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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1342 OF 2010

Mr. '**X**' ..Petitioner.

V/s.

1. The State of Maharashtra through its Principal Secretary, Law and Judiciary Department, Mantralaya, Mumbai – 400 032.

2. High Court of Judicature of Bombay through its Registrar (General), Bombay High Court, Fort, Mumbai.

3. Shri Bhimrao Ganpatrao Patil, Aged about 56 years, Occu: Judicial Service as Register (Special Investigation Cell) High Court, Bombay, Fort, Mumbai. ..Respondents.

Mr.P.R.Arjunwadkar for the Petitioner.
Mr.V.S.Gokhale, AGP for Respondent No.1.
Mr.S.K.Talsania, Senior Advocate with V.S.Kapse for Respondent No.2.

CORAM : A.S.OKA AND A.K. MENON, JJ.

RESERVED ON : 6TH FEBRUARY, 2015

PRONOUNCED ON : 15TH APRIL, 2015

JUDGMENT (PER A.K.MENON, J.)

1. Looking at the nature of the controversy, we direct that while uploading the order, the Petitioner shall be described as 'X' in the cause title. The present petition challenges the dismissal of the

Petitioner pursuant to a Departmental Inquiry held on the basis of allegations that as Chief Judicial Magistrate, Nanded, he had developed improper proximity with a lady Advocate (referred to as Ms.Y) who caused him to go astray and pass irregular, arbitrary and capricious orders for considerations other than judicial. He was charged on 9th March, 2001 for various acts of misconduct which are as follows:-

"(a) During your above said period with Nanded you had an improper proximity with Advocate Ms.Y and your proximity with her made you to go astray and pass irregular, arbitrary and capricious orders for considerations other than judicial.

(b) In S.S.C. No.3126/98, you acquitted the accused without recording the evidence of the complainant, which was necessary for the just decision of the case, although the witness was present in the Court, for considerations other than judicial.

(c) You were in a habit of seeking favours from police and used to exhibit your annoyance against them whenever they would appear before you for seeking remand etc. and as such indulged in corrupt practices.

(d) You had illegally issued process against juvenile offenders in a private criminal case bearing No. S.C.C. 2950/99 and arbitrarily required juvenile offender Vikas to languish in jail for about 3 weeks.

(e) In R.C.C. No.272/98 State Vs Padmakar Madhukar Gadewar and one, you had illegally framed a charge against the accused without recording the evidence and convicted the accused by accepting their plea of guilt which was apparently

under the compulsion, and not unconditional, and showed undue leniency by sentencing them to suffer simple imprisonment till rising of the Court and to pay the fine of Rs.1,000/- each i/b. to suffer R.I. for 15 days by making some extraneous observations in the judgment."

He was thus charged for brazenly abusing his office which amounts to grave misconduct unbecoming of a judicial officer. The charge encloses therewith a statement of imputations. Briefly stated the essence of these imputations are as follows:-

(i) On account of the proximity developed with the said Advocate, he favoured her with various orders. In one case, on a complaint of one Lalu Dhondbaji Atkore, a Criminal Case bearing No.629/99 was instituted against Ajeetsingh Babusingh and Manjeet Kaur wife of Babusingh, both of whom were brother and mother respectively of the said Advocate. The complaint was filed under section 7(1)(d) of the Protection of Civil Rights Act, under section 3(i)(k) of the Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 and under 420, 406 and 506 r/w. 34 of the Indian Penal Code in the Court of Judicial Magistrate, Loha. The Judicial Magistrate, Loha had taken cognizance of the offence and during the pendency of that complaint, he called for the record of the proceedings of the case on 20th September, 1999 to his Court at Nanded at the instance of the said Advocate. No notice was issued to the State and no inquiry was made as to the validity of reasons

shown in the application. On the very next day i.e. on 21st September, 1999, a letter was sent to J.M.F.C., Loha to forward the record and proceedings to Nanded. An application for discharge was filed by the said Advocate which was duly opposed by the A.P.P. since the offence was of serious nature. On 1st January, 2000 the accused were discharged by the Petitioner as if the Petitioner was giving a final acquittal after full trial.

(ii) In the other case, the mother of the lady Advocate filed a private criminal case against six unknown persons alleging that her son Ajeetsingh was kidnapped by them on 4th February, 2000. No verification was made as required under section 200 of the Criminal Procedure Code (for short 'Cr.P.C.'). The complaint did not disclose the names of the accused. Inspite of this, without following the provisions of paragraph 3 of Chapter III of the Criminal Manual, a warrant was addressed to the PS0 of CIDCO police station Nanded, to make a detailed report. It is revealed that it was not a case of kidnapping but said Ajeetsingh was arrested by Bodhan police station for an offence of keeping / printing counterfeit currency notes. Instead of verifying the truth, the Petitioner issued a show cause notice to PSO, CIDCO asking as to why action for disobedience of the Court's order should not be taken against him. On 1st March, 2000 Ajeetsingh was produced before the Petitioner by the Sub-jail, Bodhan. Before that the J.M.F.C. Bodhan had informed the Petitioner that Ajeetsingh is involved in a serious

crime. On 14th March, 2000, the Petitioner released Ajeetsingh on bail although he was was not an accused in any case before the Petitioner nor did the Petitioner have territorial jurisdiction to pass such orders. Thus, Ajeetsingh was released without being returned to Bodhan Sub-jail. Thereafter the Petitioner closed the proceedings since the complainant conveniently remained absent.

iii) In another incident, a crime was registered by PSO, Bhokar police station under section 489 of the IPC against Roshansingh son of Babusingh, another brother of the said lady Advocate. The Advocate moved an application on 1st November, 1999 seeking surrender of her brother-accused. The Petitioner permitted Roshansingh to surrender before the Petitioner without obtaining the say of the A.P.P. and a formal order of Magisterial custody came to be passed. Thereafter, an application for bail was filed before the Petitioner. Even without the say of the A.P.P., the Petitioner directed the accused to be released on bail. The Petitioner thereafter released Roshansingh on a personal bond without requiring the accused to furnish security. Even the bond was thereafter not obtained by the Petitioner.

iv) In the third incident, Head Constable Giyasuddin had prosecuted one Riyasatali Hashmi for offence under Sections 85 & 66 of the Bombay Prohibition Act. The said Head Constable Giyasuddin received a witness summons to appear before the

Petitioner. When he appeared before the Petitioner, he was scolded and asked to sit and wait since a warrant had been issued against him. The Head Constable submitted that no warrant has been issued but he had appeared pursuant to a summons. Yet he was asked to sit down and keep quiet. The Head Constable was made to sit up to 2.00 p.m. without his evidence being recorded. The said Giyasuddin had meanwhile received information that accused Riyasatali had managed to increase the marks of the Petitioner's daughter in the Secondary School Examination Board and was likely to be released as a *quid pro quo*. The Head Constable then approached the in-charge District Judge and narrated the incident, whereupon the in-charge District Judge requested the Petitioner to see him. However, the Petitioner did not go to meet the District Judge until just before 3.00 p.m. when the District Judge was about to go to dais. The Petitioner, therefore, was asked to come at 5.00 p.m. and the Head Constable Giyasuddin was directed to go to the Court to tender his evidence. Despite this, evidence of Head Constable Giyasuddin was not recorded and the Petitioner acquitted Riyasatali on the same day.

v) In another incident, in case No.3353/1996 (State V/s. Anil), the Petitioner issued non bailable warrant against Head Constable Giyasuddin although the witness summons had not been served. After the Head Constable Giyasuddin remained present, the Petitioner did not record the evidence. At least nine such incidents

have been cited evidencing indictments against the Petitioner. The most shocking of such type of incident is a case where one Niranjan Kaur, wife of Iqbalsingh Singh filed a complaint bearing No. S.C.C. No.2950/99 against two minor sons Vikas and Vishal of one Shrirang Dandwate under section 138 of the Negotiable Instruments Act. The said Dandwate had issued two cheques which were dishonoured. Although the minors had nothing to do with the issuance of the cheque, the Petitioner issued notice to both. At the time the Petitioner was also working as Judicial Officer for Special Court and was conversant with the Juvenile Justice Act, 1966, but despite this non bailable warrants were issued against both the juveniles and when they failed to appear on the first occasion, it was submitted that they could not attend on the earlier occasion as one of the juvenile Vikas was not feeling well and the other juvenile Vishal was having school examination. No order was passed on the application seeking stay of the non bailable warrants noting that the '*Court time was over*'.

vi) Thereafter, a fresh application was made for cancellation of warrant which was allowed by the Petitioner by imposing penalty of Rs.100/- and it was paid by each of the minors. The juvenile delinquents then submitted another application for bail but the Petitioner ordered them to furnish a personal bond of Rs.25,000/- with one solvent surety in the like amount for each juvenile offender on the ground that they were avoiding the Court and were

absconding. There is no material on record to show that the juveniles were absconding since the Petitioner himself cancelled the non bailable warrants after being satisfied with the reasons for not appearing on the first date i.e. 4th January, 2000. There was no material whatsoever to show that they were avoiding attending the Court, much less absconding. On one hand, he has released an accused on bail observing that he was a student without insisting a surety and released him on personal bond, which is accepted. On the other hand, as far as juveniles were concerned, the Petitioner did not grant them any time to produce solvent surety and one juvenile offender Vishal was sent to a remand home despite his being required to attend examination and another juvenile offender Vikas was sent to jail. With great difficulty, a local surety was arranged for the juvenile offenders.

2. Thus, on the basis of the acts of misconduct which were detailed in the documents supplied to the Petitioner, the Registrar observed that the Petitioner has brazenly abused his office which amounts to grave misconduct unbecoming of a judicial officer. A list of witnesses and a list of documents were forwarded along with the statement of imputations along with a Memorandum dated 19th April, 2001. The Petitioner denied all the charges, which according to him were based on distortion of facts, irrespective of record and events. He alleged malafides and hostile and inimical attitude towards the Petitioner. He then tried to explain his conduct by

saying that the Head Constable Giyasuddin had been indulging in activities adverse to his interest in the Court inter alia representing to the litigants that he had a say in the decisions of the case in the Petitioner's Court that is how he was abusing his authority. The Petitioner submitted in his defence that the Head Constable was arrogant in his duties and never used to appear in uniform. The Petitioner reprimanded him many times in the Court. Because of the Petitioner's stern approach, the Head Constable Giyasuddin had turned hostile against him and was instigating the litigants to file false complaints against the Petitioner. It is the further defence of the Petitioner that the Head Constable was supported by some Advocates in cahoots with Giyasuddin.

3. In his defence, the Petitioner emphatically denied the allegation of proximity with the lady Advocate, who according to the Petitioner did not conduct any cases independently before the Petitioner and there is no occasion for the Petitioner to favour the said Advocate. She was only known to the Petitioner as one of the Junior Advocates practising in Nanded Court. The further defence of the Petitioner is that no misconduct was committed by him and an attempt was made to twist and distort his orders. Another explanation with reference to the dealing with various complaints against him were set out in the reply. We find that the explanation completely unacceptable. Apropos the incident of two juveniles, he denied that he scolded the juveniles. This explanation, we find is at

variance with facts and there is absolutely no justification for the grave and serious misconduct of the Petitioner. He contended that the District Judge whom he has met at the time of the alleged incident of Giyasuddin also a developed a grudge against the Petitioner and was waiting for an opportunity to collect false evidence against the Petitioner. He had turned hostile and inimical to the Petitioner. Thus, the Petitioner had not gone to meet the District Judge, in-charge, who is also also allegedly a part of the plan to discredit the Petitioner. The Petitioner contended that since joining as judicial officer, he had discharged his duties seriously with a sense of devotion and there is no complaint whatsoever about the judicial work or conduct from the civil society till his posting in Nanded. He, therefore, submitted that the explanation offered be accepted and the proposed inquiry be dropped.

4. A further written statement was filed by the Petitioner on 25th January, 2002 in which he sought to assail the case against him by alleging proximity of the Head Constable with the then District Judge and Additional Sessions Judge and the Superintendent of Police. In our view, all these contentions are by way of afterthought, having been taken up after almost about a year after the first written statement.

5. Vide communication dated 12th September, 2003, the Registrar of this Court communicated the decision of the

Disciplinary Authority (comprising Hon'ble the Chief Justice and other Hon'ble Judges of this Court) to issue a show cause notice to the Petitioner asking him to state why the findings and reasons of the Inquiry Officer were not to be accepted and after considering the representation, why one of the major penalties including dismissal from service under Rule 5(1) (vii) and (ix)) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 may not be imposed upon him and calling him to file a reply within 15 days. A copy of the Inquiry Officer dated 15th June, 2003 was also annexed.

6. Vide response dated 23rd September, 2003, the Petitioner denied improper proximity with the lady Advocate and all other allegations. He contended that the statement of Head Constable Giyasuddin should not be accepted. He submitted that he had also filed a detailed response to the various complaints against him. He denied that he has passed the orders for considerations other than judicial. At worst, he contends that some orders may be wrong which by itself does not form a basis of a departmental inquiry. He firmly denied all the allegations.

7. On 15th January, 2004 based on the response of the Petitioner and after considering the petitioner's representation and the report of the Inquiry officer, the Disciplinary Authority decided to impose the major penalty of dismissal under Rule 5(1) (viii) to (k)

of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and directed follow-up action to be taken. The said recommendation was accepted by the Law & Judiciary Department, Government of Maharashtra. In exercise of of Rule (ix) of sub-rule (1) of Rule (5) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, the State Government ordered the dismissal of the Petitioner from service. In the meantime, the Petitioner was under suspension.

8. This petition was initially filed at the Aurangabad Bench which was thereafter transferred to the principal Bench by order dated 7th January, 2002 and is taken up for final hearing. Two affidavits have been filed, the first affidavit is on behalf of Respondent No.1 State of Maharashtra. In the said affidavit of Mr.Veersinha Murlidhar Patil, it is submitted that the State accepted the recommendation of the Disciplinary Authority in the facts of the case and that the order of 15th January, 2004 dismissing the Petitioner was proper, legal and called for no interference.

9. In the second affidavit filed by Mr.C.L.Pangarkar, a Registrar of this Court on behalf of Respondent Nos.2 & 3, as he then was, he referred to the complaints was received from Mr.Sudhir Sarpati and Smt. Sonabai Dandwate in relation to the shocking behavior of the Petitioner. He referred to the departmental Inquiry and charges framed and dealt with the

contentions, including the defence of the Petitioner and ultimately, supported the Inquiry report and the action recommended by the Disciplinary Authority. In effect, the Respondent Nos.2 & 3 have contended that no interference is called for in the facts and circumstances of the case. Certain grounds were added to the petition pursuant to the amendment application being Civil Application No.8711 of 2008 and a further reply has been filed by Respondent Nos.2 & 3 to the amended grounds reiterating their contentions.

10. We have heard Mr. Arjunwadkar, learned counsel for the petitioner at length. He has taken us through all the relevant portions of charge, statement of imputations and response of the Petitioner. It is his principal contention that the order of dismissal from service is not justified in the facts of the case. He submits that the Petitioner was denied a fair opportunity of defending himself. Mr.Arjunwadkar then submitted that prior to the Disciplinary Authority issuing the notice, the Petitioner was entitled to a personal hearing. In other words, the Petitioner was entitled to be heard twice viz. in the first instance, prior to the actual issuance of the show cause notice by the Disciplinary Authority and then, after the issuance of the show cause notice. He submitted that in the instant case, the Disciplinary Authority has not given him any chance to make a representation prior to the issuance of any show cause notice, therefore, the decision to impose the major penalty of

dismissal is flawed and unsustainable. His second submission is that the inquiry officer's report is not based on any evidence of his alleged proximity with the lady Advocate. According to him, the allegations are a figment of imagination as he had no proximity with any Advocate. No evidence has been produced of such proximity. Thirdly, he submitted that even otherwise, the orders passed by him were passed in the usual course of his duties. Some of these orders may have been wrong but they are simply mistakes and cannot be said to be orders passed for consideration other than judicial.

11. In support of his submissions, Mr.Arjunwadkar referred to the decision in the case of **Yoginath D. Bagade V/s. State of Maharashtra** reported in **AIR 1999 Supreme Court 3734.** He submitted that the recommendation of the Disciplinary Authority was flawed inasmuch as, it has to record its own findings after reviewing the inquiry report. Referring to the paragraph 28 of the judgment, he submitted that it was open to the Disciplinary Authority to offer remarks on the findings recorded by the inquiry officer or deviate. He submitted that the Disciplinary Authority had to arrive at its own findings and be satisfied with the report of the inquiry officer. Only then could the Disciplinary Authority issue a show cause notice. According to Mr. Arjunwadkar, in the present case the Disciplinary Authority had not arrived at any such finding and, therefore, the recommendations were bad.

12. In this behalf, it would be useful to refer to paragraph 28 of the said judgment which reads as under:-

> *" In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage."*

13. In our view, the submission is misconceived in view of the fact that the Apex Court had clearly held that the Disciplinary Authority must record its own finding only if it does not agree with the findings of the inquiring authority namely, the inquiry officer in

the present case. In other words, if the Disciplinary Authority is in agreement with the inquiry officer's report, there is no need for the Disciplinary Authority to arrive at or record its own findings. Thus, in our opinion, the issuance of show cause notice was not dependent upon the Disciplinary Authority arriving at its own separate findings. A show cause notice can be issued even when the Disciplinary Authority agrees with the findings recorded by Inquiry Authority. No hearing is contemplated before agreeing with the findings. Hence, the submission that show cause notice notice is required to be issued at two stages deserves to be rejected.

14. Mr.Arjunwadkar then referred to the decision of this court in the case of **Gajanan Babu Patil V/s. State of Maharashtra** reported in **2003 (1) Mh.L.J. 988** and submitted that the order of the Disciplinary Authority was flawed since there was no evidence whatsoever. In the absence of evidence, there is no case made out against the Petitioner and, therefore, the order of dismissal of the Petitioner is unsustainable.

15. Mr.Arjunwadkar referred to the judgment of the Apex Court in the case of **P.C. Joshi V/s. State of U.P. & Ors.** reported in **(2001) 6 S.C.C. 491** in which it lays down certain tests to be adopted. Paragraph 5 of the said judgment is relevant, and sets out the following catena for action :-

(i) where the judicial officer has conducted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty;

(ii) that there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) that he has acted negligently or he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(iv) that he had acted in order to unduly favour a party;

(v) that he had been actuated by corrupt motive.

16. Mr.Arjunwadkar submitted that no direct evidence of the Petitioner's closeness to the lady Advocate is adduced before the inquiry officer. There was no reason to link the allegations of proximity with the lady member of the bar with the various cases decided by him and cited as instances of misconduct. Mr.Arjunwadkar was at pains to submit that the orders passed by the Petitioner may have been wrong, but could not entail such severe major penalty of dismissal from service. According to him, had the Disciplinary Authority afforded an opportunity of personal hearing for explaining the facts and circumstances of the case, the Petitioner would have come clean and there would have been no occasion to issue the show cause notice in the first place. Having said that, Mr. Arjunwadkar submitted that omission to hear the Petitioner before the issuance of show cause notice is violative of the rules of natural justice. Furthermore, omission by the Disciplinary Authority to record any findings after reading the inquiry officer's report and without hearing the Petitioner itself is a

breach of procedure of the Disciplinary Rules.

17. Mr.Arjunwadkar further submitted that even after issuance of such show cause notice and after the Petitioner filed his response, the Petitioner ought to have been personally heard and given an opportunity of showing cause and ought to have been given a lesser punishment. The Petitioner could for instance, have offered to retire voluntarily. This opportunity was not afforded to the Petitioner. He has submitted that the Petitioner was indicted only on the basis of suspicion. For these reasons, Mr.Arjunwadkar stated that the impugned order is bad, not sustainable in law and is liable to be set aside, along with the stigma attached to the impugned order.

18. On the other hand, Mr.Talsania, Senior Advocate appearing on behalf of the High Court Administration and Mr. Gokhale, the learned Additional Government Pleader appearing for the State supported the order. Mr.Talsania submitted that it is a gross case of misconduct and no leniency whatsoever ought to be shown in the facts of the case. They supported the various instances which according to them disentitled the Petitioner to any relief. For the sake of brevity, it is not necessary to repeat the various instances, each of which are deplorable especially considering the fact that we are dealing with a judicial officer, who is expected to maintain standards which should be far higher than

that of mere mortals.

19. After dealing with the facts, learned Senior Counsel took us through the judgment of P.C. Joshi (supra). Making specific reference to paragraph 5 of the above judgment, he submitted that that a judicial officer must conduct himself in a manner which reflects his reputation, integrity, goodwill and devotion to duty and that in the instant case, these were only observed in the breach. He submitted that there is strong material to show recklessness and misconduct in discharge of his duties apart from clear negligence. The Petitioner also acted in order to unduly favour a party. After having perused the record, according to us, the Petitioner has failed on each one of the counts.

20. Mr.Talsania then referred to the decision of the Hon'ble Supreme Court in the case of **Union of India & Anr. V/s.Tulsiram Patel** reported in **(1985) 3 Supreme Court Cases, 398** and other connected matters decided by a five judge Bench of the Supreme Court. In Paragraph 96, the Apex Court referred to the rules of natural justice observed that the nature of hearing to be granted to Government servants under clause (2) of Article 311 of the Constitution of India has been elaborately set out in the case of **Khem Chand Case V/s. Union of India** reported in **AIR 1958 SC 300** and that this principle will continue to hold the field. The Court observed that a Government servant has no right to make any

representation against penalty proposed to be imposed upon him. Such an opportunity is not the requirement of the principles of natural justice as held in the case of *Associated Cement Companies Ltd. V/s. T.C. Shirvastava (1984 Supp. S.C.C. 87*) and further that neither the ordinary law of the land nor the industrial law requires such an opportunity to be given. The Supreme Court held that if an inquiry held against a government servant under clause (2) of Article 311 is unfair or biased or has been conducted in such a manner as not to give him a fair and reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated. But in such a case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of clause (2) of Article 311 and there will be no scope for having recourse to Article 14 for the purposes of invalidating it. We are in respectful agreement with the view.

21. Mr.Talsania then referred to the decision of this Court in the case of **Y.P. Sarabhai V/s. Union Bank of India** reported in **2002 II CLR 856** wherein in paragraph 14, the Court has held that an employee is entitled to receive a copy of the Inquiry report, even if the statutory rules do not permit the furnishing of the report or are silent on the subject. In other words, where the Inquiry officer is not the Disciplinary Authority, the delinquent employee has a right to receive the inquiry officer's report and submit his objections. Once this procedure is followed, in the view of this

Court, the principles of natural justice are fully met. This Court further observed that it did not seem correct, in view of the procedure prescribed in Discipline and Appeals Rules applicable to the Union Bank officers, that the Disciplinary Authority must provide a hearing to the delinquent before a major penalty is imposed. It is not, in our view, mandatory that the delinquent employee be heard once again especially since the notice to show cause had been issued accompanied with the copy of the report and all documents were also furnished therewith affording a complete opportunity to the delinquent employee to deal with the case against him.

22. The judgment of this Court in the case of Sarabhai (supra) was challenged in the Apex Court albeit unsuccessfully and the Apex Court while dismissing the appeal [**2006 (5) Supreme Court Cases 277]** observed that the factual finding of the Disciplinary Authority after holding a detailed inquiry and going through the evidence is not assailable in Courts unless there was a breach of principles of natural justice. In the present case also, we find that complete opportunity was afforded to the Petitioner to defend himself.

23. In yet another case of **Union of India & Ors. V/s. Alok Kumar** and other matters reported in **(2010) 5 Supreme Court Cases 349**, which is cited by Mr.Talsania, the question whether *de*

*fact*o prejudice is caused to the employee as a condition precedent for a grant of relief in cases of departmental inquiry was gone into. The contention was that prejudice is the *sine qua non* for vitiation of any disciplinary orders and unless there has been such prejudice, there is no question of the order being vitiated. In that case, the Central Vigilance Commission's (CVC) report was not provided to the person concerned and that was found to have been prejudicial. In the present case, no such issue arose since the inquiry report and all other documents have been provided to the delinquent officer. Mr.Talsania concluded by submitting that there is no case for interference.

24. Having perused the entire record in detail and having heard the Advocate for the Petitioner at considerable length and giving our anxious thoughts to the matters in controversy, we are of the view that no interference is called for in the facts and circumstances of the case. The relevant rule pertaining to penalty is to be found in paragraph III of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which reads as under:-

" *5. Penalties – (1) Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-*

Minor penalties -

(i) ----

(ii) ----–

(iii) ----

(iv) ----

(v) ----

(vi) reduction to a lower time-scale of pay, grade, post or service for a priod to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period-

(a) ----

(b) ----

Major penalties -

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for further employment under Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under Government;

Provided that, in every case in which the charge of acceptance from any person any gratification other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or (ix) shall be imposed. "

25. We have seen Rule 5 sub-rule (1) and clauses (vii) to (ix) dealing with the penalty of compulsory retirement, removal from service and dismissal from service. All the three options are major penalties. In the case of the Petitioner, the Disciplinary Authority has chosen to dismiss the Petitioner from service under clause (ix)

of sub-rule (1). Meaning thereby that the dismissal from service, will be a reason for disqualification for future employment under Government. Article 311 of the Constitution of India deals with the dismissal / removal or reduction in rank of a civil services officer. It will be useful to refer to Article 311 of the Constitution of India for the present purpose:-

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(I) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a post under the Union or a State shall be dismissed or removed by an ordinary subordinate to that by which he was appointed.

(ii) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed."

26. Under the Article 311, a Member of Civil Services, who could not have been dismissed or removed by any other authority subordinate to the appointing authority. Moreover, no such person

shall be dismissed without holding an inquiry in which he is to informed of the charges against him and giving reasonable opportunity of dealing with the allegations in respect of the charges. The first proviso to Article 311 clearly reveals that where it is proposed, the authority could impose upon the officer any penalty, such penalty may be imposed on the basis of evidence adduced during such inquiry and it shall not be necessary (emphasis supplied) to give such opportunity to make a representation on the penalty proposed.

27. The first proviso, in our view, is a complete answer to the contention raised on behalf of the Petitioner that no opportunity was given to him or that the opportunity given to him was insufficient and that he ought to have been heard before passing of the impugned order. The words in the proviso are clear to the effect that there is no obligation to grant him any opportunity to make a representation, if the penalty sought to be imposed is proposed after an inquiry. In the present case, the inquiry was conducted, the inquiry report was provided to the Petitioner and the Petitioner was afforded substantial opportunity to make a representation against the proposed punishment notwithstanding the fact that there is no constitutional or legal mandate to afford an opportunity post the inquiry. There is no merit in the Petitioner's contention that the Disciplinary Authority or the inquiry officer did not follow the rules of natural justice.

28. On the other hand, after agreeing with the findings the inquiry report, the Disciplinary Authority in its wisdom has issued a show cause notice. Various decisions of the Supreme Court have reiterated over time that the Disciplinary Authority is not bound to arrive at its own findings after the accepting the inquiry report of the inquiry officer, unless it has any reason to disagree with the inquiry officer's report. In the present case, the Disciplinary Authority has accepted the inquiry report in its entirety and, therefore, there was no obligation to record any further findings. In our view, the penalty imposed is completely justified. The Petitioner was a judicial officer. The standards which are to be observed and maintained by a judicial officer ought to be of an extra-ordinary quality. The allegations against the petitioner in the instant case were extremely serious. As Chief Judicial Magistrate, the Petitioner was obliged to maintain dignity of the judicial service. This was a matter of paramount importance. Acceptability of a Judge depends on the credibility, conduct, honesty, integrity and character of the Judge. The confidence of the litigating public should not get affected by the conduct of a judicial officer. In the instant case, we have no manner of doubt that the conduct of the petitioner in the matters that were brought before him were completely unjustified, lacking in credibility revealing obvious dishonesty, lack of integrity and a questionable character, especially so in the light of the allegations of proximity with a

member of the bar. The findings in the present case are damning. Even taken as gospel truth, the contention of the Petitioner that the concerned lady Advocate did not conduct any matter independently before him and that she was known to him only as a junior member of the bar are simply not believable. In the present case, the reasons for indicting the delinquent are more than obvious. Various acts of misconduct committed by him are extra-ordinary and unprecedented. In fact, it shocks the conscious of this Court that a responsible officer holding the post of the Chief Judicial Magistrate has behaved in this manner.

29. Our view stands fortified by the case of **Udaysingh Ganpatrao Naik Nimbalkar V/s. Governor, State of Maharashtra & Ors. (1996) 2 Mh. L.J. 783** wherein a Civil Judge was dismissed on the ground of lack of integrity for having demanded illegal gratification through his messenger. The disciplinary inquiry conducted by this Court on the Administrative side, had agreed with the finding and it recorded a prima facie view and recommended dismissal of the judicial officer. In that case, the Disciplinary Committee accepted the recommendation and dismissed the Respondent. The case was carried in appeal by the High Court Administration as the order of dismissal came to be set aside by the High Court on its judicial side. In the appeal before the Supreme Court in the case of **High Court of Judicature, Bombay through its Registrar** V/s. **Udaysingh Ganpatrao Naik**

Nimbalkar reported in **(1997) 5 SCC 129**, the decision of the High Court was set aside and the appeal was allowed. The Supreme Court held that the order dismissing the Respondent from service stands upheld. It is further held that in the facts of that case, although there may be time lag and there have been discrepancies in the evidence, disciplinary proceedings are not a criminal trial (emphasis supplied). The scope of the inquiry is different from that of a criminal trial in which the evidence is required to be beyond doubt. It was sufficient to seek pre-ponderance of probabilities and some material on record.

30. The Supreme Court held that the test is to see whether there is evidence on record to reach a conclusion that the delinquent committed misconduct and whether a reasonable man, in the circumstances, would be justified in reaching that conclusion. A brief reference is to the witnesses examined and finding of fact recorded by the Inquiry Officer. A finding to be recorded that there was material before the Inquiry Officer. Evidence was more than adequate

31. Applying this principle to the present case, we have no manner of doubt that the Petitioner deserves to be visited with the major penalty. As a judicial officer, the conduct of the Petitioner ought to have been above board. The repeated instances where the Petitioner has been found to be at fault, namely in passing various

orders complained of, reveals habitual misconduct at the instance of the member of the bar. The fact that the member of the bar is a lady is only incidental to the main issue. The fact remains that as a judicial officer, his conduct is highly questionable. He crossed all limits when he detained two minors who were juveniles, in conflict with the law in an attempt to pressurize the father of the juveniles who was accused for an offence under section 138 of the Negotiable Instruments Act, once again at the instance of the Advocate with whom he is alleged to be in proximity. That particular case of misconduct, in our view, is deserving of a special mention, because not only did he detain these juveniles after issuing non bailable warrants but he also sent one to jail and the second to remand home during his school examination period. None of these factual elements have been denied and cannot be denied in view of the material on record. The record speaks for itself. The version of the Petitioner that these were mistakes and may be deemed to be "mistakes" committed by him in the course of work is unacceptable. In our view, the conduct of the petitioner is such that his continuance in service would be a blot on the judiciary.

32. Adverting to the various submissions made by Mr. Arjunwadkar, counsel for the Petitioner, to answer his contention that a judicial officer has to be given an opportunity, it is seen from the constitutional mandate of Article 311 that once an inquiry has been conducted, there was no obligation whatsoever to give him a

further opportunity. Despite that he was given a show cause notice by the Disciplinary Authority prior to imposing of punishment. His contention that there has been violation of principles of natural justice has no merit. His other contention that the Petitioner may be deemed to have committed "mistakes" by passing the orders in question once again deserves no consideration, in view of the fact that the orders are so gross that even a man of ordinary prudence would find it appalling.

33. The other contention that the Disciplinary Authority has not followed Rules (4) of the Maharashtra Civil Services (Disciplinary & Appeal) Rules, 1979 also has no merit and sub-rule (4) of Rule (ix) deals with the action on the report. Sub-rule (4) reads as under:-

> *"(4) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in [Clauses (vii) to (ix) of sub-rule (1) of Rule 5], should be imposed on the Government servant, it shall make a order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed. "*

34. In the instant case, there is no question of calling for any further representation. Even rule (ix) (2) has been followed in

its letter and spirit. The Disciplinary Authority had forwarded a copy of the inquiry report and since there was no disagreement with the inquiry report, there was no question of forwarding the inquiry report with tentative reasons for disagreement upon which the Petitioner could have furnished a written representation, if he so desired. In the present case, the Disciplinary Authority agreed with the inquiry report and, therefore, there is no question of non compliance with Rule (ix) (3). No such findings have been recorded by the Disciplinary Authority. We have observed that in the course of the inquiry, the Inquiry Officer had provided the Petitioner with the statement of imputations and the relevant documents. The response of the petitioner dated 19th April, 2001 ran into 31 pages. The Petitioner filed an additional written statement in the departmental proceedings which was also taken into consideration. The Inquiry Officer recorded the oral evidence of 18 witnesses (To be confirmed) including Head Constable Giyasuddin, Mr.S.K. Shinde, the Jt. District Judge, Smt. Sonabai Shrirang Dandavate, Vikas Shrirang Dandavate, Tukaram Laxman Suryavanshi, Ganpat Bhalarao and Mr.V.R.Kingaonkar, the then District Judge, Jalna and answered point Nos.1, 4 and 6 in the affirmative and concluded that except point No.5, virtually all are proved against the Petitioner. Point No.5 was whether the Petitioner is in the habit of seeking favours from police.

35. The Inquiry Officer has recorded a finding of fact that

several orders passed by the petitioner are only to favour the lady Advocate. We find that the oral evidence of Smt.Sonabai Dandavate PW10, P.W.12 Mr.V.R.Kingaonkar coupled with the orders passed by the Petitioners in Summary Criminal Case No. 2950/99, R.C.C. No.629/99 of J.M.F.C. Loha Court and Criminal Case No.135/2000 of Bhokar is sufficient to hold that charge No.1 is proved. As regards point No.2, the statements of witnesses, including PW3, PW4, PW,6, PW7, PW11 establish that the deliquent had acquitted the accused in a Criminal Case No.3126/98 without recording the statement of the complainant, although the complainant was present in the Court as a witness. The affirmative finding was thus justified.

36. As far as point No.3 is concerned, after considering the statement of Mr.Kingaonkar and the documentary evidence, point No.3 was answered in the affirmative, inasmuch as, the orders of order of conviction in R.C.C. No.272/1998 was found to be have been passed for considerations other than judicial. As regards point No.4 also, relying upon the evidence of material witnesses, it was found the delinquent had turned down the request of juvenile accused Vishal to permit him to appear for exams and instead sent him to a Remand Home. Point No.6 was answered in the affirmative after taking into consideration the evidence on the issue. Thus, it is seen that the Inquiry Officer had arrived at appropriate findings which were material, in the facts of the case and which enabled the Inquiry Officer to come to the conclusion that there was more than

adequate evidence on various points that were against the Petitioner.

37. The contentions of the Petitioner as pleaded and argued before us are completely misconceived. The present case would pass almost all the tests laid down in the case of Union of India V/s. A.K. Dhawan (supra). The Petitioner has repeatedly displayed his lack of integrity and conduct which was devoid of any devotion to his duty. The Petitioner's conduct has also been reckless in discharge of his duties. He has acted negligently and violated the norms of justice while acting in a manner so as to unduly favour parties at the behest of a particular member of the bar. There are far too many instances set out in the inquiry report to be overlooked as mere coincidence. The Petitioner has failed to redeem himself. Finally, with reference to Mr.Arjunwadkar's plea that the Petitioner ought to have been given an opportunity to voluntarily retire rather than face the order of dismissal, in our view, time has come to send a message that such serious instances of misconduct cannot be treated with kid gloves. Time had come for the gloves to come off. Looking at the gross misconduct, no leniency can be shown. The writ petition has no substance and must fail and the same is dismissed. Rule is discharged. No order as to costs.

(A.K.MENON, J.) **(A.S.OKA, J.)**