
(1998) 03 DEL CK 0091

In the Delhi High Court

Case No : CW 2281/89

R.N. Jindal

APPELLANT

Vs

Lt. Governor of Delhi and others

RESPONDENT

Date of Decision : 27-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 AD 857 : (1998) 72 DLT 596

Hon'ble Judges : Devinder Gupta, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Mr. Arun Jaitley, Senior Advocate and Mr. A. Mariaputtam, for the Respondent

Judgement

Devinder Gupta, J.—The petitioner joined Delhi Judicial Service on 13.3.1973. He was posted as Metropolitan Magistrate in Shahdara Courts at Karkardoma when on 31.1.1987 he was placed under suspension in contemplation of initiation of disciplinary departmental proceedings. He was served with charge sheet (Annexure A) on 4.4.1987. After considering the reply dated 25.4.1987, Shri Justice N.N. Goswami was appointed as an Inquiry Officer to enquire into five separate charges, inter alia, of tampering of judicial record and making of false representation to the High Court. Inquiry Officer on 16.4.1988 submitted his report holding charges 1, 2, 4 & 5 to have been proved and charge 3 as not proved. The Full Court considered the report of Shri Justice Goswami and concurred with his findings on all the charges and made recommendation to respondent No.1 of petitioner's removal from service. The first respondent namely, the Administrator of Union Territory of Delhi, on going through the relevant material, including the report made by the Inquiry Officer, came to the conclusion that the petitioner had committed grave misconduct and failed to maintain absolute integrity and devotion to duty and, thus, found him guilty of conduct, unbecoming of a judicial officer, as per the findings of the Inquiry Officer on Articles of Charges 1, 2, 4 and 5. On 16.12.1988 major penalty of removal from service with immediate effect was imposed. It is this order of

imposing penalty of dismissal from service (annexure C), which is under challenge in this petition preferred under Article 226 of the Constitution of India.

2. The petitioner argued his case in person, who took us through the entire record, including charge-sheet, reply thereto, inquiry report, as also the minutes of the Full Court and the orders of the Administrator. Complete record of the inquiry proceedings along with the original judicial record was also made available for our perusal, which was extensively referred to during the course of arguments. We have considered various submissions made at the Bar by the petitioner and by Mr. Arun Jaitley, Senior Advocate, appearing on behalf of respondent No.2.

3. As charge No.3 was held as not proved, Therefore, no reference is being made with respect to the third charge. Barring that charge, the charge sheet served on 4.4.1997 on the petitioner was as follows:-

"Article I

That Shri R.N. Jindal, whilst holding the post of Metropolitan Magistrate, Shahdara, Delhi addressed a reference, u/s 15 of the Contempt of Courts Act 1971 to the Registrar, Delhi High Court, against Shri B.S. Phartyal and others, in respect of an incident which occurred in the course of the proceedings held on 24th July, 1986 in the case entitled State against Rakesh Kumar Jain under sections 306/34 Indian Penal Code, F.I.R. No.329 of 1985, Police Station, Gandhinagar, pending before him. The said reference was sent to Mr. P.K. Jain, Additional District and Sessions Judge, Shahdara, either on 26th or 28th July 1986 for onward transmission. In order to show that the said reference had, in fact, been sent on 24th July 1986, the very day on which the said incident had occurred, the said Shri Jindal asked Shri Sukhpal Singh, U.D.C., in the office of the District Courts at Shahdara, Delhi, to make an antedated entry in the dispatch register, and at Shri Jindal's instance and behest, the said Shri Sukhpal Singh made an antedated entry No.218 dated 24th July 1986 in the said dispatch register. This entry was, in fact, made on 28th July 1986. By the said acts the said Shri Jindal tampered with official records, or caused the same to be tampered with, and thereby committed grave misconduct, failed to maintain absolute integrity and devotion to duty and has been guilty of conduct which is unbecoming of a judicial officer.

Article - II

That on 5th of August, 1986, whilst dealing with the case entitled State vs. Inderjit and another (Case No.814/2 of 1984) the said Shri R.N. Jindal commenced proceedings u/s 345, Criminal Procedure Code, against Shri D.R. Lakhani, Advocate, counsel for one of the accused, and wrote out the following order in his own hand:

"Accused Vijay Kumar produced in custody by Shakkarpur Police. He has applied for fresh bail. Bail bond is accepted. The other accused Inderjit is absent. Issue

NBWs against him. At this stage the defense Counsel Sh. D.R. Lakhani appeared along with accused Inderjit. Accused be taken in custody. Mr. Lakhani submitted that the accused was sitting on his seat and he is present. How could the Court take him into custody. Mr. Lakhani thumped my table thrice and stated that I had no jurisdiction to send his client in custody when he was present in the Court. Mr. Lakhani by thumping the table has caused interference in the judicial proceedings. Let notice be given to him U/S 345 Cr.P.C."

Subsequently, the said order was removed from the record of the case by the said Shri Jindal, and, instead, another typewritten order dated 5th August 1986 was substituted by him in order to attribute to Mr. D.R. Lakhani conduct which was more serious by way of Constituting contempt of court. By the said acts the said Shri Jindal tampered with judicial records, and thereby committed grave misconduct, failed to maintain absolute integrity and devotion to duty and has been guilty of conduct which is unbecoming of a judicial officer."

"Article IV

That as a result of an amicable settlement relating to the proceedings which had been commenced against Shri D.R. Lakhani, Advocate, u/s 345 of the Criminal Procedure Code (in the course of the proceedings in the case entitled State vs. Inderjit and another, case No.814/2 of 1984), an application was made by Shri A.S. Khatri, President, Shahdara Bar Association and by Shri D.R. Lakhani, Secretary, Shahdara Bar Association, on 12th August 1986, before Shri R.N. Jindal, saying: "Since the matter has been amicably settled the proceedings may kindly be dropped". On the said application, Shri R.N. Jindal wrote the following order in his own hand:

"In view of the above, proceedings against Shri D.R. Lakhani, advocate u/s 345 Cr.P.C. are dropped."

Subsequently, the said Shri R.N. Jindal added at the end of the said order, in his own hand, the words "by a separate order", and placed on record a typewritten order dated 12th August 1986 convicting Shri D.R. Lakhani u/s 345 of the Criminal Procedure Code and awarding him the punishment of admonition.

By the said acts, the said Shri R.N. Jindal tampered with judicial records and committed grave misconduct, failed to maintain absolute integrity and devotion to duty and has been guilty of conduct which is unbecoming of a judicial officer.

ARTICLE-V

Further, Shri R.N. Jindal sent a letter bearing the date 12th August 1986 to the Registrar, High Court of Delhi, in which he falsely stated that Shri D.R. Lakhani had tendered an unqualified apology and has been "admonished of the offence under S 345 Cr.P.C. by a separate order" contrary to the truth that the matter had been amicably settled and the proceedings against Shri D.R. Lakhani had been dropped.

By the said acts, Shri R.N. Jindal deliberately made false representations to the High Court of Delhi in order to forestall any allegation that may be made against him by Shri Lakhani and other lawyers, and thereby committed grave misconduct, failed to maintain absolute integrity and devotion to duty and has been guilty of conduct which is unbecoming of a judicial officer."

On the first charge, on discussion of evidence, the Inquiry Officer opined:

"Therefore, I have no hesitation in coming to the conclusion that the antedated entry No.218 dated 24.7.1986 in the dispatch register was actually made on 28.7.1986 and Shri Jindal caused the tampering with of the dispatch register to that extent. Thus Article No.1 of the charge stands proved to the extent that the delinquent officer caused the tampering with of the dispatch register through Shri Sukhpal Singh."

4. On Charge 2, the opinion recorded by the Inquiry Officer is:

"In fact it is not necessary to give any definite conclusion as regards the exact date when the order was replaced because in my opinion there can be no doubt that the original order passed by Shri Jindal was the one produced by Shri Lakhani and marked 'C'. It appears that after passing the said order Shri Jindal realized that the matter had become rather serious as the President of the Bar and other Members of the Bar had also intervened and he wanted to attribute to Shri Lakhani's conduct which was more serious way of Constituting Contempt of Court and Therefore he recorded a fresh order which he got typed from Shri Wadhwa. There is no reason to disbelieve Shri Wadhwa to the effect that he was called only after 12.00 noon and had thereafter typed the order. Shri Jindal got the order typed may be on the same date or a day or so subsequently but replaced it in the file after 7.8.1986. Thus, I hold that Article II of the charge also stands proved against Shri Jindal."

5. Charges 4 & 5 were inter-related on which it was observed that there was no dispute amongst the petitioner and the Presenting Officer that no separate findings are required to be recorded on charge 5 and in case charge 4 was proved against the petitioner, as a necessary corollary charge 5 would follow the same consequence. On charge 4 the Inquiry Officer opined:

"As regards this Article of Charge, it is only a continuation of Article IV and must follow the findings recorded in Article IV. The Presenting Officer as also Shri Vats, the learned counsel for the Delinquent Officer rightly did not address any arguments under this Article and it was submitted by the counsel that in case Article IV is proved against the Delinquent Officer, Article V would follow the same. Consequently, in view of what has been said under Article IV, I hold that this Article V also stands proved against Shri Jindal."

6. Full Court in its meeting held on 30th July, 1988 considered the report of the Inquiry Officer. The following minutes were recorded:

"The Full Court considered the report prepared by Hon"ble Mr. Justice

N.N.Goswamy, the Inquiring Authority, and concurred with his findings on all the charges (Hon"ble Mr. Justice N.N.Goswamy abstained).

7. The Full Court having regard to the findings on all the articles of charge and on the basis of the evidence adduced during the inquiry decided that Shri R.N.Jindal be awarded the punishment of removal from service."

8. The Registrar of the High Court on 22.8.1988 forwarded the entire record and the inquiry report to the Lt. Governor of Union Territory of Delhi with the recommendations of the High Court as follows:

"Please refer to this Court's letter No.878/Gaz./VI.E.10 dated the 8th December, 1987, with which a copy of the charge-sheet served upon Shri R.N. Jindal, Metropolitan Magistrate, Shahdara (under suspension) was sent to the Secretary (Law and Judicial), Delhi Administration, Delhi.

9. The Hon"ble the Chief Justice and Judges of this Court after considering the Inquiry Report of the Inquiring Authority appointed to hold disciplinary proceedings against Shri R.N. Jindal, Metropolitan Magistrate, Shahdara (under suspension) and having regard to the findings on all the articles of charges and on the basis of the evidence adduced during the inquiry recommend that Shri Jindal be awarded the punishment of removal from service. Two copies of the Inquiry Report dated the 16th July, 1988, along with an extract of the minutes of the Full Court Meeting dated 30th July, 1988 are enclosed herewith.

10. I am, Therefore, desired to request to obtain the orders of the Administrator in the matter immediately."

11. On receipt of the recommendation of the High Court, the Administrator proceeded to examine the record. After narrating the gist of the findings of the Inquiry Officer, as approved by the Full Court, the Administrator proceeded to record in his order:-

"AND WHEREAS the Administrator of the Union Territory of Delhi (hereinafter referred to as `the Administrator") has gone through all the relevant material, including the report given by the Inquiring Authority.

AND WHEREAS the Administrator observes from the case records pertaining to Article No.1 of the charges that this article was divided into two parts by the Inquiring Authority i.e. (1) whether Shri R.N.Jindal tampered with the official record, and (2) whether he (Shri Jindal) caused the same to be tampered with. In regard to the later part of the article which was pressed by the Presenting Officer, Shri Sukhpal Singh, in charge of the dispatch register, has admitted before the Inquiry Authority that he had made an antedated entry at the asking of Shri Jindal. In the cross-examination, he denied the suggestion that he had made a wrong statement before Shri P.K. Jain, Addl. Sessions Judge, Shahdara to the effect that he had made an antedated entry at the asking of Shri Jindal. In the face of the above evidence, the statement regarding Shri Jindal having sent a letter on 24.7.1986 cannot be relied upon, because even the draft of the letter is

not ready on that date. The factum of tearing of the relevant page is not disputed. He has, Therefore, come to the conclusion that Shri R.N. Jindal had admittedly asked the dispatch clerk to keep an entry vacant and not to close the register for 24.7.1986 knowing fully well that he had not even completed the draft which he was to send to the High Court. He is, Therefore, of the view that Article-I of the charge as framed stand proved.

AND WHEREAS the Administrator observes from the case records pertaining to Article-2 of the charge that an original order was written in his own handwriting while dealing with the case entitled State v. Inderjeet and another. This order was found in tact on inspection of the file on 5-8-1986 by Shri D.R. Lakhani, counsel for the accused. Subsequently, the sheet containing this order was removed from the record of the case by Shri Jindal and, instead typewritten order dated 5.8.1986 was substituted by him. This fact stand proved by the depositions made before the Inquiring Authority by Shri D.R. Lakhani and Shri Wadhwa, Stenographer who typed the order after 12-00 Noon while the time recorded is 10.30 and 11.00 a.m. The Administrator is, Therefore, of the view that the act of Shri R.N. Jindal in substituting the handwritten order by a typed-written order is certainly unbecoming of a Judicial Officer. The Administrator has accordingly come to the conclusion that Article-2 of the charge has been proved.

AND WHEREAS the Administrator observes from the case records pertaining to Article-3 of the charge that the mere allegation/charge that Shri R.N. Jindal removed the application for inspection of file in the absence of any evidence documentary or otherwise, it cannot be said that Shri R.N. Jindal did so, particularly when the judicial file of the case travelled through various channels. He is, Therefore, of the view that Article-3 of the charge as framed does not stand proved;

AND WHEREAS the Administrator observed from the case records pertaining to Article-4 of the charge that the charge stand proved beyond any shadow of doubt with the depositions/statements made by lawyers, and statements given by the Naib Court/Police Officer, Stenographer being contradictory in nature could not be relied upon, as rightly observed by the Inquiry Authority. The statement of Shri N.C. Kochhar, District & Sessions Judge at the relevant time who appeared as DW 10, clinches the issue, when he has stated in the cross-examination before the Inquiry Authority that "on August 12, 1986 when Shri Jindal met him in the evening he never told him that he had convicted Shri Lakhani and on the other hand he specifically told him that he had dropped the proceedings. The Administrator has, Therefore, come to the conclusion that Article 4 of the charge has been proved;

AND WHEREAS the Administrator observes from the case records pertaining to Article 5 of the charge that the charge is a continuation of Article-4 and must follow the findings in Article-4. In light of the evidence brought on record, this charge stands proved against Shri Jindal. The Administrator is, Therefore, of the opinion that Article-5 of the charge has been proved.

AND WHEREAS the Administrator, after fully and carefully going through the material before him in regard to each article of the charge as discussed above and the circumstances of the case, has come to the conclusion that Shri R.N. Jindal has committed grave misconduct and failed to maintain absolute integrity and devotion to duty and has been guilty of conduct which is unbecoming of a Judicial Officer, as mentioned in Articles 1, 2, 4 and 5 of the charges and that imposition of a major penalty/punishment would meet the ends of justice.

NOW, Therefore, the Administrator of the Union Territory of Delhi hereby removes from service, with immediate effect the said Shri R.N. Jindal, Metropolitan Magistrate (under suspension). A copy of the report of the Inquiring Authority is sent herewith."

12. In the light of what has been quoted above, namely, charges, gist of the findings, the order/recommendation of Full Court and the order of Lt. Governor, the points raised by the petitioner deserve to be considered.

13. The challenge inter alias is on the grounds: (1) the petitioner was entitled to a copy of the Inquiry Report, which was not supplied to him. Due to non-supply of copy of inquiry report the impugned order is liable to be set aside; (2) the appointing Authority being the Administrator, namely, Lt. Governor of Delhi, it was within the competence of the High Court to have initiated disciplinary proceedings and also to impose penalties other than dismissal, removal or reduction; the penalty of removal from service could have been imposed only by the Administration and not by the High Court. While concurring with the report of the Inquiry Officer, the Full Court itself proceeded to pass an order of dismissal from service. As such the order of initial authority, namely, the High Court itself being void, the subsequent impugned order passed by the Administrator on 16.12.1988 is also void; (3) that as no appeal is provided against the impugned order passed by the Administrator under the provisions of Delhi High Court Judicial Service Rules, it will be permissible for this court, in exercise of its writ jurisdiction under Article 226 of the Constitution to consider the merits of the petitioner's case and even interfere with the findings of fact recorded by the Inquiry Officer; (4) in any case, interference otherwise is called for since the findings are perverse and consequently the impugned order is vitiated; (5) the petitioner was denied access to relevant documents; (6) material witnesses were not examined; (7) disciplinary proceedings were not stayed though proceedings in criminal court were pending with respect to the matter of contempt against Shri D.R. Lakhani, Advocate; and (8) due to violation of procedural defects, entire disciplinary proceedings are vitiated rendering the impugned order bad in law.

14. Petitioner's case is that he was entitled to a copy of the inquiry report. On the date of his removal from service the law, which was in force, as regards supply of copy of inquiry report was the one as enunciated in Union of India and others Vs. E. Bashyan, 1988 SC 1000, which was also approved by the Constitution Bench in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc.

etc., . 42nd Amendment of the Constitution dispensed with the opportunity of making representation on the penalty proposed and not the opportunity of making representation on the report of the Inquiry Officer. The latter right was always available. Non-supply of copy of report of inquiry before decision was taken by the disciplinary authority on the charges amounts to denial of a reasonable opportunity to the petitioner. Copy of the inquiry report was otherwise required to be served before passing the final order in order to enable the petitioner to at least demonstrate before the disciplinary authority that the findings have been recorded without considering relevant evidence on record or misconstruing it or the same are based on no evidence. Without copy of inquiry report it could not be done.

15. The contention on behalf of Mr. Jaitley, learned Senior Advocate appearing for respondent- High Court has been that at the relevant time there was no requirement to supply a copy of the report of the inquiry officer before imposing the penalty. As such non-supply of copy of the report will not render the impugned order bad in law. In any case copy was supplied to him afterwards.

16. In the instant case penalty of dismissal from service was imposed by an order passed by the Administrator on 16.12.1988. Decision in Union of India and others Vs. Mohd. Ramzan Khan, , was rendered by the Supreme Court on 29.11.1990. The law was settled that a copy of the report of the inquiry should be given before punishment is imposed. The said decision made it clear that the cases in which the punishment had already been imposed, cannot be reopened on the ground of failure to furnish copy of the report of the inquiry officer. This position was reiterated by the Constitution Bench in Managing Director, ECIL's case (supra).

17. In Mohd. Ramzan Khan's case (supra), the apex Court observed that the law laid down by it shall have prospective application. Orders passed prior to the date of judgment imposing punishment shall not be open to challenge on this ground. Para 17 of the report reads:

"There have been several decisions in different High Courts which, following the Forty-Second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a larger Bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two-Judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground."

18. The Constitution Bench in Managing Director, ECIL's case held that the law laid down in Mohd. Ramzan Khan's case (supra) being prospective in operation

requires no emphasis and reiterated that the cases where order of punishment had been passed prior to Mohd. Ramzan Khan's case, without furnishing report of inquiry, should not be disturbed and the disciplinary proceedings, which gave rise to said orders, should not be re-opened on that account. The Court in para 8 held:

"The need to make law laid down in Union of India and others Vs. Mohd. Ramzan Khan, prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, Therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above."

19. In a later decision in Commandant, Central Industrial Security Force and others Vs. Bhopal Singh, , as a result of disciplinary proceedings Bhopal Singh, who had been removed from service, had challenged the order of removal before Calcutta High Court. Single Bench of the High Court had allowed the writ petition on the ground that he was not served with a copy of the inquiry report during disciplinary proceedings. Reliance was placed by the learned Single Judge on Mohd. Ramzan Khan's case. Commandant, CISF, challenged the order before the Division Bench, which also dismissed the appeal. Further appeal of the Commandant, CISF, was allowed by the Supreme Court on the ground that Bhopal Singh had been removed from service on 16.6.1982 and in view of the prospective nature of the law laid down in Mohd. Ramzan Khan's case the proceedings were not liable to be reopened. Reliance was placed on the observations made in Managing Director, ECIL's case (supra) to the effect that decision in Mohd. Ramzan Khan's case had made the law laid down therein prospective in operation, namely, applicable to orders of punishment passed after November 20, 1990 on which date the said decision was delivered.

20. In view of the aforesaid position in law, the submissions made by the petitioner on the first point that the impugned order is vitiated due to non-supply of copy of report has no force.

The petitioner submitted that the Administrator-respondent No.1 (Lt. Governor)

had remained unrepresented. Arguments of Mr. Jaitley, appearing for the High Court, cannot be considered to have been made on behalf of respondent No.1. The questions raised by the petitioner in the petition ought to have been answered by respondent No.1. In the absence of any counter affidavit on behalf of respondent No.1, the writ petition was liable to be allowed. Reliance was placed by the petitioner on the decision of this Court in Surjan Singh v. Union of India, 1991 RLR 157, and on Rules incorporated in Volume V of High Court Rules and Orders contending that when answer is not given in response to a show cause notice in a writ petition, the same is liable to be allowed. We are of the view that this submission made by the petitioner is also wholly misconceived and is liable for outright rejection.

21. The mere fact that the Administrator, namely, respondent No.1 did not file separate reply to the writ petition ipso facto will not have the effect of allowing the petition. Position of a petitioner in proceedings under Article 226 of the Constitution of India, is akin to a plaintiff in civil litigation, who has to stand on his own legs. In the absence of any reply or counter affidavit he can get an order in his favor only on the strength and merits of his case and not merely on the ground that no affidavit has been filed by the opposite party. In the absence of any reply or counter affidavit to a writ petition, an order cannot follow, as a matter of course, in favor of a petitioner. Before the reliefs prayed for are granted, it is the petitioner's duty to satisfy the Court that he is entitled to the reliefs prayed for and the impugned order, which is sought to be quashed, is not sustainable in law. The Court will not blindly allow a petition filed under Article 226 of the Constitution even in case no reply is filed. The Court has to assess the claim on merits. Rules framed by this Court for filing a petition under Article 226 of the Constitution of India do not make it obligatory on the part of the Court to allow a writ petition without considering its merits. Second paragraph of Rule 4 in Chapter 4-F(b) says:-

"Affidavits in opposition shall be filed in the Registry not later than three months, unless further extended by the Court, for sufficient cause, from the date of service of notice of the rule nisi, failing which the case will be listed before the court for orders for default. Copies of affidavit in opposition or reply shall be served on the opposite party or parties and the affidavits shall not be accepted in the Registry unless they contain an endorsement of service signed by such party or parties."

22. In the instant case, we are of the view that there was no necessity for respondent No.1 to have filed a separate affidavit since there are no allegations of malafide leveled against respondent No.1. Legality and validity of the order passed by respondent No.1 is under challenge. The same is to be tested and considered in the light of what is urged by the petitioner before us. Merely on the ground that there is no affidavit filed by respondent No.1, the petitioner cannot succeed.

23. In support of the second point, it was argued by the petitioner that the Full

Court itself resolved to dismiss the petitioner. Registrar could not have of his own converted the resolution of Full Court into recommendation in the letter, which he addressed to respondent No.1. Resolution of the Judges of the High Court dismissing him is unconstitutional. Such an order being void will also render the order of respondent No.1 void. In any case the High Court will be deemed to have interfered or influenced with the exercise of discretion, which was to be exercised solely by respondent No.1. The void order passed by the Full Court, as reflected in its minutes ought not to have been considered at all by respondent No.1.

24. Relying on the decision in *Samsher Singh Vs. State of Punjab and Another*, , *Baradakanta Mishra Vs. High Court of Orissa and Another*, , and *Tej Pal Singh Vs. State of U.P. and Another*, , the petitioner urged that the defect, which had occurred in the resolution passed by the Full Court was not capable of being cured. It was an incurable defect. Instead of making recommendation the High Court itself proceeded to pass an order of dismissal. On that void order respondent No.1 could not have proceeded to pass any further order. Under the law the Administrator was supposed to pass an independent order, only on the recommendation made by the High Court and not upon the decision of the Full Court.

25. In *Samsher Singh's* case, one of the appellants, namely, *Ishwar Chand Aggarwal*, a Judicial Officer was dismissed, as a result of inquiry conducted by the Director of Vigilance. Thus, correct procedure had not been followed. High Court had in that case requested the Government through Director of Vigilance to hold an inquiry into the allegations. This procedure adopted by the High Court was not approved. The Supreme Court held:

"It is indeed strange that the High Court which had control over the subordinate judiciary asked the Government to hold an inquiry through the Vigilance Department. The members of the subordinate judiciary are not only under the control of the High Court, but are also under the care and custody of the High Court. The High Court failed to discharge the duty of preserving its control. The request by the High Court to have the inquiry through the Director of Vigilance was an act of self abnegation. The contention of the State that the High Court wanted the Government to be satisfied makes matters worse. The Governor will act on the recommendation of the High Court. That is the broad basis of Article 235. The High Court should have conducted the inquiry preferably through District Judges. The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Art. 235 by asking the Government to enquire through the Director of Vigilance."

26. In *Baradakanta Mishra Vs. High Court of Orissa and Another*, , order of dismissal passed by the High Court, on the assumption that under Article 235 of the Constitution of India, it had control over judicial officers and also power to impose major penalty of dismissal from service was challenged by the Judicial

Officer by preferring an appeal before the Governor, who dismissed the same. In this background the Supreme Court held that the High Court, within the power and control vested in it under Article 235 of the Constitution, could hold disciplinary proceedings and recommend the imposition of punishment of reduction in rank. The actual power of imposition of major punishment, namely, reduction in rank and dismissal is exercisable by Governor, who is the appointing authority. The Order of the High Court, reducing the Judicial Officer in rank was unconstitutional and liable to be quashed. It was further held that if the order of initial authority is void, the order of the appellate authority cannot make it valid. The confirmation by the Governor of such a void order cannot have any legal effect because that which is valid can alone be confirmed and not that which is void. The Court observed:-

"The High Court within the power and control vested under Article 235 could hold disciplinary proceedings against the appellant and could recommend the imposition of punishment of reduction in rank on the appellant. The actual power of imposition of one of the major punishments, viz., reduction in rank is exercisable by the Governor who is the appointing authority. The order passed by the High Court on 8 December, 1972 reducing the appellant in rank is unconstitutional and is quashed.

The two orders of dismissal dated 3 December, 1973 are based on the order of 8 December, 1972. The substratum of the orders of dismissal being unconstitutional the orders of dismissal cannot have any legal force. Further, the contention of the High Court that the orders of dismissal passed by the High Court merged in the orders passed by the Governor cannot be accepted. If the order of the initial authority is void an order of the appellate authority cannot make it valid. The order of the Governor used the word "confirm". The appellant filed appeals to the Government. The appeals were dismissed. The confirmation by the Governor cannot have any legal effect because that which is valid can be confirmed and not that which is void."

27. In Tejpal Singh's case (supra), the State Government had moved the High Court for the pre-mature retirement of an Additional District and Sessions Judge. The Governor had passed the order of retirement on the recommendation of the Administrative Judge and three days thereafter the Administrative Committee of the High Court gave its approval to the recommendations of the Administrative Judge, earlier communicated to the State Government. Thus, the order of pre-mature retirement, passed by the Governor, without having before him the recommendation of the Administrative Committee or of the Full Court was held to be void and ineffective.

28. The minutes of Full Court, in the instant case, as reproduced above, deserve closer scrutiny and have to be seen in the context the same were passed and what followed thereafter. Admittedly after recording of the minutes, the Registrar through his letter conveyed to the Lt. Governor that it had been recommended by the High Court to remove the petitioner from service. The resolution of the

Full Court, when it says, "decided" that "Shri R.N. Jindal be awarded punishment of removal from service" has to be read "decided to recommend" that "R.N. Jindal be awarded punishment of removal from service". This resolution does not say that R.N. Jindal is awarded punishment of removal from service. It is also one of the ways in which the minutes of the Full Court can be read, as was rightly urged by Shri Jaitley on behalf of the High Court. Use of the words "be awarded punishment" itself would imply that the Full Court neither took a decision of its own, nor it intended that the decision was being taken by it to impose punishment of removal from service. Rather the decision says "be awarded punishment of removal from service." On a plain reading, it would imply that it is a recommendation and not order of the High Court.

29. In this view of the above, we are inclined to accept the submission made by Mr. Jaitley on behalf of the High Court that the minutes have to be read in the context in which the facts proceeded further, namely, the recommendation of the High Court as was conveyed in the letter of the Registrar to the Administrator. Therefore, the same must be read that Full Court, having concurred with the findings on all the charges and having regard to such findings on the Charge and on the basis of the evidence adduced during inquiry, decides to recommend that R.N. Jindal be awarded punishment of removal from service. What follows from the impugned order, annexure C, is that the Administrator also did not have an occasion to see the copy of the minutes of the Full Court but only went by the letter of the Registrar, which said only "recommendation".

30. Reference at this stage be made to a recent decision of the Supreme Court in *T. Lakshmi Narasimha Chari Vs. High Court of Andhra Pradesh and another*, . In that case the High Court had proceeded to pass the order of removal from service on the assumption that it was not necessary for the High Court to make its recommendation to the Governor but it alone had the power to impose that punishment. Referring to the decision in *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, , and that of *B.S. Yadav and Others Vs. State of Haryana and Others*, , it was held that order of removal from service in the case of judicial officers, who were before the Court, had to be passed by the Governor and not by the High Court itself. The Court further held that the recommendation of the High Court for removal from service, after charges of misconduct were found proved in the disciplinary inquiry was binding on the Governor, who had to issue the order of removal, in accordance with the recommendation made by the High Court. Consequently the orders of removal, which had been passed by the High Court were directed to be treated as recommendation of the High Court made to the Governor and it was also held that in view of the control over them vested in the High Court by virtue of Article 235 of the Constitution of India, the Governor was bound in each case to act in accordance with the recommendation of the High Court and each one of the officers had to be removed from service for misconduct, found proved by the High Court against them. The Governor of State of Andhra Pradesh accordingly was asked to proceed and make necessary consequential orders in accordance

with the recommendation of the High Court.

31. In the instant case also, in the light of what followed on the minutes of the Full Court, assuming that the same was a decision of the High Court (which we have held is not but only a recommendation), as contended by the petitioner, on the ratio of decision in *T. Laxmi Narasimhachari's* case (supra), the same rightly was treated by the Governor as recommendation of the High Court. Rightly it is so reflected in the letter of Registrar. The Administrator, namely, Lt. Governor, acting on that recommendation rightly proceeded to pass the impugned order and for that reason the submission made by the petitioner has to be negated.

32. Before we proceed to consider the other grounds of challenge, we are taking into consideration the scope of interference in a petition filed under Article 226 of the Constitution to challenge the impugned order. After referring to the decisions in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, , *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, , the apex Court on the extent of the power of Judicial Review, while hearing a petition under Article 226 of the Constitution of India, in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , held that the adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said findings, being within the exclusive jurisdiction of the Tribunal, the said points cannot be agitated before a writ court. Findings recorded by the Tribunal cannot be challenged in proceedings of a writ of certiorari on the ground that relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned findings. The extent of the judicial review is available only within the parameters of well settled principles, which the Supreme Court stated as follows:.

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to

be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised."

33. In *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, , it was held that the High Court does not act as a court of appeal against decision of a court or Tribunal to correct errors of facts.

34. Again in *Kailash Chander Asthana Vs. State of U.P. and Others*, , it was held that when challenge is made to the order of removal from service on findings on charge of acceptance of illegal gratification against Civil Judge, the scope of judicial review was limited one. It is not an appeal from the decision.

35. Scope of judicial review also came for consideration in *B.C. Chaturvedi Vs. Union of India and others*, , wherein it was held:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of act or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion received support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the

conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

36. In a recent decision in the High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, , the Court reiterated the extent of the power of judicial review as also the scope of interference by the High Court vis-a-vis on the question of re-appreciation of evidence and interference with the power of imposition of penalty. Quoting with approval the decisions in Union of India and Others Vs. S.L. Abbas, , The Administrator of Dadra and Nagar Haveli, Silvassa Vs. H.P. Vora, and State Bank of India and Others Vs. Samarendra Kishore Endow and Another, , the Supreme Court held that the disciplinary authority being the fact finding authority has exclusive power to consider the evidence, which is invested with the discretion of imposing appropriate punishment, keeping in view the magnitude or gravity of misconduct. The High Court while exercising the power of judicial review is to see whether there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether a reasonable man, in the circumstances, would be justified in reaching that conclusion. The scope of disciplinary inquiry is entirely different from that of a criminal trial in which the charge is required to be proved beyond reasonable doubt. Technical rules of evidence have no application in the case of disciplinary inquiry. 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 a delinquent has committed misconduct. Reiterating the scope of judicial review as enunciated in B.C. Chaturvedi's case (supra); State of T.N. Vs. T.V. Venugopalan, , Government of Tamil Nadu and another Vs. A. Rajapandian, and State of Tamil Nadu and another Vs. S. Subramaniam, ; it was held that the only consideration the Court had 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 court has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but only a review of the manner in which decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion, which the authority reaches is necessarily correct in the view of the Court or the Tribunal. When the conclusion reached by the authority is based on evidence the court is devoid of power to reappreciate the evidence and to come to its own conclusion on the proof of the charge.

37. It is in the light of this position in law that matter will have to be examined with respect to each charge and on the other grounds urged.

38. On the first charge, the inquiry officer observed that the same can be divided into two parts, first being whether R.N. Jindal tampered with the official record

and the second being as to whether he caused the same to be tampered with. As regards the first part the Inquiry Officer held that there was no material to hold that R.N. Jindal himself tampered with the official record. However, on analyzing the oral and documentary evidence produced before him, the Inquiry Officer observed that entry No.218 (later changed to 218-A) was made on 25.7.1986, the entry 219 was also made on 25.7.1986 and entry 220 was made on 28.7.1986. All these three entries were on the same page. This page was torn which is clear from the remnant existing before the entry No.218 dated 24.7.1986. After tearing off the page the entry in question was made, which was dated 24.7.1986 and the original entries 218, 219 and 220 recorded on one page, the said page was affixed next to the page containing the entry in question. In fact the page containing entry No.218 has no other entry on either side of the page. The page has obviously been torn intentionally. On the entire page which contains entry No.218, there is no other entry and the page has been left blank. The existing page containing the original entry No.218, 219 and 220 was torn and pasted after entry No.218 and the original entry 218 was made as 218-A. The Inquiry Officer also observed that in the entire register he did not come across any other page containing only one entry or entry with number suffixed with letter A or B. He further observed that the page was obviously torn as the remnant of the torn portion still exists prior to entry 218. He further observed that according to the case of R.N. Jindal, the dispatch clerk had misunderstood his message and in order to save his own skin had done this manipulation.

39. The above observations were made after the Inquiry Officer came to the conclusion that the page was obviously torn intentionally. Inquiry Officer taking note of the petitioner's defense observed that he would have ordinarily believed the story put forward by him but the circumstances of the case led to a different conclusion. The petitioner had admittedly asked the dispatch clerk to keep an entry blank in the dispatch register and not to close the same for 24th July, 1986, knowing fully well that he had not even completed the draft, which he was to send to the High Court. In this background finding was recorded that ante date entry No.218 date 24.7.1986 in the dispatch register was actually made on 28th July, 1986 and it was the petitioner who got tampered the dispatch register to that extent and it was done through Sukhpal Singh.

40. The conclusions aforementioned were reached by the Inquiry Officer in the background of statement of fact, which was the basis of the first charge. The Statement of Facts read:

"According to Shri R.N. Jindal , on 24th July 1986, whilst dealing with a miscellaneous application in a case entitled State against Rakesh Kumar Jain, u/s 306/34, Indian Penal Code, F.I.R. No.329 of 1985, Police Station Gandhinagar, there was an altercation between him and Shri B.S. Phartyal, counsel for the applicant, and, subsequently, with Shri B.K. Sharma and Shri Attar Singh Khatri, Advocates.

In respect of the said incident, Shri Jindal addressed a reference, u/s 15 of the Contempt of Courts Act 1971 to the Registrar, Delhi High Court, against Shri Phartyal and others. The said reference was sent to Shri P.K. Jain, Additional District and Sessions Judge, Shahdara, Delhi, either on 26th or on 28th July 1986 for onward transmission. In order to show that the said reference had, in fact, been sent on 24th July 1986, the very day on which the said incident had occurred, the said Shri R.N. Jindal asked Shri Sukhpal Singh, U.D.C., in the office of the District Courts at Shahdara, Delhi, to make an antedated entry in the dispatch register.

The last page of the dispatch register, which had been filed, already contained entries Nos.218, 219 and 220 dated 25th July 1986, 25th July 1986 and 28th July 1986 respectively. At the instance and behest of Shri R.N. Jindal, the said page was torn out of the register, and at the top of the next page, which was then blank, an entry No.218 dated 24th July 1986, showing the dispatch of the said reference, was made. No other entry exists on this page. The number of the already existing entry No.218 dated 25th July 1986 was changed to 218-A. The page which had been torn out of the register was, subsequently, posted on the back of the page on which the antedated entry No.218 dated 24th July 1986 had been made. Thereby, the said Shri Jindal tampered with official records, or caused the same to be tampered with, and thereby committed grave misconduct, failed to maintain absolute integrity and devotion to duty and has been guilty of conduct which is unbecoming of a judicial officer."

41. The petitioner in his reply had explained that

"I have explained earlier, the mere intention was that the register of entry of that day may not be closed, hoping that I would be able to send the reference that very day. It is likely that the clerk concerned may have genuinely misunderstood my instructions given to him if I actually sent the reference on a subsequent date, I should nevertheless enter it in the entry of 24-7-86."

42. The petitioner wanted us to reappraise the evidence. He referred to the statements of Sukhpal, dispatch clerk (who was declared hostile), PW 3 Rohtas, the Ahlmad, and DW 1, Kanta Rani. We are not inclined to re-assess or re-appraise the evidence and on such re-appraisal to take another view, which accordingly to the petitioner would be a possible view that he was not at all concerned with the tampering of the record and same must have been done by the clerk concerned, who must have genuinely misunderstood his instructions since the letter was intended to be sent on 24.7.1986, though it was actually handed over on 28.7.1986. We have examined the concerned dispatch register with the torn pages pasted on it and the statements of Sukhpal, Rohtas and Kanta Rani. It is not at all possible, even to take a different view than the one, which was taken by the Inquiry Officer that it was the petitioner alone at whose behest tampering in the dispatch register was done. A bare look at the dispatch register reveals the entry 218 was later on changed to 218 A dated 25.7.1986 followed by two other entries 219 and 220 made on 25.7.1986, which are on the

same page. This page is torn and entry in question is made, which was dated as 24.7.1986. The original entry 218, 219 and 220 recorded on one page, which is affixed next to the page containing the entry in question. Thus, there is no scope for coming even to a different conclusion.

43. On the second charge also the petitioner wanted us to reappraise the entire evidence urging that his version deserves to be accepted. The Inquiry Officer, after recording the nature of charge concentrated on the crucial question as to whether the original order was handwritten and the same was substituted by a type-written order at some subsequent point of time. The Inquiry Officer proceeded to notice certain proceedings recorded in case titled State Vs. Inderjit and another as regards the order sheet and the exact nature of the case against the petitioner saying:-

"The case of the Department as is disclosed in the statement of imputations of misconduct in support of this Article is that a case entitled State versus Inderjeet and another was pending in the Court of Shri R.N. Jindal. On 12th May 1986, Shri R.N. Jindal wrote an order in his own hand which reads as follows:-

"12.5.86 Present A.P.P. for State. Accused Inderjit is present on bail. Accused Vijay Kumar absent. NO PW is present. None served. Issue NBW against Vijay Kumar and his personal bond is forfeited. Issue notice to surety to produce the accused also to appear on 5/8/86.

Initials

12/5"

The aforesaid order commenced towards the bottom of the second side of a green sheet, and the words to appear on 5/8/86 and the initials with the date there under were carried over to the next sheet. The same case was called on 5.8.1986 and on that date Shri Jindal commenced proceedings u/s 345, Criminal Procedure Code against Shri D.R. Lakhani, Advocate, counsel for Inderjit, and wrote the following order in his own hand:

"Accused Vijay Kumar produced in custody by Shakkarpur Police. He has applied for fresh bail. Bail bond is accepted. The other accused Inderjit is absent. Issue NBWs against him. At this stage the defense counsel Sh. D.R. Lakhani appeared along with accused Inderjit. Accused be taken in custody. Mr. Lakhani submitted that the accused was sitting on his seat and he is present. How could the Court take him into custody. Mr. Lakhani thumped my table thrice and stated that I had no jurisdiction to send his client in custody when he was present in the Court. Mr. Lakhani by thumping the table has caused interference in the judicial proceedings. Let notice be given to him U/s 345 Cr.P.C."

This order was written on the sheet on which a part of the order dated 12th May 1986 had been carried over. Subsequently, the sheet containing this order was removed from the record of the case by Shri Jindal, and, instead, a typewritten order dated 5th August 1986 was substituted by him. The typewritten order

reads as follows:

At this stage, accused Vijay Kumar produced under arrest by the Shakkarpur police. He has applied for fresh bail. His bail bond is accepted. There is another accused Inderjit who also appeared. He did not come twice when the case was called. The accused Inderjit be taken into custody.

At this stage, the defense counsel Sh. D.R. Lakhani, came. He stated that the accused be released as he was sitting on his seat. He was told that the accused has not come twice when the case was called and his presence at the seat of defense Counsel is irrelevant. The counsel Shri Lakhani said that nobody on earth can send this accused behind the bars. He thumped the table twice. He threatened me that he will not allow me to go to my house after court hours and he has seen many magistrates like me. He also showed his hands in teasing manner and did not allow the court to function for 15 minutes. He also threatened that Chief Justice will come to save me. By doing so the Advocate has committed gross contempt of court. Let notice be given to him U/s 345 Cr.P.C.

Notice given. The Advocate left the Court threatening and teasing.

The accused Vijay Kumar has applied for bail. The bail is granted. Accused Inderjit is warned to come in Court when the case is called and he gave written Explanation and begged the excuse. On this, the bail of accused Inderjit is restored.

Put up after some time for consideration of notice and reply if any by defense Counsel Shri D.R. Lakhani.

Sd/- R.N. Jindal,

M.M. 5/8/86"

The case is that the typewritten order was substituted for the original handwritten order so as to attribute to Shri D.R. Lakhani conduct which was more serious by way of Constituting contempt of court. While doing so the last words of order dated 12th May 1986, that is, "to appear on 5/8/86" and the initials with the date thereunder, were written by Shri Jindal in the margin of the green sheet on which the said order dated 12th May 1986 commenced. In the complaint filed, it is stated that the order dated 12th May 1986 recorded in the margin is in a different ink and does not tally with the ink used for the main order. Shri Jindal in his reply to the complaint stated:

"whatever paper is available at that moment the same was used. We are supplied with pen holders as well as ball pens and when pen holders become dry or unfit for use at any stage another pen has to be used in its place. In that situation there is nothing unusual if the same order sheet is sometimes written with three different pen holders or ball pens. The writing and ink of the pen holders and pens are different. I have not destroyed or damaged any order sheet. In my order sheets I wrote on the left hand side if only one or two words

are left to be written in the order sheet. If two inks have been used in one order sheet it is for the above reasons."

In reply to the charge sheet, which was adopted as written statement of defense, Shri Jindal has denied the charge and has mainly relied on his letter dated 12.8.1986 written to the Registrar of the Court. According to Shri Jindal the conduct attributed to Shri Lakhani in that letter tallies with the order now existing on the record. In these circumstances it is pleaded that it was impossible to substitute the order after 6.9.1986 as alleged by Shri Lakhani in the complaint. Further reliance is placed on the notice issued to Shri Lakhani u/s 345 of the Code of Criminal Procedure which also has the same language which is existing in the order in the file."

44. We need not reiterate the manner in which the evidence was appreciated by the Inquiry Officer. The Inquiry Officer duly took note of the Explanation of the petitioner that the subordinate Judges are supplied with various ball-pens and if one gets dry, second one is taken to complete the order and observed that if this Explanation of the petitioner has to be accepted then the last word written with the pen in the order dated 12.5.1986 which had become dry, it would give an indication to that effect. But there is no such indication in this order. We have ourselves examined the original record and the Explanation of the petitioner does not fit in there. The Inquiry Officer also took note of the alleged habit of the petitioner of writing orders in the margin of the order sheet, for which evidence was adduced by the petitioner by getting summoned various judicial files. The same were duly analyzed by the Inquiry Officer, who observed:

"A bare look at all these files indicate that Shri Jindal got access to these files through some official of the Court and for the reasons stated above a suspicion arises to the effect that in order to create evidence in his favor Shri Jindal has tampered with all these files also."

45. For the typed order sheet also, on appreciation of evidence adduced before him and considering petitioner's Explanation the Inquiry Officer observed:

"that the Stenographer attached to the Court of Shri Jindal was on leave on 5.8.1986. According to Shri Jindal he had called Shri Wadhwa, a Stenographer attached to another Magistrate as the said Magistrate was on leave. Shri Wadhwa was cited as a witness but was given up. At the request of the Presenting Officer I did summon all the files relating to the cases which were before Shri Jindal on 5.8.1986. The files disclose that all orders on that date were handwritten on the files except in the case the evidence was typewritten and one letter was also typewritten though the date of the letter was tampered with. Finally Shri Wadhwa at the request of Shri Jindal was examined as a court witness. He deposed that he went to the Court of Shri Jindal on being called at 12.00 noon and worked till 1.00 p.m. He stated that prior to 12.00 noon he was busy in his work in the Court to which he was attached that is in the Court of Shri S.L. Khanna, A.C.M.M. Shahdara. He stated that as far as he remembered he had

recorded some evidence on that date in Shri Jindal's court. On looking at the file relating to the case of "State vs. Inderjit" he stated that the order marked "B" was typed by him but the same was typed after 12.00 noon while the time recorded is 10.30 and 11.00 a.m. He stated that the time over the order was recorded as per dictation of Shri Jindal. However, these orders were typed after 12.00 noon. He also admitted that notice Ex.PW1/11 in the said file was also typed by him but after 12.00 noon. He deposed that the alleged incident between Shri Lakhani and Shri Jindal in the Court on 5.8.1986 did not take place in his presence and he had no personal knowledge of the same."

46. In the light of the evidence produced, charge No.2 was also held to have been proved as quoted above.

47. After taking note of the evidence, which the petitioner led in defense, the Enquiry Officer came to the conclusion:-

"In fact it is not necessary to give any definite conclusion as regards the exact date when the order was replaced because in my opinion there can be no doubt that the original order passed by Shri Jindal was the one produced by Shri Lakhani and marked "C". It appears that after passing the said order Shri Jindal realized that the matter had become rather serious as the President of the Bar and other Members of the Bar had also intervened and he wanted to attribute to Shri Lakhani's conduct which was more serious by way of Constituting Contempt of Court and Therefore, he recorded a fresh order which he got typed from Shri Wadhwa. There is no reason to disbelieve Shri Wadhwa to the effect that he was called only after 12.00 noon and had thereafter typed the order. Shri Jindal got the order typed may be on the same day or a day or so subsequently but replaced it in the file after 7.8.1986. Thus, I hold that Article II of the charge also stands proved against Shri Jindal."

48. The petitioner contended that since there is no regular appeal provided against the order of dismissal and it was not possible for him to urge the merits of the findings recorded by the Inquiry Officer, Therefore, while exercising the power of judicial review, case should be examined from the angle that whether the conclusions arrived at by the Inquiry Officer are right or not? This submissions made by the petitioner deserves rejection in view of the settled position in law. The judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that conclusion which the authority reached is necessarily correct in the eyes of law. The Court is concerned to determine whether the inquiry was held by a Competent Officer or whether rules of natural justice are complied with {(See B.C.Chaturvedi's case (supra))}. The conclusions arrived at are based on evidence on record. Having considered the charge, the evidence produced thereupon and the conclusions, we are of the view that there is scope to come to a different conclusion than the one arrived at by the Inquiry Officer.

49. On the 4th charge, which has been reproduced above, the petitioner also examined himself as also some other witnesses including Mr. Justice N.C. Kochhar, as D.W.1. On an analysis of the entire evidence, the Inquiry Officer concluded that there was no reason to reject the statement of lawyers, who had deposed to the effect that the matter was amicably settled and the order, which was recorded on the application ended with the words "dropped". There was no talk of a separate order. Thus the only point for consideration was whether the words "by a separate order" after the word "dropped" were written at the same time. The Inquiry Officer observed that the statement of Shri N.C. Kochhar, who at the relevant time was the District Judge, Delhi and appeared on behalf of the petitioner clinched the matter since as per his statement the petitioner did not tell him that he had already written some letter to the High Court. He had also not written letter dated 12.8.1996 at least till he had met Mr. N.C. Kochhar. The Inquiry Officer thus concluded:-

"Even on looking at the order it is clear that the same is a manipulated order. The order reproduces the statement of Shri Lakhani when no such statement exists on the file. The statement is reproduced in inverted commas, and to believe that Shri Jindal remembered the statement by heart would be going too far. The order is also contradictory to the order passed on the application. Once the proceedings are dropped, which Shri Jindal admits, it is impossible to hold that Shri Jindal did not know the true interpretation of the provisions and it was mandatory to convict the person. On one hand the proceedings are being dropped and on the other the alleged contemner is being convicted. The two possibly cannot be reconciled. Though, according to Shri Jindal the order and the letter dated 12.8.1986 were dictated to the Stenographer on the evening of 12.8.1986 but the letter was sent to this Court only on 14.8.1986, for which there is no Explanation. The letter was obviously drafted sometimes after 12.8.1986, that is, after Shri Jindal had talked to Justice Kochhar. I am, Therefore, clearly of the view that this Article of Charge also stands proved against Shri Jindal."

50. On charge 5, it was concluded:-

"As regards this Article of Charge, it is only a continuation of Article IV and must follow the findings recorded in Article IV. The Presenting Officer as also Shri Vats, the learned counsel for the Delinquent Officer rightly did not address any arguments under this Article and it was submitted by the counsel that in case Article IV is proved against the Delinquent Officer, Article V would follow the same. Consequently, in view of what has been said under Article IV, I hold that this Article V also stands proved against Shri Jindal."

51. For the aforementioned conclusions arrived at by the Inquiry Officer, there is ample material on record and for that reason there is no scope for interference. Points three and four thus stand negated.

52. Next question is that whether a fair opportunity was denied to the petitioner.

The petitioner has alleged that he was compelled to be examined as a defense witness before other defense witnesses were examined, though he had prayed that he should be examined towards the conclusion of the inquiry.

53. The order of Inquiry Officer passed on 3.11.1987 says that after the Presenting Officer closed his case, it was posted for the petitioner's evidence. The application made by him praying for permission to examine defense witnesses and expressing his intention to appear as his own witness in defense towards the end of the inquiry was allowed partly. The petitioner was permitted to examine himself as his own witness and was also permitted to examine the other defense witnesses cited by him. However, it was directed that the petitioner will examine himself first and thereafter the other witnesses will be examined. There is nothing wrong with this order passed by the Inquiry Officer. It is perfectly in consonance with Sub-rule (17) of Rule 14 of Central Civil Service (Classification & Control) Rules, which reads:-

"the evidence on behalf of the Government servant shall then be produced. Government servant may examine himself as his own witness if he is so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to be cross examined, re-examined and examined by the Inquiry Authority, according to the provisions applicable to the witness in for the disciplinary authority."

54. A bare reading of the rule negatives the petitioner's contention. Witnesses produced by the Government servant shall then be examined implies that after the Government servant has examined himself, if he so prefers, his remaining evidence will be examined thereafter.

55. The petitioner urged that procedural irregularity was committed by the Inquiry Officer when he permitted summoning of files and cause list dated 5.8.1986 behind his back. Needless to add that on 19.11.1987 an application was made by the Presenting Officer before the Inquiry Officer praying for summoning of cause list of 5.8.1986 of the Court then presided over by the petitioner as also Reader's copy of the said cause list, peshi register (register of cases) maintained by the Court Reader for 5.8.1986 and 12.8.1986 and all the Court files of the cases that were fixed before the Court on 5.8.1986. The application stated that the documents were required for cross examination of various defense witnesses. In case the petitioner had expressed his desire to appear as his own witness and also to produce defense evidence, the Presenting Officer was within his right to have moved such an application before the Inquiry Officer praying for the summoning of record, which he believed would be required to effectively cross examine the witnesses including the petitioner. There was no question of considering such a prayer in petitioner's presence. No prejudice can be said have been caused to the petitioner, nor any was demonstrated since what was sought to be summoned was the record of the cases or the other record maintained in Court. It was also relevant for the purpose of the inquiry on the charges framed against him.

56. The petitioner contended that the documents, which were allowed to be summoned were not relied upon and no permission should have been granted to summon those documents. This submission has also no force, since necessity to summon the documents arose only for the purpose of cross examining the defense witnesses. Such documents in which reliance was not placed by the Presenting Officer, need not have been produced earlier. While a witness is under cross examination he can be confronted with a document, which need not have been relied upon. The Presenting Officer had already closed his evidence. The case was at the defense stage. For purposes of cross examining effectively the witnesses as also the petitioner's documents were summoned, which were relevant. In the absence of any prejudice caused to the petitioner, there is no force in the submission.

57. Another grievance of the petitioner was that non-examination of Shri Sanjay Khanna, the clerk, who had been examined during preliminary inquiry and who prepared certified copies is fatal. Shri P.L.Behl and Shri R.K.Kochhar, advocates, who according to the petitioner were material witnesses, were also not examined during inquiry proceedings. This submission also have no force. It was open for the petitioner to have summoned and examined them, in case he considered that their statements were material.

58. While considering the submissions made by the petitioner, another aspect, which cannot be lost sight of is that technical rules of evidence have no application in disciplinary proceedings.

59. The petitioner also urged that his application for stay of disciplinary proceedings was wrongly rejected. Disciplinary proceedings ought to have been stayed till pendency of the criminal proceedings based upon the same facts. It also has no force. Criminal proceedings and disciplinary proceedings are two independent and separate proceedings and have to be decided on the basis of material produced separately in those proceedings. The scope of each is separate and distinct. No procedural impropriety can be said to have been committed and no prejudice can be said to have been caused by not staying the disciplinary proceedings against the petitioner because of the pendency of some criminal proceedings based upon same facts.

60. It was also contended by the petitioner that no motive or bad intention had been imputed against him, nor could there be a question of deriving any gain by him for the offences alleged against him. In the absence of any motive, the impugned order of dismissal is not only bad but harsh also. This submission is also without any substance. The petitioner was a judicial officer. Maintenance of discipline in judicial service is of paramount importance. The petitioner was not charged with the offence of misconduct or illegal gratification or the like but of tempering with judicial record, which is equally a serious offence, for which no motive need to be proved. The charges having been held to have been proved by the Competent Authority, it will not be open for this Court, in exercise of its writ jurisdiction to interfere with those findings or even on the quantum or nature of

the sentence imposed, in view of the ratio of decision in *Udhey Singh* (supra).

61. On the last point on procedural defect, it was urged by the petitioner that he was not supplied with copies of those documents, which were put to him and the defense witnesses during their cross examination. This submission is without any force. The petitioner was provided with copies of all documents relied upon by the presenting officer in support of his case. He was also allowed to inspect the records. In case necessity arose to summon files or documents for the purposes of cross examination of defense witnesses, there is no provision for supplying copies of such files or documents. Those were called only for the purposes of cross examination, to be confronted to the defense witnesses. This submission thus has no force. Thus points four to eight raised by the petitioner have been dealt with and negated.

62. We have examined the question that whether there is evidence on record to reach the conclusion that the petitioner committed misconduct with which he was charged and whether a reasonable man in the circumstances would be justified in reaching the conclusion. On all the charges held proved against him, on the basis of the evidence, which was brought on record, it is not possible to come to a different conclusion. It is not a case of no evidence. Evidence has been led on both sides. Due opportunity was afforded to the petitioner, who availed of the same. His grievance of alleged violation of certain rules of evidence or insufficiency of evidence, we are of the view, is outside the scope of Judicial Review. Technical rules of evidence are not applicable in disciplinary proceedings. Evidence on record is not only sufficient but clinching. May be there was no allegation of malafide or illegal gratification against the petitioner, but that alone will not absolve him of the charges, which were found to have proved against him. The same were duly considered. Concurring with the findings of the Inquiry Officer, High Court recommended petitioner's dismissal from service and the impugned order was passed by the Competent Authority.

63. We find no ground to interfere in this petition, which is liable to be dismissed and is hereby dismissed. No order as to costs.