

(2005) 01 AHC CK 0169
In the Allahabad High Court
Case No : C.M.W.P. No. 1208 of 1998

Shreenath Upadhyay

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 05-01-2005

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 3, 49, 50, 52
Constitution of India, 1950 — Article 14, 235, 237
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 173(1), 173(2), 173(5)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307
Uttar Pradesh Government Servants (Conduct) Rules, 1956 — Rule 3

Citation : (2005) 2 ESC 906 : (2005) 2 UPLBEC 1822

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Ashok Khare and Tarun Varma, for the Appellant; S.N. Singh and K.R. Sirohi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for quashing the Order passed by the High Court of Allahabad on the administrative side, reverting the petitioner to next below rank, i.e., from the post of Civil Judge (Senior Division) to the post of Civil Judge (Junior Division), as a punishment after holding disciplinary proceedings, vide Order dated 12.11.1997.

2. The facts and circumstances giving rise to this case are that petitioner Joined as a Judicial Magistrate/Munsif in 1981, and while he was working as ACJM, Mathura, in 1994, he had entertained certain bail applications and granted the bail to the accused on 24.12.1994. The complainant in that case had sent a complaint to this Court, whereupon explanation of the petitioner as well as report of the District Judge, Mathura were called for, whereafter an Inquiry was initiated against the petitioner and duly approved charge-sheet dated 9.8.1996 was issued. The petitioner was charged with the allegations that he had acted with

mala fide intention and granted the bail for extraneous considerations to help the said accused exceeding his powers by entertaining the application u/s 439 of the Code of Criminal Procedure (hereinafter called the "Cr.P.C.") though the case did not fall within the ambit of Section 437, Cr. P.C. and being a Magistrate he could not have exercised that power. The petitioner filed the reply to the charge-sheet denying all the allegations. An inquiry was conducted and the Inquiry Officer found the charges established to the effect that he was guilty of misconduct within the meaning of Rule 3 of U.P. Government Servants Conduct Rules, 1956. The copy of the inquiry report dated 26.3.1997 was served upon the petitioner giving him an opportunity to file his comment(s) to the said report, which the petitioner submitted on 19.5.1997. The matter was placed before the Administrative Committee of the Court which accepted the report of the Inquiry Officer and referred the matter to the Full Court recommending that the officer be reduced to the rank of Civil Judge (Junior Division). The Full Court vide resolution dated 25.10.1997 accepted the recommendation of Administrative Committee and directed that the petitioner be reverted to the next lower rank in service, i.e., to Civil Judge (Junior Division) from Civil Judge (Senior Division). Hence this petition."

3. Sri Tarun Verma, learned counsel appearing for the petitioner has submitted that in a case where a Judicial Order can be corrected in appeal or revision, the question of holding a domestic inquiry against the judicial officer does not arise. Thus the domestic inquiry as well as the Order impugned is liable to be quashed. The Order of punishment has been imposed by the High Court without referring the matter to the Governor of the State of Uttar Pradesh. Therefore, the matter remains in-executable and un-enforceable. More so, the punishment is too harsh and should not have been awarded in the facts and circumstances of the case. Thus, the petition deserves to be allowed and the impugned Order is liable to be quashed.

4. On the other hand, Shri K.R. Sirohi, learned counsel appearing for the High Court and Shri S. N. Singh, learned Standing Counsel appearing for the State have vehemently opposed the contention, contending that if the judicial- Order is passed for extraneous consideration or even by negligence of grave nature, it falls within the ambit of misconduct, and a judicial officer can be dealt with in a domestic inquiry apart from the fact that such an Order can be corrected in appeal or revision. The requirement of approval of the Governor of the State is not required in view of the provisions contained in Rule 50 of the Civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter called the Rules 1930). The punishment imposed, undoubtedly, is a major punishment, but it cannot be held to be disproportionate to the delinquency committed by the petitioner. More so, the writ Court cannot function as an appellate Court, questioning the propriety of Order passed by the Full Court imposing punishment, as the scope of judicial review is limited to the process of decision-making and not against the decision itself. In the instant case, a full-fledged inquiry was conducted strictly in accordance with law and there had been no

violation of the principles of natural justice. Therefore, the petition is liable to be dismissed.

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

6. The issues as to whether where a judicial Order can be corrected in appeal, disciplinary proceedings can be initiated against a judicial officer for passing the wrong Order; and whether recklessness and gross negligence on the part of a judicial officer, even if he had no corrupt motive, fall within the ambit of misconduct, are no more *res Integra*.

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

"....,It is not necessary that a member of the service should have committed the alleged act or omission in the course of discharge of his duty as a servant of the Government in order that it may form the subject matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission...The test is whether the act or omission has some reasonable occasion with nature and condition of his service or where the act or omission has caused any reflection upon the reputation of the member of the service for integrity or devotion of duty as a public servant.. The proposition put forward was that 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 is not precluded from taking disciplinary act if there is proof that he has acted in gross recklessness in the discharge of his duties or that he failed to act honestly or in good faith or that he omitted to observe the prescribed conditions which are essential for the exercise of the statutory power."

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

9. In *S. Govinda Menon (supra)*, the Hon^{ble} Supreme Court had relied upon the judgment in *Pearce v. Foster*, (1966) 17 QBD 536 wherein it had been held as

under :

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

10. The Supreme Court in *Union of India and Others Vs. K.K. Dhawan*, , very heavily relied upon its earlier judgment in *S. Govinda Menon (supra)*, and observed that the officer who exercises judicial or quasi-judicial powers, acts negligently or recklessly or in Order to confer undue favour on a person, is not acting as a Judge, and in the disciplinary proceedings, it is the conduct of the officer in discharge of his official duties and not the correctness or legality of his decisions or judgments which are to be examined, as the legality of the Orders can be questioned on appellate or revisional forum. In such a 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 Jade, 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 said long ago "though the bribe may be small, yet the fault is great."

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

12. Undoubtedly, abuse of power has always been treated as constituting misconduct, for the purpose of disciplinary proceedings. Moreso, in *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik*, , the Hon"ble Apex Court held that gross negligence constitutes misconduct.

13. In *Union of India (UOI) and Others Vs. J. Ahmed*, , the Hon"ble Supreme Court considered whether inefficiency in service amounts to misconduct or not, and the Hon"ble Court answered it in negative, holding that the word "misconduct" itself indicates that, if proved, it may incur the penalty under the Rules.

14. 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.

15. 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 with great caution and a close scrutiny of his actions, and only if the circumstances so warrant for the reason that non-initiation of disciplinary proceedings against a judicial officer may shake the confidence of the public in the officer concerned, and if lightly taken, it is likely to undermine the independence and in case the action of the judicial officer indicates culpability, there is no reason why disciplinary action should not be taken against him.

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

"Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus: "A transgression of some established and definite Rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its, synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

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

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

17. The Hon''ble Supreme Court further held that the word "misconduct" though

not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite Rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.

18. 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.

19. 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.

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

21. In *State Bank of India and others Vs. T.J. Paul*, , the Supreme Court held that even in a case where 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 officer 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.

22. 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.

23. Thus in view of the above, we find no force in the submissions made by the learned counsel for the petitioner that if the judicial Order can be corrected in an appeal or revision, initiation of disciplinary proceeding is not warranted. As the Hon"ble Apex Court has consistently held that in exceptional circumstances even if such an Order can be corrected by an Appellate or Revisional Court, disciplinary proceeding can certainly be held against the judicial officer. In a case like instant, the Court can review only the "decision making procedure" and not the "decision" of the authority. The Court, not being a Court of Appeal, is not competent to substitute its own view on factual aspects of the case.

24. The Court can review to correct errors of law or fundamental procedural requirements, which may lead to manifest injustice and can interfere with the impugned Order in "exceptional circumstances". [Vide Union of India (UOI) Vs. Parma Nanda, ; State Bank of India and Others Vs. Samarendra Kishore Endow and Another, ; Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, ; State of Punjab and others Vs. Surjit Singh Conductor, ; State of U.P. and others Vs. Ashok Kumar Singh and anothers, ; State of U.P. and others Vs. Nand Kishore Shukla and another, ; Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other, ; State of Punjab and others Vs. Bakhshish Singh, ; Yoginath D. Bagde Vs. State of Maharashtra and Another, ; Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, ; Food Corporation of India v. A. Prahalada Rao and Anr. AIR 2001 SC 51 Kumaon Mandal Vikas Nigam Ltd. v. Girja Shan/car Pant and Ors. AIR 2001 SC 24 ; N.R. Nair and Others Vs. Union of India and Others, ; Union of India and Another Vs. Ashutosh Kumar Srivastava and Another, ; Lalit Popli Vs. Canara Bank and Others, ; S.J.S. Enterprises (P) Ltd. v. State of Bihar and Ors. (2004) 7 SCC 166 ; and Madhya Pradesh Special Police Establishment Vs. State of Madhya Pradesh and Others,].

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

26. In General Court Martial and Others Vs. Col. Aniltej Singh Dhaliwal, , the Hon"ble Supreme Court has held that the High Court, in its limited power of exercise of judicial review, may interfere by appreciating the evidence only if there is an omission on the part of the Inquiry Officer or the Disciplinary Authority to consider the relevant evidence.

27. Similarly, in Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, , the Court observed as under :

"It is equally well settled that where a quasi-judicial Tribunal or arbitrator records

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

28. In *R.S. Saini v. State of Punjab* (1999) 8 SCC 90, the Apex Court noted as follows :

"We will have to bear In mind the Rule that the Court while exercising writ Jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there Is some evidence to reasonably support the conclusion of the inquiring authority, It is not the function of the Court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings."

29. Even the issue of interference on quantum of punishment has also been considered by the Hon"ble Supreme Court in a catena of judgments, and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, It would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. Thus, being illegal, it cannot be enforced. [Vide *Bhagat Ram Vs. State of Himachal Pradesh and Others*, ; *S.K. Giri v. Home Secretary, Ministry of Home Affairs and Ors.*, 1995 Suppl (3) SCC 519; *Union of India and others Vs. Giriraj Sharma*, ; *Bishan Singh and others Vs. State of Punjab and another*, ; *Ranjit Thakur Vs. Union of India (UOI) and Others*, ; and *B.C. Chaturvedi Vs. Union of India and others*,].

30. In *Ranjeet Thakur* (supra), the Hon"ble Apex Court observed as under :

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

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

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

33. In State of U.P. v. Nand Kishore Shukla (supra), the Hon"ble Supreme Court observed that the Court is not an appellate authority, and therefore, the Court will be loath to interfere with that part of the Order.

34. In G. Ganayutham (supra), the Apex Court has considered the entire law on the subject and compared the Indian Law with English, Australian and Canadian Laws, and held that in case the Court comes to the conclusion that the punishment awarded is disproportionate or the Disciplinary Authority was irrational in imposing the punishment, the punishment cannot be quashed as even then the matter has to be remitted back to the appropriate authority for reconsideration and it is only in very rare cases that the Court might--to shorten the litigation--think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority. In Aniltej Singh Dhaliwal (supra); U.P. State Road Transport Corpn. and Others Vs. A.K. Parul, ; and Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, , the Apex Court has taken the same view.

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

and the particular circumstances in which the decision came to be made.

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

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

37. Same view has been reiterated in *Union of India and Others Vs. Himmat Singh Chahar*, ; *Rajat Baran Roy and Others Vs. State of W.B. and Others*, ; *M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another*, ; *Common Cause, A Registered Society Vs. Union of India and Others*, ; *Commissioner of Rural Development and Others Vs. A.S. Jagannathan*, ; *The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another*, ; *Consumer Education and Research Society Vs. Union of India and Others*, ; *U.P.S.R.T. Corporation v. Madan Lal Gupta*, (2000) 9 SCC 521; *District Judge, Baharaich and Anr. v. Munijar Prasad*, JT 2001 (8) SC 643 ; *Union of India and Ors. v. Ashutosh Kumar Srivastava*, (supra); and *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, .

38. In *Regional Manager, U.P.S.R.T.C. v. Hoti Lal*, (2003) 3 SCC 605 the Hon''ble Supreme Court held that judicial review of the quantum of punishment is not warranted by a writ Court unless it is held to be arbitrary. While deciding the said case, the Hon''ble Supreme Court placed reliance upon its earlier judgment in *Om Kumar v. Union of India* (2001) 2 SCC 386.

39. Thus, in view of the above, the legal position can be summarised that judicial review in a disciplinary proceedings is permissible only in exceptional circumstances wherein the Court comes to the conclusion that the matter suffers from errors of law or decision is wrong for not following the fundamental procedural requirement, which have led to manifest injustice. The quantum of punishment cannot be interfered with and substituted by the Court like an Appellate Authority unless it shocks the judicial conscience being disproportionate to the misconduct and for that, reasons have to be recorded as to why the punishment is not commensurate to the delinquency. Thus, the

punishment itself should be held to be arbitrary by the writ Court before interfering with it.

40. The following charge was framed against the petitioner :

"That you, while working as IVth Additional Chief Judicial Magistrate, Mathura (as In charge, IVth Additional Munsif Magistrate, Mathura) heard bail application moved on behalf of Sri Kalua @ Ram Babu Sri Satya Prakash @ Bhola and Sri Sri Cirso @ Kishanlal in State v. Ram Babu and Ors. (Crime No. 136/94 under Sections 147/148/149/ 307/302 Indian Penal Code, Police Station Baldeo, District Mathura on 23.12.1994 and allowed the same on 24.12.1994 by an erroneous Order passed deliberately for extraneous considerations and containing patent illegalities hereinafter stated and thereby failed to maintain integrity and devotion to duty while exercising your powers as in-charge IVth Additional Munsif Magistrate, Mathura and thereby guilty of misconduct within the meaning of Rule 3 of the Government Servant's Conduct Rules, 1956. The illegalities committed by you are--

(a) That you passed the Order dated 24.12.1994 allowing bail u/s 167(2) of Criminal Procedure Code whereas the charge-sheet was already filed in the Court on 1.12.1994 and cognizance whereof was also taken by the Magistrate u/s 190(1)(b), Cr.P.C. With the taking of cognizance by the Magistrate Section 167 of Criminal Procedure Code ceased to apply and no Order could have been passed u/s 167(2) of Criminal Procedure Code on 24.12.1994 and you wrongly passed the aforesaid Order u/s 167(2) of Criminal Procedure Code.

(b) That in the aforesaid Crime No. 136/1994 under Sections 147/148/149/ 307/302 of the Indian Penal Code, Police Station Baldeo, District Mathura one Servar died on the spot and the other deceased Chandra Pal died about a month after the incident as a result of the injuries received in the same. The prosecution papers including his autopsy in respect of the deceased Servar were complete according to Section 173(5) of Criminal Procedure Code. Still you granted bail to them only because the post-mortem report of the deceased Chandra Pal was not filed alongwith charge-sheet.

(c) That you allowed the aforesaid bail application in spite of the fact that the bail application No. 1534 of 1994 moved by one of the applicants Sri Ram Babu @ Kalua before the Sessions Judge, Mathura was already rejected on merits by Sri J.P. Gupta In-charge Sessions Judge, Mathura on 17.11.1994.

(d) That when the stage of Section 167(2) of Criminal Procedure Code was over, you had no jurisdiction to grant bail u/s 437 of Criminal Procedure Code and, as such, you passed an illegal Order deliberately to help the accused person and knowing it to be without your jurisdiction.

(e) That you have made mis-statements/incorrect facts with the object of placing reliance on the principle of law laid down in the case of Matchumari China Venkatareddy and Others Vs. State of Andhra Pradesh, in support of your Order

inasmuch as you have wrongly stated that it had been laid down in the aforesaid Venkatareddy's case that if the papers referred u/s 173(5) of the Criminal Procedure Code were not filed alongwith charge-sheet, the charge-sheet could not be deemed to have been submitted within time. In fact in Venkatareddy's case the Magistrate examined the charge-sheet and papers filed with it and not finding them in conformity with Section 173(5) of the Criminal Procedure Code, returned the charge-sheet. The Hon'ble Andhra Pradesh High Court held that perusal of police report (charge-sheet) as to whether the same is in consonance with Sections 173(2) and 173(5) of the Criminal Procedure Code or not is only an administrative act and not a judicial act. It was also held therein that judicial act commence when the police report charge-sheet is filed in complete form, both complying with the provisions contained u/s 173(1) and 173(5) of Criminal Procedure Code and it is taken on the file of the Court and perused by the Court for taking decision u/s 190(1)(b) of the Criminal Procedure Code. In the case of State v. Ram Babu and Ors.. Crime No. 136/1991, Police Station Baldeo, District Mathura the decision u/s 190(1)(b) of the Criminal Procedure Code was taken on 1.1.1994 and the plea of non-filing of papers in conformity with Section 173(5) of the Criminal Procedure Code and non-filing of charge-sheet within ninety days did not arise nor was it available when you passed the said Orders.

(f) That after the decision u/s 190(1)(b) of the Criminal Procedure Code, copies of the prosecution papers and the statements of the witnesses u/s 161 of the Criminal Procedure Code and other documents which are to be supplied to the accused persons u/s 208 of the Criminal Procedure Code were to be prepared by the Police Copying Department of the Civil Courts, Mathura and that being the stage after the cognizance taken by the Court, no Order allowing bail u/s 167(2) of the Criminal Procedure Code could have been passed for non-supply of copies of prosecution papers u/s 208 of Criminal Procedure Code, knowing this procedure of supplying prosecution papers in vogue in Smt. Hawabi Sayed Arif Sayed Hanif Vs. L. Hmingliana and others, is not applicable in the matter but you deliberately ignored this distinction in this particular case.

(g) That in Misc. Bail Application No. 242 of 1992, 1993 (3) Crimes 956, the Hon'ble Madhya Pradesh High Court, while allowing bail, exercised its discretion u/s 439 of the Criminal Procedure Code, a Section not available to Magistrate whose jurisdiction is confined to Section 437 of the Criminal Procedure Code, still you deliberately granted bail in this case hence the offence was punishable with death or life imprisonment and designedly placed reliance on the ruling aforesaid."

41. The basic issue involved in the case had been as to whether a Magistrate could entertain the bail application in a case exclusively triable by a Sessions Judge even if it did not fall within the ambit of Section 437 Cr.P.C.

42. In Gurcharan Singh and Ors. v. State AIR 1978 SC 179 their Lordship of the Apex Court Ruled that if a police officer arrests a person on a reasonable suspicion of commission of an offence punishable with death or imprisonment for

life and forwards him to a Magistrate, the Magistrate at that stage will have no reasons to hold that there are no reasonable grounds for believing that he has not been guilty of such an offence. At that stage, unless the Magistrate is able to act under the proviso" to Section 437(1), bail appears to be out of the question.

43. In *Vijay Kumar and Ors. v. State of U.P. and Ors.* 1989 (1) AWC 569, a Division Bench of this Court held that it can be legitimately concluded that the requirement of the law is that if such an offence reasonably appears to have been committed where punishment for life imprisonment can be inflicted or death penalty can be awarded, the Magistrate has no jurisdiction to grant bail, except in cases which fall within the ambit of the proviso added to Sub-section (I) of Section 437, Cr.P.C.

44. Another Division Bench of this Court in *Kishor Kumar and Ors. v. State of U.P. and Ors.* 1985 (22) ACC 390, had taken a similar view observing that the Magistrate has no jurisdiction to grant bail, except in cases which fall within the ambit of the proviso added to Section 437, Cr.P.C.

45. A Division Bench of this Court (in which one of us Dr. B.S. Chauhan was a Member) in *Rajendra Nath Srivastava v. State of U.P. and Ors.*, decided on 30.5.1997, considered the case of a Magistrate terminated from service after holding domestic enquiry for granting bail in a matter exclusively triable by a Sessions Judge and held that "in a case of a non-bailable offence also Magistrate's Court can grant bail but this grant will not be permissible if there appear reasonable grounds for believing that the man has been guilty of an offence punishable with death or imprisonment for life unless the case falls within the proviso added to Sub-section (1) of Section 437, Cr.P.C."

46. In view of the above, it cannot be held that a Magistrate can grant bail in the cases exclusively triable by Sessions Court unless it falls within the ambit of Section 437, Cr.P.C.

47. The Inquiry Officer has recorded the following findings :

"(1) The Charged Officer did not consider to inquire from the record whether any of the accused had already moved bail application before Sessions Judge Mathura u/s 439, Cr.P.C., as the bail application dated 16.12.1994 did not contain the fact that it was second bail application of accused Ram Babu and first bail application of other two accused persons.

(2) Learned Magistrate acted in unjudicial haste in passing Order on the bail application of Ram Babu and Ors. on 24.12.1994 even without the required clarification from the applicants in this behalf or calling office report in this behalf so as to prevent himself from committing gross error.

(3) He thus acted in an undesirable and unjudicial haste and committed jurisdictional error in entertaining and granting bail to accused Ram Babu one of the applicants for which he has left with no jurisdiction.

(4) The Charged Officer found way to grant bail to the accused by taking resort to technical ground u/s 167(2) Cr.P.C. The learned Magistrate should have considered that the charge-sheet against the accused persons was submitted much before expiry of the prescribed period of 90 days and cognizance had already been taken by the Magistrate having jurisdiction on the basis of the charge-sheet.

(5) Thus, it is apparent from the record that the bail to the accused was granted by the Charged Officer without any clear cut and plausible reason, thereby leading to the apprehension in the mind of the complainant Sri Ashok that the impugned Order of bail for ulterior motive or for extraneous consideration, particularly because the Order was passed on technical ground of which the application was quite controversial and when such an Order was being passed by the Charged Officer who was holding temporary charge of the Magistrate having jurisdiction on the last day of the year, i.e. before commencement of the winter vacation, so that the complainant might not get any time to get the wrong remained immediately after passing of the Order by resorting to judicial process before the competent Court for cancellation of bail or otherwise."

48. There is no scope of judicial review of the findings recorded by the. Inquiry Officer. It was a case of double murder. Petitioner granted bail on the last day of the year before the winter vacation acting as a Link Officer without making any attempt to find out as to whether the bail of the co-accused had already been rejected by the Sessions Court. The charge-sheet had been filed. There was no scope for the petitioner to resort to the provisions of Section 167(2), Cr.P.C. Petitioner was an experienced Judicial Officer and had already served for 13 years at that time, therefore, it is difficult to presume that he could not understand the distinction in the provisions of Sections 437 and 439, Cr.P.C.

49. In view of the above, there is no scope of acceptance of submissions made by Shri Tarun Verma that the petitioner had been misguided by certain judgments of the other Courts in this regard.

50. The submissions made by Shri Verma that the punishment imposed is too harsh is also not worth consideration for the reasons recorded by the Inquiry Officer and by the Disciplinary Authority. We are of the opinion that the Court has dealt with the petitioner leniently as in a similar case in *Rajendra Kumar Srivastava (supra)*, the petitioner there had been dismissed from service and such a punishment is warranted in view of the law laid down by their Lordships of the Apex Court in *Ruston and Hornsby (I) Ltd. v. T.B. Kadam* AIR 1975 SC 2025 *Municipal Committee, Bahadurgarh Vs. Krishan Behari and others*, ; *U.P. SRTC v. Basudeo Chaudhary*, (1997) 11 SCC 370; *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc.*, ; *Karnataka State Road Transport Corporation v. B.S. Hullikatty*, JT 2001 (2) SC 72 and *Regional Manager, R.S.R.T.C. v. Ghanshyam Sharma*, JT 2001 (10) SC 12. At this belated stage, we do not propose to examine the matter for enhancement of punishment, though Sri Sirohi has so

suggested.

51. It is further contended by Shri Verma, learned counsel appearing for the petitioner, that petitioner is an employee of the State, and therefore, imposition of major punishment without the approval of the Governor of the State is not permissible. In support of his contention, very heavy reliance has been placed upon the judgment of the Hon''ble Apex Court in T. Lakshmi Narasimha Chari Vs. High Court of Andhra Pradesh and another, ; and Registrar (Administration), High Court of Orissa, Cuttack v. Sisir Kanta Satapathy (dead) by LR.s. and Anr., JT 1999 (7) SC 8 wherein after considering the provisions of Article 235 of the Constitution, the Hon''ble Apex Court came to the conclusion that in such matters High Court can make the recommendations which are binding upon the Governor of the State, but it is the Governor who has to pass the final Order of imposition of punishment. This task cannot be taken up by the High Court itself. While deciding the said cases the Hon''ble Apex Court has placed reliance upon its earlier judgments, including Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), State of Haryana Vs. Inder Prakash Anand H.C.S. and Others, ; State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, ; Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, ; B.S. Yadav v. State of Haryana, AIR 1981 SC 561; S.P. Gupta Vs. President of India and Others, Tej Pal Singh v. State of U.P. and Anr., JT 1986 SC 66; Registrar, High Court of Madras v. R. Rajiah, etc., JT 1988 (2) SC 567 All India Judges'' Association and Ors. etc. v. Union of India and Ors. etc., J T 1993 (4) SC 618 ; S.V. Bhima Bhatta and Another Vs. State of Karnataka and Others, : and High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and Anr., JT 1998 (2) SC 1.

52, However, in the facts and circumstances of the instant case, the petitioner herein, cannot get any benefit whatsoever from the said judgments of the Hon''ble Supreme Court.

53. Chapter XII Rule 49 of the Rules 1930 which deals with the conduct and discipline, provides for imposing the major and minor punishment including reduction to a lower post or time scale or to the lower stage in a time scale, and this power is to be exercised by the Governor. Rule 52 of the Rules 1930 reads as under ;

"52. Subject to the provisions of these Rules the Governor may impose any of the penalties specified in Rule 49 on any person appointed by him :

Provided that in the case of officers of State Services (Class I and Class II) in respect of whom the control is vested in the High Court by virtue of the provisions of Article 235 or of a notification issued under Article 237 of the Constitution, the power to impose any of the penalties specified in clauses (i) to (v) of the said Rule 49 shall be vested with the High Court."

54. As the case of the petitioner is squarely covered by the proviso to Rule 52 and the power to impose any of the penalties on an officer under the

administrative control of the High Court has been vested in the High Court, the aforesaid judgments of the Hon''ble Apex Court are not attracted. The said judgments have been delivered in matters where there had been no provision analogous to the provisions of Rule 52 of the Rules 1930. The petitioner has not challenged the validity of the proviso to Rule 52. Thus, no relief can be granted to the petitioner on this count also.

In view of the above, we find no force in the petition. Petition is devoid of any merit and is accordingly dismissed. No costs.