

(2011) 04 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 163 of 2009

K. P. Singh

APPELLANT

Vs

High court of H.P. and Another

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 235
Income Tax Act, 1961 — Section 220(2A)

Citation : (2011) 3 KLJ 11

Hon'ble Judges : Kurian Joseph, J;Deepak Gupta, J

Bench : Division Bench

Advocate : R.S. Gautam and J.L. Bhardwaj, for the Appellant; Jyotsna Rewal Dua, R.K. Bawa (AG), Ankush Dass Sood (Addl. AG) and Vidushi Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Kurian Joseph, J.—Integrity according to Oxford dictionary is moral uprightness; honesty. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short it depicts sterling character with firm adherence to a code of moral values. "Judiciary is an integrity institution". Therefore, Judicial Officers should possess the sterling quality of integrity. Integrity is the hallmark of judicial discipline apart from others as reminded by the Apex Court in Tarak Singh and Another Vs. Jyoti Basu and Others, . To quote:

Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside.

Under The Bar Council of India Rules, An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the court, a privileged member of the community; and a gentleman, bearing in mind that what may be lawful and a moral for a person who is not a member of the Bar, or for a member of the Bar in his nonprofessional capacity may still be improper for an advocate.

These attributes apply with equal force, nay, with stronger vigor to Judicial Officers. In High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and another, reported in (1998) 2 SCC 72, Judges have been described as "hermits", further reminding that, "they have to live and behave like hermits, who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat". In Tarak Singh's case (supra), having regard to the plain truth that the judiciary is also manned by human beings and yet in view of their privileged position, it was cautioned as follows:

There is nothing wrong in a Judge having an ambition to achieve something, but if the ambition to achieve is likely to cause a compromise with his divine judicial duty, better not to pursue it. Because, if a Judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will be a tendency to make a compromise between his divine duty and his personal interest. There will be a conflict between interest and duty.

In High Court of Judicature at High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, , in the matter of maintenance of discipline, the Apex Court stated as follows:

.....Maintenance of discipline in the judicial service is a paramount matter. Acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer. The confidence of the litigating public gets affected or shaken by lack of integrity and character of Judicial Officer.....

In Daya Shankar Vs. High Court of Allahabad and Others through Registrar and Others, the Supreme Court set the following standard:

Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. In High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, in more emphatic words, it was stated that dishonesty is the stark antithesis of judicial probity, and....."A dishonest judicial personage is an oxymoron".....

Having regard to certain sporadic instances of lack of probity and integrity among some of the personnel who man this high office, it is high time that specific standards are set with regard to value system to be adopted and followed by the members serving in the temple of justice. No doubt, they are more self imposed than imposed. While dispensing justice, the messenger is also

important as the message itself. A judge is judged not only by the quality of his judgments, but also by the quality and purity of his character and the measurable standard of that character is impeccable integrity reflected transparently in his personal life as well. One who corrects corruption should be incorruptible. That is the high standard, the public has set in such high offices of institutional integrity. Therefore, any departure from the pristine codes and values of discipline and disciplined conduct on the part of the judicial officers will have to be viewed very seriously lest the very foundation of the system would be shaken and, if so, that will be the death knell of democracy. Having prologued on such disturbing notes, we may now turn to deal with the issues as raised in the present appeal.

The appellant is the Writ Petitioner. He joined the Himachal Pradesh Judicial Service in the year 1988. While he was posted as Judicial Officer at Dalhousie and Jawali between 1996 to 2002, the allegation is that he developed illicit relationship with a lady lawyer Mrs. Deepa Singh, who was practising as an Advocate at Dalhousie. It was further alleged that he travelled in her company to Thailand between 10.12.2002 to 22.12.2002. There was no previous permission from the competent authority either for leave or for leaving the country. However, on return to India, he applied for leave on medical grounds between 9.12.2002 to 22.12.2002. The delinquent officer flatly denied the allegations and attempted to present a story of some people making an attempt to tarnish his name. In the process, he got a medical officer to lead evidence to the effect that he had seen him on 18.12.2002 and another advocate practising in his Court to speak that they had met him on or around 15.12.2002. These two persons we have specially mentioned because one belongs to the medical profession and other belongs to the legal fraternity. The Inquiry Officer having regard to the materials available on record found that the charges of misconduct as alleged with regard to the illicit relationship of the delinquent officer with Advocate Ms. Deepa Singh, travel without permission abroad, willful absence from duty were proved. The High Court having considered the representation filed by the delinquent officer resolved to impose a punishment of removal from service. The recommendation was accepted by the State Government and as per the impugned P-18 Order, the delinquent officer was removed from service. The Writ Petition was filed challenging the inquiry report and also the order of termination. Before the Learned Single Judge, it was contended that the inquiry report is biased, it is based on no evidence, the inquiry was conducted in violation of the procedure as prescribed under the Rules, the officer was not given an opportunity for personal hearing and that the disciplinary authority namely the High Court has not considered his representation on merits and recorded its findings. The Learned Single Judge dismissed the Writ Petition and hence the appeal.

2. Before us, the main contentions are:

i) The inquiry is conducted in violation of the provisions of the Central Civil

Services (Classification, Control and Appeal) Rules, 1965, in particular Rule 14(15);

ii) The report is based on no evidence;

iii) The inquiry officer was biased in the sense also that his version of the absence was not taken into consideration;

iv) The disciplinary authority, namely the High Court has not considered the comments offered by the delinquent officer to the inquiry report and recorded its findings and that such findings have not been communicated to the petitioner whereby the whole proceedings are vitiated; and

v) There is violation of the principles of natural justice in not granting an opportunity for personal hearing.

3. The main allegation is that after closing the evidence, new evidence has been permitted to be adduced. Whether it is permissible is the question. Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, provides for procedure for imposing major penalties. Sub Rule 15 of Rule 14 reads as follows:

(15) If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Inquiring Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

Note.-- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

4. A perusal of the Rule would clearly show that there is no absolute bar under the Rules in production of new evidence at the stage of closing the case on behalf of the disciplinary authority. It is permissible at the discretion of the Inquiry Officer. It is the duty of the Inquiring Authority to make every possible and permissible attempt to find out the truth and that is why it is sometimes termed as fact finding enquiry. In the event of the Inquiry Officer allowing the production of such new evidence, the delinquent government servant shall be entitled to have, if he deems, a copy of the list of further evidence proposed to

be produced and an adjournment by clear three days before the production of such new evidence. The delinquent shall also be entitled to inspect such documents and he may also seek for an opportunity to produce new evidence on his part. The note under Sub Rule 15 bars the production of new evidence to fill up any gap in the evidence; however, such evidence is permitted when there is an inherent lacuna or defect in the evidence which has been produced originally. The documents Exhibits P-2A, P-4A to P-7A, P-11 A to P-13A, P-42 to P-48, P- 49 and P-50, are the documents which according to the petitioner have been permitted to be produced after closure of evidence by both the sides. Exhibit P-2A is the certified copy of the passenger manifest of Flight No. TG 316 on 10.12.2002, Delhi to Bangkok and that of Flight No. TG 315 from Bangkok to Delhi on 22.12.2002. Exhibit P-2 originally produced was the computer print out. Likewise, Exhibit P-4A to P-7A are the details of embarkation of the delinquent officer and Smt. Deepa Singh. In the place of those certified copies, computer print outs had already been produced. Exhibit P-11A to P-13 A are again the certified copies of the embarkation and dis-embarkation cards, the computer print outs of which had already been produced. Exhibit P-42 to P-48 are the applications of the delinquent officer for visa on arrival, his clear photograph, embarkation form embarkation form of Ms. Deepa Singh, application for duplicate Passport of delinquent officer, visa application form, the flight manifest of the return flight from Bangkok to Delhi and letter of Royal Thai Embassy, New Delhi, regarding the travel of delinquent officer. Going through the proceedings of inquiry, we find that these documents have been produced with clear three days notice to the delinquent officer and on 27.12.2003, the appellant has acknowledged the receipt of the documents. On 3.1.2004, the statement of the delinquent officer as counter signed by him reads as follows:

I do not want to lead any evidence in rebuttal to rebut the documents. Exhibits P-2A. P-4A. P-5A. P-6A. P-7A. P-11A. P- 12A. P-12A. P-13A. P-41. P-42. P-43. P-44. P-45. P-46. P-47 and P-48. which have been introduced by the presenting side after closure of their evidence. I shall only argue orally with regard to admissibility of these documents and production at a late stage.

(emphasis supplied)

5. As we have already discussed above, Rule 14(15) does not in any way bar the recalling of any witness or production of new evidence. If such a process is adopted, certain safeguards are prescribed under the Rule so as not to cause any prejudice to the delinquent officer. He is to be given the list of documents, he is to be granted three clear days time, he is to be granted an opportunity to inspect the documents and he is also to be given an opportunity to lead fresh evidence if it is required in the interest of justice. The only restriction is that the evidence thus led shall not be to fill the gaps in the evidence already tendered. But such evidence is permissible to fill up any inherent lacuna or defect in the evidence which has already been tendered. Filling up any gap in the evidence and filling up an inherent lacuna or defect in the evidence are provided in the Rule in

contradistinction to each other. The very purpose of inquiry is to find out the facts on the best available evidence. But, in the process the course of justice shall not be deflected. Sharpening the evidence is different and distinct from filling up any gap or in-consistency in the evidence. Curing any defect in the evidence already tendered so as to make it legally perfect is different from filling up the gap in evidence. What has been done in the instant case is only production of the certified copies of the travel documents on which evidence had already been tendered by producing the un-certified computer print outs. With the leave of the Inquiry Officer, certain documents which have been obtained belatedly from the Thai Embassy also were produced. On an application for producing Exhibits P-49 and P-50 filed on 3.1.2004 by the presenting officer, the delinquent officer stated that:

I do not want to file any reply to the application produced by the presenting side today. However. I orally oppose the tendering of the documents in evidence at this stage because the evidence of the presenting side has already been closed and the documents cannot be now tendered to fill in a lacuna in the evidence of the presenting side.

6. In this context, we may also extract the statement of the delinquent officer with regard to Exhibits P-49 and P-50 on 3.1.2004.

I do not want to lead any evidence to rebut the documents Exhibit P-49 and P-50. which have been produced by the presenting side in the evidence today. I shall however, rebut these documents in the course of my arguments with regard to their admissibility and late production etc.

Thus, the only objection of the delinquent officer is with regard to admissibility of the documents and not on the contents of the documents. Exhibit P-49 is a letter from the Royal Thai Embassy, New Delhi addressed to the Registrar of the High Court of Himachal Pradesh. The letter reads as follows:

The Royal Thai Embassy presents its compliments to the High Court of Himachal Pradesh, Shimla and would like to refer to the latter's letter No, HHC/VIG/PS/2003-3585 dated 26th December 2003 requesting the Embassy to certify the copies of documents of Shri Kiran Pal Singh. In this connection, the Embassy has the honour to inform the High Court that it has attested a copy of Shri Kiran Pal Singh's visa application form as herewith enclosed. In addition the Embassy has the honour to further inform the latter that the Shri Kiran Pal Singh has obtained the visa No. 17908 issued on December 10. 2002 by the immigration office at Chiangmai International Airport. Thailand. The Royal Thai Embassy avails itself of this opportunity to renew to the High Court of Himachal Pradesh, Shimla the assurances of its highest consideration.

7. Exhibit P-50 is the application for visa on arrival at Bangkok. There is no dispute with regard to the Passport and the details with regard to the address of the applicant and the date on which the application has been filed at Thailand. Having stated before the inquiry officer that the delinquent employee does not

have anything to rebut on the evidence thus produced, it is absolutely futile to contend that the documents have been admitted in evidence in violation of the procedure under Rule 14(15). The production being legally permissible, it cannot be said that the inquiry has been conducted in violation of the Rules.

8. PW-1, Shri Promod Sood, Manager, Liaison and Customer Services of Thai Airways International, PCL, New Delhi, has clearly stated before the Inquiry Officer that....."as per the passengers manifest, which I have brought today (Ext. P-2), a person named Singh K.P. had travelled by our flight No. TG 316, dated 10th December, 2002 from Indira Gandhi International Airport, Delhi to Bangkok.....As per the passengers manifest, Singh Deepa has also travelled by this flight from New Delhi to Bangkok. As per the passengers manifest, Singh Deepa Ms and Singh K.P. Mr. returned from Bangkok to New Delhi by Flight No. TG 315 on 22nd December, 2002.".....

9. PW-2 Shri Sandeep Goel, I.P.S., Foreigners Regional Registration Officer, Delhi, referring to the passenger name recorded as retrieved from the computer system and passenger manifest, Exhibits P-3 to P-7 stated that....." Sh. Kiran Pal Singh holder of Passport No. R-489789 and Deepa Singh holder of Passport No. E-3033381 have departed from Indira Gandhi International Airport Delhi on 10.12.2002 by flight No. TG 316 of Thai Airways. Both of these passengers have returned to India at I.G.I. A. Delhi on 22.12.2002 by flight No. TG315 of the airways.".....

10. The delinquent appellant does not have, even according to his own statement, any evidence to lead in rebuttal to the documentary evidence referred to above. Thus, it is not a case of evidence adduced in violation of the Rules or it is not a case of no evidence. It is a fact and it has been also established that the delinquent was in Thailand between 10th December, 2002 to 22 nd December, 2002, for which period he later submitted an application for earned leave on medical grounds. As far as the illicit relationship of Advocate Deepa Singh with the delinquent officer is concerned, the husband of Smt. Deepa Singh and also the son of Smt. Deepa Singh have stated in detail before the inquiry authority. Though it was not necessary for us to extensively refer to facts as above, in view of the vehement contention advanced by the petitioner that it is a report on no evidence and that it is a report on evidence otherwise impermissible and that the version of the delinquent has not been taken into consideration, we have referred to the same. It is settled law that the High Court is not a Court of appeal under Article 226 of the Constitution of India on the decision of the authorities holding departmental inquiry. The Court is concerned to determine whether the inquiry held by a competent authority is done in accordance with the procedure prescribed in that behalf, whether principles of natural justice have been applied, whether there is some evidence for the inquiry officer to reasonably support the conclusion that the delinquent officer is guilty of charge and whether there is overall fairness in the procedure. The Court may also examine whether the conclusion ex-facie is wholly arbitrary or capacious that no reasonable person

could ever have arrived at that conclusion. The law is well settled in that regard. In *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, , at paragraph 21, it has been held as follows:

21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of Andhra Pradesh Vs. Sree Rama Rao*,). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

11. It has been further held in the said decision that....."A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said findings is within the exclusive jurisdiction of the Tribunal."

12. To quote Krishna Iyer, J in *State of Haryana and Another Vs. Rattan Singh*,

In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are

permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence- not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.

13. The principles as stated above have been consistently followed by the Supreme Court in all the subsequent decisions as well. In a recent judgment in U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, , also the above principles have been quoted with the approval and have been affirmed. Thus the settled law on the point is that it is the exclusive domain of the disciplinary authority to consider the evidence on record and record findings whether the charge has been proved or not. Complicated and technical rules of evidence have no application to the disciplinary proceedings and the inquiry authority is to consider the material on record, with fair common sense. It is open to the inquiry authority to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The only restriction is that the materials must be germane and relevant to the facts in issue. The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the facts must be more probable Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, The jurisdiction of the High Court under Article 226 of the Constitution of India is circumscribed by the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. The scope of judicial review shall not be extended to the extent of re-appreciating the evidence so as to arrive at different conclusion. The judicial review is not akin to consideration of the case on merits as an appellate authority (Lalit Popli Vs. Canara Bank and Others, . The inquiry officer in the instant case has acted only in accordance with the procedure prescribed under the Rules. There is no violation of principles of natural justice, the inference drawn by him are based on materials available on record.

14. As far as the allegation of bias is concerned, admittedly, the petitioner has not approached the reviewing authority for change of inquiry officer or with any such allegation, though made an attempt before the inquiry authority. The inquiry authority having turned down the application on merits, rules permitted

him to approach the reviewing authority namely the High Court. Such a step having not taken by the delinquent officer, it cannot be said that there is any basis on the allegation of bias. Therefore, the report of inquiry cannot be assailed as invalid on that count.

15. The next contention is that the High Court has not considered the representation filed by the petitioner to the inquiry report, the findings have not been recorded and that they have not been communicated to the petitioner. Rule 15 of the CCS (CCA) Rules, provides for the action on the inquiry report. Sub Rule (2) & (2A) are relevant provisions, which read as follows:

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favorable or not to the Government servant. (2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

16. Annexure P-17 is the detailed representation (comments on the report) running to 76 pages, submitted by the delinquent officer. The disciplinary authority, namely the High Court in its Full Court Meeting held on 7.4.2004 has considered the representation as Item No. 2. To extract, the relevant part of consideration:

....."The representation of the delinquent Officer has since been received which was placed in the Full Court meeting today for our consideration. We have perused the representation of the delinquent officer and considered the same in the light of the report of the Inquiry Officer. We have also considered his request to grant him personal hearing and feel that neither there is any need for the same nor any useful purpose shall be served by granting him a personal hearing. It was found that the delinquent Officer was charged under as many as seven heads of articles of charges and out of these, he has been found guilty of five number of articles of charges by the Inquiry Officer.

In brief, it is established that Shri K.R Singh, while posted as a Judicial Officer at Dalhousie and Jawali between 1996 to December, 2002 developed illicit relations with a lady lawyer, Mrs. Deepa Singh, who was practicing as an Advocate at Dalhousie. Further, he traveled in her company to Thailand on 10.12.2002 and remained there till his return to India on 22.12.2002. He did not obtain any permission from the competent authority and remained willfully absent from 10.12.2002 to 22.12.2002. He rather applied for leave for the period from 9.12.2002 to 22.12.2002 on the false pretext of his being sick, whereas he had

actually gone to Thailand during this period. Further, on coming to know that an inquiry is being contemplated against him by the High Court for having gone to Thailand without obtaining permission and by seeking leave on false pretext of sickness, he lodged a false report to the police alleging loss of passport. The charges are very serious in nature, especially as these relate to moral turpitude on the part of the delinquent Officer and acts unbecoming a Judicial Officer. Even though the delinquent Officer had in fact gone to Thailand with the lady lawyer, Mrs. Deepa Singh (which fact has conclusively been proved and established with reference to and on the basis of official documents), when asked to explain and when served with the articles of charges, he denied this fact in toto knowing fully well that he had actually gone to Thailand in the company of the aforesaid lady Advocate, Mrs. Deepa Singh and that he had done so without obtaining any leave or permission from the competent authority.

In the light of the aforesaid discussion, agreeing with the report of the Inquiry Officer, accepting its findings on all the charges and in view of the nature of grave and serious charges proved against the delinquent Officer and after considering the representation of the delinquent Officer, we feel that it shall not be in public interest to retain the delinquent Officer in service and that the gravity of the charges against him is such, that, his removal from service is the only option.".....

17. The consideration by the Full Court, as extracted above, would clearly show that the authority has applied its mind to the report of the inquiring authority and the representation filed by the delinquent officer. As held by the Supreme Court in High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, "But it is not necessary that the disciplinary authority should "discuss materials in detail and contest the conclusions of the enquiry officer".

.....In Ram Kumar Vs. State of Haryana, adverting to the position, it has been held as follows:

"When the punishing authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings. When by the impugned order of termination of service the punishing authority has accepted the findings of the Enquiry Officer and the reasons given by him the question of non compliance with the principles of natural justice would not arise and it is also incorrect to say that the impugned order is not a speaking order.

In State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, , having regard to the position under the regulation pertaining to the disciplinary proceedings of the Bank and on the question whether reasons are to be given for the decisions, it was held that it would depend on the provision in the statute either expressed or implied. To quote:

.....Even if we proceed on the basis that such an obligation is implicit, still the order of the disciplinary authority cannot be held to be bad as, on perusal thereof, we find that before concurring with the findings of the inquiry officer it has gone through the entire proceeding and applied its mind thereto. In our considered opinion, when the disciplinary authority agrees with the findings of the inquiry officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to re-appraise the evidence to arrive at the same findings.....

18. No doubt Sub Rule (2A) to Rule 15 mandates that the disciplinary authority shall consider the representation and record its findings before proceeding further in the matter of imposition of penalty, in the instant case major penalty. As we have already discussed hereinabove, the disciplinary authority has considered the report of the inquiry officer and representation filed by the petitioner in detail, having regard to the views of the inquiry authority and the comments of the representationist and has come to the conclusion that the charges as reported have been established. We may also state in this context that a subtle distinction has been made under Sub Rule (2A) with regard to recording of the findings qua recording of reasons. The disciplinary authority is required to record the findings not on the representation but on the charges leveled against the delinquent officer. That it is so is clear from the action on imposition of penalty, under sub Rule (3) with regard to minor penalty and (4) regarding major penalty. Sub Rule (4) of Rule 15 reads as follows:

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

19. The findings that are recorded by the disciplinary authority are the findings on all or any of the articles of charge. That is what has been precisely done by the disciplinary authority as can be seen from the minutes as extracted above. In the process, it is not necessary to refer to the comments of the delinquent employee on merits with regard to the evidence or sufficiency or admissibility thereof since the disciplinary authority having regard to the materials available on record has come to the conclusion that the articles of charge as reported in the inquiry report have been proved.

20. Yet another contention advanced is whether the petitioner should have been communicated the findings of the disciplinary authority recorded under sub Rule (2A). Sub Rule (4) to Rule 15 of the Rules with regard to action on the inquiry report read with sub Rule (2A) does not call for such a procedure. Once the disciplinary authority records the findings of guilt so as to attract a major penalty, the only next step required is to impose such penalty and no further opportunity to make a representation on the penalty proposed is warranted. The

communication of the findings, according to the petitioner would have enabled the petitioner to successfully challenge the order of punishment. We are afraid, there is no basis for such a contention. The disciplinary authority has only accepted the report as such, having given due regard to the views expressed in the report, materials referred to in the report and the comments offered by the delinquent officer. The inquiry report having already been furnished to the delinquent employee and the report having been accepted in toto by the disciplinary authority, the communication of the findings on the charges by the disciplinary authority is not in any way going to improve the efficacy of the opportunity available to the delinquent officer. It is the very same opportunity that he has availed of in the Writ Petition.

21. The requirement of Rule 17 on communication of orders in fact has laid stress on the communication of the orders with respect to the findings on each article of charge. In the instant case the disciplinary authority had already communicated the findings on the articles of charge which were established before the inquiry authority.

22. No doubt, right to reason is also one of the facets of the principles of natural justice. However, under the scheme of the disciplinary proceedings as per the CCS (CCA) Rules, though an opportunity to make a representation on the report of the inquiry has been conferred on the delinquent employee, it cannot be said that the representation should be disposed of with reference to all the contentions or on the points urged in the representation. The disciplinary authority having considered the representation in the light of the report of the inquiry officer and having decided to accept and act on the report and having also decided not to dis-agree or reverse any of the findings in the report of inquiry and under the scheme of the proceedings the recommendation for imposition of major penalty being binding on the government which has passed the formal order, it cannot be said that any prejudice has been caused to the delinquent in the process or that there is failure of justice. In other words, reasons of the inquiring authority have only been endorsed by the disciplinary authority and thus requirement of right to reason has been satisfied. Learned counsel for the appellant inviting reference to the decision of the Supreme Court in *Pragdas v. Union of India*, reported in 1967 MPLJ 868, submitted that the disciplinary authority should have recorded the reasons for the findings. At paragraph 5 of the judgment, it has been held as follows:

The reasons in support of the order had to be recorded and disclosed to the parties concerned by the Central Government; the reasons could not be gathered from the "notings" made in files of the Central Government. Recording of reasons and disclosure thereof is not a mere formality. The party affected by the order has a right to approach this Court in appeal and an effective challenge against the order may be raised only if the party aggrieved is apprised of the reasons in support of the order.

23. There cannot be any dispute with regard to the principle of law as stated in

the decision. But as already observed above, the disciplinary authority in the instant case has only accepted the report of the inquiring authority and its findings on the findings thus accepted and recorded, which had already been communicated to the petitioner while supplying the inquiry report, the action has been taken." Thus, there is consideration, there is recording of the finding and communication thereof. The reasons leading to the findings are already there in the inquiry report. Nothing in the report has been added, varied, implied or reversed by the disciplinary authority.

24. The last point urged by the learned counsel for the appellant is again on the alleged violation of the principles of natural justice in not having been given an opportunity for personal hearing. No man should be condemned un-heard is one of the main principles of natural justice. But, whether in all circumstances, the personal hearing would mean hearing by word of mouth is the question. The Supreme Court had considered this aspect in several cases and earliest among them is in *Union of India (UOI) Vs. Jyoti Prakash Mitter*, The constitution Bench of the Supreme Court considered the situation whether the High Court Judge should be given a hearing by the President of India while taking decision under Article 217(3) of the Constitution of India. It has been held as follows:

26.....In a proceeding of a judicial nature, the basic rules of natural justice must be followed. The respondent was on that account entitled to make a representation. But it is not necessarily an incident of the rules of natural justice that personal hearing must be given to a party likely to be affected by the order. Except in proceedings in Courts, a mere denial of opportunity of making an oral representation will not, without more, vitiate the proceeding. A party likely to be affected by a decision is entitled to know the evidence against him, and to have an opportunity of making a representation. He, however, cannot claim that an order made without affording him an opportunity of a personal hearing is invalid.

25. In *Jain Exports (P) Ltd. and Another Vs. Union of India (UOI) and Others*, the Supreme Court has taken the view that once the show cause notice is issued and explanation submitted by the parties is considered, natural justice cannot be said to be violated on the ground that opportunity for hearing ought to have been afforded.

26. In *Carborundum Universal Ltd. Vs. Central Board of Direct Taxes, New Delhi*, the Supreme Court considered the question of waiver of interest u/s 220 (2-A) of the Income Tax Act, 1961. It has been held as follows:-

6. There is no procedural statutory requirement of a hearing for the disposal of an application u/s 220 (2-A) of the Act. The legal position is that where a statutory provision does not exclude natural justice the requirement of affording an opportunity of being heard can be assumed, particularly when the proceedings are quasi-judicial. Exclusion, however, can either be by a clear provision or inferred from the scheme, as also the nature of power which is being exercised. We have already noticed that the power of the Board which was

invoked was discretionary. It was to be exercised on the basis of the recommendation of the Commissioner and the material provided by the assessee. Personal hearing in every situation is not necessary and there can be compliance of the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof.....

27. In *Union of India and another Vs. M/s. Jesus Sales Corporation*, the Supreme Court went to the extent holding that even while rejecting an application to dispense with the pre-deposit alongwith the appeal under the Imports and Exports (Control) Act, 1947, it was not necessary to afford an opportunity for personal hearing. At para 5 of the judgment, it was held as follows:-

5.....When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded.....

28. In *State of T.N. represented by Secretary, Housing Deptt., Madras Vs. K. Sabanayagam and Another*, the Apex Court held that while considering the question of exemption from all the provisions of Bonus Act, 1965, it is not obligatory on the part of the appropriate government to afford an opportunity for hearing to the employees and it would be sufficient to consider the materials in rebuttal, furnished by the employees, likely to be affected by the decision.

29. In *The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others*, , it is held by the Supreme Court "when all the relevant circumstances have been taken into account by the District Committee and the Educational Authorities, there is no violation of the principles of natural justice." That was a case where the Supreme Court considered the complaint regarding refusal of grant-in-aid to the schools.

30. In the *Administrative Law* by Sir William Wade and Christopher Forsyth, Tenth Edition, in Part VI dealing with Natural Justice and at Chapter 14 dealing with Right to a Fair Hearing, while discussing generally about the procedure, it is stated as follows:

In various situations practicalities may justify dispensing with oral hearing. It has been held that a statutory board, acting in an administrative capacity, may decide for itself whether to deal with applications by oral hearing or merely on written evidence and argument, provided that it does in substance "hear" them;

and that dealing with an appeal on written communications only is not contrary to natural justice. The visitor of a college may similarly deal with an appeal on written submissions only and a student may be rusticated from his college without an oral hearing, if he has been told the nature of the complaints against him and given a fair opportunity to state his case in writing. A licensing authority may give a "hearing" on paper, provided that the applicant is allowed to reply to any objections known to the authority. An immigrant appealing against a deportation order need not be offered an interview. Some statutory tribunals have power to dispense with oral hearings, but if they do so, they must be careful to give a party a fair opportunity to comment on any adverse statement submitted. Large numbers of planning appeals are disposed of on paper, but in those cases the appellant previously waived his right to a statutory hearing. A number of tribunals may dispense with hearings under their statutory rules in certain circumstances.

31. Personal hearing, therefore, does not necessarily invariably and always mean a hearing by word of mouth, oral hearing. In various situations practicalities may justify dispensing with such hearing by word of mouth. In such situations, it would be sufficient that an effective opportunity is given to the party to present his case by way of a representation, where such authority is expected to apply its mind to the issues involved. The instant is one such example of the practical difficulty where the delinquent employee is to be given opportunity for personal hearing by the Full Court of the High Court since under Article 235 of the Constitution of India, it is the High Court which is the disciplinary authority.

32. True, in disciplinary proceedings, by way of oral hearing, the delinquent may make an attempt for change of heart or to soften the heart of the disciplinary authority in the matter of quantum of punishment. It is seen from the resolution of the Full Court dated 7.4.2004 that this aspect of the matter also has been considered by the Full Court and a lenient view has been taken in view of the age of the petitioner and instead of dismissal from service, the milder penalty of removal from service has been imposed. Whether the delinquent in the instant case deserved such a leniency is itself a question of serious concern. Apparently, that decision has been taken by the Full Court in view of the submission of the petitioner in the representation as follows;

However, in case the Hon"ble High Court does not find favour with the comments submitted, the delinquent beg apology and humbly prays for taking kind and lenient view.

33. Therefore, even from that angle also, it cannot be said that any prejudice has been caused to the petitioner in not affording an opportunity for oral hearing.

34. Having prologued on integrity, in this judgment, it is only appropriate that there is an epilogue too. Honesty and integrity are the hallmarks of judicial probity. Dishonesty and lack of integrity are hence the basic elements of misconduct as far as a Judicial Officer is concerned. In the instant case, a judicial

officer in service for around 14 years, having been charged with various acts of misconduct, had the audacity to defend the charges against plain truth, by even concocting evidence. It is sad, unfortunate and painful that in the process a member of the legal fraternity and the member of the medical profession have also been made to speak utter falsehood of having seen the officer in India at a time when he was admittedly in Thailand. The Judicial Officer has acted against his conscience which shocks the judicial conscience. There is betrayal of the judicial conscience. The keeper has become the poacher. He has corrupted the system and the society by polluting also the minds of the duty holders like Advocates, witnesses and the litigant public, in his attempt to concoct the evidence to establish that he was in India only while actually, factually and admittedly he was in Thailand at the relevant time. Such conduct has shaken the credibility and it is shocking to the judicial conscience. According to us, such conduct is the most serious misconduct which deserves the severest punishment as permitted under law so that it would serve the purpose also of deterrence. Therefore, we are of the view that the appeal should be dismissed with exemplary costs. We may end up this epilogue quoting from the decision of the Supreme Court regarding the role of the High Court in such situations, reported in *High Court of Judicature v, Shashikant Patel (supra)*: Dishonesty is the stark antithesis of judicial probity. Any instance of a High Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to erosion of the judicial foundation. Every hour we must remind ourselves that the judiciary floats only over the confidence of the people in its probity. Such confidence is the foundation on which the pillars of the judiciary are built.

Though for different and additional reasons also, we do not thus find any merit in the appeal, which is accordingly dismissed with cost of Rs. 25,000/-. (Justice Kurian Joseph), Chief Justice. April 21, 2011.