

(2003) 04 AHC CK 0249

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28043 of 1997

Hari Singh

APPELLANT

Vs

Governor, U.P. (Registrar General) and Others

RESPONDENT

Date of Decision : 21-04-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Evidence Act, 1872 — Section 41, 42
Specific Relief Act, 1963 — Section 42
Uttar Pradesh Government Servants (Conduct) Rules, 1956 — Rule 3(1), 3(2)

Citation : (2003) 2 UPLBEC 1456

Hon'ble Judges : Ghanshyam Dass, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : S.K. Chaturvedi, for the Appellant; C.K. Rai, Sudhir Agrawal and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for quashing the order dated 4.7.1997 (Annexure-15), passed by the respondent No. 1. His Excellency the Governor of Uttar Pradesh removing the petitioner from service.

2. Facts and circumstances giving rise to this case, are that the petitioner was appointed as Addl. Munsif in 1970 and promoted to the post of Civil Judge on 8.7.1981. On 25.6.1984 when petitioner was posted as Civil Judge, Azamgarh, the learned District Judge sent copies of complaints against the petitioner to this Court, wherein a large number of allegations of corruption etc., had been levelled against him. A preliminary enquiry was held and as some substance was found to be there in the allegations, a regular enquiry was conducted. The petitioner was served with charge-sheet and he submitted his reply to the same. The enquiry was conducted and the report was submitted by the enquiry officer (a Distt. Judge) on 20.8.1996. The said report was placed before the Administrative Committee of this Court which accepted the same and petitioner was given a show cause notice to make his representation against the findings recorded by

the enquiry officer. Petitioner submitted his representation dated 28.11.1996 and subsequently, additional representation dated 24.12.1996. The Administrative Committee considered the representations made by the petitioner and proposed the punishment of removal from service. The matter was placed before the Full Court on 24.5.1997. After considering the matter the Full Court accepted the Enquiry Report as well as the punishment. When matter was referred to the respondents No. 1 and 2, the order impugned dated 4.7.1997 (Annexure-15) was passed removing the petitioner from service. Hence, this petition.

3. Shri S.K. Chaturvedi, learned Counsel for the petitioner made large number of submissions, contending that the allegations of corruption, demand and acceptance of illegal gratification had been levelled falsely; as the judgment and order passed by a Court can be corrected in appeal or revision, the error committed by a Judicial Officer while deciding a case does not warrant the initiation of disciplinary proceedings; the charge of corruption had been motivated as the complainants had a grudge against the petitioner because the case had been decided against them; complaint was filed at a belated stage; i.e., after 11 days of decreeing the suit; the matter related to declaration as to whether a particular temple was a public trust or a private trust, and even if earlier it had been held to be a public trust, it had no relevance for re-determination of the issue by the petitioner; petitioner had unblemished service record and did not deserve the punishment; and the last not the least, punishment awarded was too harsh and disproportionate to the misconduct.

4. On the other hand, Shri C.K. Rai, learned Standing Counsel has opposed the submissions made by the learned Counsel for the petitioner contending that petitioner being a Judicial Officer should have maintained the dignity and decorum of the office. He attended the various marriage ceremonies of the son of a party in the suit. The allegations of corruption and illegal gratification were duly proved in the domestic enquiry, report of which has been accepted by the Administrative Committee as well as by the Full Court. Petitioner had been given full opportunity to defend himself and no irregularity has been pointed out while conducting the enquiry, on the basis of which it can be held that the enquiry stood vitiated for one reason or the other, and once, the issue has been decided by the Court earlier in respect of the same property and declared to be a public trust and the judgment of the learned District Judge stood affirmed by this Court as well as by the Hon'ble Supreme Court, by virtue of the provisions of Sections 41 to 43 of the Evidence Act, being a judgment in rem it could not have lightly been brushed aside by the petitioner. Petitioner had been awarded adverse entries many times, and thus, was not fit to be retained in service. The petition is liable to be dismissed.

5. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

6. The issue as to whether where a judicial order can be corrected in appeal or revision, the disciplinary proceeding can be initiated against a Judicial Officer for

passing the wrong order; and whether rucklessness and gross negligence on the part of Judicial Officer, even if he had no corrupt motive, fall within the ambit of misconduct are no more *res Integra*.

7. The Supreme Court, in *Govinda Menon Vs. Union of India (UOI)*, , has held as under :-

".....It is not necessary that a member of the service should have committed the alleged Act or omission in the course of discharge of his duty as a servant of the Government in order that it may form the subject matter of disciplinary proceedings. In other words, if the Act or omission is such as to reflect the reputation of the Officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that Act or omission..... The test is whether the Act or omission has some reasonable occasion with nature and condition of his service or where the Act or omission has caused any reflection upon the reputation of the member of the service for integrity or devotion of duty as a public servant..... The proposition put forward was the quasi-judicial orders, unless vacated under the provisions of the Act, are final and binding and cannot be questioned by the Executive Government through disciplinary proceedings.... The charge is, therefore, one of misconduct and recklessness disclosed by the utter disregard of the relevant provisions.....But in the present proceedings what is sought to be challenged is not the correctness or the legality of the decision of the Commissioner but the conduct of the appellant in the discharge of his duty as Commissioner. The appellant was proceeded against because in the discharge of his function, he acted in utter disregard of the provisions of the Act, and the Rules. It is the manner in which he discharges his function that brought up in these proceedings.... It is manifest, therefore, that though, the propriety and legality of the sanction to the leases may be question in appeal or revision under the Act the Government not precluded from taking disciplinary Act if there is proof that he has acted in gross recklessness in the discharge of his duties or that he failed to Act honestly or in good faith or that he omitted to observe, the prescribed conditions which are essential for the exercise of the statutory power."

8. Thus, the aforesaid judgment is an authority that disciplinary proceedings can be initiated against an employee in respect of the action, even if it pertains to exercise of judicial or quasi-judicial powers.

9. While deciding the aforesaid judgment in *S. Govinda Menon (supra)*, the Hon"ble Supreme Court had relied upon the judgment in *Pearce v. Foster (1966) 17 QBD 536*, wherein it had been held as under :-

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal."

10. The Supreme Court, in *Union of India and Others Vs. K.K. Dhawan*, , very heavily relied upon its earlier judgment in *S. Govinda Menon (supra)* and observed that the Officer who exercises judicial or quasi-judicial powers Acts,

negligently or recklessly or in order to confer undue favour on a person, is not acting as a Judge and in the disciplinary proceedings it is the conduct of the Officer in discharge of his official duties and not the correctness or legality of his decisions or judgments which are to be examined as the legality of the orders can be questioned on Appellate or Revisional Forum. In such case, the Government cannot be precluded from taking the disciplinary action for violation of the Conduct Rules. The Court summarised some circumstances in which disciplinary action can be taken, which are as under :-

"(i) where the Officer had acted in a manner as would reflect on his reputation or integrity or good faith or devotion of duty;

(ii) if there is prima facie material to show, recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government Servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however, small the bribe may be because Lord Coke and long ago "though, the bribe may be small, yet the fault is great."

11. The Court further, observed that the said instances were not exhaustive. However, it was further observed by the Supreme Court that each case would depend upon the facts and circumstances of that case, and no absolute rule can be postulated.

12. Undoubtedly, abuse of power has always been treated as constituting misconduct for the purpose of disciplinary proceedings. More so, in *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik*, , the Hon''ble Apex Court held that gross negligence constitutes misconduct. In *Union of India (UOI) and Others Vs. J. Ahmed*, , the Hon''ble Supreme Court considered whether inefficiency in service amounts to misconduct or not, and the Hon''ble Court answered it in negative holding that the word "misconduct" itself indicates that if proved, it may incur the penalty under the Rules.

13. In *Union of India (UOI) and Others Vs. Upendra Singh*, , the Apex Court held that even an Officer, while discharging judicial or quasi-judicial duties, is amenable to the disciplinary proceedings into his conduct in discharge of the duty.

14. In *Union of India and others Vs. A.N. Saxena*, , the Hon''ble Apex Court held that disciplinary action can be taken in regard to the action taken or purported to be taken in course of judicial or quasi-judicial proceedings. However, in such circumstances, the disciplinary proceedings should be initiated after great caution and a close scrutiny of his actions and only if the circumstances so warrant for the reason that initiation of disciplinary proceedings against a Judicial Officer

may shake the confidence of the public in the Officer concerned and if lightly taken, likely to undermine his independence and in case, the action of Judicial Officer indicates culpability, there is no reason why disciplinary action should not be taken against him.

15. In *State of Punjab and Others Vs. Ram Singh Ex. Constable*, the Hon^{ble} Supreme Court considered various dictionaries to find out the meaning of "misconduct" and the same is worth quoting as under :-

"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, willful in character, improper or wrong behaviour, its synonyms are misdemeanour misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness".

Misconduct in office has been defined : "Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces Acts which the offence holder had no right to perform, Acts performed improperly, and failure to Act in the face of an affirmative duty to Act".

P. Ramanatha Aiyar's, *Law Lexicon*, Reprint Edition 1987, at page 821, defines "misconduct thus : The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the 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. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law, carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden Act; carelessness, a forbidden quality of an Act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

16. The Hon^{ble} Supreme Court, further held that the word "misconduct" though not capable of precise definition, on selection receives its connotation from the context, the delinquency, in the performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour unlawful behaviour, willful in character; forbidden Act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the Act complained of bears forbidden quality or character.

17. In *Government of Tamil Nadu Vs. K.N. Ramamurthy*, the Hon^{ble} Supreme

Court held that exercise of judicial or quasi-judicial power negligently having adverse effect on the party or the State certainly amounts to misconduct.

18. In *M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation*, , the Hon''ble Supreme Court has ruled that any action of an employee, which is detrimental to the prestige of the institution or employment, would amount to misconduct.

19. In *Union Bank of India Vs. Vishwa Mohan*, , the Hon''ble Supreme Court held that misconduct includes not working with diligence by an employee.

20. In *State Bank of India and others Vs. T.J. Paul*, , the Supreme Court held that even in a case the allegations of malafide and corrupt practice have neither been alleged nor revealed while issuing the charge-sheet, the delinquent employee may be held guilty of misconduct in case, the Officers Acts without restraints jeopardising the interest and rights of other party. The said case, was for granting the Bank loan negligently and the Bank suffered serious loss. The Apex Court held that it may not be a case of insubordination or disobedience of specific order of any superior officer, if the Act is prejudicial to the interest of the Bank or gross negligence or negligence involved or likely to involve the Bank in serious loss, would amount to misconduct. In other words, if negligence of an Officer seriously affects and prejudices the rights of the party, it definitely amounts to misconduct. In *Government of A.P. Vs. P. Posetty*, , the Hon''ble Supreme Court held that sense of propriety and acting in derogation to the prestige of the institution and placing his official position under any kind of embarrassment may amount to misconduct as the same may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an employee/ Government Servant.

21. Thus, in view of the above, we find no force, in the submissions made by the learned Counsel for the petitioner that if the judicial order can be corrected in an appeal or a revision, initiation of a disciplinary proceeding is not warranted. As the Hon''ble Apex Court has consistently held that in exceptional circumstances, even if such an order can be corrected by an Appellate or Revisional Court, disciplinary proceeding can certainly be held against the Judicial Officer.

22. In the instant case, this remains the admitted position that the property in dispute has been a subject matter of the earlier Suit No. 2 of 1951 and it had been declared to be a public trust by the judgment and decree dated 21.9.1957 passed by the District Judge and it was challenged in Civil Appeal No. 466 of 1967. The same was upheld vide judgment and order dated 28th February, 1967 of this Court, against which the SLP had been filed before the Hon''ble Supreme Court which also stood dismissed. Undoubtedly, the judgment given earlier being in respect of a Trust of a Public nature, was a judgment in rem, and the copy thereof being admissible under the provisions of Section 42 of the Evidence Act. the petitioner could not have brushed aside the same so lightly.

23. The provisions of Sections 41 to 43 of the Act, make it clear that if a

judgment of the Court is a judgment in rem, it is binding in subsequent proceedings on that issue though the parties may not be the same. But, if it is a judgment in personam, it does not have any binding effect in subsequent proceedings. This issue was considered by the Privy Council in Mahomed Siddique Yousuf v. Official Assignee of Calcutta , wherein it was held that in proceedings of insolvency, an order passed on adjudication is of a binding nature being a judgment in rem and a person who may not be a party in the insolvency proceedings, cannot challenge the said order for the reason that the order of adjudication was conclusive in nature and cannot be disputed.

24. In Surinder Kumar and Others Vs. Gian Chand and Others, , the Hon''ble Supreme Court held that probate of the will operates as a judgment in rem, therefore, the, objection that the parties in any subsequent proceedings were not parties to it, is not sustainable because of the nature of the judgment.

25. In Smt. Satya Vs. Shri Teja Singh, , the Supreme Court observed as under :-

"Section 41 of the Indian Evidence Act provides, to the extent material, that a final judgment of the Competent Court, in the exercise of matrimonial jurisdiction, is conclusive proof that a legal character, which it confers or takes away, accrued or ceased at the time declared in the judgment for that purpose. But, the judgment has to be of a Competent Court, i.e., a Court having jurisdiction over the parties and the subject matter. Even a judgment in rem is, therefore, open to attack on the ground that the Court, which gave it, had no jurisdiction to do so."

26. While deciding the said case, the Apex Court placed reliance upon its earlier judgment in R. Viswanathan Vs. Rukn-ul-Mulk Syed Abdul Wajid,

27. In Gurdit Singh and Others Vs. State of Punjab and Others, , the Supreme Court explained as under :-

"A judgment of a Court is an affirmation, by the authorised societal agent of the State, speaking by the warrant of law and in the name of the State, of the legal consequences attending of proved or admitted state of facts. Its declaratory, determinative and adjudicatory function is its distinctive characteristic. Its recording gives an official certification to a pre-existing relation or establishes a new one on pre-existing grounds."

28. In State of Bihar Vs. Radha Krishna Singh and Others, , the Hon''ble Supreme Court, while considering the scope of provisions of Sections 13 and 34 to 43 of the Act, to prove the admissibility of the earlier judgment, observed as under :-

"Some Courts have used Section 13 to prove the admissibility of a judgment as coming under the provisions of Section 43.....We arc, however, of the opinion that where there is a specific provision covering the admissibility of a document, it is not open to the Court to call into aid other general provisions in order to make a particular document admissible. In other words, if a judgment is not

admissible as not falling within the ambit of Sections 40 to 42, it must fulfil the conditions of Section 43 otherwise it cannot be relevant u/s 13 of the Evidence Act. The words "other provisions of this Act" cannot cover Section 13 because this section does not deal with judgments at all.

It is also well settled that a judgment in rem like judgments passed in probate, insolvency, matrimonial or guardianship brother similar proceedings, is admissible in all cases whether such judgments are inter parties or not. In the instant case, however, all the documents consisting of judgments filed are not judgments in rem and therefore, the question of their admissibility on that basis does not arise. As mentioned earlier, the judgments filed as Exhibits in the instant case, are judgments in personam and therefore, they do not fulfil the conditions mentioned in Section 41 of the Evidence Act."

The Court further summarised the law as under :-

"(1) A judgment in rem e.g., judgments or orders passed in admiralty, probate proceedings, etc., would always be admissible irrespective of whether they are inter parties or not.

(2) Judgments in personam not inter parties are not at all admissible in evidence except for the three purposes mentioned above.

(3) On a parity of aforesaid reasoning, the recitals in a judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in judgment would be wholly inadmissible in a case, where neither the plaintiff nor the defendant were parties.

(4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.

(5) Statements, declarations or depositions, etc., would not be admissible if they are *post litem motam*".

29. While deciding the said case, the Court took into consideration the judgments in AIR 1937 69 (Privy Council) and *Coco-Cola Company of Canada Ltd. v. Pepsi-Cola Company of Canada Ltd.* AIR 1942 PC 40.

30. In *Raje Anandrao Vs. Shamrao and Others*, , the Supreme Court held that suit u/s 92 of the Code is of public nature and unless, the scheme of administration or modification thereof regarding administration of the temple not affecting the private rights of Pujaris who are not parties to the suit, is binding on them. Similar view has been reiterated in *Ahmed Adam Sait and Ors. v. M.B. Nakhri and Ors.* AIR 1964 SC 107, observing that when a representative suit is brought and decree is passed in such a suit, law assumes that all persons, who have the same interest as the plaintiffs in the representative suit, were represented by the said plaintiffs and therefore, are constructively barred, by the *res-judicata*, from re-agitating the matters directly or substantively in issue in the said suit. A

similar rule follows if the suit is either filed or defended under Order I, Rule 8 of the Code. In that case, persons either suing or defending an action, are doing so in a representative capacity and so, the decree passed in such a suit binds all those whose interests were represented either by the plaintiffs or by the defendant.

31. In *Sunni Central Board of Waqf, U.P. Vs. Sirajul Haq Khan and Others*, , the Division Bench of Allahabad High Court held that a suit u/s 92 of the Code can be maintained only in respect of public trust of a permanent character and the judgment in such a suit would be a judgment in rem and not a judgment in personam. Therefore, such a judgment is admissible in any other subsequent suit and it is not open to any party to challenge the permanent public nature of the trust.

32. In *Vempa Sunanda v. Vempa Venkata Subbarao* AIR 1957 AP 424, the Division Bench of Andhra Pradesh High Court held that a decree dissolving a marriage determines the status of the parties and is equivalent to a judgment in rem.

33. Therefore, it depends upon the nature of the proceedings and where the matters are of public nature, the judicial decision may be evidence though not conclusive of what they say, but where the matters are not of public nature, such evidence is not admissible as having binding effect. Therefore, decree like nullity of marriage or in probate or insolvency proceedings, determination of customary rights, being the matters of public nature, the judgments are in rem and therefore, may be admissible but where the question of status of joint family or a suit for restitution of conjugal right, order in lunacy, judgment u/s 42 of the Specific Relief Act or declaration of a person to be a partner in a firm or proceedings of partition suit or in case of adoption, as the judgments are not of public nature, the same are in personam and the judgments are not admissible if the parties are not the same.

34. A judgment in rem means an adjudication pronounced upon the status of a person or thing, by a Competent Court to the world generally. But, it is not conclusive proof of the facts constituting the reasons for the decision. In such circumstance, the order is conclusive only as regards the status but not as regards the grounds on which it is based.

35. Section 41 of the Act, deals with the judgment in rem. Section 42 deals with the matters relating to public nature and forms. The exception in the general principle of res-judicate is partially embodied in Section 11 of the Code.

36. In view of the above, we are of the considered opinion that once the Trust has been declared to be Public Trust and that judgment had been upheld by this Court as well as the Hon'ble Supreme Court, the petitioner has not shown any respect to those judgments as well as the law and proceeded with the matter without realising the seriousness of the issue.

37. Petitioner had been issued the charge sheet levelling two charges only. The enquiry officer exonerated him of the first charge, thus, we are not concerned with the same. The case, remains restricted only to the second charge, which reads as under:-

"That you, while posted as Additional Civil Judge, Azamgarh during the period from June, 1983 to June, 1984, in Original Suit No. 25/67, Ram Janki v. Thakurji and Ors., which was pending in your Court, after hearing the arguments, on several dates asked Shri P.N. Agarwal, Advocate in the month of March, 1984, to manage illegal gratification for you from Raja Sarju Prasad Trust for expeditious disposal of the suit and deciding it in favour of the Trust (defendant). You finding no response from the side of the defendant, settled deal with the opposite party (Plaintiff) and decreed the plaintiffs suit on 26.4.84, after having accepted illegal gratification, holding that the aforesaid Trust was not a Public Trust, whereas in an earlier Suit No. 2 of 1951, the then District Judge, Azamgarh, had held the Trust as Public Trust. This finding was confirmed by the Hon"ble High Court and as SLP was also rejected by the Hon"ble Supreme Court, thereby you failed to maintain absolute integrity and devotion to duty and committed judicial dishonesty in your official discharge of duty and behaved in a manner unbecoming of a Judicial Officer.

You, thereby, committed breach of Rules 3(1) and (2) of U.P. Government Servants Conduct Rules, 1956. You are, therefore, guilty of misconduct."

38. Petitioner had been given full opportunity to defend himself and Shri Chaturvedi, learned Counsel for the petitioner has been fair enough not to raise any grievance in the manner the enquiry had been held. The charge stood fully proved against him. Whatever we have said earlier regarding the legal position, there is sufficient evidence to prove the charge also. In earlier suit Smt. Janki Kunwar mother of Smt. Saraswati Devi, plaintiff No. 2, in the latter suit had been defendant No. 2. The relevant evidence, in this regard had been that Shri K.K. Chaube, the then District Judge, PW-18, deposed that he had received the complaints against the delinquent Officer on 26.4.1984, that he had decided the said suit after accepting the illegal gratification. Shri B.P. Agrawal, a retired District Judge. PW-4, deposed that his son P.N. Agrawal, a lawyer and witness in enquiry, had told him that the Delinquent Officer had called him in Chambers and asked for illegal gratification to decide the case in favour of the Trust. Shri P.N. Agrawal, PW-5, deposed that he had seen the Delinquent Officer, in Tilak Ceremony of the son of Sudershan Dass Agrawal and after the function was over Delinquent Officer was sent from there in his Car by Sudershan Dass Agrawal. The general reputation of the petitioner in Azamgarh was very bad. Ram Dhari Tripathi. PW-15, deposed that prior to decision in the said suit once he had gone to the Court and in his presence the Delinquent Officer had called Shri Prakash Narain Agrawal, Advocate in his Chambers. Subsequently, Shri Prakash Narain Agrawal had told him that the Delinquent Officer was asking for bribe of rupees twenty five-thirty thousand. He further, deposed that he had also attended both

the Tilak as well as the Marriage Ceremony of the son of Smt. Saraswati and Sudershan Dass Agrawal and the Delinquent Officer was present there on both the occasions. He had not seen the Delinquent Officer while coming there, but, he had gone from that place by the Car of Sudershan Agrawal. Prior to the decision in the suit he came to know that the opposite party had paid a bribe of Rs. 42,000/-, to the petitioner for getting the judgment in its favour.

39. Learned Counsel for the petitioner has taken us through, the entire evidence on record. The evidence of the witnesses to the extent that the Delinquent Officer attended Tilak and Marriage Ceremony of the Son of the plaintiff No. 2 in that suit remained uncontroverted. No question had been put in cross-examination in this respect, and the uncontroverted evidence of a party is to be accepted. Learned Counsel for the petitioner could not furnish any explanation as why no cross-examination was made to those witnesses on this issue by the Delinquent Officer. Thus, it remains beyond doubt, that the Delinquent Officer at the relevant time had close relationship with the party of the suit. In view of the evidence on record it cannot be held that the entire story had been cooked up by the complainant because the matter had been decided against him. If the issue is examined in totality of the circumstances ignorance of the judgment of the learned District Judge, affirmed by this Court as well as by the Hon"ble Supreme Court, a judgment in rem, and attending that Marriage Ceremony of the son of the plaintiff No. 2 in the suit establish, the second charge. The enquiry officer has discussed the evidence in detail and recorded the findings, and came to the following conclusion :

".....These statements under normal circumstances may not convey the caning convincingly but when viewed in the background of judgment dated 26.4.84, 21.9.57 and 28.2.67 noted earlier it becomes very clear that the charged Officer had invited the trouble in the shape of Charge No. 2 by his own conduct. The witnesses on records and the evidence described above convincingly established the Charge No. 2 against the Officer....."

40. Shri Chaturvedi, learned Counsel for the petitioner has submitted, that the language used by the enquiry officer itself shows that he was not satisfied regarding the guilt of the Delinquent Officer. The submission made is preposterous for the reason that the enquiry officer wanted to say that if the case is examined taking attendant circumstances in to consideration, i.e., the earlier judgments in rem, delivered by the learned District Judge and upheld by this Court as well as the Hon"ble Supreme Court and attending the Marriage Ceremony of the son of the plaintiff were convincing additional factors for inspiring the Trust in the evidence of the witnesses for demand of illegal gratification. The case docs not present special features which may warrant interference by this Court. Thus, we find no reason to interfere with the findings of fact recorded by the enquiry officer.

41. In a case like instant, the Court can review only the "decision making procedure" and not the "decision" of the authority. The Court, not being a Court

of Appeal, is not competent to substitute its own view on factual aspects of the case.

42. In the High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, , the Hon"ble Supreme Court held as under :-

".....It is on administrative side, to keep guard over the subordinate judicial functioning within its domain. While it is imperative for the High Court to protect honest Judicial Officers against all ill conceived or motivated complaints, the High Court cannot afford the by-pass any dishonest performance of a member of the subordinate judiciary. Dishonesty is the stark antithesis of judicial property. Any instance of a High Court condoning or compromising with a dishonest deed of its Officers would only be contributing to erosion of the judicial foundation. Every hour we must remind ourselves that judiciary floats only over the confidence of the people in its probity. Such confidence is the foundation on which pillars of the judiciary arc built.

The Judges, at whatever level may be, represent the State and its authority, unlike the bureaucracy or the members of the others services. Judicial Service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of Public Offices of great Trust, and responsibility. If a Judicial Officer "tips the scales of justice its rippling effect would be disastrous and deleterious" Dishonest judicial personage is an oxymoron. We wish to quote the following observations made by Ramaswamy, J., in High Court Judicature at High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another, :

"The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235 and 124(6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection."

When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but, confining strictly to the parameters set by this Court in the aforesaid decisions....."

43. Thus, the case of Judicial Officer has to be examined keeping in mind the aforesaid view expressed by the Hon"ble Supreme Court. The Court can review to correct errors of law or fundamental procedural requirements which may lead to manifest injustice and can interfere with the impugned order in "exceptional circumstances". [Vide Union of India (UOI) Vs. Parma Nanda, ; State Bank of India and Others Vs. Samarendra Kishore Endow and Another, ; State of Punjab and others Vs. Surjit Singh Conductor, ; State of U.P. and others Vs. Ashok Kumar Singh and anothers, ; State of U.P. and others Vs. Nand Kishore Shukla

and another, ; Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, ; Rae Bareilly Kshetriya Gramin Bank Vs. Bhola Nath Singh and other, ; State of Punjab and others Vs. Bakhshish Singh, ; Yoginath D. Bagde Vs. State of Maharashtra and Another, ; Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, ; Food Corporation of India v. Prahalada Rao and Anr. AIR 2001 SC 51; N.R. Nair and Others Vs. Union of India and Others, and Union of India and Another Vs. Ashutosh Kumar Srivastava and Another,

44. In State of Tamil Nadu and another Vs. S. Subramaniam, , the Apex Court held that as the High Court has power of judicial review of the administrative action on complaint relating to service conditions of the employee, it is within the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge stood proved or not. It is equally settled law that technical Rules of evidence have no application in the disciplinary proceedings and the authority is to consider the material on record. In judicial review, the Court "has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial Review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or the Tribunal. When the conclusion reached by the authority is based on evidence, the Court or the Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proved charges. The only consideration the Court/Tribunal has, in its judicial review, is to consider whether the conclusion is based on the evidence on record that support the finding, or whether the conclusion is based on no evidence."

45. In the General Court General Court Martial and Others Vs. Col. Aniltej Singh Dhaliwal, , the Hon"ble Supreme Court has held that the High Court, in its limited power of exerciser of judicial review, may interfere by appreciating the evidence only if there is an omission on the part of the enquiry officer or the Disciplinary Authority to consider the relevant evidence. Similarly, in Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, , the Court observed as under:-

"It is equally well settled that where a quasi-judicial Tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated... Viewed from either angle, the conclusions of the enquiry officer...are wholly perverse and hence unsustainable. The High Court, in our opinion, was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence. Between appraisal of evidence, and total lack of evidence, there is an appreciable difference which could never be lost sight of and the High Court ought not to have short-circuited the writ petition."

46. Even the issue of interference of quantum of punishment has also been considered by the Hon''ble Supreme Court in a catena of judgments and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary and thus, would violate the mandate of Article 14 of the Constitution. Thus, being illegal, it cannot be enforced. [Vide Bhagat Ram Vs. State of Himachal Pradesh and Others, ; S.K. Giri Vs. Home Secretary, Ministry of Home Affairs and others, Union of India and others Vs. Giriraj Sharma, ; Bishan Singh and others Vs. State of Punjab and another, ; Ranjit Thakur Vs. Union of India (UOI) and Others, and B.C. Chaturvedi Vs. Union of India and others,

47. In Ranjeet Thakur (supra), the Hon''ble Apex Court observed as under:-

"But, the sentence has to suit the offence, and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on the aspect, which is otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. In the present case, the punishment is so stringently disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review."

48. The said judgment has been approved and followed by the Apex Court in Union of India and another Vs. G. Ganayutham (Dead) by LR., , and after examining elaborately the concept of reasonableness, rationality and proportionality the same view has been reiterated.

49. In B.C. Chaturvedi (supra), after examining various earlier decisions of the Supreme Court, the Court observed that in exercise of the powers of judicial review, the Court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an Authority "shocks the conscience" of the Court, it would appropriately mould the relief either directing the Authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself "impose appropriate punishment with cogent reasons in support thereof." While examining the issue of proportionality, Court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced him to do so, though he had no intention to do so. [Vide Giriraj Sharma (supra)]. The Court may further examine the effect, if order is set-aside or substituted by some other minor penalty.

50. In State of U.P. v. Nand Kishore Shukla (supra), the Hon''ble Supreme Court observed that the Court is not an Appellate Authority and therefore, the Court will be loath to interfere with that part of the order.

51. In G. Ganayutham (supra), the Apex has considered the entire law on the

subject and compared the Indian Law with English, Australian and Canadian Laws and held that in case, the Court comes to the conclusion that the punishment awarded is disproportionate or the Disciplinary Authority was irrational in imposing the punishment, the punishment cannot be quashed as even then the matter has to be remitted back to the Appropriate Authority for reconsideration and it is only in very rare cases, that the Court might-to shorten the litigation-think of substituting its own view as to the quantum of punishment in place of punishment awarded by Competent Authority. In U.P. State Road Transport Corpn. and Others Vs. A.K. Parul, , the Apex Court taken the same view.

52. In Council of Civil Services Union v. Minister for Civil Service 1984 (3) AER 935, it was held that anything disproportionate should be discarded. It was further observed that judicial review is permissible only on limited grounds, namely, illegality, irrationality, procedural impropriety and proportionality. The concept of irrationality has been explained as a decision which is so outrageous in its deviation of logic or accepted moral stand that no sensible person who had applied his mind to the question to be decided would have arrived at. Procedural impropriety has been explained as failure to observe basic Rules of natural justice or failure to Act with procedural fairness towards the person who would be affected by the decision. The requirement of procedural propriety depends upon the subject matter of the decision, the executive functions of the decision-maker and the particular circumstances in which the decision came to made.

53. Similar view has been reiterated in Kuldeep Singh Vs. The Commissioner of Police and Others, . In Apparel Export Promotion Council Vs. A.K. Chopra, , the Hon"ble Supreme Court has observed, that if the finding of fact is based on appreciation of evidence, the Writ Court should not normally interfere with those findings unless the findings are shown to be wholly perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted to be canvassed before the Court as the High Court cannot sit as Appellate Forum for the factual finding recorded during the disciplinary proceedings for the reason that it exercises a very limited power of judicial review and in exercise of such power, the High Court should not substitute its own conclusion with regard to the guilt or delinquency, for that of the Departmental Authority. The Court further, observed as under :-

"Even in so far as imposition of penalty or punishment is concerned, unless, the punishment or penalty imposed by the Disciplinary or Departmental Authority either impermissible or such that it shocks the conscience of the High Court it should not normally substitute its own opinion and impose some other punishment or penalty."

54. Same view has been reiterated in Rajat Baran Roy and Others Vs. State of W.B. and Others, ; M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another, ; Union of India and Others Vs. Himmat Singh Chahar, ; Common Cause, A Registered Society Vs. Union of India and Others, ; High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs.

Shashikant S.Patil and Another, ; Consumer Education and Research Society Vs. Union of India and Others, ; and U.P.R.S.R.T. Corporation v. Madan Lal Gupta. (2000) 9 SCC 521.

55. Similar view has been reiterated by the Hon''ble Supreme Court in Bahraich and Anr. v. Munijar Prasad, 2002 1 LLJ 461 ; Union of India and Ors. v. Ashutosh Kumar Srivastava (supra); and Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, .

56. In the instant case, learned Counsel for the petitioner could not argue at all that the enquiry had not fairly been conducted. Nor he has raised the issue that the petitioner had not been given an opportunity to defend himself. As the judicial review is permissible only against the decision-making procedure and not against the decision, we see no ground to interfere with in the case.

57. It has next been submitted by the learned Counsel for the petitioner that the punishment imposed was disproportionate to the misconduct committed by the petitioner.

58. In Ruston and Hornsby (I) Ltd. v. T.B. Kadam AIR 1975 SC 2025, the workman faced the charge of suspected dishonesty in connection with company's property. The Hon''ble Supreme Court held that the workman "being a Watchman, the charge is serious one and if it was held proved the deserves nothing short of dismissal.

59. Dealing with a similar situation the Apex Court in Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, , held as under :-

"In a case of such nature, in deed, in cases involving corruption, there can be no other punishment that dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the Act of misappropriation that is relevant. The Director had interfered in the punishment under a total misapprehension of relevant factors to be borne in mind in such a case."

60. In The Government of Andhra Pradesh Vs. B. Ashok Kumar, , the Court held that for accepting illegal gratification dismissal from service is a appropriate punishment.

61. Similar view has been taken by the Hon''ble Supreme Court in U.P. SRTC v. Basudeo Chaudhary, (1997) 11 SCC 370 , wherein the Court held that in a case of misappropriation, dismissal from service was justified by the Corporation. Placing reliance upon the said judgment in Krishnan Bihari (supra) and Vasu Deo Chaudhary (supra), the Supreme Court, in Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc., reiterated the same view, observing that in case of breach of trust and misappropriation of funds, once the charge stood proved, interference by Courts, showing uncalled for sympathy, is totally unwarranted as it is a case of loss of confidence of the employer, that the employee would

truthfully and faithfully carry on his duty in future.

62. In Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, , the Hon''ble Supreme Court considered a case, where the Bus Conductor and charged a fare of Rs. 2.25 and issued the Ticket of Rs. 1.75 and misappropriated fifty paise, the Apex Court held that the appropriate punishment in that case should be dismissal from service.

63. Similar view has been reiterated by the Hon''ble Supreme Court in Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234 SC

64. In view of the above, as the charge of corruption stood proved against the petitioner, the only punishment could have been the dismissal from service. This Court has taken a lenient view imposing the punishment of removal from service, and therefore, even on that count we are not able to accept the submission made on behalf of the petitioner.

65. We are not inclined to examine the issue as to whether petitioner''s previous service record was good as there have been claims and counter claims by both sides for the reason that even if his service record was not good as no charge had been framed on it, the Court cannot examine the issue.

66. To sum up, disciplinary proceeding which had been initiated against the petitioner were conducted strictly in accordance with law and with strict adherence of the principles of natural justice. Learned Counsel for the petitioner did not raise any grievance in this regard. The judicial review is permissible only against the decision making process and not against the decision itself. Therefore, no good ground is made out to interfere with the impugned order. Even no issue of quantum of punishment we are of the view that the petitioner has been dealt with leniently as no punishment other than dismissal could have been imposed in such, a case.

67. Petition is devoid of any merit and is accordingly dismissed. No costs.