

(2006) 11 DEL CK 0056

In the Delhi High Court

Case No : Writ Petition (Civil) No. 11017 of 2006

Barkha Gupta

APPELLANT

Vs

High Court of Delhi and Another

RESPONDENT

Date of Decision : 20-11-2006

Acts Referred:

All India Services (Confidential Roll) Rules, 1970 — Rule 5(1)
Constitution of India, 1950 — Article 226

Citation : (2007) 93 DRJ 586

Hon'ble Judges : Madan B. Lokur, J; Aruna Suresh, J

Bench : Division Bench

Advocate : Sanjay Jain, Jasmeet Singh and Tani Sudan, for the Appellant;
Rajeev Bansal and Anand KI. Mishra, for the Respondent

Judgement

Madan B. Lokur, J.—The facts of this case put on view, in essence, a rather unfortunate episode in the career of an officer belonging to the Delhi Judicial Service.

2. The Petitioner was appointed to the Delhi Judicial Service in November, 1992 and was posted as a Sub Judge at Tees Hazari Courts in May, 1993. Her work and conduct did not draw any adverse comments on the contrary, she received rather favourable gradings in her Annual Confidential Reports (for short ACRs) for the first few years of her service as can be seen from the chart given below:

ACR for the year Grading 1993 B+(Good) 1994 B+(Good) 1995 B+(Good) 1996 B (Average) 1997 A (Very Good) 1998 A (Very Good)

3. In her ACR for the year 1997, against the question whether the Petitioner has maintained a reputation for honesty and impartiality, her learned Inspecting Judge remarked on 12th May, 1998 as follows:

Reputation is very good.

The ACR of the Petitioner for the year 1997 was approved by the Full Court of

this Court in its meeting held on 18th July, 1998.

4. For the year 1998, the learned Inspecting Judge filled up the ACR of the Petitioner on 22nd April, 1999 and against the question whether the Petitioner has maintained a reputation for honesty and impartiality, the learned Inspecting Judge wrote as follows:

She maintains high integrity. She is honest and impartial.

The Full Court approved the ACR of the Petitioner for the year 1998 on 14th May, 1999.

5. For the year 1999, the learned District Judge, in response to a question (in relation to her ACR for that year) remarked as follows:

Has (she) maintained a reputation for honesty and impartiality during the period under report? (Give reasons for your answer if it is negative or doubtful)

Yes. No complaint regarding her integrity received.

Her fortunes changed, however, because her learned Inspecting Judge did not write her ACR for the year 1999 with the necessary promptitude. Then for the year 2000, before her ACR was due to be written, on 7th December, 2000, virtually at the fag end of the year under consideration, the Administrative Committee of the High Court decided under the heading "Any other matter with the permission of the Chair" that

For the present judicial work of the following judicial officers (be) withdrawn with immediate effect.

One of the officers so named was the Petitioner. It may be mentioned, for the record, that the learned Inspecting Judges of the Petitioner for the years 1999 and 2000 were not members of the Administrative Committee, nor were they consulted or their opinion sought before the decision taken on 7th December, 2000. There is nothing on record to indicate what prompted the Administrative Committee of the High Court to withdraw judicial work from the Petitioner.

6. A few days later, on 12th December, 2000, the Administrative Committee again met and decided that an earlier constituted Committee (for convenience called a Special Committee) which had enquired into the allegations in respect of three other judicial officers should also enquire into and report about the reputation and integrity of the six officers from whom judicial work was withdrawn (including the Petitioner) pursuant to the decision taken on 7th December, 2000. The Administrative Committee also decided that the Special Committee would associate the concerned learned Inspecting Judge in the process of such evaluation and that further action would be taken on the basis of the report of the Special Committee.

7. At this stage, it is necessary to mention that the Special Committee was constituted much earlier as a result of a resolution passed on 21st November,

1998 by the Full Court to the effect that in case a learned Judge has some doubt about the integrity of a judicial officer, then the case of that judicial officer may be referred to a Committee of learned Judges. The Full Court resolution dated 21st November, 1998 reads as follows:

It was decided that whenever an Hon''ble Judge expresses doubt about the integrity of an officer, the Committee comprising of Hon''ble Mr. Justice Arun Kumar, Hon''ble Mr. Justice S.K. Mahajan and Inspecting Judge of the concerned officer would look into the matter. In case, the Inspecting Judge of the concerned officer also happens to be the member of the committee, the Committee in its discretion, may co-opt any other Hon''ble Judge on the Committee.

8. On 16th January, 2001, the learned Inspecting Judge of the Petitioner for the year 1999 considered recording her ACR. We assume that in the normal course, that ACR ought to have been written in the first few months of 2000, but that was not to be. Even otherwise, whenever the ACR of the Petitioner for the year 1999 was to be written, it should have been based on her work and conduct for the year 1999 only. Unfortunately, the learned Inspecting Judge of the Petitioner erred because when he sat down to write her ACR for the year 1999 he had come to know that the Administrative Committee had withdrawn judicial work from the Petitioner, (in December, 2000) and he used this information (which was not relevant for the year 1999) to defer the recording of her ACR with the following observation:

Recording of ACR of Ms. Barkha Gupta, D.J.S. is deferred in view of her case having been referred to the Committee of Judges.

9. In so far as the ACR for the year 2000 is concerned, apparently the learned Inspecting Judge did not take any steps in this regard till 8th February, 2001, when the Special Committee along with the learned Inspecting Judge of the Petitioner for the years 1999 and 2000 as co-opted members met. In its minutes recorded on 8th February, 2001, the Special Committee stated as follows:

Discreet enquiries have been made independently with regard to the reputation and integrity of and Ms. Barkha Gupta and the said enquiries have confirmed that there is substance in the allegations that these officers do not enjoy good reputation about integrity.

The Committee, therefore, recommends to the Full Court that these officers be graded as C (integrity doubtful) for both the years 1999 and 2000.

10. When the Full Court met on 17th February, 2001, it recorded the ACR on the work and conduct of the Petitioner for the years 1999 and 2000 in the light of the report given by the Special Committee and she was graded as C (integrity doubtful).

11. The Petitioner was communicated her ACR for the years 1999 and 2000 by a letter dated 26th February, 2001. The communication mentioned that she could make a representation against the adverse remarks within six weeks of receipt of

the communication.

12. On 8th March, 2001, the Petitioner addressed a letter to the High Court which is not on our file but the receipt of which is not in dispute. In this letter, which was read out to us in Court, the Petitioner requested for material on the basis of which she was graded C (integrity doubtful) for the years 1999 and 2000. Unfortunately, there was no reply to this request and so the Petitioner made another representation dated 11th April, 2001 to the High Court pointing out that she had been graded A for the years 1997 and 1998 and there was no apparent reason for her being downgraded to C (integrity doubtful) for the years 1999 and 2000. The Petitioner reiterated her request to be provided with necessary details on the basis of which her ACRs had been downgraded to enable her to make an appropriate representation. A request was also made that the adverse remarks be expunged.

13. In the meanwhile, on 8th February, 2001, Hon"ble the Chief Justice passed an order whereby a Committee of learned Judges was requested to function as Inspecting Judges for judicial officers for the year 2001. In the case of the Petitioner (as in the case of most judicial officers), a Committee of three learned Judges was constituted as her Inspecting Judges to write her ACR for the year 2001.

14. According to the Petitioner, while her requests dated 8th March, 2001 and 11th April, 2001 for supply of material on the basis of which she was graded as C. (integrity doubtful) for the years 1999 and 2000 were pending consideration, her judicial work was suddenly restored on 1st June, 2001 and she was posted with the Juvenile Court. Long thereafter, by a letter dated 5th October, 2001 she was told that her representations against the adverse entries in her ACRs were considered and rejected. One of the grievances voiced by the Petitioner before us is that she had asked for material on the basis of which her ACRs had been downgraded to C (integrity doubtful) but she was not supplied the material and so she was unable to make an effective representation against the downgrading of her ACRs. It was submitted that, at best, Only her request for supply of material could have been rejected.

15. Be that as it may, when the ACR of the Petitioner for the year 2001 was due to be written by the Committee of three learned Judges, only two of them took up the recording of the ACR and on 18th July, 2002 they observed as follows:

Since upto June 2001 judicial work had not been assigned to the officer in terms of the decision of the Administrative Committee and the last two ACRs were recorded by the Full Court, we are of the view that ACR for the relevant year may also be recorded by the Full Court.

16. Learned Counsel for the Respondents was unable to tell us why the third learned Judge did not endorse his signatures on the ACR form of the Petitioner. In any case, the third learned Judge did not submit any independent report about the work and conduct of the Petitioner and so we assume that he tacitly

endorsed the view of the other two learned Judges.

17. The decision of the Committee taken on 18th July, 2002 was considered by the Full Court on 1st August, 2002 which resolved that the Committee of three learned Judges may reconsider the matter. Consequently, the Committee then considered the ACR of the Petitioner and on 24th October, 2002 recorded the following note:

As desired by the Full Court, we have made discreet enquiries about the integrity of the Officer Ms. Barkha Gupta. Our enquiries reveal that the officer does not enjoy good reputation.

We grade the officer Ms. Barkha Gupta as C.

18. The Full Court considered this report of the Committee in its meeting held on 18th January, 2003 and in respect of the work and conduct of the Petitioner for the year 2001, the Full Court graded her as C (integrity doubtful). The grading was communicated to the Petitioner by a letter dated 5th March, 2003.

19. Feeling aggrieved, the Petitioner made a representation to the High Court on 15th March, 2003 in which she submitted that she was being condemned unheard and that there was no reason for doubting her integrity. She again requested to know the material against her and stated that in case she was not able to furnish a satisfactory explanation to the complaint against her, she would prefer to relinquish her judicial post than to continue in service with humiliation and the stigma of dishonesty on her head. She appealed to the High Court to reconsider her case relating to the recording of adverse entries for the years 1999, 2000 and 2001 and an opportunity to put forth her point of view.

20. While the representation dated 15th March, 2003 was still under consideration, the ACR of the Petitioner for the year 2002 came to be recorded by her learned Inspecting Judge on 20th February, 2003 when she was graded her B+ (Good). The learned Inspecting Judge noted that nothing adverse has come to his notice about her integrity.

21. The ACR of the Petitioner for the year 2002 was placed for consideration before the Full Court and in its meeting held on 22nd March, 2003 the Full Court downgraded her from B+, as awarded by the learned Inspecting Judge, to C (integrity doubtful). It is significant to note that the learned Inspecting Judge of the Petitioner was not present in the meeting of the Full Court when her case was taken up for consideration.

22. For the two subsequent years, that is, 2003 and 2004, the learned Inspecting Judges of the Petitioner declined to grade her in view of the fact that on earlier occasions the Full Court had recorded her grading. The Full Court, therefore, took up her case for consideration on 21st May, 2005 and graded her C for both the years 2003 and 2004. The Full Court did not make any remark about her integrity.

23. In the meanwhile, the Petitioner became due for her selection grade but because she did not have at least two B+ gradings in the preceding four years, during 2000 and 2003, she was overlooked for the grant of selection grade. The Petitioner is also aggrieved by her being overlooked for the grant of selection grade.

24. It is under these circumstances that the Petitioner filed a writ petition under Article 226 of the Constitution seeking setting aside of the adverse entries made in her ACRs for the years 1999 to 2004 and for a direction to grant her selection grade with effect from 4th November, 2000, the date of her entitlement.

25. Responding to the writ petition, the High Court has filed its counter affidavit. Learned Counsel for both the parties have also filed their written synopsis and we have heard the parties at great length in view of the fact that the case involves the career of a judicial officer whose integrity is said to be doubtful. Learned Counsel for the High Court placed all the records before us for our perusal.

26. Learned Counsel for the Petitioner raised the following contentions:

(a) Given the "A" (Very Good) grading that the Petitioner received in her ACRs for the years 1997 and 1998 coupled with the observation of the learned District Judge in the report for the year 1999 to the effect that no complaint regarding her integrity had been received, there was no reason to grade the Petitioner as "C (integrity doubtful)" for the years 1999 and 2000 and in any event, the material adverse to the Petitioner ought to have been disclosed to her. Failure to disclose the adverse material to the Petitioner vitiates her ACRs for these two years.

(b) The ACR of the Petitioner for the year 1999 ought to have been written by her learned Inspecting Judge in early 2000 or in any event, it should have been written uninfluenced by the events of December, 2000 which had no concern with her work and conduct during the year 1999.

(c) The Full Court had acted contrary to the decision of the Supreme Court in the case of Madan Mohan Choudhary Vs. The State of Bihar, when it recorded her ACRs for the years 1999 and 2000 "at one go". According to learned Counsel, there should have been an independent and separate application of mind for each year as mandated by the Supreme Court. This was not done in the case of the Petitioner vitiating her ACRs for the year 1999 and 2000. Similarly, the ACRs for the years 2003 and 2004 suffer from the same defect because the ACRs for both the years were recorded "at one go".

(d) The illegal recording of the ACRs of the Petitioner for the years 1999 and 2000 had a cascading effect inasmuch as without there being any material against the Petitioner for the years 2001 and 2002, she was again given a grading of C (integrity doubtful). This was despite the fact that her learned Inspecting Judge for the year 2002 had given her a grading of B+ (Good):

(e) When the ACR of the Petitioner for the year 2002 came up for consideration

before the Full Court on 22nd March, 2003, her learned Inspecting Judge for that year was not present in the meeting. There was no tearing hurry for the Full Court to have recorded her ACR for the year 2002 in the absence of the learned Inspecting Judge for that year, more particularly since on previous occasions her ACRs had been delayed for more than a year. According to learned Counsel, the Full Court could have taken up her ACR for consideration in its next meeting in the presence of her learned Inspecting Judge who could have provided valuable inputs for consideration by the Full Court. It was submitted that the importance of the learned Inspecting Judge cannot be downplayed and he has an extremely important role in the decision making process.

(f) There was in fact no material before any of the authorities, the Administrative Committee, the Special Committee, the Committee of Judges or even the Full Court to suggest that the integrity of the Petitioner was doubtful. At best, some discreet enquiries were made, which appear to be oral and the responses also appear to be oral; such oral information cannot be used to condemn a judicial officer. Moreover, the discreet enquiries appear to have been sporadic and made over a very short period of time. It was submitted that while discreet enquiries about the integrity of a judicial officer must be made, it should be over a sufficiently long period, and from time to time, and not on the basis of a few intermittent enquiries made here and there over a couple of weeks or maybe even a month or two.

(g) Finally, it was submitted that the Petitioner was neither supplied the material nor given any inkling into why her ACRs had been so drastically downgraded from A to C (integrity doubtful). Despite her requests for supply of information, she was not given any material, contrary to the principles of natural justice.

27. Learned Counsel for the High Court, of course, defended the gradings given to the Petitioner. He relied upon the counter affidavit filed by the High Court and submitted that her gradings were given after due deliberations by the Full Court and no fault can be found in the decision making process.

28. Before we deal with any of the submissions made by learned Counsel for the parties, it is necessary to state and appreciate some home truths.

29. Firstly, an Annual Confidential Report, as its nomenclature suggests, is an annual event. A fortiori, it must be written every year.

Secondly, the remarks in the annual confidential report are based on an assessment of the work and conduct of the official/officer concerned for a period of one year. [See *State of Madhya Pradesh Vs. Srikant Chaphekar*,]. The year may be the financial year or, as in the case of the Petitioner, it may be the calendar year.

Thirdly, being an annual report, it is expected to be prepared soon after the year under review is over or at least within a reasonable time after that year is over. It ought not to be kept pending for an indefinite period, or, as in the present

case, for a period of more than 12 months even after the year under review has come to an end. In this regard, reference may be made to the view expressed by the First National Judicial Pay Commission (commonly known as the Shetty Commission). The Commission considered the procedure prescribed for writing the confidential report for the All India Administrative Service to be a better one and more transparent. All High Courts were requested to adopt that procedure with necessary modifications. The recommendations of the Shetty Commission were accepted by the Supreme Court in *All India Judges Association and Others Vs. Union of India (UOI) and Others*, . It may be mentioned, en passant, that this Court has already modified its ACR form to make it in consonance with the recommendation of the Shetty Commission. However, what is important for our present purposes is that the All India Administrative Service (Confidential Rolls) Rules, 1970 to which the Shetty Commission has adverted, provides in Rule 5(1) that

A confidential report assessing the performances, character, conduct and qualities of every member of the Service shall be written for each financial year, or calendar year, as may be specified by the Government, ordinarily within two months of the close of the said year.

Fourthly, since it is a report on the work, conduct and integrity of an officer for the year under review, it ought not to be influenced by material that has come into existence or knowledge that has been derived after the reporting year is over because that would colour the report by the introduction of extraneous material. It is for this reason also that it is advisable that the ACR should be written as soon as possible after the reporting year is over. Unfortunately, no rules have been framed in Delhi for recording the ACR of judicial officers - there is only a practice that has evolved over a period of time.

30. In so far as submission (a) and (b) above are concerned, the facts of the case as are available with us, show that the work, conduct and integrity of the Petitioner was very good particularly in the years 1997 and 1998. This was not only the view of her learned Inspecting Judge but also of the Full Court which endorsed the view of her learned Inspecting Judge.

31. During the year 1999, the work, conduct and integrity of the Petitioner (as opined by the learned District Judge) was not in doubt. Additionally, there is nothing on the record to suggest that during that year she was either counseled by her learned Inspecting Judge or that her learned Inspecting Judge made any adverse comment about any of the required qualities or that any discussion took place between her and her learned Inspecting Judge in respect of any of these qualities. In the absence of absolutely any material or information one way or the other we have no option but to assume that the Petitioner's work, conduct and integrity during the year 1999 was at least satisfactory, if not good or very good, given her past record for the years 1997 and 1998. Even if there is any doubt about the work, conduct and integrity of the Petitioner for the year 1999, she must be given the benefit thereof in the absence of absolutely any material

placed before us to form any opinion one way or the other, except the favourable view of the learned District Judge.

32. Even for the year 2000, we find absolutely no material one way or the other with respect to the work, conduct and integrity of the Petitioner. Her learned Inspecting Judge does not appear to have counseled her or advised her or discussed with her anything about her work, conduct or integrity during the year 2000 - at least there is no hint, let alone any record of any meeting or discussion or counseling. For this reason, we are again left with no option but to assume that given her past record, there was nothing adverse against the Petitioner for the year 2000 as well.

33. Why then did the Administrative Committee suddenly take a decision on 7th December, 2000 to withdraw judicial work from the Petitioner? We have been provided with no answer at all, except to depend on the wisdom of the Administrative Committee. There is no doubt that the Administrative Committee of this Court consists of not only the Chief Justice but also other learned Judges who are well conversant with the administration not only of this Court but also of the District Courts. But notwithstanding all this, there must be at least some hint (which we do not find) of some material to indicate the basis on which judicial work was withdrawn from the Petitioner. We have no doubt that the Administrative Committee must have discussed the work, conduct and integrity of the Petitioner before taking the decision that it did - but it is not the decision that we are concerned with but the decision-making process which is completely shrouded in mystery. We could have understood if the learned Inspecting Judges of the Petitioner for the years 1999 or 2000 were members of the Administrative Committee that took the decision on 7th December, 2000 or if they had provided some inputs or insights to enable the Administrative Committee to take a decision but we find that that was not so, or at least there is nothing on record to suggest that any one of them was taken into confidence before the Administrative Committee took the decision on 7th December, 2000. We are, therefore, left none the wiser and are unable to comprehend the reason or basis for the decision of the Administrative Committee to withdraw judicial work from the Petitioner - and learned Counsel for the High Court was unable to enlighten us at all on this.

34. Since we have adverted to the fact that the learned Inspecting Judges of the Petitioner were not taken into confidence by the Administrative Committee, we feel it appropriate to discuss and appreciate the role of an Inspecting Judge with reference to the District Courts.

35. An exhaustive and enlightening discussion on this topic is to be found in High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another, wherein the Supreme Court made an extremely powerful Statement about inspection of the subordinate courts. This is what was said:

Inspection of the subordinate courts is one of the most important functions which

the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency.

36. How should an inspecting judge carry out an inspection of the subordinate courts? To this question also, the Supreme Court provides us an answer, in the following words:

Inspection of subordinate courts is not a one-day or an hour or a few minutes" affair. It has to go on all the year round by monitoring the work of the court by the Inspecting Judge.

37. And if the inspection of a subordinate court is not carried out, as it should be, the Supreme Court says:

A casual inspection can hardly be beneficial to a judicial system. It does more harm than good.

38. What is the intended consequence of an inspection of the work, conduct and integrity of a judicial officer? Again, we need to go back to the decision of the Supreme Court. This is what was said:

Since Judges are human beings and also prone to all the human failings inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst - in inspiring Subordinate Judges to give the best results. They should feel a sense of achievement. They need encouragement.

39. What is the impact of an inspection on the career of a judicial officer whose work, conduct and integrity is being inspected? The Supreme Court informs us that,

Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred.

40. It is in cumulative response to all these, and many other similar questions that the Supreme Court emphasized that "Inspection of a subordinate court is thus of vital importance."

41. In *Rajiv Ranjan Singh "Lalan" and Another Vs. Union of India (UOI) and Others*, the Supreme Court referred to and relied on *Ishwar Chand Jain* and observed:

The above judgment emphasises the importance of the remarks given by the Inspecting Judge, The object of inspection is to assess the work performed, capability, competency besides integrity of the candidate.

42. The above discussion shows that the learned Inspecting Judge is an important cog in the wheel in so far as the career and prospects of a subordinate

judge are concerned. It is for this reason that the learned Inspecting Judge is expected to interact with the judge who has been put under his charge for that year. If this is not done, there is no way that the judicial officer can know whether she is going wrong and if so on what account, and how can the situation be remedied.

43. Consequently, for the Administrative Committee not to have consulted the learned Inspecting Judges of the Petitioner for the years 1999 and 2000 suggests that they were not given the due importance nor was any weight given to their opinion in the matter, which is quite at odds with the views expressed by the Supreme Court and referred to by us above. Perhaps, it is this absence of consultation that appears to have engendered wrong notions about the integrity of the Petitioner, virtually marring her career.

44. Consequently, in so far as submissions (a) and (b) are concerned, we find the contentions raised by learned Counsel for the Petitioner to be well-founded and conclude in this regard as follows:

The Petitioner was awarded A (Very Good) grading for the years 1997 and 1998 not only by her learned Inspecting Judges but also by the Full Court. The integrity of the Petitioner was found to be unimpeachable for these years. For the year 1999, the learned District Judge was of the view that she had maintained a reputation for honesty and impartiality and that no complaint regarding her integrity had been received.

The Petitioner was not counseled or told anything adverse by her learned Inspecting Judges for the years 1999 and 2000 about her work, conduct or integrity. There is nothing on record to suggest the cause for a drop in performance or integrity of the Petitioner for the years 1999 and 2000.

Without there being any material on record, suddenly the Administrative Committee decided to withdraw judicial work from the Petitioner in its meeting held on 7th December, 2000. The decision was taken without even discussing the matter with the learned Inspecting Judges of the Petitioner for the years 1999 and 2000.. Absolutely no material has been shown to us to give a hint about the basis" on which the Administrative Committee withdrew judicial work from the Petitioner.

While the ACR of the Petitioner for the year 1999 ought to have been written within a reasonable time after the conclusion of the reporting year, the ACR was actually not written for more than a period of 12 months thereafter and when it was in fact being written On 16th January, 2001, the learned Inspecting Judge for the year 1999 was influenced by the decision taken by the. Administrative Committee on 7th December, 2000. We are of the opinion that the learned Inspecting Judge ought not to have taken into account the material that had come to his knowledge after the conclusion of the reporting year.

In so far as the ACR for the year 2000 is concerned, the learned Inspecting

Judge of the Petitioner did not give his assessment on the work, conduct or integrity of the Petitioner except when he participated in the deliberations of the Committee on 8th December, 2001 by which time the Administrative Committee had already decided to withdraw judicial work from the Petitioner, a factor that could have easily influenced him, as it did the learned Inspecting Judge of the Petitioner for the year 1999.

45. Under these circumstances, we are of the view that there was no proper objective assessment of the work, conduct or integrity of the Petitioner for the years 1999 and 2000 and, therefore, the grading of C (integrity doubtful) awarded to the Petitioner for those years deserves to be quashed and her ACRs for these two years require to be reconsidered.

46. In so far as submission (c) is concerned, we are in agreement with learned Counsel for the Petitioner that the decision rendered by the Supreme Court in *Madan Mohan Chaudhary* is fully applicable to the facts of the present case. A reading of the decision of the Supreme Court clearly suggests that adverse remarks in ACRs for more than one year should not be recorded "at one go". The Supreme Court has not defined the expression "at one go" but it is clear that what is intended to be conveyed is that there should be a separate application of mind for each year for which the ACR is being written; The reporting authority or any superior authority may record the ACR for more than one year in one sitting but each year has to be considered as a separate watertight compartment. In other words, after the ACR for one year is recorded, then the ACR for some other year may be recorded, uninfluenced by the earlier recording. This may be at the same sitting and even after a gap. of only a few minutes - but the concerned authority must shut its mind to what has been recorded in the ACR of some other year.

47. What has happened in the present case, and this is clear from the record, is that the ACRs of the Petitioner for the years 1999 and 2000 were considered "at one go" by the Special Committee in its meeting held on 2nd February, 2001. What the Supreme Court requires is that the Special Committee should consider each year independently, and this was not done. Thereafter, when the Full Court met on 17th February, 2001, it considered the ACRs of the Petitioner for the years 1999 and 2000 "at one go" and graded her C (integrity doubtful) while the mandate of the Supreme Court is that the grading should have been done separately for each year. The same error was repeated when the Full Court met on 21st May 2005 and graded the Petitioner C for the years 2003 and 2004 "at one go". Even though this may seem to be a matter of procedure, but as we have interpreted *Madan Mohan Chaudhary*, it is nevertheless important to follow the correct procedure because if that is not done, then it may adversely impact on the career of a judicial officer - as it has happened in this case. Consequently, while accepting submission (c) and quashing the ACR of the Petitioner for the years 1999,2000,2003 and 2004, we think it would be appropriate if Hon"ble the Chief Justice reconsiders the issue of the grading given to the Petitioner for these

four years individually and independently.

48. As far as submissions (d) and (e) are concerned, we again agree with learned Counsel for the Petitioner in so far as her ACR grading for the years 2001 and 2002 are concerned.

49. For the year 2001, we find that the ACR of the Petitioner was not written by the Committee of three learned Inspecting Judges till 18th July, 2002 on which date it was observed that the Petitioner had been given judicial work only from June, 2001 onwards. That being so, the Petitioner had certainly performed her judicial functions for a period of more than six months in the year 2001 and an assessment in regard to her work, conduct and integrity could have been made on this basis. However, the Committee appears to have shut its eyes to this fact on the ground that since the last two ACRs of the Petitioner, that is, for the years 1999 and 2000 had been written by the Full Court, her ACR for the year 2001 should also be written by the Full Court. With respect, we do not think the view expressed by the Committee is correct. The Committee had adequate time to assess the work, conduct and integrity of the Petitioner and write her ACR for the year 2001, which could then have been considered by the Full Court. Merely because the Full Court had written the ACR of the Petitioner for two earlier years is not enough reason for declining to write her ACR for the year 2001. If this reasoning is accepted, then the ACR of the Petitioner will henceforth never be written by anybody except the Full Court. But be that as it may, we are not called upon to decide whether the view expressed by the Committee should be quashed or not because the Full Court apparently did not accept the view of the Committee and, therefore, on 1st August, 2002 it was resolved that the Committee may reconsider the matter. On reconsideration, the Committee made discreet enquiries which revealed that the Petitioner did not enjoy a good reputation and, therefore, the Petitioner was graded as C (integrity doubtful), which was later accepted by the Full Court.

50. It is not clear whether the discreet enquiries pertained to the integrity of the Petitioner for the reporting year 2001 or (mistakenly) for a part of 2002 also or both, thereby repeating the error committed by the learned Inspecting Judge of the Petitioner for the year 1999. But without going into this, in any event, there is nothing to show that any of the three learned Inspecting Judges of the Petitioner for the year 2001 had at any time counseled her with regard to her work, conduct or integrity: The Supreme Court has clearly held in *Ishwar Chand Jain* that inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, are remedied. If no mistake was pointed out by any of the three learned Inspecting Judges in the work, conduct or integrity of the Petitioner, or if she was not counseled or advised or cautioned about what might have come to the notice of any of the three learned--Inspecting Judges, she cannot be expected to rectify any non-existent mistake or to remove any non-existent deficiency in her work, conduct or integrity or to take any remedial steps of any kind. We find that if not even one out of the three

learned Inspecting Judges had counseled or cautioned or advised the Petitioner during the period that she was performing judicial functions from June, 2001 to December, 2001, it would not at all be fair to conclude that there is some doubt about her integrity. At least learned Counsel for the High Court should have showed something to us if the issue had to be decided in his favour, but absolutely nothing was forthcoming.

51. Quite apart from this, it is difficult for us to dispel the impression, that the Petitioner was awarded C (integrity doubtful) only because she was given that grading for the years 1999 and 2000 - the adverse opinion once formed against the Petitioner continued for the year 2001 also, without there being any material on record to suggest that her integrity was doubtful for any reason whatsoever, or that she refused to mend her ways despite being made aware of the need to be a little careful in the performance of her judicial duties.

52. The Petitioner repeatedly represented to the High Court that she may at least be told what is the material against her but unfortunately she was shortchanged in this and her request was treated as a representation against the adverse remarks and summarily rejected. We are left with the feeling that there was in fact no material against the Petitioner except some information received on the basis of some discreet enquiries and that was treated as adequate material to condemn her. We find this to be wholly inadequate and have more to say (a little later) about discreet enquiries being made in the manner and in a situation such as this. As things stand, we are clearly of the view that for the year 2001 there was no material against the Petitioner that could have resulted in her being awarded C (integrity doubtful) and that her grading for the reporting year 2001 was influenced by her grading for the previous two years.

53. In so far as the grading for the year 2002 is concerned, the learned Inspection Judge of the Petitioner gave her grading of B+ (Good). He also noted that nothing adverse had come to his notice about her integrity.

54. Even though the Supreme Court has noted in *Ishwar Chand Jain* that remarks recorded by the learned Inspection Judge are normally endorsed by the full court, that did not happen in the case of the Petitioner. The Full Court considered the grading awarded by the learned Inspection Judge of the Petitioner for the year 2002 and rejected the B+ grading and substituted in with a grading of C in its meeting held on 22nd March, 2003. As we have already noticed, the learned Inspecting Judge of the Petitioner was not present in the Full Court meeting held on 22nd March, 2003. If the Full Court was of the view that the report of the learned Inspection Judge was incorrect, it would have been appropriate for the Full court to have at least obtained his views before rejection his grading. We say this because, as we have already held, the learned Inspection Judge is an important cog in the wheel. Consequently, it was inappropriate for the Full Court to have completely ignored the view of the learned Inspecting Judge of the Petitioner and proceeded to grade the Petitioner as C.

55. We agree with learned Counsel, there was no tearing hurry for the Full Court to grade the Petitioner on that very day. It is not unusual, particularly in the case of the Petitioner, for the ACR to remain pending for months together and it would not have created and flutter if instead of taking up her ACR for consideration of 23rd May, 2003 the Full Court had taken it up for consideration in April or May or whenever it met next, so that the views of the learned Inspection Judge could be ascertained.

56. We are, Therefore, of the view that the ACR of the Petitioner for the year 2002 also deserves to be struck down and it ought to be reconsidered after taking into consideration the views of her learned Inspection Judge for the year 2002.

57. In so far as submissions (f) and (g) are concerned, we have already concluded that the ACRs of the Petitioner for the years 2003 and 2004 deserve to be set aside because of our reading of Madan Mohan Chaudhry. Nevertheless, we propose to consider submissions (f) and (g) because they relate to "discreet enquiries" mad against the Petitioner which led two Committees to conclude that her integrity was doubtful. To appreciate whether ?discreet enquiries? could or could not have been taken into consideration, it is necessary for us to first of all appreciate what is the nature of ?discreet enquiries? in cases pertaining to the integrity of an officer.

58. As a prelude, the view of the Shetty Commission in this regard may be stated:

Annual Confidential Reports of the Judicial Officers prepared and maintained by the High Courts have given rise to many complaints from the Judicial Officers. It is said that in certain cases, confidential reports are based more on information received from the Bar members or third parties, which is in strict legal parlance "hearsay evidence". It may be stated that the judges who are honest and strict and who adhere to rules of procedure do not always find favourable response from the Bar Members.

59. In Indira Jaising Vs. Registrar General, Supreme Court of India and Another, , the Supreme Court considered the question about the publication of an enquiry report made by a Committee of Judges in respect of the alleged involvement of sitting Judges of the High Court of Karnataka in certain incidents. Hon''ble the Chief Justice of India had constituted the Committee as a part of an in-house procedure to look into the allegations. The Supreme Court rejected the contention of the petitioner for disclosure and held that being a confidential and discreet report, it is only for the information of Hon''ble the Chief Justice of India and not for the purpose of disclosure to any other person. Similarly, the procedure adopted by the two Committees of the High Court of making discreet inquiries in the case of the Petitioner, is an in-house procedure adopted for its information. Therefore, for the Petitioner to contend that the material gathered during such discreet enquiries or the material that Surfaced as a result of the

discreet enquiries should be disclosed to her, is not acceptable since it is related to an in-house and confidential method adopted to obtain information.

60. How should "discreet inquiries" be made? There are two aspects to this question. Firstly, the period of time for which discreet inquiries should be made and, secondly, the manner of making discreet inquiries.

61. We are of the opinion that discreet inquiries should be made over a suitable period of time. An inquiry into matters pertaining to the integrity of a judicial officer, which may have the effect of permanently damaging her career and reputation, must not be a one-off affair. What we find in the present case is that two separate Committees made discreet enquiries about the integrity of the Petitioner. On the first occasion, the Administrative Committee took a decision on 12th December, 2000 to refer the case of the Petitioner to a Special Committee. It is not clear when actually the reference was made but the Special Committee met on 8th February, 2001 and noted that discreet enquiries have confirmed that there is substance in the allegations that the Petitioner does not enjoy a good reputation about integrity. It appears that the discreet enquiries were made over a period of a little less than two months. On the second occasion, discreet enquiries were made pursuant to the decision of the Full Court taken on 1st August, 2002 and the minutes of the Committee were recorded on 24th October, 2002 to the effect that the discreet enquiries about the integrity of the Petitioner show that she does not; enjoy a good reputation. On this occasion, discreet enquiries were made over a period of a little less than three months.

62. How long should the discreet inquiries last - are 60 days or 90 days not enough? It is not possible to give any definitive answer. Theoretically, discreet enquiries can even be made over a period of one day but is that all right? Maybe yes, in a given case. But so far as this case is concerned, we have not been told either the time period or the frequency of the discreet enquiries. It is quite possible that the discreet enquiries were limited to a few telephone calls. We have been left groping in the dark and are a little unhappy at the lack of transparency in the procedure adopted by both the Committees. It would have, in our opinion, been a far more healthier procedure to adopt if some sort of a record was maintained showing the different (even approximate) dates when the discreet enquiries were made and from the categories of persons such as members of the Bar, colleagues of the judicial officer, other learned Judges or the administrative staff of the courts. Of course, further and fuller details are not required to be disclosed because the enquiry is an in-house and confidential matter but the record must indicate clearly and positively that the discreet enquiries were not a one-off affair or based on a casual talk or a couple of phone calls made during the course of one day. We say this because the repercussions can be devastating for a judicial officer. There may also be some exceptional case, the converse of one that David Pannick has mentioned in his book Judges. The learned author says.

The qualities desired of a judge can be simply stated: "that if he be a good one

and that he be thought to be so." Such credentials are not easily acquired.

The converse of this being a judge of doubtful integrity, and he being thought to be so. If the general reputation of a judge is that his integrity is doubtful, then perhaps there is no need to make discreet inquiries in that regard. But that is not the situation that we are concerned with - if it is not the case of the High Court that the general reputation of the Petitioner was one of a person of doubtful integrity.

63. But what is sought to be contended is that when discreet enquiries were made for a period of about two months from December, 2000 to February, 2001, they related to the integrity of the Petitioner for the years 1999 and 2000, which ought not have been in doubt. We have already noted that during these two years, there were no adverse comments made about the work, conduct or integrity of the Petitioner by any of her learned Inspecting Judges nor was the Petitioner given any counseling or advise or caution by any of her learned Inspecting Judges on any matter pertaining to her judicial work. What does stand out, therefore, is that in the absence of any counseling or advise given to the Petitioner, it would be too harsh to damage her reputation in respect of her ACRs for two years merely on the basis of ex post facto discreet enquiries spread over a period of a little less than two months. In this context, it is worthwhile to refer to *Padam Singh Vs. Union of India and Others*, , which was followed in *P.D. Jharwal (deceased) through Smt. Shingari Devi and Others Vs. Union of India (UOI) and Others*, , in which a Division Bench of this Court, while giving full respect to the decision of the Full Court in the matter of recording the ACR observed as follows:

But without even a complaint from any quarter or any instance or circumstance as to the conduct, which led the Full Court to say about integrity, it has to be held that the ACRs were flawed, which alone could not have formed the basis to brand the petitioner of-doubtful integrity and to grade him "C". Before the two reports, which were recorded on the same day the petitioner had a good record as regards integrity. There is no answer to the question that in the absence of any complaint from any quarter how the petitioner was doubted to be an officer having doubtful integrity. It will be a case of absolute lack of materials, which is almost equivalent to the situation that from the available material no reasonable man would reach to such a conclusion.

64. Reference may also be made to *M.S. Bindra Vs. Union of India and Others*, wherein the Supreme Court relied upon the maxim *nemo fructu repente turpissimum* and observed that while evaluating the materials, the authority should not altogether ignore the reputation in which the officer was held till recently. It was also observed that the authority should not keep its eyes totally closed towards the overall estimation in which the officer was held in the recent past by those who were supervising him earlier. In the case of the Petitioner, for the previous two years, that is, 1997 and 1998 her learned Inspecting Judge found her to be of good integrity and reputation and even the learned District

Judge observed that for the year 1999 he had not received any adverse report against the Petitioner. What was the material, therefore, on the basis of which these views were discarded and the Petitioner tainted with the brush of doubtful integrity? Surely, something, would be available on record, other than some "discreet inquiries". In *M.S. Bindra*, the Supreme Court observed:

To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

65. We are, therefore, of the view that even if it is assumed, because of the composition of the Special Committee, that its "discreet inquiries" meet the test of reasonableness, there are sufficient indications that the Petitioner was not dealt with fairly, her past record was unjustifiably disregarded and the opinion of her peers and superiors was ignored when her ACRs for 1999 and 2000 were recorded.

66. Similarly, in respect of the ACR for the year 2001, the discreet, enquiries made by the Committee of learned Inspecting Judges were also ex post facto and for a period of a little less than 90 days. This particular Committee had in fact the entire calendar year 2001 to make all discreet enquiries, both for the period when the Petitioner was performing administrative functions from January 2001 to June, 2001 and thereafter when she was performing judicial functions from June, 2001 to December, 2001. Are we to understand that not even one of the learned Inspecting Judges Constituting the Committee made any enquiries at all about the integrity of the Petitioner throughout the year but did so only when asked by the Full Court? If the answer is in the affirmative, it would show that the inspection in respect of the Petitioner was a "casual inspection" if not a "one-day or an hour or a few minutes" affair". On the other hand, if the learned Inspecting Judges had carried out their inspection, as expected, they could have given their opinion almost immediately - obviating the need to take about 90 days to make "discreet inquiries". Obviously, therefore, the Committee did not give due administrative importance to the work, conduct and integrity of the Petitioner for the year under review, but was activated only because of the decision of the Full Court. In view of these strategic procedural lacunae in the recording of the ACR of the Petitioner for the year 2001, we are left with no option but to set it aside.

67. With whom were the "discreet inquiries" made? This is again a mystery. As we have already noted above, these enquiries should normally be made not only from the members of the Bar, but from a cross-section of people such as the colleagues of the judicial officer, other learned Judges and, if necessary, from the administrative staff. The Shetty Commission has suggested that inquiries should

not be confined to members of the Bar because they may have some axe to grind or some scores to settle. In the present case, we have no material, one way or the other, to conclude that the learned Judges Constituting the two Committees made discreet enquiries from not only from one source, but from several sources and had then formed an opinion about the integrity of the Petitioner.

68. One final word: there is clearly a necessity to frame some rules with regard to the writing of ACRs. We may venture to suggest that the rules may incorporate a requirement that the ACR must be written, to the extent possible, within two months or three months of the conclusion of the reporting year. Of course, the fixation of any period would, in a sense, be arbitrary but the failure to fix any period would be equally arbitrary, if not detrimental to the justice delivery system. This Court has, so far, been dealing with the issue of ACRs on the basis of some very nebulous practices - the time has come to "codify" these practices, at least for guidance, if not for adherence.

69. The result of our discussion is that the gradings given to the Petitioner in her ACRs for the years 1999 to 2004 are set aside. The matter should be placed before Hon'ble the Chief Justice on the administrative side for taking a decision on the ACRs of the Petitioner for these years and for considering framing some rules for recording ACRs. The writ petition is allowed, as above. No costs.