

(2013) 01 AHC CK 0417

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 53896 of 2011

Ram Chandra Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Arms Act, 1959 — Section 2, 25, 4

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2013) 3 ADJ 489

Hon'ble Judges : Satyendra Singh Chauhan, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Siddharth Khare and Ashok Khare, for the Appellant; Ranjan Srivastava and Yashwant Verma, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, who happens to be the Judicial Officer, has challenged his order of dismissal dated 23.8.2011 passed by the State Government. The petitioner was selected by U.P. Public Service Commission for appointment in U.P. Nyayik Sewa, and was posted as Additional Civil Judge-II at Jaunpur on 22.12.2003. Subsequently the petitioner was transferred as Civil Judge (Senior Division). The petitioner remained posted from time to time at different places of posting and from 6.8.2010, he was posted as Civil Judge (Senior Division), district Balrampur. During the period 16.12.2008 to 3.8.2010, the petitioner was posted as Additional Chief Judicial Magistrate at Hehrauni outlying Court of district Lalitpur. While being posted as Additional Chief Judicial Magistrate, his reader Harish Chandra Gautam moved an application on 4.5.2009 seeking his transfer from outlying Court to District Headquarter, Lalitpur. While submitting his application, Harish Chandra Gautam levelled certain charges against the petitioner that for the purpose of raising quota, the petitioner decided certain cases under the U.P. Excise Act and Arms Act between 13.4.2009 to 29.4.2009, showing them incorrectly decided. It was also alleged in the said complaint that the evidence of certain persons was recorded fraudulently, though they never appeared before

the Court on the date of recording of statement and during the said period, they were posted on election duty.

2. The District Judge proceeded to ask for comments on the said complaints by means of letter dated 7.7.2009. In response to the said letter, the petitioner submitted his reply on 15.7.2009. Meanwhile one Sarfaraj Ali, Advocate also moved a complaint on 3.9.2009 against the petitioner before the District Judge making certain allegations. It was also stated that the statements which were recorded with regard to 21 cases, referred to in his complaint, have been recorded between 2.4.2009 to 27.4.2009 fraudulently and the said cases have been decided between 6.4.2009 to 28.4.2009. On the said complaint, the District Judge, Lalitpur called for the comments of the petitioner with reference to the aforesaid complaint. The petitioner submitted his reply in response to the aforesaid complaint on 14.9.2009. The then District Judge, Lalitpur proceeded to conduct a preliminary enquiry and recorded the statements of Sarfaraj Ali, Advocate, Harish Chandra Gautam, Reader, Constables Amrit Singh, Mewa Lal, Rajesh Kumar and Radhey Shyam, and Dilip Kumar Srivastava, Assistant Prosecuting Officer, Mehrauni.

3. The preliminary enquiry report dated 6.1.2010 was forwarded to the Registrar General of the High Court by the District Judge, Lalitpur. Thereafter the High Court accorded permission for holding regular departmental enquiry, which was registered as Departmental Enquiry No. 8 of 2010.

4. Sri Vijay Verma-I, District Judge, Lalitpur, who was appointed as enquiry officer, issued a departmental charge-sheet dated 2.6.2010, levelling seven charges against the petitioner. The petitioner submitted his reply to the said charge-sheet on 19.6.2010. The enquiry was held by the enquiry officer after giving proper opportunity to the petitioner. The petitioner cross-examined all the witnesses, who were examined in respect of the charges and he also adduced evidence as well. After conclusion of the enquiry, charges No. 1 to 6 were found proved against the petitioner, whereupon a show-cause notice was issued to the petitioner. The copy of enquiry report was supplied to the petitioner by the High Court on administrative side alongwith show-cause notice. The petitioner filed reply to the show-cause notice on 29.11.2010.

5. The Administrative Committee of the High Court perused the aforesaid enquiry report and recommended for dismissal of the petitioner from service. The said dismissal was thereafter approved in a Full Court meeting. On the basis of the said decision of the Administrative Committee, an order dated 3.5.2011 was issued withdrawing the judicial and administrative powers of the petitioner as Civil Judge (Senior Division), Balrampur. The State Government thereafter, on the basis of the recommendation of the High Court, proceeded to pass an order dated 23.8.2011, dismissing the petitioner from service. Hence this writ petition.

6. Submission of learned counsel for the petitioner is that the diary of the Assistant Prosecuting Officer was asked to be summoned during the course of

enquiry by the petitioner, but the said application was rejected by the enquiry officer for the reasons best known to him. He submits that the said fact has been admitted in the counter-affidavit. The petitioner wanted to prove from the diary that the said constables turned up to give evidence and there was entry to that effect in the diary of the Assistant Prosecuting Officer and since the diary of the Assistant Prosecuting Officer was not summoned, therefore, the petitioner has been denied proper opportunity to defend himself and the order has been passed in violation of principles of natural justice. He further submits that the complaint made by Sarfaraj Ali, Advocate and Harish Chandra Gautam, Reader is malicious on account of the fact that the petitioner has lodged complaint against the said reader, who is a corrupt person and that is why a complaint has been moved against him by the reader Harish Chandra Gautam. Sarfaraj Ali, Advocate has also moved a complaint with malicious intention, as he wanted favour in criminal matters and the petitioner has denied the same as judicial officer, therefore the said complaint is of no avail. The conduct of the petitioner can utmost be termed as minor in nature and amounts to procedural irregularity, but it cannot be termed as gross misconduct for dismissal of the petitioner.

7. Counsel for the petitioner further submits that all the 21 cases, which were decided, referred to in the charge-sheet, between 2.4.2009 to 27.4.2009 went without complaint and neither the accused persons or their counsel made any complaint in respect of those cases decided by the petitioner. The complainants were neither the aggrieved persons nor they were prejudiced in any manner. He also submits that in none of the cases, any appeal was filed nor any accused or their counsel were aggrieved by the order passed by the petitioner and in case the order was passed without recording the statement of PWs, then certainly the order would have been appealed in the higher Court. Learned counsel for the petitioner submits that all the 21 cases relate to the trivial offence and hardly have any material bearing, so far misconduct against the petitioner has been levelled. The petitioner can utmost be said to have claimed wrongful quota and not more than that. He submits that the statement of the police personnel recorded in the aforesaid cases was only to prove the arrest and seizure memo alone, which are already on record of the criminal cases. The counsel, who was engaged on behalf of the accused, has obtained copy of the statement of prosecution witnesses in each of the cases after depositing requisite fee in this regard in the Government treasury and the details regarding the same stood recorded in Register No. 45. He also submits that the findings recorded by the enquiry officer are self contradictory and not supported by any cogent evidence.

8. Learned counsel for the High Court, by filing counter-affidavit has submitted that the petitioner has fraudulently recorded the statement of five constables, who never appeared in his Court, which is a serious misconduct on his part. He did not try to identify the person, whose statement was recorded and whose fake signatures were put on the statement. All the constables have appeared before the enquiry officer and they stated that they never appeared before the Court and neither gave any such statement as recorded by the petitioner. During the

said period i.e. from 13.4.2009 to 29.4.2009, in cases relating to Excise Act and Arms Act, quota was wrongly claimed by the petitioner, showing them to have been decided as contested cases, whereas they were never contested and in fact in most of the cases, application for confession was there, but in spite of that, confession application was ignored and the case was shown to be contested case. The reader of the petitioner, who became fed up by the corrupt practice of the petitioner, moved an application for his transfer to headquarter alongwith the aforesaid facts being brought on record in the said application. The evidence of Pairokar was recorded as a secondary evidence, whereas in none of the cases, either the I.O. or any other person appeared. The evidence of Pairokar was recorded in a fraudulent manner and all the Pairokars appeared before the enquiry officer and stated that they never appeared before the Court nor they gave their statement nor they put any signature on the relevant papers and some impostor has put his signature on the said papers. Learned counsel submits that the petitioner has not been able to explain as to under what circumstances, the statement of these persons were recorded in a fraudulent manner. The petitioner has taken only the shelter of the procedural process, but he has not been able to justify the recording of statement of such persons. Except charge No. 7, all the charges have been found proved against the petitioner. The Assistant Prosecuting Officer Sri Dilip Kumar Srivastava, who was deputed in the Court, also appeared before the enquiry officer and he was subjected to lengthy cross-examination, but nothing has been brought out from his evidence and he stated that he was well known to Rajesh Kumar, Amrit Singh, Radhey Shyam and Mewa Lal. He did not examine any of the witnesses in the Court, so the petitioner has committed serious misconduct by recording statement of pairokars, mentioned above fraudulently. All the constables appeared before the enquiry officer and they denied their signatures having been recorded in the Court. Constable Mewa Lal stated that at no point of time, he was posted at Madawara from 2008, but in spite of that, his statement was recorded in respect of that police station. These constables were deputed on election duty and as such there could not have any occasion to record the statement of these constables. The Reader of the petitioner has also given specific statement that he has made a complaint in this regard and stated that he has recorded the statement of PW-1 in the absence of the witness on the dictation of the P.O. and in all the cases, signature of any person was not appended before him and in all the cases, the P.O. kept the files in his chamber and thereafter he does not know as to from whom, he got the signature. In all the cases, statements of accused were typed and on the judgment paper, signatures of the accused persons were obtained on a blank paper and thereafter, after 2 to 3 days, files were given back to him and when he objected to the P.O. that it was wrong to record such statements, then the P.O. said that he would spoil his entry and will write to the District Judge and this pressure was applied on him. Except the shelter to the procedural law, nothing was setup in defence by the petitioner, from which, it could be inferred that no such misconduct was committed by the petitioner.

9. Learned counsel for the High Court has further submitted that full opportunity was given to the petitioner to cross-examine the witnesses and he did cross-examine the witnesses on length. The petitioner was also given opportunity to produce evidence in defence and he produced several advocates in defence to substantiate that the witnesses were produced and the cases were contested by them. The petitioner has also taken refuge to the defence that it was a typographical error and the stenographer had committed the aforesaid mistake by typing the judgment and as such he is not liable for such a harsh punishment.

10. We have heard learned counsel for the parties and perused the record.

11. The petitioner, who was at the relevant time posted as Additional Chief Judicial Magistrate at Mehrauni outlying Court, district Lalitpur, was subjected to complaint by his Reader Harish Chandra Gautam. In the said application, a request was also made that the complainant Harish Chandra Gautam may be transferred to some other Court. The District Judge, Lalitpur called upon the petitioner to file his comments/objections on the said application dated 4.5.2009. The petitioner submitted his comments vide letter dated 15.7.2009. Subsequently, one Sarfaraj Ali, Advocate also made a complaint on 3.9.2009 against the petitioner to the Hon'ble the Chief Justice of this Court, making certain allegations of corruption, dishonesty, misbehaviour, harassment and misconduct on the part of the petitioner in great detail. The then District Judge, Lalitpur sought the comments of the petitioner on the complaint dated 3.9.2009 vide his letter dated 9.9.2009. The petitioner submitted his comments through a letter dated 14.9.2009. In the meanwhile, Hon'ble Sudhir Agrawal, J, too sought a report from the District Judge Lalitpur on the said complaint by Sarfaraj Ali, Advocate vide his order dated 24.12.2009. The then District Judge, Lalitpur conducted a preliminary enquiry with due diligence and afforded ample opportunity to the petitioner to have his say on the transfer application/complaint dated 3.9.2009 and also in compliance of the direction dated 24.12.2009, in which the factum of misconduct of serious kind was reflected on the part of the petitioner.

12. The preliminary enquiry report alongwith other material was placed before the Administrative Judge, Lalitpur, who passed an order to the effect that the matter requires immediate regular departmental enquiry against the petitioner and, therefore, let the same be held by placing him under suspension. The then Acting Chief Justice directed the matter to be considered in the meeting of the Administrative Committee of the High Court held on 29.3.2010, in which a decision was taken to initiate departmental enquiry against the petitioner. In pursuance of the resolution dated 29.3.2010, departmental enquiry was held against the petitioner, which was numbered as 8 of 2010 and charge-sheet dated 2.6.2010 was issued to the petitioner. The petitioner submitted his reply to the charge-sheet on 19.6.2010. The enquiry officer submitted his report on 3.10.2010. After submission of enquiry report, a show-cause notice was issued to the petitioner, who submitted his reply on 29.11.2010.

13. The departmental enquiry report dated 3.10.2010 alongwith comments of the petitioner dated 29.11.2010 was considered in the meeting of the Administrative Committee on 12.1.2011, which took a decision to place the matter before the Full Court. Thereafter the matter was placed before the Full Court on 30.4.2011 and it was resolved to dismiss the petitioner from service. Accordingly, in pursuance of the resolution dated 30.4.2011, a D.O. letter dated 4.5.2011 was forwarded to the Government of U.P. for issuance of necessary orders regarding dismissal of the petitioner from service. Thereafter the State Government passed an order dated 23.8.2011, dismissing the petitioner from service.

14. Seven charges were levelled against the petitioner in the charge-sheet, in which, charge No. 7 was not found proved by the enquiry officer, whereas charge Nos. 1 to 6 were found proved against the petitioner. Charges levelled against the petitioner in the charge-sheet reads as under:

1. The petitioner recorded the statement of a person in the name of Constable Radhey Shyam, even though no such person was present for giving evidence in Criminal Case No. 735 of 2005 (State v. Amar Singh), u/s 60 of Excise Act; in Criminal Case No. 980 of 2008 (State v. Jai Hind Singh), u/s 60 of Excise Act; in Criminal Case No. 1492 of 2005 (State v. Narain Singh), u/s 4 read with Section 25 of the Arms Act and in Criminal Case No. 1124 of 2008 (State v. Anant Ram), u/s 4 read with Section 25 of the Arms Act.

2. The petitioner upon his own dictation got the statement of one Constable Rajesh Kumar recorded even though no such person was present in Criminal Case No. 1355 of 2008 (State v. Kailash), u/s 4 read with Section 25 of the Arms Act; in Criminal Case No. 1025 of 2008 (State v. Rajoo Mogiya), u/s 60 of Excise Act; in Criminal Case No. 1029 of 2008 (State v. Rakesh), u/s 4 read with Section 25 of the Arms Act; in Criminal Case No. 456 of 2007 (State v. Mohar Singh), u/s 4 read with Section 25 of the Arms Act and in Criminal Case No. 105 of 2006 (State v. Kamlesh), u/s 60 of Excise Act.

3. Upon the dictation of the petitioner the statement of one Constable Amrit Singh was recorded even though he was not present in Criminal Case No. 1394 of 2008 (State v. Charan Singh), u/s 60 of Excise Act; in Criminal Case No. 1928 of 2008 (State v. Prem Narain), u/s 2/ 25 of the Arms Act and in Criminal Case No. 357 of 2009 (State v. Vikram), u/s 60 of Excise Act.

4. The statement of one Constable Mewa Lal was recorded on the dictation of the petitioner even though no such person was present in Criminal Case No. 1919 of 2008 (State v. Bandu), u/s 4/ 25 of the Arms Act; in Criminal Case No. 2224 of 2008 (State v. Boot he), u/s 60 of Excise Act; in Criminal case No. 1147 of 2007 (State v. Satya Pal Singh), u/s 60 of Excise Act and in Criminal Case No. 340 of 2008 (State v. Harbansh), u/s 60 of Excise Act.

5. In 21 criminal cases, the petitioner had passed orders on the footing that the accused had confessed his offence in their statements recorded u/s 313 of

Criminal Procedure Code and imposed punishment even though the statement of the accused had not been recorded in any of the aforesaid criminal cases.

6. The petitioner had created nonexistent evidence for deciding the aforesaid 21 cases even though not even a single witness had been produced for claiming quota on the basis of such judgment.

7. The petitioner misbehaved with and abused Harish Chandra Gautam, Reader in the Court, who made a complaint to the District Judge in this regard on 18.7.2009. The petitioner called one Sarfaraj Ali, Advocate shown as a witness to the incident and asked him to file affidavit in favour of the petitioner and upon his refusal he became furious and misbehaved with him.

15. The charges levelled against the petitioner were scrutinised meticulously by the enquiry officer. All the witnesses whose evidence has been recorded in 21 cases were of secondary nature and were given by constables/pairokars of various police stations. In all the 16 cases detailed in Charges 1 to 4 in the charge-sheet, evidence of CW-6 APO was also recorded, who is supposed to have examined the constables/pairokars's evidence as secondary evidence as PW-1 in all the cases in question. The statement of CW-1 Constable Amrit Singh, alleged to have been recorded in the Court on 24.4.2009 in Case No. 1394 of 2008 (State v. Charon Singh @ Pappu) u/s 60 of Excise Act, P.S. Sojna. No statement was given by him as PW-1. He also stated that the paper does not bear his signature and it has been made by someone else in his name. Similarly, in Case No. 1928 of 2008 (State v. Prem Narain) u/s 4/ 25 of Arms Act, P.S. Sojna and in Case No. 357 of 2009 (State v. Vikram) u/s 60 of Excise Act, P.S. Sojna, he did not give any statement as PW-1 and the statement recorded in his name was a fraudulent statement. He has not made signatures on those statements. The witness was subjected to lengthy cross-examination, but nothing came out from his evidence, from which it could be inferred or could be proved that he signed the papers on which his statement was recorded or he got his statement recorded. In the same manner, Constable Mewa Lal has deposed that he has not made any statement as PW-1 in Case No. 340 of 2008 (State v. Harban) u/s 60 of Excise Act, P.S. Madawara, nor the said document bears his signature. He also stated that he cannot say that as to who appeared and signed the statement on his behalf.

16. In identical manner, in Case No. 1147 of 2007 (State v. Satyapal Singh) u/s 60 of Excise Act, P.S. Madawara, Case No. 2224 of 2008 (State v. Boot he) u/s 60 of Excise Act, P.S. Madawara and Case No. 1919 of 2008 (State v. Bando) u/s 4/ 25 of Arms Act, P.S. Madawara, he has not made any statement as PW-1 Constable Mewa Lal nor the said statements bear his signatures. He has also stated that he cannot say as to who has appeared in his place and gave these statements and signed the documents. He has also stated that he was on election duty for two months and he did not go to the Court of ACJM, Mehroni. Since the constable was on election duty, therefore, there was no question of his attending the Court or recording the statement. Similarly, CW-4 Constable

Radhey Shyam has deposed that in April 2009, he was posted in P.S. Sojna and when the Pairokar went on leave, he used to do Pairokari in the Court of ACJM. He stated that as PW-1, he has given statement in Case No. 827 of 2008 (State v. Gajraj) u/s 4/ 25 of Arms Act. On seeing the statement, he has stated that he has made this statement as PW-1 and bears his signature. Similarly in Case No. 241 of 2008 (State v. Hukum Singh) u/s 60 of Excise Act, P.S. Sojna, he has recognized the statement made by him as PW-1 and has stated that he has made the statement on 4.4.2009, which bears his signatures. Similarly, in Case No. 482 of 2008 (State v. Malkhan) u/s 60 of Excise Act, P.S. Sojna, he has recognized the statement made by him as PW-1 and has stated that he has made the statement on 4.4.2009, which bears his signatures and similarly in Case No. 1704 of 2008 (State v. Komal Kachhi) u/s 4/ 25 of Arms Act, P.S. Sojna, he has recognized the statement made by him as PW-1 and has stated that he has made the statement, which bears his signatures. But in Case No. 980 of 2008 (State v. Jaihind Singh) u/s 60 of Excise Act, P.S. Sojna, Case No. 1492 of 2005 (State v. Narain Singh) u/s 4/ 25 of Arms Act, P.S. Sojna, Case No. 735 of 2005 (State v. Amar Singh) u/s 60 of Excise Act, P.S. Sojna and Case No. 1124 of 2008 (State v. Anant Ram) u/s 4/ 25 of Arms Act, P.S. Sojna, on seeing the statement of PW-1, he has stated that he did not give these statements nor do they bear his signatures and as such, in all the aforesaid four cases, he has denied that he gave the statements or the statements bear his signatures. Though he has admitted to have made statements in some other cases, but he has denied that he has given statements in all the cases on the dictation of APO and his statements were genuine and believable.

17. Similarly, CW-5 Constable Rajesh Kumar, who was posted in April 2009 as Pairokar, P.S. Mehroni, has stated that in Case No. 1025 of 2008 (State v. Rajoo Mogiya) u/s 60 of Excise Act, P.S. Mehroni, Case No. 1355 of 2008 (State v. Kailash) u/s 4/ 25 Arms Act, P.S. Mehroni, Case No. 456 of 2007 (State v. Mohar Singh) u/s 4/ 25 Arms Act, P.S. Mehroni and Case No. 1029 of 2008 (State v. Rakesh) u/s 4/ 25 Arms Act, P.S. Mehroni, he has not given any statements as PW-1 nor the said statements bear his signatures, though he had admitted that in Case No. 105 of 2006 (State v. Kamlesh) u/s 60 of Excise Act, P.S. Mehroni and in Case No. 2240 of 2008 (State v. Brashbhan Singh) u/s 60 of Excise Act, P.S. Mehroni, he has made the statements as PW-1, which also bear his signatures. He was also subjected to lengthy cross-examination, but nothing could be culled out from his statement, which may help the petitioner.

18. CW-3 Harish Chandra Gautam, Reader of the Court of Additional District/ Special Judge (EC Act) and the then Reader of the petitioner stated that in Case No. 357 of 2009 (State v. Vikram) u/s 60 of Excise Act, P.S. Sojna, Case No. 1394 of 2008 (State v. Charon Singh@ Pappu) u/s 60 of Excise Act, P.S. Sojna, Case No. 1928 of 2008 (State v. Prem Narain) u/s 4/ 25 Arms Act, P.S. Sojna, Case No. 1147 of 2007 (State v. Satyapal Singh) u/s 60 of Excise Act, P.S. Madawara, Case No. 2224 of 2008 (State v. Booths) u/s 60 of Excise Act, P.S. Madawara, Case No. 340 of 2008 (State v. Harban) u/s 60 of Excise Act, P.S.

Madawara, Case No. 1025 of 2008 (State v. Rajoo Mogiya) u/s 60 of Excise Act, P.S. Mehroni, Case No. 456 of 2007 (State v. Mohar Singh) u/s 4/ 25 of Arms Act, P.S. Mehroni, Case No. 105 of 2006 (State v. Kamlesh) u/s 60 of Excise Act, P.S. Mehroni, Case No. 1029 of 2009 (State v. Rakesh) u/s 4/ 25 Arms Act, P.S. Mehroni, Case No. 980 of 2008 (State v. Jaihind Singh) u/s 60 of Excise Act, P.S. Sojna, Case No. 735 of 2005 (State v. Amar Singh) u/s 60 of Excise Act, P.S. Sojna, Case No. 827 of 2008 (State v. Gajraj) u/s 4/ 25 of Arms Act, P.S. Sojna, Case No. 482 of 2008 (State v. Malkham @ Malthoo) u/s 60 of Excise Act, P.S. Sojna, Case No. 241 of 2008 (State v. Hukum Singh) u/s 60 of Excise Act, P.S. Sojna and Case No. 1704 of 2008 (State v. Komal) u/s 4/ 25 of Arms Act, P.S. Sojna, he has recorded the statement of PW-1 in the absence of the witness on the dictation of the P.O. and on the statement, signature of any person was not appended before him. The P.O. had kept the files in his chamber and thereafter he does not know as to from whom he got the signatures on the statements. In all the cases, statements of accused were typed and on the judgment paper, the signatures of the accused were obtained on a blank paper and thereafter, after 2 to 3 days, the files were given back to him and when he objected to the P.O. that it was wrong to record such statements, then the P.O. said that he will spoil his entry and will write to the District Judge and pressure was applied on him. In the cross-examination, he stood by his stand and also stated that the statement was never got recorded at the instance of A.P.O. and in fact, false quota has been claimed on the basis of the cases decided on merits in Excise Act and Arms Act between 13.4.2009 to 29.4.2009. But it is to be seen that the statement of the Reader is fortified by the evidence given by constable/pairokar, whose statement is alleged to have been recorded as PW-1 in many cases.

19. Dilip Kumar, A.P.O. appeared as CW-6 in the Court of ACJM, Mehroni in the month of April, 2009. He stated that in Case No. 2240 of 2008 (State v. Brashbhan) u/s 60 of Excise Act, Case No. 1356 of 2008 (State v. Kailash) u/s 4/ 25 of Arms Act, Case No. 1029 of 2008 (State v. Rakesh) u/s 4/ 25 of Arms Act, Case No. 105 of 2006 (State v. Kamlesh) u/s 60 of Excise Act, Case No. 1025 of 2008 (State v. Raju Mogiya) u/s 60 of Excise Act, Case No. 456 of 2007 (State v. Mohan) u/s 4/ 25 of Arms Act, he had not got recorded the statement of PW-1 Constable Rajesh Kumar nor he had produced PW-1 for recording his statement. He also stated that he cannot say as to who had given those statements and whether the signatures are of Constable Rajesh Kumar or not. Similarly, in other cases as well, he stated that he had not got recorded the statement of Constable Amrit Singh, Constable Rajesh Kumar, Constable Radhey Shyam and Constable Mewa Lal. He also stated that he was well acquainted with Constables/Pairokar Rajesh Kumar, Amrit Singh, Radhey Shyam and Mewa Lal. He stated that he had not got recorded the statements of any of these witnesses. He was subjected to cross-examination in regard to the procedure adopted in the Court for recording the evidence, but it could not come out from his statement that the evidence of any of these persons were got recorded by him. The witness has admitted that secondary evidence is adduced with the permission of the Court, but the record

reveals that there was no such order nor any document to that effect that permission was taken in all these cases for recording the statement of PW-1 as secondary evidence. Apart from it, CW-6 also stated in his cross-examination that he does not remember that he got the statement recorded of any Pairokar in the month of April, 2009 in the Court of ACJM, Mehroni.

20. Normally secondary evidence is recorded when the witnesses of fact are already recorded and for certain reasons, the formal evidence such as G.D. writer etc. is not forthcoming, whereby the evidence cannot be completed, then with the permission of the Court, the prosecution examines the witness, who is acquainted with the handwriting and signature of the formal witness so that the evidence is completed. But in the case in hand, not a single witness either of fact or formal, enumerated in the charge-sheet was examined and as such there was no occasion to get the secondary evidence recorded in the form of PW-1 in any of the cases when no other evidence was re-corded.

21. It is to be noted that the petitioner examined certain Advocates. DW-1 Baishakhi Lal, Ahalmad has stated that in Case No. 1915 of 2008 (State v. Badoo) u/s 4/ 25 of Arms Act, P.S. Madawara, the statement recorded as PW-1 was written by him. Similarly, DW-2 Kundan Lal Rathor has also stated that in Case No. 2240 of 2008 (State v. Brashbhan) u/s 60 of Excise Act, P.S. Mehroni, on 6.4.2009, the evidence of PW-1 was recorded by him. DW-1 has in his examination-in-chief himself stated that he does not know whether the witness was real or the fake one. He has also stated that he cannot say whether the statement was recorded on the dictation of the A.P.O. or not. In all the cases where he recorded the statement of PW-1, he stated that he does not know whether the witness was real or fake. In his cross-examination, he has further stated that when A.P.O. was not present, then on the saying of the P.O., he used to record the statement of the witness. He also stated that in the absence of A.P.O., the statement was got written by the P.O. Regarding the identify of the witness, he has stated that it is only the Sahab (petitioner), who knows and he does not have any knowledge about it.

22. Thus, it is established from the statement of these witnesses that evidence was recorded in the absence of A.P.O. and the identity of witnesses was not known to him.

23. Similarly, DW-2 Kundan Lal Rathor also stated that whenever petitioner used to call him for recording statement, he used to go. He has also stated that he does not know the identity of the witness nor does he remember as to whether the A.P.O. got the evidence recorded or not. In the cross-examination by the enquiry officer, he has stated that on 6.4.2010, the evidence was recorded in the absence of the Prosecuting Officer. He stated that he recorded the evidence on the direction of the petitioner.

Thus, it is established that the evidence of PW-1 was recorded in the absence of A.P.O. and the identity of the witness was not known to him.

Similarly, DW-7 Irshad Ali, DW-8 Salig Ram Vyas, DW-9 Phool Singh, DW-10 Shiv Lal, DW-11 Ajai Kumar Dixit, DW-12 Bahadur Singh Parmar, DW-13 Pooran Singh Tomar, DW-14 Brajesh Kumar Tripathi, DW-15 Brajendra Kumar Purohit, DW-17 Vijai Kumar Sharma, DW-18 Ju-gal Kishor Soni and DW-21 K.L. Pal were adduced as defence witnesses and were examined by the charged officer for proving that the statement of PW-1 was recorded in their presence and it was also alleged that some of them have cross-examined the witness also and on that reasoning, the petitioner wanted to prove that the witnesses were in fact examined in the Court. While considering the evidence of the lawyers, it is borne out that DW-7 Irshad Ali has denied that the statement of PW-1 in Case No. 980 of 2008 (State v. Jaihind Singh) u/s 60 of Excise Act, was recorded in his presence. Thus, this witness does not support the version of the petitioner that PW-1 was examined in front of the counsel for the accused.

24. In the like manner, DW-8 Salig Ram, Advocate has stated that in Case No. 827 of 2008 (State v. Gajraj) u/s 4/ 25 of Arms Act, P.S. Sojna, he was an Advocate and the evidence of PW-1 was recorded by the A.P.O. in front of him, wherein he also cross-examined the witnesses. It was also stated by him that the Pairokar was in his dress, but in the cross-examination, the witness has stated that no witness of fact has been examined in this case. Apart from it, he moved an application on 28.3.2009 for confession by the accused and on the same day, he had moved an application for recall of the warrant issued against the accused and on the same day, he was engaged as counsel in the case. He was not able to tell as to why despite the application for confession by the accused, his statement for confession was not recorded. He could also not tell as to why despite application for confession given by the accused, he did not plead guilty in the charge framed against him.

25. Similarly DW-9 Phool Singh, Advocate has stated that in Case No. 2240 of 2008 (State v. Brashbhan) u/s 60 of Excise Act, P.S. Mehroni and Case No. 2224 of 2008 (State v. Boot he) u/s 60 of Excise Act, P.S. Madawara, the statement of PW1 was recorded in front of him. The A.P.O. had recorded the statement as secondary evidence.

26. DW-10 Shiv Lal, Advocate has stated that in Case No. 357 of 2009 (State v. Vikram) u/s 60 of Excise Act, P.S. Sojna, evidence of PW-1 Constable Amrit Singh, Pairokar was recorded in front of him by the A.P.O.

27. DW-11 Ajai Kumar Dixit, Advocate has stated that in Case No. 1147 of 2007 (State v. Satyapal Singh) u/s 60 of Excise Act, P.S. Madawara, evidence of PW-1 Constable Amrit Singh was recorded in front of him by the A.P.O.

28. DW-12 Bahadur Singh Parmar, Advocate has stated that in Case No. 241 of 2008 (State v. Hukum Singh) u/s 60 of Excise Act, P.S. Sojna, evidence of PW-1 Constable Radhey Shyam was recorded by the A.P.O. in front him, in which, he also cross-examined the witness.

29. DW-13 Pooran Singh Tomar, Advocate has stated that in Case No. 1124 of

2008 (State v. Anant Ram) u/s 4/ 25 of Arms Act, P.S. Sojna, evidence of PW-1 Constable Radhey Shyam was recorded by the A.P.O. as secondary evidence, wherein he also cross-examined the witness.

30. DW-14 Brajesh Kumar Tripathi, Advocate has stated that in Case No. 105 of 2006 (State v. Kamlesh) u/s 4/ 25 of Arms Act, P.S. Mehroni, evidence of PW-1 Constable Rajesh Kumar, Pairokar was recorded by the A.P.O. in front of him, wherein he also cross-examined the witness.

31. DW-15 Brajendra Kumar Purohit, Advocate has stated that in Case No. 1029 of 2008 (State v. Rakesh) u/s 4/ 25 of Arms Act, P.S. Mehroni and Case No. 1704 of 2008 (State v. Komal) u/s 4/ 25 of Arms Act, P.S. Sojna, evidence of Constable Radhey Shyam and Constable Rajesh Kumar respectively was recorded as PW-1 as secondary evidence by the A.P.O. in open Court in front of him.

32. DW-16 Sita Ram Jha, Advocate has stated that in Case No. 735 of 2005 (State v. Amur Singh) u/s 60 of Excise Act, P.S. Sojna, he does not remember whether PW-1 Constable Radhey Shyam's statement was recorded in front of him or not. Thus, he does not support the case that the evidence of PW-1 was recorded in front of him.

33. DW-17 Vijai Kumar Sharma, Advocate has stated that in Case No. 1394 of 2008 (State v. Charan Singh @ Pappu) u/s 60 of Excise Act, P.S. Sojna, evidence of Constable Amrit Singh PW-1 and in Case No. 1492 of 2005 (State v. Narayan Singh) u/s 4/ 25 Arms Act, P.S. Sojna, evidence of Constable Radhey Shyam was recorded in front of him but in Case No. 1928 of 2008 (State v. Prem Narain) u/s 4/ 25 Arms Act, P.S. Sojna, he has stated that he cannot say whether statement of PW-1 was recorded in front of him or not. He did not cross-examine the witness.

34. DW-18 Jugal Kishor Soni, Advocate has not supported the charged officer's version as he has stated that in Case No. 1025 of 2008 (State v. Rajoo Mogiya) u/s 60 of Excise Act, P.S. Mehroni, statement of PW-1 was not recorded in front of him. Thus, he does not support the charged officer's version.

35. DW-21 Kapoor Lal Pal, Advocate has stated that in Case Nos. 456 of 2007 (State v. Mohar Singh) u/s 4/ 25 of Arms Act, P.S. Mehroni, 340 of 2008 (State v. Harban) u/s 60 of Excise Act, P.S. Madawara and 482 of 2008 (State v. Malkhan @ Malthoo) u/s 60 of Excise Act, the statement of PW-1 Constable Pairokars were written in front of him. He had also cross-examined the witnesses in case Nos. 456 of 2007 and 340 of 2008 with PW-1, but did not cross-examine the PW-1 Constable Radhey Shyam in Case No. 482 of 2008.

36. The defence witnesses examined by the charged officer, who are Advocates, namely, DW-7 Irshad Ali, DW-16 Sita Ram and DW-18 Jugal Kishor Soni, clearly do not support the version of the charged officer's claim that the witnesses PW-1 were examined in front of the accused and their counsel. Apart from it, in many cases, lawyers were not having any Vakalatnama in the cases, but they not only

moved applications for the accused in the cases but also stated that they cross-examined the witness, when they did not have any authority to represent the accused in the Court, even then they could have conducted the case. They have also accepted that without Vakalatnama, they cannot appear for the accused. Apart from it, the person, who was not witness of the fact, there was no necessity to cross-examine the said witness and could not have been fatal for the accused under such circumstances, when there was no witness of fact recorded. DW-9 Phool Singh, DW-12 Bahadur Singh Parmar, DW-13 Pooran Singh Tomar, DW-14 Brajesh Kumar Tripathi, DW-15 Brajendra Kumar Purohit, DW-16 Sita Ram Jha and DW-21 K.L. Pal have stated that their Vakalatnama is not on record and in most of the cases, the accused had moved applications for confession, but no confession was recorded and after the recording of the evidence of PW-1, the case was decided on the basis of confession of the accused. DW-8 Salig Ram could not justify as to why confession was not recorded in spite of the application for confession. The other witnesses have not been able to justify the action of the petitioner that despite the application for confession, the accused refused to confess.

37. It is beyond the understanding of common practice as to why the lawyers argued for giving minimum punishment to the accused as stated by DW-10, DW-11, DW-13 etc., when there was no confession and also no evidence whereby the accused could be convicted, then why the prayer for punishment was made. DW-17 Vijai Kumar Sharma admits that arguments are heard in a contested case, but the case of State v. Charan Singh, was not a contested case and hence he did not argue except telling the Court that the accused was confessing. Apart from it, the lawyers, who did not file any Vakalatnama in the cases, have stated that they cross-examined the witnesses whereas lawyers such as DW-18 Jugal Kishor Soni, who had filed his Vakalatnama, has stated that statement of PW-1 was not recorded in front of him. Thus, the petitioner has failed to prove his case, even on the basis of defence evidence that the statement of witnesses was recorded as alleged by him.

38. If the counsel has filed his Vakalatnama, according to the petitioner, and statement was recorded in his presence, they why he did not cross-examine the witnesses when other lawyers who did not file Vakalatnama have cross-examined the witnesses, according to them. The statement of DW-18 goes to indicate that the statement of PW-1 was not recorded in his presence. Apart from it, DW-15 Brajendra Kumar has stated before the enquiry officer that there is no signature on the order sheet on the day on which, PW-1's statement was recorded. From the aforesaid statement it can be deduced that the counsel for the accused was not present to cross-examine the witness.

39. The enquiry officer found that the evidence of lawyers, who stated that the evidence of PW-1 was recorded in front of them, was wholly unreliable, especially in the circumstances when the very PWs themselves have come forward before the enquiry officer as CW-1, CW-2, CW-4 and CW-5 to state that they were not

examined in the Court as PW-1 and some of them were on election duty.

40. DW-17 Vijai Kumar Sharma has stated that he cannot tell whether in Case No. 1928 of 2008 (State v. Prem Narain) u/s 4/ 25 of Arms Act, P.S. Sojna, the statement of PW-1 was recorded in front of him or not. He did not cross-examine the witness, though it is shown that cross-examination by Vijai Kumar Sharma was done. It is to be noted that when he did not cross-examine, as per his own statement, then how come the cross-examination is there. He has stated that it could have been written by the Reader. The Reader has already stated that the evidence was recorded on the dictation of the P.O. and thereafter the file was kept by him for two or three days.

41. The evidence of lawyers also becomes unworthy of credit because CW-6 A.P.O., who is alleged to have examined the witnesses in all the cases in question, has categorically stated that he did not examine any of the witnesses. The witnesses examined as PW-1 have denied their signatures on the statements recorded as PW-1 but the charged officer has not asked for the expert opinion of the hand writing to prove that the signatures were in fact of those witnesses, who were examined as PW-1 and put the signatures on the statements even though he has taken the stand that the witnesses were in fact examined in the Court. This itself goes to prove that fake persons were examined and their signatures were got appended on the statements instead of real persons.

42. The ultimate finding came in the form that in the cases in question, the charged officer got the statement of persons recorded in the name of Constables/ Pairokars named in charges 1 to 4 and on his dictation to the Reader knowingly that no such person was present in the Court to give evidence, got the statements of such persons recorded and created false evidence in the cases in question and, therefore, charge Nos. 1 to 4 was found to be proved against him.

43. In respect of fifth charge, it is clear that none of the accused u/s 313 Cr.P.C. has confessed the offence but still in the judgment delivered by the charged officer, it is mentioned that after recording of the evidence of PW-1 at that stage, the accused has shown his willingness to confess and hence the evidence was closed and thereafter statement u/s 313 Cr.P.C. was recorded. In the said judgment, it is mentioned that the accused confessed his offence and stated the incident to be true. The petitioner has only stated in reply to the aforesaid charge that the Stenographer was given the guidelines for the judgment and accordingly judgment was directed to him. But the Stenographer due to clerical error, did not type that during the argument, the confession was made and instead of recording that confession, the same has been recorded u/s 313 Cr.P.C. It was further pleaded by him that it was only procedural error and there cannot be any blame on his integrity.

44. In all the 21 cases, it has been submitted by the petitioner that if the mistake is of clerical/typographical error, then such mistake cannot occur in all 21 cases. Apart from it, there is no evidence on record in the files of the cases

that the accused showed his willingness to confess after he refused to confess u/s 313 Cr.P.C. When in the cases, the application for confession was moved, then no confession was recorded and when the statement of accused was recorded or the charge was framed against the accused, then he does not plead guilty and then the case is fixed for evidence and instead of taking evidence of the witnesses enumerated in the charge-sheet, a secondary evidence is taken and immediately after recording of evidence of such witness, evidence is closed and thereafter the statement u/s 313 Cr.P.C. is recorded and in the statement u/s 313 Cr.P.C., the accused again does not confess. Under the circumstances, there was no occasion for the accused to confess thereafter because there was no evidence present on the basis of which, he could have been convicted and when the accused and his lawyer knew that the accused could not be convicted on the basis of the evidence on record, then there was no occasion to confess at that stage.

45. Thus, it is evident that though none of the accused in the statement u/s 313 Cr.P.C. has confessed the offence, but in the judgment delivered, it has been clearly stated that the accused has confessed his guilty and lessor punishment has been imposed on the basis of such non existing confession. The judgment could not be left to the discretion of the Stenographer and ought to have been pronounced, looking to the entire facts, therefore, the shelter taken by the petitioner to the procedural error cannot be accepted as he happens to be a judicial officer of considerable experience.

46. The plea of the petitioner that none of the accused have filed the appeal in the cases is of no consequence, in view of the ample evidence on record to indicate that he manipulated the record and shown the confession of the accused at the argument stage, whereas in the judgment it was mentioned at the stage of statement u/s 313 Cr.P.C.

47. The sixth charge was in respect of creating evidence for deciding cases showing them to be decided on merits for claiming false quota, whereas they were never decided, but in fact the record was manipulated and fabricated to show that they have been decided on merit. Even the petitioner himself has stated that he does not have any objection, if the quota is reduced if it is found that the judgments are not on merit. The charged officer showed the cases to have been decided on merit after full trial. From the monthly statement of the petitioner of April, 2009, it appears that 24 Act cases have been shown as decided after full trial, for which quota has been claimed. Thus, the evidence goes to indicate that he falsely claimed the quota by recording false evidence.

The seventh charge has not been found proved.

48. Thus, from the above discussing of evidence, it is amply clear that the petitioner has indulged into unworthy and unethical and fraudulent acts while acting as Judicial Officer and thereafter fabricated the evidence which is a gross misconduct on his part. Such Judicial Officers, who have got no sanctity to their

office and also who have polluted the entire system, cannot be allowed to be retained in service, as such retention would further jeopardize and harm the institution.

49. The aforesaid view has been expressed by the Apex Court while considering the question of launching of prosecution against the appellant. In the case of K. Veeraswami Vs. Union of India (UOI) and Others, , in Paragraphs-79 and 80 held as under:

79. Before parting with the case, we may say a word more. This case has given us much concern. We gave our fullest consideration to the questions raised. We have examined and re-examined the questions before reaching the conclusion. We consider that the society's demand for honesty in a judge is exacting and absolute. The standards of judicial behaviour, both on and off the Bench, are normally extremely high. For a Judge to deviate from such standards of honesty and impartiality is to betray the trust reposed on him. No excuse or no legal relativity can condone such betrayal. From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a judge's dishonour. A single dishonest judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system.

80. A judicial scandal has always been regarded as far more deplorable than a scandal involving either the Executive or a member of the Legislature. The slightest hint of irregularity or impropriety in the Court is a cause for great anxiety and alarm. "A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion" to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.

50. So far misconduct committed by the petitioner is concerned, we have to consider as to what is the meaning and scope of misconduct as defined in various dictionaries as well as in various judgments of the Apex Court.

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

...It is not necessary that a member of the service should have committed the alleged Act or omission in the course of discharge of his duty as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words, if the Act or omission is such as to reflect the reputation of the Officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that Act or omission.....The test is whether the Act or omission has some reasonable occasion with nature and condition of his service or where the Act or omission has caused any reflection upon the reputation of the member of the service for integrity or devotion of duty as a public servant.....The proposition put forward was the quasi-judicial orders, unless vacated under the provisions of the Act, are final and binding and cannot be questioned by the Executive

Government through disciplinary proceedings.... The charge is, therefore, one of misconduct and recklessness disclosed by the utter disregard of the relevant provisions.....But in the present proceedings what is sought to be challenged is not the correctness or the legality of the decision of the Commissioner but the conduct of the appellant in the discharge of his duty as Commissioner. The appellant was proceeded against because in the discharge of his function, he acted in utter disregard of the provisions of the Act, and the Rules. It is the manner in which he discharges his function that brought up in these proceedings.... It is manifest, therefore, that though, the propriety and legality of the sanction to the leases may be question in appeal or revision under the Act the Government not precluded from taking disciplinary Act if there is proof that he has acted in gross recklessness in the discharge of his duties or that he failed to Act honestly or in good faith or that he omitted to observe, the prescribed conditions which are essential for the exercise of the statutory power.

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

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

53. The Supreme Court in *Union of India and Others Vs. K.K. Dhawan*, , very heavily relied upon its earlier judgment in *S. Govinda Menon (supra)* and observed that the Officer who exercises judicial or quasi-judicial powers Acts, negligently or recklessly or in order to confer undue favour on a person, is not acting as a Judge and in the disciplinary proceedings it is the conduct of the Officer in discharge of his official duties and not the correctness or legality of his decisions or judgments which are to be examined as the legality of the orders can be questioned on Appellate or Revisional Forum. In such case, the Government cannot be precluded from taking the disciplinary action for violation of the Conduct Rules. The Court summarised some circumstances in which disciplinary action can be taken, which are as under:

- (i) where the Officer had acted in a manner as would reflect on his reputation or integrity or good faith or devotion of duty;
- (ii) if there is prima facie material to show, recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government Servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive, however, small the bribe may be because Lord Coke and long ago "though, the bribe may be small, yet the fault is

great.

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

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

55. In Union of India and others Vs. A.N. Saxena, , the Hon"ble Apex Court held that "disciplinary action can be taken in regard to the action taken or purported to be taken in course of judicial or quasi-judicial proceedings. However, in such circumstances, the disciplinary proceedings should be initiated after great caution and a close scrutiny of his actions and only if the circumstances so warrant for the reason that initiation of disciplinary proceedings against a Judicial Officer may shake the confidence of the public in the Officer concerned and if lightly taken, likely to undermine his independence and in case, the action of Judicial Officer indicates culpability, there is no reason why disciplinary action should not be taken against him.

56. In Government of Tamil Nadu Vs. K.N. Ramamurthy, , the Hon"ble Supreme Court held that exercise of judicial or quasi-judicial power negligently having adverse affect on the party or the State certainly amounts to misconduct.

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

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

59. In State Bank of India and others Vs. T.J. Paul, , the Supreme Court held that even in a case the allegations of mala fide and corrupt practice have neither been alleged nor revealed while issuing the charge-sheet, the delinquent employee may be held guilty of misconduct in case, the Officers Acts without restraints jeopardising the interest and rights of other party. The said case, was for granting the Bank loan negligently and the Bank suffered serious loss. The Apex Court held that it may not be a case of insubordination or disobedience of specific order of any superior officer, if the Act is prejudicial to the interest of the Bank or gross negligence or negligence involved or likely to involve the Bank in serious loss, would amount to misconduct. In other words, if negligence of an Officer seriously affects and prejudices the rights of the party, it definitely amounts to misconduct.

60. In Government of A.P. Vs. P. Posetty, , the Hon"ble Supreme Court held that

sense of propriety and acting in derogation to the prestige of the institution and placing his official position under any kind of embarrassment may amount to misconduct as the same may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an employee/Government Servant.

61. Considering the entire evidence adduced by the petitioner during the course of enquiry and also the grave misconduct, which has been committed by the petitioner, we find that the petitioner is not a fit person to be retained in service.

62. The order passed by the State Government dated 23.8.2011, dismissing the petitioner from service, cannot be faulted in any manner. The writ petition is devoid of merit. It is accordingly dismissed.