
(2014) 08 AHC CK 0233
In the Allahabad High Court
Case No : Writ Petition No. 1458 (S/B) of 2011

Ram Chandra-II

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 235, 311(2)
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) ALLMR(Cri) 312

Hon'ble Judges : Sanjay Misra, J;Brijesh Kumar Srivastava-II, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Brijesh Kumar Srivastava-II, J.—The petitioner was selected by the Lok Sewa Ayog Uttar Pradesh and he joined as Judicial Officer (Munsif Magistrate) on 06.04.1981. The petitioner was promoted in the Uttar Pradesh Higher Judicial Services on 15.05.2001 and posted as Additional District Judge. In June, 2009, the petitioner was transferred as Additional District Judge, Agra where he resumed his charge on 09.06.2009. The petitioner was placed under suspension vide order dated 03.08.2009 in contemplation of departmental enquiry and attached with the District and Sessions Judge, Etah. The petitioner was served with a charge sheet dated 03.11.2009 on 10.11.2009 in which four charges were levelled against him. The first charge relates to demand of a car by the petitioner from a Police Inspector of Police Station Shahganj, District Agra and that he travelled in the said car from Agra to Vrindaban, Mathura, which was registered in the name of an accused involved in a murder case. The second charge relates to furnishing of a false information by the petitioner to the District Judge, Agra with ulterior motive as after taking permission to visit his home at Allahabad the petitioner visited to another place i.e. Vrindaban. The third charge relates to stay of petitioner in a private guest house after being transferred in Agra Judgeship in the month of June, 2009 even though he has been provided residence in Judges' Compound, Agra. The fourth charge relates to influence the judicial proceedings

by the petitioner in some cases during his posting as Judicial Officer in Agra Judgeship.

2. With respect to the incident mentioned in charge Nos. 1 and 2, the District Judge, Agra sent a confidential report dated 21.07.2009 to the Administrative Judge stating therein that the incident, which was published in the various news papers, had received wide publication and pursuant to which on 20.07.2009 an exhaustive report was prepared after ascertaining the veracity of the news report and also about the identity of the said officer after a proper enquiry conducted by Special Chief Judicial Magistrate.

3. The Administrative Judge called the petitioner for probing the matter as to validate the facts of the confidential report forwarded by District Judge, Agra. Further, the Administrative Judge wrote a letter dated 23.07.2009 to Hon"ble the Chief Justice regarding the conduct of the petitioner. The letter dated 23.07.2009 was considered by the Administrative Committee in its meeting held on 29.07.2009 and in pursuance of the resolution passed by the Administrative Committee the petitioner was placed under suspension vide order dated 03.08.2009 in contemplation of departmental enquiry and attached with the District and Sessions Judge, Etah. The departmental enquiry was instituted against the petitioner and witnesses were examined. The petitioner was given opportunity to provide his written submission as well as to cross examine the witnesses. The petitioner submitted written statement to the charge sheet on 23.11.2009.

4. The enquiry was proceeded against the petitioner, who was served with a copy of the report of the Administrative Judge. Statement of the petitioner was taken on record on 12.03.2010 by way of cross-examination in the enquiry. The petitioner submitted his written argument before the Enquiry Judge on 25.03.2010. The petitioner was supplied copy of the enquiry report dated 18.05.2010.

5. In the enquiry proceedings charge Nos. 1 and 2 were proved against the petitioner and charge Nos. 3 and 4 were dropped. The petitioner preferred a representation dated 01.09.2010 against the said enquiry report and the same was placed before the Administrative Committee for consideration along with enquiry report. The Administrative Committee referred the matter to the Full Court for passing necessary order and the Full Court recommended the petitioner's dismissal from service. Hence, the petitioner has preferred the instant petition with the following reliefs:

(I) to issue writ order or direction in the nature of certiorari quashing the impugned order of dismissal from service dated 15.04.2011 as contained in Annexure No. 1 to the writ petition with all consequential service benefits.

(II) to issue writ order or direction in the nature of mandamus directing and commanding the opposite parties to treat the petitioner in continuous service by giving him all consequential service benefits as if the impugned order of

dismissal from service contained as Annexure No. 1 to the writ petition has never been passed.

(III) to issue any other writ order or direction which this Hon''ble court may deem just fit and proper under the circumstances of the case.

(IV) to allow the cost of the writ petition.

6. We have heard Sri O.P. Srivastava, learned Senior Counsel appearing on behalf of the petitioner, learned Standing Counsel appearing for respondent No. 1-State and Sri Manish Kumar appearing for respondent No. 2-The High Court.

7. Argument advanced on behalf of the petitioner is that the impugned order of dismissal has been passed without affording an opportunity of hearing to the petitioner and, hence, the rules of principles of natural justice has been violated while conducting the enquiry. On the other hand, it was contended by learned counsel for respondents that the procedure for investigation and related steps has been followed with due procedure of law and it is also evident from the perusal of records itself that the petitioner has participated in enquiry and also afforded opportunity of being heard and there is no illegality in the impugned order passed as such.

8. Before advertng to the submissions made by learned counsel for the parties, it would be appropriate to consider the settled proposition of law as laid down by Hon''ble Supreme Court while considering the various aspects of disciplinary enquiry.

9. In the matter of *Nirmala J. Jhala Vs. State of Gujarat and Another*, , the Hon''ble Supreme Court has dealt with disciplinary enquiry doctrine in following words:

LEGAL ISSUES:

I. Standard of proof in a Departmental Enquiry which is Quasi Criminal/Quasi Judicial in nature:

A. In *M.V. Bijlani Vs. Union of India (UOI) and Others*, this Court held:

"... Disciplinary proceedings, however, being quasi criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures.

(Emphasis added)

(See also: Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, Roop Singh Negi Vs. Punjab National Bank and Others, and Krushnakant B. Parmar Vs. Union of India (UOI) and Another,

B. In Prahlad Saran Gupta Vs. Bar Council of India and Another, this Court observed that when the matter relates to a charge of professional mis-conduct which is quasi-criminal in nature, it requires proof beyond reasonable doubt. In that case the finding against the delinquent advocate was that he retained a sum of Rs. 15,000/- without sufficient justification from 4-4-1978 till 2-5-1978 and he deposited the amount in the Court on the latter date, without disbursing the same to his client. The said conduct was found by this Court as "not in consonance with the standards of professional ethics expected from a senior member of the profession". On the said fact-situation, this Court imposed a punishment of reprimanding the advocate concerned.

C. In Harish Chandra Tiwari Vs. Baiju, this Court made a distinction from the above judgment stating the facts in the aforesaid decisions would speak for themselves and the distinction from the facts of this case was so glaring that the misconduct of the Appellant in the present case was of a far graver dimension. Hence, the said decision was not of any help to the Appellant for mitigation of the quantum of punishment.

D. In Noor Aga Vs. State of Punjab and Another, it was held that the departmental proceeding being a quasi judicial one, the principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded there from. Inference on facts must be based on evidence which meet the requirements of legal principles. (See also: Roop Singh Negi Vs. Punjab National Bank and Others, Union of India (UOI) and Others Vs. Naman Singh Sekhawat, and Vijay Singh Vs. State of U.P. and Others,

E. In M.S. Bindra Vs. Union of India and Others, it was held:

While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "Nemo Firut Repente Turpissimus" (no one becomes dishonest all on a sudden) is not unexceptional but still it is salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to

entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

F. In High Court of High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, , this Court held:

The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct.

G. In view of the above, the law on the issue can be summarised to the effect that the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. The ratio of the judgment in Prahlad Saran Gupta (supra) does not apply in this case as the said case was of professional misconduct, and not of a delinquency by the employee

Scope of Judicial Review:

(i) It is settled legal proposition that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. The only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings. (Vide: State of Tamil Nadu and another Vs. S. Subramaniam, R.S. R.S. Saini Vs. State of Punjab and Others, and Govt. of A.P. and Others Vs. Mohd. Narsullah Khan,

(ii) In Zora Singh, this Court while dealing with the issue of scope of judicial review, held as under:

The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari the

superior Court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence.

(Emphasis added)

(iii) The decisions referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set-aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from malafides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision-making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene

10. The Hon''ble Supreme Court in the case of Rajesh Kohli Vs. High Court of J. and K. and Another, has observed as under:

"32. Upright and honest judicial officers are needed not only to bolster the image of the judiciary in the eyes of the litigants, but also to sustain the culture of integrity, virtue and ethics among Judges. The public's perception of the judiciary matters just as much as its role in dispute resolution. The credibility of the entire judiciary is often undermined by isolated acts of transgression by a few members of the Bench, and therefore it is imperative to maintain a high benchmark of honesty, accountability and good conduct."

11. The Hon''ble Supreme Court in the case of Arundhati Ashok Walavalkar Vs. State of Maharashtra, has observed as under:

"23. We are, however, unable to accept the aforesaid contention for the simple reason that we could probably interfere with the quantum of punishment only when we find that the punishment awarded is shocking to the conscience of the court. This is a case of a judicial officer who was required to conduct herself with dignity and manner becoming of a judicial officer. A judicial officer must be able to discharge his/her responsibilities by showing an impeccable conduct. In the instant case, she not only traveled without tickets in a railway compartment

thrice but also complained against the ticket collectors who accosted her, misbehaved with the railway officials and in those circumstances we do not see how the punishment of compulsory retirement awarded to her could be said to be disproportionate to the offence alleged against her.

24. In a country governed by the rule of law, nobody is above law, including judicial officers. In fact, as judicial officers, they have to present a continuous aspect of dignity in every conduct. If the rule of law is to function effectively and efficiently under the aegis of our democratic set-up, judges are expected to, nay, they must nurture an efficient and enlightened judiciary by presenting themselves as a role model. Needless to say, a judge is constantly under public gaze and society expects higher standards of conduct and rectitude from a judge. Judicial office, being an office of public trust, the society is entitled to expect that a judge must be a man of high integrity, honesty and ethical firmness by maintaining the most exacting standards of propriety in every action. Therefore, a judge's official and personal conduct must be in tune with the highest standard of propriety and probity. Obviously, this standard of conduct is higher than those deemed acceptable or obvious for others. Indeed, in the instant case, being a judicial officer, it was in her best interest that she carries herself in a decorous and dignified manner. If she has deliberately chosen to depart from these high and exacting standards, she is appropriately liable for disciplinary action."

12. In the case of High Court of High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another, the Hon"ble Supreme Court has observed as under:

"11. It is true that a resolution came to be passed authorising the Committee off five Judges to deal with imposition of punishment on judicial officers. The question of punishment on judicial officers. The question, therefore, is: whether it requires the Chief Justice and the Committee to initiate disciplinary proceedings? The "delegation of the function of the High Court in respect of punishment of judicial officers" is an expression of width and of wide amplitude to cover within its ambit the power to take a decision by the Committee from the stage of initiation of disciplinary proceedings, if necessary, till its logical and, viz., recommendation to the Government to impose a penalty proposed by the Committee. The recommendation is by the High court, the controlling authority under Article 235 of the constitution. Therefore, it is difficult to accept the contention of Shri Barta that the delegation is only for imposition of punishment on judicial officers. In fact, the High Court has no power to impose any punishment by itself. The appointing authority under the Constitution to impose punishment in accordance with the rules framed for the purpose. Therefore, the entire gamut of procedural steps of disciplinary action is by the High court which is the controlling authority through the committee constituted in that behalf by the Chief justice of the High Court.

14. Therein also, it was further observed that what is required of a Judge is "a

form of life and conduct for more severe and restricted than that of ordinary people" and through unwritten, it has been most strictly observed. The Judicial Officers are at once privileged and restricted; they have to present a continuous aspect of dignity and conduct. If the rule of law is to efficiently function under the aegis of our democratic society. Judges are expected to nurture an efficient, strong and enlightened judiciary. To have it that way, the nation has to pay the price, i.e., to keep them above wants, provide infrastructural facilities and services. There was a time when a Judge enjoyed a high status in society. A government founded on anything except liberty and justice cannot stand and no nation founded on injustice can permanently stand. Therefore, dispensation of justice is an essential and inevitable feature in the civilized democratic society. Maintenance of law and order requires the presence of an efficient system of administration of criminal justice. A sense of confidence in the court is essential to maintain the fabric of ordered liberty for free people and it is for the subordinate judiciary by its action and the High Court by its appropriate control of subordinate judiciary and its own self imposed judicial conduct, on and off the bench, to ensure it. If one forfeits the confidence in the judiciary of its people, it can never regain its lost respect and esteem. The conduct of every judicial officer, therefore, should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or parties influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. If he tips the scales of Justice, its nipping effect would be disastrous and deleterious. Obviously, therefore, this Court in All India Judges Association case attempted to ensure better uniform conditions of service for subordinate judiciary throughout the country, it recommended that the Superannuation of the subordinate judicial officer at the age of 60 years; and ensured amelioration of their service conditions by giving diverse directions. In 2nd All India Judges' Association case, this Court dealt with the status of the judicial officer as a class and held that they are above the personnel working in other constitutional functionaries, viz., the Executive and the Legislative. Directions were issued by this Court for ensuring due implementation for their better service conditions. Three year's minimum service at the Bar was recommended to be eligible to be a judicial officer in All India Judges' Association and others Vs. Union of India and other, (third case). In (1994) 1 MLJ 12 (SC) direction was issued to ensure accommodation."

13. In the case of Union of India and Others Vs. K.K. Dhawan, the Hon'ble Supreme Court has observed as under:

"28. Certainly, therefore, 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. Accordingly, the contention of the respondent

has to be rejected. It is important to bear in mind that in present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the conduct Rules. Thus we conclude that the disciplinary action can be taken in the following cases:

- i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to 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 the 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 said long ago "though the bribe may be small, yet the fault is great."

14. Various other case laws as cited by respondents' counsel are Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, Union of India and others Vs. A.N. Saxena, ; All India Judges' Association and Others Vs. Union of India and Others, ; P.C. Joshi Vs. State of U.P. and Others, Ramesh Chander Singh Vs. High Court of Allahabad and Another, V.K. Jain Vs. High Court of Delhi through Registrar General and Others, ; R.S. Mishra Vs. State of Orissa and Others, Smt. Mona Panwar Vs. The Hon'ble High Court of Judicature at Allahabad and Others, ; Chanbasappa Dhanappa Konale Vs. High Court of Judicature and Others, these cited cases have got no bearing to the present case as the factual position of the present case stands on a different footing.

15. From perusal of the above citations, it is clear that while exercising the writ jurisdiction scope of judicial review is very limited. Needless to say that principles of natural justice are always to be observed. It appears from the record that a departmental enquiry was conducted and after completion of the same the Enquiry Judge submitted report dated 18.05.2010. Under orders of the Hon'ble Chief Justice dated 06.07.2010, a copy of enquiry report was sent to the District Judge, Etah for being furnished to the petitioner for his comments/representation, if he so desires, within 4 weeks.

16. The petitioner submitted comments/representation dated 01.09.2010 to the enquiry report. The enquiry report dated 18.05.2010 and comments dated 01.09.2010 of the petitioner was considered in the meeting of the Administrative

Committee held on 28.10.2010 and the matter was placed before the Full Court, the details of which have been discussed in the preceding paragraphs.

17. In view of the resolution of the Administrative Committee dated 28.10.2010, the matter of the petitioner was considered in the meeting of the Full Court held on 27.11.2010 where it was resolved that the petitioner be dismissed from service. Letter dated 06.12.2010 was sent to the Principal Secretary, Appointment Section-4, Government of U.P., Lucknow for issuance of necessary order regarding dismissal of the petitioner. By the Memorandum dated 15.04.2011 issued by the Government the petitioner has been dismissed. The petitioner preferred a representation before His Excellency, the Governor, on 06.12.2010 for reconsideration of his dismissal from service which was sent to the High Court along with letter dated 20.04.2011. Under the order of Hon'ble Chief Justice the representation of the petitioner was considered in the meeting of the Administrative Committee held on 12.07.2011 where it was resolved that there is no scope for consideration of the representation dated 06.12.2010.

18. In the departmental enquiry as many as 13 witnesses were examined. The petitioner was also examined as defence witness. Sri V.K. Arya, Station House Officer of police station Shahganj, Agra was examined as E.W. 3. He has deposed that car bearing registration No. U.P.35M/1415 had been seized in case crime No. 426 of 2009 u/s 302 IPC on the basis of first information report lodged against Raju son of Jawahar and others. The owners of the said car were Bhagwandas and Raju who are full blooded brothers. The report in this regard was submitted to the Chief Judicial Magistrate. It was the self same vehicle which found mention in the newspaper reports attended with deposition that the said vehicle had been released on 13.10.2009 pursuant to the orders of Addl. District Magistrate (City) Agra. According to the record maintained at the police station, vehicle had been seized and remained as such in the precincts of the police station and was not given to anyone for use. He denied that the car in question was ever given to the petitioner for use.

19. On a query being put to him, he handed out copy of the release order of the vehicle in question. He also deposed that he had relation with the petitioner prior to joining police service, but denied that the car in question was ever given to the petitioner for his use. He also denied with respect to demand being made by the petitioner for arranging a car nor did he arrange any vehicle for him.

20. Smt. Uma Singh was examined as E.W. 5, who has stated that the first information report was lodged by her in which car in question was involved. The car in question was used in the murder of her daughter and her grand-daughter. The car was given to the petitioner for his use and he travelled in the said car upto Vrindaban on 19.07.2009. The aforesaid car was detained by the police in Vrindaban and in this regard she had made a complaint addressed to the High Court.

21. In her cross examination, she stated that in paragraph-5 of her complaint

she indicated that the petitioner had been given the car in question for his personal use which had been detained by the police in Vrindaban on 19.07.2009 on suspicion basis.

22. Smt. Sanju wife of Bhagwandas was examined as E.W. 6, who has deposed that the car in question was registered in the name of her husband Bhagwandas. The car had been taken away from her house by the police and was seized. The car in question along with its key was with the police. As soon as she came to know that the car had been illegally used and detained by police of Mathura, she moved application for release of the same.

23. In her cross-examination she stated that when she moved application, the car was present in the precincts of police station of Shahganj and its number plate was intact and it had not suffered any scratching.

24. Sri Vinod Agarwal was examined as E.W. 9, who has deposed that he was serving as Principal Correspondent in D.L.A. and news item published in newspaper dated 20.07.2009 was published from news agency. He also attested the news items published at page-7 of the newspapers titled as "Ajibogarib Halat Me Bach Nikley Judge Saheb" in which photo of the car was also published. He also testified to the title published in the newspapers "Hatyabhiyukt Ki Gadi Se Panch Ladkiyan Ke Saath Vrindavan Jakar Ajeebogarib Paristhitiyon Ka Shikar Bane Judge Saheb Ko Antateh Ubar Liya Gaya." He also testified to the title published in the newspapers "Thana Shahganj Police Ki Nadani Ke Chalte Judge Saheb Ko Thana Jana Pad Gaya Tha."

25. In his cross examination, he stated that he was not told the name of the Judge. He denied knowledge regarding the photograph of the car published in the newspapers was taken while it was in Vrindaban police station or it was in Shahganj police station.

26. In connection with first charge it is necessary to go through observation made by the Enquiry Judge, which may be reproduced herein:

In the first instance I would deal with the evidence of E.W. 1 namely, Sri N.K. Jain, District Judge Agra. E.W. 1 Distt. Judge N.K. Jain has proved his report and stuck to the facts as contained in his report submitted to the High Court. It would appear from his statement that he based his confidential report on the information furnished by the C.J.M. after enquiry from Police Station Shahganj and also on the statement made by the delinquent officer before the Distt. Judge on 20.07.2009 when he was summoned by the District Judge in his chamber at 4.40 p.m. The District Judge also deposed that the delinquent officer made the statement before two judicial officers namely C.J.M. namely Anil Kumar Vashishtha Sri Rahul Mishra, the then Addl. District Judge Agra, Sri Anil Kumar Vashishtha has been examined E.W. 7 who has propped up in entirety the statement of E.W. 1 that the officer made statement before the Distt. Judge on 20.07.2009 at 4.40 p.m. that he had demanded a car for his visit to Vrindavan and that he had gone to Vrindavan in the car provided by S.H.O. Shahganj along

with the girls of the family of Shalya Guest House situated at Tajganj. The deposition of E.W. 2 Umesh Kumar who was then C.J.M. is to the effect that certain information was sought from him and after collecting information from P.S. Shahganj, he furnished the information to the Distt. Judge by means of letter dated 7.9.2010. He also deposed that whatever he has stated in his letter aforesaid is based on documentary evidence which are annexed to his letter aforesaid. It is also noteworthy that although the delinquent officer had conceded that he appeared before the Administrative Judge but denied to have given the version as alleged in the report of the Administrative Judge. In his deposition, the delinquent officer stated that he only explained the circumstances in which he could not occupy the residence allotted to him and he did not give statement on the lines as attributed to him about his visit to Vrindaban or about demanding car from S.H.O. Shahganj or also about using the said car for his visit to Vrindaban alongwith girls.

In the above conspectus, and regard being had to the memorandum prepared by the Distt. Judge and also the letter of the District Judge addressed to the Administrative Judge and again regard being had to the report of the Administrative Judge addressed to Hon. Chief Justice, and taking into reckoning the deposition of E.W. 7 namely A.K. Vashishtha, the conclusion is inescapable that the delinquent officer was called in the chambers on 20.07.2009 and he appeared and made the oral statement before the Distt. Judge in the presence of Sri A.K. Vashishtha, Special C.J.M. who is arrayed as E.W. 7.

I would also like to dwell upon denial made by the delinquent officer in his defence about the statements attributed to him both by the Distt. Judge and the Administrative Judge in their respective reports. The defence of the delinquent officer that he did not make the statement as attributed to him by the Administrative Judge in his report addressed to Chief Justice and that the same appears to have been prepared on the basis of the report submitted by the Distt. Judge and further that the Administrative Judge mentioned facts in his report ostensibly labouring under some confusion confounded by the District Judge, does not commend to me for acceptance. I have perused both the reports. The report of the Administrative Judge mentions certain facts which are not contained in the report of the District Judge. The relevant facts which are not mentioned in the report of the Distt. Judge may be adverted to Para No. 2 at page 2 of the report of Administrative Judge being relevant is excerpted below.

"The officer informed me that his two sons are studying in Delhi and that his wife and daughter mostly live at Allahabad. He belongs to Allahabad and his house at Allahabad. He wanted to come to Allahabad on 19th July 2009 to see off his son but changed his mind and decided to visit temples at Vrindaban alongwith family members of the owner of the guest house with whom he has developed acquaintance. The Inspector of Shahganj Agra is known to him from Allahabad and that he requested him to provide a car. The car was driven by him. The guest house owner, his minor daughters in between age group of 6 to 14 and

sister in law serving in railway accompanied him. At Vrindaban he had parked his car outside the ISKON temple. He found a photographer taking pictures of the car. On his return at Agra he enquired from the Inspector P.S. Shahganj and found that car is not a case property. It is registered in the name of person, who is an accused in a murder case and was brought by the police to the police station. The officer did not know the owner of the car and his involvement in criminal case."

27. The Enquiry Judge also observed:

" The most intriguing aspect of the matter is the evidence of E.W. 3 V.K. Arya, S.H.O. Shahganj and also the evidence of E.W. 8 R.K. Singh, S.H.O. P.S. Vrindaban. Both the witnesses repudiated the entire story. E.W. denied that the car ever left the precincts of Police Station Shahganj. He also denied that the officer demanded a car from him or that he provided the car in question to him. When E.W. 8 was queried how his name came to be mentioned in the news report, he expounded that he also read his name in the newspaper but admitted that he did not repudiate the news report in any manner. The witness did not repudiate that photographs were taken while the car was detained at Police Station. He also produced General Diary stating that no entry was made of any car having been detained at P.S. Vrindaban. I would not mince words to say that the cases are not unknown where the police officers gave inaccurate account to help out a colleague from a tight situation of his creation. Similar appears to be the position here. Despite clinching evidence of news papers reports and also photograph having been published of the car while it was detained at P.S. Vrindaban and also the statement of the delinquent officer before the District Judge and also from the Administrative Judge, denial of the incident in entirety has come from the aforesaid two witnesses.

There is nothing on record to support the version of the delinquent officer that he was not summoned nor he made any incriminating statement adverse to him before the District Judge as alleged in his report by the Distt. Judge. Reliance on timing of daily sitting is a very fragile and weak ground and therefore, the version of the delinquent officer does not commend to me for acceptance."

28. In connection with the first charge, the Enquiry Judge has recorded finding that the officer used the said car and visited Vrindaban in the said car.

29. The Enquiry Judge has also recorded finding that "to sum up, the charge Nos. 1 and 2 are proved to the extent as stated supra. In so far as charge Nos. 3 and 4 are concerned, as stated supra, they are not proved.

30. Judging the conduct by the standard laid down above, I cannot resist temptation that the conduct of the delinquent officer brought infamy to the entire district judiciary. He is a seasoned officer having put in 18 years of service. The officer most unabashedly denied his statement made before two senior dignitaries i.e. the Administrative Judge and the District Judge in the presence of two judicial officers. Had he been fair in not repudiating his statement, it could

have been a fit case for a lenient view regard being had to his unblemished record and this deviant behaviour being an individual aberration. Reckoning with all the circumstances, I do not propose any lenient or compassionate view in the matter."

31. It will appear from the perusal of the record that the Enquiry Judge after considering all materials on record and affording opportunity to the petitioner has recorded his finding. The petitioner was given opportunity to submit objection/reply against the enquiry report and it is only after the reply submitted by the petitioner, the decision has been taken. The copy of the enquiry report has been provided to the petitioner. It appears to us that the Enquiry Judge has conducted the enquiry after meticulously considering the evidences and statements. It is not a case where it can be said that the principles of natural justice have been violated.

32. In light of the decisions cited herein above, we do not find any reason or ground to hold that the finding of facts recorded by the Enquiry Judge are in any manner perverse so as to warrant any interference in exercise of our jurisdiction under Article 226 of the Constitution of India.

33. We are unable to hold that the disciplinary proceeding as well as punishment order is violative of Article 14, 16 and 311(2) of the Constitution of India besides being in transgression of the 1999 rules and other statutory provisions. The dismissal order is neither arbitrary nor harsh nor it can be said to be disproportionate to the gravity of the charges.

34. We are conscious of the fact that scope of judicial scrutiny is very limited. Admittedly, a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process.

35. We are also conscious of the fact that the standard of conduct is higher than expected of a layman and also higher than expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

36. From the perusal of above noted laws and factual position of the case, it is evident that the departmental proceeding has been concluded in a lawful manner and the petitioner has been provided with an opportunity of being heard and to participate in the departmental proceedings. As discussed earlier, charge Nos. 1 and 2 have been found proved though the petitioner denied his involvement with the car in question, but the finding of the Enquiry Judge was recorded otherwise based on materials available on record. Hence, the stand taken by the petitioner that the rules of natural justice has been violated while conducting the enquiry is

not at all tenable in the eyes of law. The order passed by the State Government dated 15.04.2011, dismissing the petitioner from service, cannot be faulted with in any manner.

37. Accordingly, we find that this writ petition is devoid of merit and is liable to be dismissed. It is dismissed.

38. No order is passed as to costs.