in the disciplinary inquiry conducted

against Ms. Shipra Tanwar, who was working as A.O. (Legal) at Gandhidham during the year 2014-15, with respect to the same charges. There is a reference of the circular dated 25.9.2015 therein which provides certain steps for settlement of claims by way of compromise through Conciliation in Lok Adalat, so as to reduce the huge pendency of motor T.P. claims and to maximise settlement through compromises. The office order dated 15.9.2014 issued by the Regional Manager, Disciplinary Authority records that the advice to effectuate the compromise have been given by the Corporate management from time to time so as to achieve their objective. The steps as suggested in the circular dated 15.9.2014 are as follows:

“a) Ensure that all files are complete i.e. Policy copy, Sec. 64 VB compliance verification of vehicular documents DL from RTO arranged for, FIR, Panchnama, M.V. inspection reports, age proof of the claimants and victims income proof of claimants and any dependents, hospital bills, treatment papers admission card, inquest report P.M. report, plhyusical disability certificate Form No.16, income tax returns, salary slips, charge-sheet etc. are available that through investigation as also veracity of FIR and other documents are carried out as applicable.

b) That thereafter Advocate opinion on our liability being absolute being obtained including contributory negligence, if any provisions thereof.

- c) Segregate all Fit and unfit cases for compromise.*
- d) Inform the list of fit files to local legal services authority to list them.*
- e) Based on medical referee opinion (If required) and Advocate opinion on likely compromise amount negotiable to arrive at reasonable compromise.*
- f) Compromise manual circulated in January 2014 to be followed.”*

13. It is noted therein that for compromise settlement of claims in Lok Adalat, it has to be ensured by the officers concerned that all MACT claim files are complete containing all the required documents duly verified and claims investigated, contain Advocate's opinion about the liability and if the company's liability is absolute and such cases found fit for compromise, are to be put up for settlement in Lok Adalat. It was opined that on scrutiny of MACT that have been compromised in Lok Adalat revealed that none of the aforesaid guidelines had been adhered to. Segregation of all fit and unfit cases of compromise had not been carried out. There was no verification sheet or claim processing note of Ms. Shipra Tanwar recording her opinion / recommendations whether the case merits for compromise or otherwise though

she was handling all such cases. The claim files were not duly processed, and note put up by preparing claim notes / reports were not there. It was further noted that though claims were not valid for compromise as the Company had no liability as per the provisions of the Motor Vehicles Act, terms and conditions of the Motor policy, but Ms. Shipra Tanwar, in the capacity of Law Officer, handling such cases, had not made any dissenting remarks in relevant claim file, highlighting that the Company has no liability legally under the provisions of the Motor Vehicles Act, terms and conditions of the Motor policy. She had, thus, exhibited absolute lack of devotion to duty and acted in a manner unbecoming or a public servant and also acted in a manner prejudicial to the interest of the Company.

- 14.** Her reply to the Memorandum of charges noted therein indicates that she took a defence that she had acted as per the directions and guidance of the officer in-charge, being under probation which was her learning phase. She stated that in the absence of any written document issued by the head office and there was no manual stating the duties of

legal officer, she had to rely on the directions of the officer in-charge.

- 15.** As noted therein, the charges in the nutshell against Ms. Shipra Tanwar, legal officer was that she had not discharged functions as expected from a Law Officer, by way of the note claim report / check list, processing those claims files which have been put up for compromise, without segregation of fit and unfit cases. She had not made any dissenting remarks in the relevant files clearly pointing out that the Company had no liability under provisions of the Motor Vehicles Act, terms and conditions of Motor policy, though in the memorandum, it was clearly written that the company has no liability. It was observed by the Disciplinary Authority therein that the defence of the legal officer namely Ms. Shipra Tanwar that she was neither aware of the functioning of the legal officer nor there was any order of the Company to that effect, was not plausible. By keeping silence over the claim files referred in the proceedings held against her where the Company had no liability, she had committed misconduct in not expressly pointing out or not putting any

written remarks or dissenting note on the case files. Her defence that she had acted on the directions of the officer in-charge, was turned down to record that she was required to obey the lawful orders and directions of the superiors, as per the policy of the Company.

16. We may note that a minor penalty of reduction to a lower stage for a period of one year with immediate effect, as per Rule 23(d) of the Conduct, Discipline and Appeal Rules of the Company, was imposed upon her.

17. The above noted facts have been brought before us by the learned counsel for the writ petitioner to defend the order passed by the learned Single Judge, returning a finding that there was no allegation that by virtue of the settlement entered in the Lok Adalat, the writ petitioner had received any personal gain or the settlements were made by him with wrongful intention much less an ulterior motive.

18. Learned counsel for the appellant Company assailing the judgment of the learned Single Judge, however, argued

that no flaws in the decision making process could be pointed out by the petitioner - respondent. The inquiry report cannot be said to be vitiated for non-compliance of principles of natural justice. Once the departmental inquiry proceedings leading to the passing of the punishment order by the disciplinary authority, has been conducted by complying the provisions of the Service rules, it was not open for the learned Single Judge to interfere to reach at a different conclusion from that recorded by the disciplinary authority. This Court while exercising the power of judicial review would not sit in appeal against the order of the disciplinary authority so as to substitute its own view, more so when it is recorded in the inquiry report that 10 claims were settled by the writ petitioner contrary to manuals / guidelines of the Company. There was no material on record to demonstrate that the disciplinary proceedings were *de hors* the statutory provisions. The petitioner has failed to maintain utmost integrity and commitment to his work which had caused financial loss to the Insurance Company and, thus, committed misconduct within the meaning of the Rules.

19. Reference has been made to the decision of the Apex Court placed before the learned Single Judge to substantiate the submission that re-appreciation of evidence was not permissible within the scope of Article 226 of the Constitution of India.
20. Learned counsel for the petitioner, however, placing reliance on the decisions in the cases of ***Union of India versus J. Ahmed reported in (1979) 2 SCC 286, Inspector Prem Chand versus Government of NCT of Delhi reported in 2007 4 SCC 566, Chairman and M D, Bharat Petroleum Corpn Ltd. versus T K. Raju reported in 2006 3 SCC 143, Roop Singh Negi versus Punjab National Bank reported in 2009 2 SCC 570, B C Chaturvedi versus Union of India reported in 1995 6 SCC 749, P T Thomas versus Thomas Job reported in 2005 6 SCC 478***, would submit that looking to the charges framed against the writ petitioner, they cannot be said to constitute 'misconduct' in the context of the disciplinary proceedings entailing penalty. No ill motive could be attached to the action of the petitioner in signing the

compromise pursis leading to the settlement of claims in Lok Adalat. 'Misconduct' implies wrongful intention and not mere error of judgment.

21. It was argued that every act or omission of an officer or employee cannot be termed as misconduct. Though it is settled that the power of judicial review cannot be exercised to assess the adequacy of evidence or role of evidence and the Court is not permitted to re-appreciate the evidence as a Court of appeal, but in the facts and circumstances of the instant case, learned Single Judge having gone through the inquiry report and the decision of the disciplinary authority extensively, has reached at the conclusion that the allegations in the chargesheet would not amount to misconduct. No infirmity can be attached to the order of the learned Single Judge and the instant appeal thus, deserves to be dismissed. As regards the demand of interest on the unpaid amount, it was argued by the learned counsel that the petitioner has been kept out of employment on account of a wrong decision, as held by the learned Single Judge, he is, as such, entitled for interest on the amount due which were

otherwise admissible / payable to him.

22. To appreciate the contentions of the learned counsel for the parties, having noted the factual aspects of the matter, the nature of charges and the manner in which the decision was taken for settlement of cases in the Lok Adalat, we are first required to cull out the law laid down by the Apex Court in the decisions cited by the learned counsel for the writ petitioner as to the meaning of term 'Misconduct'.

23. In *Inspector Prem Chand versus Government of NCT of Delhi (Supra)*, the Apex Court has taken note of the observations about the meaning of terms 'misconduct' in *State of Punjab and Others versus Ram Singh Ex. Constable reported in 1992 (4) SCC 54*, in paragraph 10 as under : -

"10. 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].

24. In Union of India & Ors. vs. J. Ahmed (supra),

relied therein, it was noted in paragraph 12 that : -

"12. 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 Sharad Prasad 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]

25. It was observed that in the ***Chairman and M D, Bharat Pet. Corpn Ltd. versus T K. Raju (supra)***, it was noted that misconduct is a generic term. 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. The 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 the statute which is being construed. Misconduct literally means wrong conduct or improper conduct.

26. It was noted in ***Union of India versus J. Ahmed (supra)***, that there may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation, but that 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. Referring to certain hypothetical examples in paragraph '11' of the said decision, it was observed that : -

"11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that 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] (1886) 17 QBD 536 (at p. 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 Sharadprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur, 61 Bom LR 1596 : (AIR 1961 Bom 150), and

Satubha K. Vaghela v. Moosa Raza, (1969) 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".

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Management, Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik, (1966) 2 SCR 434 : (AIR 1966 SC 1051), in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S. Govinda Menon v. Union of India, (1967) 2 SCR 566 : (AIR 1967 SC 1274), the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani v. Air France, Calcutta, (1964) 2 SCR 104 : (AIR 1963 SC 1756), wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. 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 instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes 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.”

27. It was, thus, observed that the 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 the conduct which is blameworthy for the Government servant in the context of the 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. (Reference was made to ***Pierce v. Foster, 17 Q.B. 536, 542***). A disregard of an essential condition of the contract of service may constitute Misconduct. (emphasize was to the decision of the High Court of Bombay in ***Sharadprasad***

Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur reported in AIR 1961 Bom 150 : 61 Bom LR 1596 therein). The definition of Misconduct in Stroud's Judicial Dictionary, has been noted therein.

28. The decision of the Apex Court in ***S. Govinda Menon v. Union of India reported in (1967) 2 SCR 556 : AIR 1967 SC 1274***, was further noted to record that though the manner in which a member of the service discharged his quasi-judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings, however, a single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences, the same may amount to Misconduct. 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.

29. In light of the above discussion, we are required to

note the findings returned by the learned Single Judge in the impugned judgment to arrive at his conclusion in the impugned judgment. It was noted by the learned Single Judge that the writ petitioner was posted as a Senior Manager to look after various functions of the divisional office in his capacity being an officer of Supervisory and Managerial cadre. As far as the department where the claims are processed by way of Court orders and when compromise settlements are entered into, the work allocation would be assigned to officers by way of office orders and many a times, they were guided through mails received from the registered office of the Head office. For 10 charges attributed in the charge-sheet, the claims which were settled in the Lok Adalat, the divisional office and the T.P. Department was consisted of five officers. Since these were special and legal activities, allocation of work was also carried out and it was completed under the supervision of Mrs. Bina Ramnani, A.M. Head of the T.P. Department. The claim files were processed at the end of Head of T.P. Department through the Assistant Officer Mrs. Lina Nair, a Class-III employee who was working

in the department for a long time. Such files were then allocated to the Legal Officer Ms. Shipra Tanvar as she was specially posted to the divisional office to settle maximum claims. The processing of the claim as was supposed to be conducted, required the Legal Officer to enter into negotiations with the Advocates by carrying out all the necessary legal formalities in consultation with the Advocates and submit an opinion with regard to the compromise. The role of the writ petitioner to sign the compromise pursis on which the claim was finally settled and the compromise pursis were countersigned by the Legal Officer, then came in. It was noted by the learned Single Judge that since the Legal Officer and other Officers working in the team, were directly part of the same transaction, to single out the petitioner and penalize him, amounts to victimization. As per the findings in the inquiry report, it was rightly noted by the learned Single Judge that the nature of allegations in the chargesheet is that the writ petitioner had settled some claims in the Lok Adalat, contrary to the policy manual of the Company. As it was joint exercise wherein more than one officers were involved in

settling the matter for which a settlement had to be arrived at blaming the petitioner solely, terming the decision for compromise as Misconduct, would be illegal.

30. It was further noted from the deposition of the prosecution witnesses, PW-1 and PW-2, that it was evident that they admitted that the exercise of settlement by way of compromise placed in the Lok Adalat was a team work. Infact, the analysis and findings of the Inquiry Officer would indicate that it is a case of no evidence. The Inquiry Officer had proceeded to base its opinion on the deposition of prosecution witnesses and even the principle of “preponderance of probability”, the standards of proof of the charges in a disciplinary inquiry was not adhered to. It was further noted that the based on the feedback that the petitioner got from the officers in the department, i.e. the Legal Officer and the other Officers, he signed the pursis of settlement of cases before the Lok Adalat. The question is that can this be said to be the exercise of powers within an ulterior motive or acting without devotion of duty or acting prejudicial to the interest of the Company, as concluded by

the disciplinary authority.

31. It was held by the learned Single Judge that after the entire team work was undertaken by the T.P. Department of the Insurance Company, involving the officers named by the petitioner in his representation, the Insurance Company entered into settlement of claims with the claimants and, therefore, to attribute ill motives to the petitioner for ulterior motive or holding that the petitioner acted as unbecoming of an Officer of the Company, is misconceived. It was concluded that the findings in the inquiry report indicate that the petitioner had entered into such settlement without wrongful intention, much less an ulterior motive. There is no allegation to the effect that by virtue of this settlement entered into the Lok Adalat, there was any personal gain to the petitioner. The attribution, therefore, by the department that the settlement was arrived at with ulterior motives, is misconceived.

32. None of these findings of the learned Single Judge could be successfully assailed before us by the learned

counsel for the appellant Company. As noted above, in the imputation of the charges apart from the assertions that the claims were settled as against the policy / guidelines of the Insurance Company, there is no imputation of ill motive. There is no charge that the claims were settled by the writ petitioner on some extraneous consideration, or he has been benefited out of the payments made to the claimants. The charge of financial loss to the Company was based on the premise that the writ petitioner had signed the compromise pursis without looking to the files and further that in his opinion given at prior point of time, the claims were not admissible to the Company.

- 33.** In light of the above, we are further required to note that the stand of the Insurance Company in the written statements filed before the Claim Tribunal or the defence taken by the petitioner in the departmental communications in the claim cases would not be a consideration to assess as to whether the petitioner had committed any misconduct in settling the claims. There is no denial or dispute to the fact that the settlement of claims (10 in number) was not the sole

decision of the appellant. In the process, the team which was deputed to process the claim had to negotiate with the Advocates as to the merits of the claim and the possible success of the Insurance Company in the matter. A dedicated department named as T.P. Department was there to process such claims and the Legal Officer was deputed to consult the Advocates to maximize the number of settlements. In this process, when the compromise pursis reached at the table of the writ petitioner, at the last leg of the decision, he cannot be held responsible for signing the compromise pursis allegedly against the policy / guidelines of the Company. There may be some instances where the Insurance Company decided to settle the claims in order to bring the dispute to an end, i.e. not to contest cases in the Court which eat up a lot of time and energy as also causes financial implications.

- 34.** In the above scenario, at the most, it could be a case of an error of judgment which can be indicative of negligence. It could be an act of omission on the part of the appellant, which was a mere error of judgment. The explanation offered by the writ petitioner to the charges

demonstrates that he had signed the compromise pursis when the file was processed and reached at his table with the counter signature of the Legal officer. In the inquiry held against the Legal Officer, deputed to process the settlement claims, it has been noted that the Legal Officer did not put her written remark or did not put up a dissenting note on the case files, and, therefore, was punished with the minor penalty of reduction to a lower stage for a period of one year. It was contended by the Legal Officer in the disciplinary inquiry held against her that she was a probationer and was in the learning phase and, as such, had acted on the directions of the Officer In-charge. She did not mention the name of the writ petitioner being the Officer In-charge instructing her to settle the claims.

35. Even otherwise, there is no specific allegation of “ill motive” like any under-dealing or corruption etc. against the petitioner.

36. For the above, we find that the petitioner cannot be held guilty of misconduct as his role was to endorse the

proposal of settlement placed before him by the Legal department. The settlements were drawn / drafted in consultation / deliberation between the Law Officer of the Company namely Ms. Shipra Tanwar, Penal Advocates and the Advocates for the Claimant. No ill motive, as such, can be attributed to the writ petitioner by putting his signature on the compromise pursis.

37. It is further noticeable that in none of the settlement claims by the Lok Adalat, which according to the appellant Company were not legally admissible, the Company has filed any review before the Court, saying that it was an act of mala fide on the part of the Officer in connivance with the claimant. There are absolutely no such allegation in the entire disciplinary proceedings.

38. For the above discussion, we reach at a irresistible conclusion that it may be a case of error of judgment or act of negligence on the part of the petitioner in discharging his duty, but that itself would not constitute misconduct, as it has not been shown or established by the appellant - Company

that the said act of the appellant had resulted in irreparable damage to the Company, to indicate the grossness of negligence.

39. No interfere, as such, is called for in the decision of the learned Single Judge. The appeal filed by the appellant Company being Letters Patent Appeal No. 1114 of 2022 is hereby dismissed, being devoid of merits.

40. Insofar as the Letters Patent Appeal No. 258 of 2023 filed by the writ petitioner seeking interest on the unpaid amount, we may note that the writ petitioner had retired on 31.03.2016 on attaining the age of superannuation. His pension was fixed but gratuity had been withheld on account of the continuance of the disciplinary inquiry after the retirement. After the dismissal order was passed, it is stated that the pension had also been stopped from February, 2019. We, therefore, provide that all consequential benefits, the retiral benefits withheld or deducted, shall be paid to the writ petitioner, as if there was no dismissal of his service, within a period of two months from the date of service of the copy of

this order before the competent authority. All the pending dues would carry the simple interest at the current bank rate, from the date of withholding of the same till the date of actual payment.

41. In the result, Letters Patent Appeal No. 1114 of 2022 stands dismissed. The Letters Patent Appeal No. 258 of 2023 stands disposed of, in the above terms.

42. Civil Application/s pending in both the Appeals do not survive for consideration, hence, the same stand disposed of, accordingly.

43. The oral request for stay of the order in the Letters Patent Appeal No. 1114 of 2022 is hereby rejected.

44. Direct service is permitted. No order as to costs.

Sd/-
(SUNITA AGARWAL, CJ)

Sd/-
(N.V.ANJARIA, J)

AMAR SINGH