HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2804/2019

Reserved on: 21.05.2022.
Pronounced on: 28.06.2022.

Javid Ahmad Naik ..... petitioner (s)

Through :- M/S. G.A.Lone, T.H.Reshi, Mujeed Andrabi & Mirza Saleem Beg Advocates.

V/s

State of J&K and ors .....Respondent(s)

Through :- Mr. Shah Amir Advocate with Mr. Aatir Javaid Kawoosa Advocate.

Coram: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

Sanjeev Kumar, J

1. The petitioner, who was serving as Munsiff Pulwama in Kashmir Division, was removed from the judicial service by the Governor of the then State of Jammu and Kashmir vide Government Order No.3337-LD(A) of 2019 dated 23.07.2019 ['the impugned order']. The impugned order has been passed by the Governor on the recommendations of the Full Court that the petitioner, in view of his proven misconduct, was not worthy of retention in the judicial service.

2. Feeling aggrieved, the petitioner has invoked the extraordinary writ jurisdiction of this Court seeking quashment of the impugned order as also the enquiry report dated 06.07.2018 and a show cause notice issued by this

Court proposing penalty of removal of the petitioner from service vide Registrar General's communication No. 49220/GS dated 31.12.2018. The petitioner additionally seeks to assail the recommendations made by the Full Court to the Governor of then State of Jammu and Kashmir for imposition of penalty of his removal from the judicial service. The petitioner also prays for a writ of mandamus to command the respondents to treat him in service with all consequential service benefits.

3. Before we advert to the grounds of challenge pleaded in the petition and urged by Mr. G.A.Lone, learned counsel appearing for the petitioner, during the course of arguments, it would be appropriate to allude to the factual antecedents leading to the removal of the petitioner from service. Pursuant to his selection made by the J&K Public Service Commission and on the recommendations of this Court, the petitioner was appointed as Munsiff in the year 2003. After serving at different places, the petitioner, in the year 2010, was transferred and posted as Munisff Pulwama where he rendered his services from 08.08.2010 to 01.09.2012. In the month of January, 2011, when the petitioner was nominated as Duty Magistrate during winter vacations, he, exercising the powers of Sub-Registrar of the District, registered five sale deeds (one registered on 12.01.2011 and four on 13.1.2011). These sale deeds were in respect of 450 kanals and 17 marls of land belonging to a migrant. On the allegation that five sale deeds of immovable property belonging to the migrant were registered by the petitioner by facilitating the evasion of stamp duty to the tune of Rs.32.00 lacs in conspiracy with Nazir Ahmed Naqash and others ['the vendees'], one Bashir Ahmed Khanday, son of Abdul Razak Khanday, resident of Khandaypora, Awantopora made a written complaint to

Hon'ble the Chief Justice, Supreme Court of India with a copy to Hon'ble the Chief Justice of this Court.

4. It appears that the complaint filed by Bashir Ahmed Khanday was taken cognizance of by the then Lord Chief Justice of this Court and respondent No.3, who was then the District and Sessions Judge, Ganderbal, was directed to conduct a preliminary enquiry. The preliminary enquiry conducted by respondent No.3 revealed, *prima facie,* involvement of the petitioner in a serious misconduct and, accordingly, the matter was placed before the Full Court. The Full Court, after perusing the preliminary enquiry report submitted by respondent No.3, proposed to hold a regular enquiry against the petitioner in terms of Rule 33 of J&K Civil Services (Classification, Control and Appeal), Rules 1956 ['the Rules of 1956']. Accordingly, the petitioner was served with a Statement of Article of charges and a Statement of allegations in support of the charges framed against him. The petitioner was asked to submit his written statement of defence. The petitioner responded to the charges and claimed to be innocent. Finding that the defence of the petitioner and his plea of innocence was not satisfactory, this Court appointed initially Justice Hasnain Massodi, thereafter, on his superannuation, Justice Tashi Rabstan as an Enquiry Officer to conduct the regular enquiry into the charges. Before the Enquiry Officer, the High Court examined Mohd Yousaf Wani, the then Principal District Judge, Pulwama, Bashir Ahmed Khanday, the complainant, Ms. Ulfat Jabeen, the Deputy Commissioner Stamps (Department of Commercial Taxes), Srinagar, Bashir Ahmed Bhat, ex-Nazir Munisff Court Pulwama. Besides the aforesaid witnesses examined by the High Court, the petitioner also got his own statement recorded in support of his statement of defence. He also got recorded the statements of Wasim Raja Dar, an orderly in

the Court of Munisff Pulwama and Ghulam Rasool Bhat, who was posted as Reader in the Court of Munsiff Pulwama. The Enquiry Officer evaluated the evidence on record, the oral as well as the documentary, and after giving hearing to both the sides, vide his report dated 06.07.2018 concluded that preponderance of probabilities and some material on record proves that the conduct of the petitioner, a judicial officer, was under **serious clouds** and that it appears that the petitioner along with Nazir of his Court had hatched a conspiracy to cause monetary loss to State Exchequer and confer undue benefit on the parties to the documents which were registered without proper stamp duty. The conclusion of the Enquiry Officer, as is apparent from reading of his report, predicated primarily on the following findings of fact:

> (i) That the sale deeds presented to the petitioner for registration did not have requisite notings of the then Nazir to indicate the total stamp duty paid, but the petitioner still registered the sale deeds for the reasons which he has not been able to explain satisfactorily;
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> (ii) That the sale deeds pertained to migrant property and the permission for the sale had been granted by the Divisional Commissioner, Kashmir in the year 2005, whereas the documents were presented for registration in the year 2011 i.e after about six years of granting the permission, but still the petitioner did not insist for fresh permission before registering the documents in question to know the latest factual as well as the physical position of the land proposed to be sold;
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> (iii) That as per the statement of Ms. Ulfat Jabeem, Deputy Commissioner Stamps, the vendees, who were called upon to produce the insufficiently stamped sale deeds, did not produce the same before her, but instead deposited the entire stamp duty payable along with penalty in December, 2013 and January/March 2014 i.e after about three years of registration of sale deeds by the petitioner, which is indicative of the fact that the vendees had not paid any stamp duty at the time of registration of sale deeds;

(iv) That the plea of the vendees that the original registered sale deeds carrying stamp papers have been stolen by their Munshi because of some dispute is totally an afterthought and cannot be accepted. The Enquiry Officer has found that the original sale deeds registered by the petitioner were deliberately kept back to avoid truth coming to light. Moreover, the vendees did not register any FIR against their Munshi, nor is there any explanation forthcoming as to how the Munshi of one person could steal five sale deeds of five different vendees;

(v) That the petitioner has failed to explain his conduct of not reporting the alleged tampering of record by the then Nazir to any authority including the Principal District Judge, Pulwama.

5. It is noteworthy that the Enquiry Officer has not only found the petitioner guilty of misconduct, but has clearly opined the connivance of the then Nazir in the whole episode resulting into evasion of stamp duty and consequent loss to the public exchequer. The Nazir having been retired is, however, not subjected to any disciplinary action. The Enquiry report prepared by the Enquiry Officer on 06.07.2018 was deliberated by the Full Court in its meeting held on 27.12.2018 in which it was unanimously decided to propose penalty of removal of the petitioner from service and, accordingly, the petitioner was put on show cause notice of the proposed penalty and was asked to submit his reply within a period of seven days from the service of the notice as is apparent from the communication of Registrar General of this Court bearing No. 49221/GS dated 31.12.2018 [‘the impugned show cause notice’].

6. The petitioner responded to the show cause notice by submitting a detailed written reply contesting the enquiry report on merits and requested the competent authority to withdraw the notice and drop the enquiry proceedings against him. The reply to the show cause notice was considered by the Full Court and finding no merit therein, the Full Court unanimously decided to recommend to the Governor of then State of Jammu and Kashmir to impose the

penalty of removal of the petitioner from the service. It is in pursuance of the recommendations made by the Full Court, the then Governor vide impugned order dated 23.07.2019 ordered the removal of the petitioner from the judicial service with immediate effect. It is this order of the Governor passed on the recommendations of the Full Court, the petitioner is aggrieved of and has assailed the same, *inter alia*, on the following grounds:

(i) That the complaint on the basis of which the conduct of the petitioner came under scrutiny of the Disciplinary Authority was *mala fide*, filed by a dreaded militant to teach the petitioner a lesson for having gone against his father in a civil litigation pending before the petitioner;

(ii) That the findings of fact recorded by the Enquiry Officer which, to some extent, point to the involvement of the petitioner in the evasion of stamp duty while registering five sale deeds during January, 2011 vacations, are not supported by any evidence and, therefore, perverse;

(iii) That the impugned show cause notice, as is apparent from its reading, clearly shows that the matter had been prejudged and decision to remove the petitioner from service had been taken even prior to the holding of regular enquiry:

(iv) that the show cause notice proposing penalty of removal of the petitioner from the service issued by the High Court is without jurisdiction, in that, in terms of Rule 34 of the Rules of 1956, it is only the authority, which is competent to impose the penalty of dismissal, removal or reduction in rank, is competent to issue the notice after it has arrived at provisional conclusions in regard to the penalty to be imposed, on the delinquent. And, in the instant case, it was the Governor;

(v) That the failure of the respondents to supply copy of enquiry proceedings including the enquiry report, in terms of Rule 33 of the Rules of 1956, before the competent authority arrived at the conclusion to propose a major penalty, vitiates the whole proceedings culminating into passing of impugned order of removal of the petitioner from the judicial service;

(vi) That the petitioner was deprived of his right to convince and persuade the Disciplinary Authority that the findings of the

Enquiry Officer contained in the enquiry report were without any evidence and *per se* perverse; and,

(vii) That a Judicial Officer is protected for any act done or ordered to be done by him in the discharge of judicial duty and, therefore, the petitioner, who, while performing the duties of Sub-Registrar under the J&K Registration Act, was performing his duties as Judicial Officer in good faith and, therefore, not liable for any action for any act done or ordered to be done in the discharge of such functions. Reference in this regard is invited to the Judicial Officers Protection Act, 1971.

7. In support of his arguments to sustain challenge to the impugned order(s), strong reliance is placed by Mr. G.A.Lone, learned counsel appearing for the petitioner on the following judgments:

(a). Union of India vs. S.C.Goel, AIR 1964 Supreme Court 364;

(b). Union of India v. Mohd. Ramzan Khan,AIR 1991 Supreme Court 471;

(c). Kuldeep Singh vs. Commissioner of Police and ors, AIR 1999 Supreme Court 677;

(d). HP State Elect. Board Ltd. Vs. Mahesh Dahiya, AIR 2016 Supreme Court 5341;

(e). Sadhna Chaudhary vs. State of UP and another, AIR 2020 Supreme Court 2542;

(f). State of Rajasthan and ors vs. Heem Singh, AIR 2020 Supreme Court 5455; and,

(g). Union of India and ors vs. P. Balasubrahmanayam, AIR 2021 Supreme Court 1257.

8. *Per contra,* Mr. Shah Amir Advocate assisted by Mr. Atir Kawoosa appearing for the High Court has contested the challenge of the petitioner primarily on the ground that the jurisdiction vested in the High Court under Article 226 of the Constitution of India is supervisory and not appellate and the judicial review is not an appeal from a decision. It is submitted that the Jurisdiction of this Court in the matter of disciplinary proceedings which have culminated into imposition of penalty is circumscribed, rather limited, to

correct only errors of law leading to manifest injustice or violation of principles of natural justice. It is pleaded that in the disciplinary proceedings, the Enquiry Officer is the sole judge of fact and the Rules applicable and the findings of such Enquiry Officer are based only on preponderance of probabilities. And unless the delinquent makes out a case of no evidence or perversity, this Court would not interfere with the findings of fact recorded and conclusions drawn by the Enquiry Officer in a departmental enquiry. In short, Mr. Shah has elaborately delineated on the scope of judicial review in such matters.

9 On facts, it is submitted on behalf of the respondents that from the material collected during the enquiry in the shape of oral testimony of the witnesses and the documents, it is clearly borne out that the petitioner was guilty of serious misconduct which resulted in causing huge loss to the public exchequer due to evasion of stamp duty. Supporting the findings of fact recorded by the Enquiry Officer, it is urged that the instant case is not a case of no evidence, nor the findings of fact recorded by the Enquiry Officer could be termed as perverse. The Full Court has deliberated on the issue threadbare and accepted the findings of fact recorded by the Enquiry Officer. Having regard to the facts that emerged in the enquiry, the Full Court was of the opinion that the imposition of penalty of removal of the petitioner from the judicial service would meet the ends of justice to keep the stream of justice unpolluted and unsullied. With regard to providing of enquiry report prior to issuance of notice of show cause, it is argued that the enquiry report was provided to the petitioner along with notice of proposed penalty and the petitioner replied the show cause notice both on merits of the enquiry as well as the proposed penalty. It is, thus, argued that by not supplying the enquiry report prior to the issuance of notice of proposed penalty, no prejudice, whatsoever, is caused to

the petitioner. Relying strongly on the provisions of Article 235 of Constitution of India, it is argued by Mr. Shah Amir that the control over the subordinate judiciary vested in the High Court and such control includes the disciplinary action against the delinquent judicial officers. Viewed thus, the competent authority, it is contended, to propose the major penalty is the High Court and not the Governor, who merely acts upon the recommendations of the High Court and passes a formal order of imposing the major penalty of dismissal, removal or reduction in rank. In support of his submissions, Mr. Amir places reliance upon the following judgments:

(a). Kailash Chander Asthana vs. State of UP and ors, AIR 1988 Supreme Court 1338;

(b). Tarak Singh & anr vs Jyoti Basu & ors, (2005) 1 SCC 201;

(c). Ajit Kumar Vs. State of Jharkhand and Others, (2011) 11 SCC 458;

(d). R.C. Chandel vs High Court Of M.P. & Anr (2012) 8 SCC 58;

(e). Shrirang Yadavrao Waghmare vs The State Of Maharashtra And Ors (2019) 9 SCC 144; and,

(f). Sadhna Chaudhary vs. State of UP and another, (2020) 11 SCC 760

10 Having heard learned counsel for the parties and perused the material on record, it is necessary to have quick reminder of the scope of judicial review in departmental enquiries/disciplinary proceedings. Way back in the year 1999, in the case of **Kuldeep Singh vs. The Commissioner of Police and others, AIR 1999 Supreme Court 677**, the Supreme Court held that, normally the High Court and the Supreme Court would not interfere with the findings of fact recorded at the domestic enquiry, but, if the finding of 'guilt' is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny. The Court went on to hold that a broad

distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But, if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would be treated as *per se* and the findings would not be interfered with.

11. Even prior thereto, a three judge Bench of the Supreme Court in **B.C.Chaturvedi vs Union of India and ors, (1995) 6 SCC 749** had noticed the scope of judicial review with regard to disciplinary proceedings. The observations made by the Supreme Court in paragraphs (12) and (13) are noteworthy and are, therefore, reproduced hereunder:

> "12.*Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent*

officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel, AIR 1964 SC 364, this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

12. Recently the Supreme Court had the occasion to deal with a case arising out of an enquiry into the allegation of misconduct by a Judge in the exercise of judicial powers in the case of **Sadhna Chaudhary vs. State of Uttar Pradesh and another, (2020) 11 SCC 760**. The Supreme Court, while delineating the scope of judicial review in such matters, in paragraphs (17) and (18) and (19) held thus:

"17. Undoubtedly, the High Court is correct in its observation of the applicable law. Indeed, the end result of the judicial process does not matter, and what matters is only the decision making process employed by the delinquent officer. Clearly, it is a principle since the nineteenth century that judges cannot be held responsible for the end result or the effect of their decisions. This is necessary to both uphold the rule of law, and insulate judicial reasoning from extraneous factors.

18. Even furthermore, there are no two ways with the proposition that Judges, like Caesar's wife, must be above suspicion. Judicial officers do discharge a very sensitive and important constitutional role. They not only keep in check excesses of the executive, safeguard citizens' rights and maintain law and order. Instead, they support the very framework of civilized society. It is courts, which uphold the law and ensure its enforcement. They instill trust of the constitutional order in people, and ensure the majesty of law and adherence to its principles. Courts hence prevent people from resorting to their animalistic instincts, and instead provide them with a gentler and more civilised alternative of resolving disputes. In getting people to obey their dicta, Courts do not make use of guns or other (dis)incentives, but instead rely on the strength of their reasoning and a certain trust and respect in the minds of the general populace. Hence, it is necessary that any corruption or deviation from judicial propriety by the guardians of law themselves, be dealt with sternly and swiftly.

19. It has amply been reiterated by this Court that judicial officers must aspire and adhere to a higher standard of honesty, integrity and probity. Very recently in Shrirang Yadavrao Waghmare v. State of Maharashtra, (2019) 9 SCC 144, Division Bench of this Court very succinctly collated these principles and reiterated that:

> *"5. The first and foremost quality required in a Judge is integrity. The need of integrity in the judiciary is much higher than in other institutions. The judiciary is an institution whose foundations are based on honesty and integrity. It is, therefore, necessary that judicial officers should possess the sterling quality of integrity. This Court in Tarak Singh v. Jyoti Basu, (2005) 1 SCC 201] held as follows:*
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> > *"Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the justice - delivery system resulting in the failure of public*

confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside."

6. The behaviour of a Judge has to be of an exacting standard, both inside and outside the court. This Court in Daya Shankar v. High Court of Allahabad, (1987) 3 SCC 1 held thus:

> *".....Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy."*

7. Judges are also public servants. A Judge should always remember that he is there to serve the public. A Judge is judged not only by his quality of judgments but also by the quality and purity of his character. Impeccable integrity should be reflected both in public and personal life of a Judge. One who stands in judgments over others should be incorruptible. That is the high standard which is expected of Judges.

8. Judges must remember that they are not merely employees but hold high public office. In R.C. Chandel v. High Court of M.P., (2012) 8 SCC 58 , this Court held that the standard of conduct expected of a Judge is much higher than that of an ordinary person. The following observations of this Court are relevant:

> *"29. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are*

> *drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty."*
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> *9. There can be no manner of doubt that a Judge must decide the case only on the basis of the facts on record and the law applicable to the case. If a Judge decides a case for any extraneous reasons then he is not performing his duty in accordance with law.*
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> *10. In our view the word "gratification" does not only mean monetary gratification. Gratification can be of various types. It can be gratification of money, gratification of power, gratification of lust etc., etc."*

(**emphasis supplied**)

13 It is on the anvil of the afore-stated law, we have examined the submissions made by Mr. Lone, learned counsel for the petitioner in support of his challenge to the impugned order. We do not find it a case of no evidence, nor are we persuaded to agree with the learned counsel for the petitioner that the evidence collected during the departmental enquiry is thoroughly unreliable and no reasonable person would act upon it. The plea of perversity flies in the face of clear findings of fact recorded by the Enquiry Officer in the light of evidence on record. The Enquiry Officer has rightly found the petitioner being *prima facie* involved in a serious misconduct. The evidence collected during the enquiry is writ large to support the observations of the Enquiry Officer. Five sale deeds pertaining to migrant property in relation to more than 450 kanals were presented before the petitioner when he was discharging the duties of Duty Magistrate/Sub-Registrar in the District of Pulwama during winter vacations. The proforma that accompanies a registered sale deed and which

indicates the stamp papers attached was not filled up by the Nazir and yet the documents were accepted for registration and registration done. The manner in which the registration of five sale deeds was undertaken by the delinquent officer has been explained by the then Nazir. The Nazir has been cross-examined at length, but he has withstood his testimony.

14. We are not even for a minute ruling out the involvement of the Nazir also in the evasion of stamp duty to confer wrongful benefit on the vendees, but the conduct of the petitioner too cannot be appreciated. He was supposed to ensure that the documents presented before him for registration were completed in all respects and that proper stamp duty had been paid. The documents of sale pertained to the conveyance of more than 450 kanals of land and, therefore, the petitioner would have been extra careful and vigilant in scrutinizing the same particularly in reference to the payment of requisite stamp duty. The statement of Nazir that on 12.11.2011 when the first deed of sale was purportedly registered, he was on leave, cannot be disbelieved. His other part of the statement that he was summoned by the petitioner while he was on leave and was asked to deposit the registration fee, too cannot be doubted. There is possibility of initial understanding and thereafter some misunderstanding between the petitioner and the Nazir, but that does not absolve the petitioner of his serious misconduct which resulted in evasion of stamp duty worth Rs.32.00 lac. This Court cannot be oblivious to the fact that immediately after the enquiry was instituted against the petitioner, all the five original registered sale deeds went missing. The explanation of the vendees that the sale deeds were stolen by their Munshi has rightly not been accepted by the Enquiry Officer. It was clearly and purely an afterthought and an excuse put forth to somehow save the skin of the petitioner. This is, however, a fact

that the vendees did not contest that the registered sale deeds, which they were in possession of, were not properly stamped. In fact, in response to the notice of Deputy Commissioner Stamps, they deposited not only the requisite stamp duty payable on those sale deeds, but they also paid heavy penalty. That clearly shows that the registered sale deeds though claimed to be missing by the vendees, were actually not stamped.

15 In the given facts and circumstances, the maxim *Res Ipsa Loquitur* is clearly attracted. The preponderance of probabilities clearly point to the involvement of the petitioner in the serious misconduct which resulted in evasion of huge stamp duty and conferring wrongful benefit on the vendees. This could not have been done by the petitioner without any ulterior consideration. Be that as it may, we do not find it a case of no evidence or perversity. The Full Court, which unanimously endorsed the recommendations of the Enquiry Officer, has, thus, acted justly, fairly and in the best interest of justice. We may hasten to reiterate the proposition that the Judges, like Caesar's wife, must be above suspicion. Having regard to the nature of duties, the judicial officer is supposed to perform, a higher standard of honesty, integrity and probity is expected from a judicial officer. The Judges are not like other Government employees, but hold high public office of trust and, therefore, should have sterling quality of integrity and unimpeachable character. It is in this light, the conduct of a judicial officer is to be gauged. Viewed thus, we find that the Enquiry Officer was purely justified in holding the petitioner guilty of serious misconduct on the basis of preponderance of probabilities that had emerged from the evidence on record. The Full Court was entirely justified in endorsing the recommendations of the Enquiry Officer and proposing a penalty of removal of the petitioner from the judicial service.

16 Having held thus, we now propose to deal with the legal issues raised by Mr. Lone, learned counsel for the petitioner.

17 With a view to better appreciate the arguments of Mr. Lone, it is necessary to point out at the outset that the instant case having arisen prior to 5th /6th of August, 2019 when Article 370 and Article 35-A of the Constitution of India were abrogated and all the provisions of the Constitution of India as amended from time to time without any modification or exception, were applied to the state of Jammu and Kashmir. That being the position, the instant case is required to be dealt with in accordance with law as it was applicable prior to 5th August, 2019. We were governed by the Constitution of Jammu and Kashmir and the Constitution of India as applicable to the then State of Jammu and Kashmir. Keeping this in view, we propose to examine the other grounds of challenge one by one, as vehemently urged by learned counsel for the petitioner and strongly rebutted by learned counsel for the respondents.

(i). That the complaint was *mala fide*, filed by a dreaded militant to teach the petitioner a lesson for having gone against his father in a civil litigation.

18 Needless to say that the complainant in the instant case was only a whistle blower, who brought certain startling facts to the notice of Lord Chief Justice of this Court showing involvement of the petitioner in a scam that had resulted into evasion of stamp duty worth lacs of Rupees at the time of registration of five sale deeds. Even if the whistle blower had a bad past and the complaint was filed to teach the petitioner a lesson for having gone against his father in a civil litigation, we cannot lose sight of the fact that the allegations made in the complaint were *prima facie* found substantiated in the preliminary enquiry conducted by respondent No.3 and were subsequently

proved when a regular enquiry was conducted by the Enquiry Officer who, it needs to be noticed, was none other than a Judge of this Court. The fact, that the allegations made in the complaint have been substantiated in the regular enquiry, renders the argument of learned counsel for the petitioner that complaint was actuated by *mala-fides,* insignificant. The petitioner cannot be absolved of the proven allegations merely on the ground that the complaint, which became the basis of initiation of enquiry, was filed by a person of doubtful integrity and bad reputation.

(ii). That the findings of guilt recorded by the Enquiry Officer are without any evidence and, therefore, perverse.

19 This issue has already been dealt with elaborately hereinabove in the judgment and, therefore, requires no reiteration.

(iii). That the show cause notice was defective and clearly shows that the matter had been prejudged.

20. This argument of learned counsel for the petitioner too is without any substance. The show cause notice of proposed penalty proceeded on the basis of the recommendations/findings of fact recorded by the Enquiry Officer. It is true that the show cause notice proposing penalty of removal of the petitioner from service does indicate that the Full Court, after going through the preliminary enquiry report submitted by Registrar Vigilance, had resolved that the regular enquiry for inflicting the major penalty would be initiated against the petitioner, but that does not, by any stretch of reasoning, amounts to prejudging the issue. It was the *prima facie* view of the Full Court that, having regard to the nature of allegations against the petitioner that had surfaced during preliminary enquiry, it was necessary to proceed against the petitioner

in a regular enquiry for inflicting major penalty. It cannot, thus, be construed that the Full Court had made up its mind to necessarily impose the major penalty even if there was no evidence against the petitioner collected during the regular enquiry.

(iv). Violation of Rule 34 of the Rules of 1956.

21. Before we proceed to appreciate the argument of learned counsel for the petitioner based on the construction and interpretation of Rule 34, it is necessary to set out Rule 34 of the Rules of 1956.

> *34. after the inquiry against a government servant has been completed, and after the authority competent to impose penalty has arrived at provisional conclusions in regard to the penalty to be imposed, the government servant charged shall, if the penalty proposed is dismissal, removal or reduction in rank, be supplied with a copy of the proceedings prepared under rule 33 excluding the recommendations, if any, in regard to punishment, made by the officer conducting the inquiry and asked the show cause by a particular date with affords him reasonable time, why the proposed penalty should not be imposed on him.*

22. From a reading of Rule 34, it transpires that the Authority competent to impose the penalty of dismissal, removal or reduction in rank alone is supposed to arrive at provisional conclusion in regard to the penalty to be imposed after the enquiry against the Government servant has been completed. However, Rule 34 of the Rules of 1956 which applies generally to the Government servant cannot be viewed in isolation, more so when it is to be applied to the members of judicial service. The issue raised by learned counsel for the petitioner fell for consideration of a Division Bench of this Court in the case of **T.R.Parihar vs. State of Jammu and Kashmir and ors, 1986 KLJ 187.** T.R.Parihar, a District and Sessions Judge, who was facing a disciplinary enquiry initiated against him by the High Court, raised a plea before the

Division Bench of this Court that the notice issued by the High Court proposing penalty of his dismissal from the service was without jurisdiction and competence, in that, the appointing authority of the officer was the Governor of the State of Jammu and Kashmir under Section 109 of Constitution of Jammu and Kashmir and the authority competent to dismiss from service under Section 126 of Constitution of Jammu and Kashmir, which corresponded to Article 311 of Constitution of India. The matter was examined by the Division Bench *in extenso* and what was held by the Division Bench in paras (7) and (8) reads thus:

> *"7. Thus, from what has been noted above, it can now be safely concluded to be the settled law that the High Court has the exclusive and absolute control over the subordinate judiciary in the matter of disciplinary proceedings and it is the High Court alone, to the exclusion of all other authorities, which can initiate disciplinary proceedings against the members of the subordinate judiciary including District and Sessions Judges, suspend them pending the enquiry and impose punishment on them, other than the punishment of dismissal, removal or reduction in rank, subject to the conditions of service and the right of appeal, if any, granted by the conditions of service and the right of appeal, if any, granted by the conditions of service. This exclusive, absolute and comprehensive control of the High Court over the subordinate judicial is designed to protect and ensure the independence of the judiciary and no inroad, which may have any effect of eroding the independence of the judiciary, can be permitted. The control of the High Court over the subordinate judiciary is absolute in character and comprehensive in nature. It cannot be whittled down by taking away its effectiveness against the subordinate courts or the subordinate judges by any quibbling of words. Since, it is the High Court which has to make recommendations to the Governor, when it is prima facie of the opinion that the punishment of dismissal, removal or reduction in rank is required to be imposed upon a District and Sessions Judge, it is not only fair, but also a requirement of the Rules of natural justice that before making such a recommendation, the High Court should give an opportunity to the concerned District and sessions Judge to show cause why the punishment proposed to be recommend should not be recommended. The notice, in the*

instant case, therefore, gives an opportunity to the officer to show cause before the recommendation is made to the Governor. Such a notice can by no stretch of imagination be deemed to, in any way, prejudice the officer and as a matter of fact, it gives him a fair chance to show cause before the recommendation is made because, ordinarily, it is now the settled law, that the recommendation of the High Court is binding on the Governor. In the catena of authorities cited earlier, it has been laid down that a show cause notice under clause (2) of Article 311 of the Constitution of India corresponding to clause (2) of Section 126 of the Constitution of Jammu and Kashmir has to be issued by the High Court and the Governor is to be approached only in case there is need to dispense with the issuing of such a notice under clause (b) and (c) of Section 126(2) of the State Constitution. It, therefore, follows that before making the recommendation, it is the High Court which is required to issue the show cause notice against the proposed punishment so that while making the recommendation, the High Court can consider the entire matter in a detailed manner. If after the officer has been given the opportunity to show cause, the High Court comes to the conclusion that the punishment other than dismissal, removal or reduction in rank is called for, it will proceed to punish the officer accordingly, but in case it finds that either of the three punishments, noticed above, are required to be imposed upon the officer, it would make a recommendation to the Governor. The mere mention of Rule 34 in the impugned notice does not detract from its true nature and character and the petitioner has been unable to show how he has been prejudiced by it.

8. *Rule 34 of the Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956 is nothing but a broad manifestation of the principle enshrined in clause (2) of Section 126 of the State Constitution, corresponding to Article 311(2) of the Indian Constitution. This rule neither extends nor does it narrow down what is provided in the Constitution in clause (2) of Section 126. A plain reading of clause(2) of Section 126 of the State Constitution shows that it is for the 'proposer' of the punishment to issue the notice to show cause why the 'proposed' punishment be not (recommended to be) imposed. Rule 34 of the Service Rules is of general application to all civil servants and it applies to the judicial officers because of the absence of separate service rules enacted for them. In its application to the judicial officers, the rule has to be construed in the light of the other provisions of law and particularly of the*

> *State Constitution and the rule has to be interpreted consistently with the provisions of the Constitution which is the basic and the paramount document. This is also the mandate of harmonious construction. Thus, construed, it becomes abundantly clear that in the case of such judicial officer, who cannot be dismissed, removed, or reduced in rank by the High Court itself, it is the High Court alone which has to give notice to them to show cause against the proposed punishment before making its recommendation to the Governor. The argument, therefore, that the High Court has no competence or jurisdiction to issue such a notice, is clearly untenable and we reject it.*
>
> ***(*emphasis supplied*)***

23 We have not been shown any contrary judgment of the Supreme Court which would persuade us to take a view contrary to the view which has been taken by the Division Bench in T.R.Parihar's case (supra).

24 From the judgment of the Division Bench in the aforesaid case, it is abundantly clear that, in terms of Article 235 of Constitution of India which corresponds to Section 111 of the Constitution of Jammu and Kashmir, the control over the District Courts and the Courts subordinate thereto including the posting and promotion of, and the grant of leave to, the persons belonging to judicial service of the State and holding any posts inferior to the post of District Judges vests in the High Court. The expression "control" used in Article 235 of Constitution of India has been aptly dealt with by the Division Bench in T.R.Parihar's case (supra) in paragraphs (4), (5) & (6) of the judgment which, for facility of reference, is also set out below:

> *"4. From the contentions raised at the Bar, the question requiring determination in the present writ petition, at this stage, is the scope of the word "control" occurring in Section 111 of the Constitution of Jammu and Kashmir, corresponding to Artticle 235 of the Constitution of India and whether a notice under Section 34 of the J&K Civil Services (Classification, Control and Appeal) Rules, and alternatively under clause (2) of Section 126 of the State Constitution is to be issued by High Court or the*

Governor. This in turn, brings in the question of the ambit and extent of the disciplinary control of the High Court over the subordinate judiciary including the District Judges. We shall consider these questions in the light of some decided cases.

5. ***In the State of West Bengal & Ors. Vs. Nripendra Nath Bagehi, AIR 1966 SC 547,*** *the Constitution Bench of the Supreme Court was called upon to answer a somewhat identical question. Hidayat ullah J. (as His Lordship then was) speaking for the court interpreted Article 235 of the Constitution of India (corresponding to Section 111 of the State Constitution) & observed as under:*

> *"Further, as we have already shown, the history which lies behind the enactment of these articles indicates that "control" was vested in the High court to effectuate a purpose namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well, the very object would be frustrated. This aid to construction is admissible because to find out the meaning of a Law recourse may legitimately be had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved. The word "control" as we have seen, was issued for the first in the constitution & it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge. Article 227 gives to the High court superintendence over these courts and enables the High court to call for returns etc. The word "control" includes something in addition to mere superintendence. It is control over the conduct and discipline of the Judge. This conclusion is further strengthened by two other indications pointing clearly in the same direction. The first is that the order of the High Court is made subject to an appeal if so proved in the law regulating the conditions of services and this necessarily indicates an order passed in disciplinary jurisdiction. Secondly, the words are that the High Court shall "deal" with the Judge in accordance with his rules of service and the word "deal" also points to disciplinary and not mere administrative jurisdiction."*

His Lordship then went on to opine :

> *"In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal). AND POSTING AND PROMOTIONS OF DISTRICT JUDGES. Within the exercise of the control vested in the High Court, the High Court can hold enquires, impose, punishments other than dismissal or removal, subject*

however to the conditions of service, and a right of appeal, if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause."

(Emphasis supplied)

From the passages extracted above, it is clear that only in case of dispensing with the requirements of showing cause, as contained in clauses (b) and (c) of Section 126 (2) of the State Constitution that the Governor has to be approached and not for the issuing of a show cause notice before the recommendation is made to the Governor by the High Court. In taking this view we are also fortified by a Judgment of the Full Bench of this Court T.C. Kotwal Vs. State of J&K, AIR 1967 J&K 98.

The above said legal position was reiterated by the Supreme Court in the State of Haryana Versus Inder Prakash Anand & Ors. AIR 1976 SC 1841 wherein it was held:-

"The control which is vested in the High Court is complete control subject only to the powers of the Governor in the matter of appointment, including dismissal, removal, reduction in rank and initial posting and of the initial promotion to District Judges. There is nothing in Art. 235 to restrict the control of the High Court in respect of the Judges other than the District Judges in any manner."

Elaborating the scope of the word 'control' the court held:-

"The control vested in the High Court is that if the High Court is of the opinion that a particular judicial officer is not fit to be retained in service, the High Court will communicate that to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate appointment. In Such cases it is the contemplation in the Constitution that the Governor as the head of the State will act in harmony with the recommendations of the High Court.

<u>If the recommendation of the High Court is not held to be binding of the State the consequences will be unfortunate. It is in public interests that the State will accept the recommendations of the High Court. Vesting of complete control over subordinate judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State. The 'Governor' will act on the recommendations of the High Court that is the broad basis of the Article. 235."</u>

(Emphasis supplied).

6. Again in Baldev Raj Guliani Vs. The Punjab and Haryana High Court and others, AIR 1976 SC 2490, their Lordships once again laid emphasis on the concept of control over the subordinate courts as vested in the High Court. In the above referred case, their Lordships posed the question "whether the Government is bound under the constitution to accept the recommendation of the High Court and pass an order of removal of the judicial officer? "The appellant in that case relied upon Art. 235 as well as Article 311 of the constitution of India read with the appointment and punishment Rules and contended that the Governor being the final authority to pass the order of removal of the Judicial Officer, he is not under any constitutional obligation to be bound by the recommendation of the High Court. Their Lordships noticed with approval para 18 of AIR 1976 SC 1840 (Supra) and went on to answer to question in the following words:-

> *"For the first time in the country's history, appeared in the Constitution of India the concept of control over subordinate courts to vest in the High Courts. The quality of exclusive control of the High Court does not appear to be whittled by the constitutional device of all orders being issued in the name of the Governor as the head of the State Administration. When, therefore, the High Court exercising disciplinary control over the subordinate judiciary finds, after a proper enquiry, that a certain officer is guilty of gross misconduct and is unworthy to be retained in judicial service and therefore, re-commends to the Governor his removal of dismissal, it is difficult to conceive how and under what circumstances such a recommendation should be rejected by the Governor acting with the aid and advice of the council of Ministers, or as a usually the case, of one of the ministers. It is in this context that this court has more than once observed that the recommendation of the High Court in respect of judicial officers should always be accepted by the Governor."*

(*Emphasis supplied*)

The interpretation of expression "control" of the High Court over the subordinate courts and the subordinate judges once again fell for consi-deration of the Supreme Court by another Constitution Bench in Chief Justice of Andhra Pradesh & Anr. etc. Vs. L.V.A. Dikshitulu & Ors., AIR 1979 SC 193 and after referring to a catena of authorities and reaffirming the law laid down from Bagchi's case (Supra) onwards, the Constitution Bench observed:

> *"Article 235 is the pivot around which the entire scheme of the Chapter revolves. Under it, the control over district courts and courts subordinate thereto including the posting and promotions of, and the grant-of leave to persons belonging to the judicial service of a State is vested in the High Court."*

Their Lordships further observed :

"The interpretation and scope of Article 235 has been the subject of several decisions of this court. The position crystallized by those decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature comprehensive in extent and effective in operation. It comprehends a wide variety of matters. Among others it includes :

> *(i) Disciplinary jurisdiction and a complete control subject only to the powers of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this control the High Court can hold inquiries against member of the subordinate judiciary, impose punishment other than dismissal or removal, subject, however to the condition of service and a right of appeal, if any, granted thereby and to the giving of an opportunity of showing cause as required by Article 311 (2).*
>
> *(ii) In Article 235, the word "control" is accompanied by the word "vest" which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court being exclusive and not dual, an inquiry into the conduct of a member of the judiciary can be held by the High Court alone and no other authority."*

(*Emphasis supplied*)

25. It is, thus, axiomatic that control over District Judiciary vested in the High Court in terms of Article 235 of the Constitution of India is complete and absolute and provided only to ensure independence of judiciary and to achieve effective separation of powers. The 'control' vested in the High Court, *inter alia,* extends to the maintenance of discipline in judicial service which in turn would mean vesting all disciplinary powers in the High Court. Indisputably, our High Court, though empowered, has not framed its separate disciplinary rules pertaining to the District Judiciary and has been conventionally applying the Rules of 1956 which are generally meant for and applicable to the civil services of the State. In that view of the matter, we must keep in mind that the provisions of the Rules of 1956 including Rule 34 do not

apply as these are, but would apply *mutatis mutandis*. Rule 34 when construed in the light of Article 234 of Constitution of India would postulate that the High Court being an absolute and exclusive disciplinary authority is competent to issue show cause notice of proposed penalty to the judicial officer subordinate to it.

26. We are in respectful agreement with the view taken by the Division Bench in T.R.Parihar's case(supra), which squarely applies to the instant case. We, thus, find no substance in the contention of Mr. Lone that the show cause notice of proposed penalty to the petitioner could have been issued only by the Governor and that the High Court being only a disciplinary authority and not the competent authority to impose the major penalty upon the petitioner could not have issued it. Accepting the argument of Mr. Lone would be tantamount to conceding the control of the High Court over the District Judiciary in favour of the Executive, which not only is violative of Article 235 of Constitution of India, but would also militate against the very idea of independence of judiciary and separation of powers which forms the core of the Constitution of India.

(v). The non-supply of enquiry proceedings including the report of enquiry prior to the competent authority arriving at the proposed conclusions with regard to imposition of major penalty.

27. It is argued that the petitioner was entitled to be supplied the enquiry report prior to the competent authority arriving at the provisional conclusion in regard to the major penalty to be imposed on the petitioner. It is, thus, urged that the supply of enquiry report along with notice of proposed penalty issued by the High Court was not substantial compliance of the principles of natural justice and, therefore, the entire proceedings culminating

into issuance of impugned order of imposing penalty of removal of the petitioner from the judicial service is vitiated. We have given our thoughtful consideration to the argument raised by Mr Lone. To sustain his argument, Mr. Lone seeks to draw support from the case of **Managing Director ECIL Hyderabad vs. B. Karunakar etc., 1993 4 SCC 727**. He has, in particular, invited our attention to paragraph (29) of the judgment which reads thus:

> *"29.Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice".*

28. What, however, has not been read out to this Court by Mr. Lone is paragraph (31) of the same judgment which, for facility of reference, is also reproduced hereunder:

> "*31.Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/ Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment.The Court/Tribunal should nut mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/ Tribunals which will apply their judicial mind to the question*

and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/ Tribunals find that the furnishing of the report would have made a difference to the result in the case that should set aside the order of punishment Where after following the above procedure the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law".

29. From a reading of two paragraphs reproduced above from the judgment of Managing Director ECIL (supra), it is abundantly clear that in the cases where enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court.

30. In the instant case, there is no dispute that the enquiry report has been furnished to the petitioner though it was furnished after the Full Court had arrived at provisional conclusion in regard to imposition of major penalty upon

the petitioner. The reply submitted by the petitioner to the show cause notice is detailed one and elaborate. The petitioner has dealt with the merits of the enquiry report extensively and requested the High Court to drop the charges. In that view of the matter, it can hardly be said that the petitioner has been prejudiced, in any manner, by not supplying him the enquiry report prior to the competent authority arriving at provisional conclusion with regard to imposition of one of the three major penalties upon the petitioner. As a matter of fact. Mr. Lone despite being pointedly asked could not demonstrate any prejudice having been caused to the petitioner due to non supply of copy of the report at the stage prior to the competent authority arriving at provisional conclusion with regard to the imposition of major penalty.

31. It may be pertinent to note that a Constitution Bench of the Supreme Court in the case of Managing Director ECIL (supra) was considering a reference made by a three Judge Bench of the Supreme Court noticing a conflict in the two decisions of the Court i.e **Kailash Chander Asthana v. State of U. P. AIR 1988 SC 1338 and Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588**.

32. The questions that fell for consideration of the Constitution Bench are precisely stated in para (2) of the judgment which, for better appreciation of the point under discussion, is also reproduced hereunder:

> 2.*"The basic question of law which arises in these matters is whether the report of the Inquiry Officer/authority who/which is appointed by the disciplinary authority to hold an inquiry into the charges against the delinquent employee is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him.*

This question in turn gives rise to the following incidental questions:

(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC471) (supra) will apply to all establishments- Government and non- Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report should come into operation?

(vii) Since the decision in Ramzan Khan's case (AIR 1991 SC 471) (supra) has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz., what was the law prevailing prior to 20th November, 1990?"

33. The aforesaid case as also cases of Kailash Chander Asthana and Mohd Razan Khan had arisen in the context of 42nd amendment to the Constitution whereby a second notice i.e a show cause notice of proposed penalty had been deleted from article 311 of Constitution of India. However, prior to 42nd amendment to the constitution, a Constitution Bench of the Supreme Court had the occasion to consider similar question in the case of

Union of India vs. H.C.Goel, AIR 1964 SC 364. While interpreting Article 311 of the Constitution of India in the context of controversy raised in the matter, the Constitution Bench held thus:

> "*Article 311 consists of two sub-articles and their effect is no longer in doubt. The question about the safeguards provided to the public servants in the matter of their dismissal, removal or reduction in rank by the Constitutional provision contained in Article 311, has been examined by this court on several occasions. It is now well-settled that a public servant who is entitled to the protection of Article 311 must get two opportunities to defend himself. He must have a clear notice of the charge which he is called upon to meet before the departmental enquiry commences, and after he gets such notice and is given the opportunity to offer his explanation, the enquiry must be conducted according to the rules and consistently with the requirements of natural justice. At the end of the enquiry, the enquiry officer appreciates the evidence, records his conclusions and submits his report to the Government concerned. That is the first stage of the enquiry, and this stage can validly begin only after charge has been served on the delinquent public servant.*
>
> *After the report is received by the Government, the Government is entitled to consider the report and the evidence led against the delinquent public servant. The Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report. If the report makes findings in favour of the public servant, and the Government agrees with the said findings, nothing more remains to be done, and the public servant who may have been suspended is entitled to reinstatement and consequential reliefs. If the report makes findings in favour of the public servant and the Government disagree with the said findings and holds that the charges framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf. If the enquiry officer makes findings, some of which are in favour of the public servant and some against him, the Government is entitled to consider the whole matter and if it holds that some or all the charges framed against the public servant are, in its opinion, prima facie established against him, then also the Government has to decide provisionally what punishment should be imposed on the public*

> *servant and give him notice accordingly. It would thus be seen that the object of the second notice is to enable the public servant to satisfy the Government on both the counts, one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted upon him is unduly severe. This position under Article 311 of the Constitution is substantially similar to the position which governed the public servants under section 240 of the Government of India Act, 1935……"*

(**emphasis supplied**)

34. From the aforesaid authoritative pronouncement of the Constitution Bench of the Supreme Court which was rendered prior to 42nd constitution amendment, it is abundantly clear that what was envisaged under Article 311 of the Constitution as it stood prior to 42nd amendment and which was in *pari materia* with Section 126 of the Constitution of Jammu and Kashmir, was serving of notice upon the delinquent employee at two stages of the disciplinary proceedings. The first notice to the delinquent was to call upon him to meet the charge before the departmental enquiry commenced. At this stage, the delinquent would get an opportunity to offer his explanation. The second stage or the second occasion to give notice to the delinquent officer would come after the report of the enquiry officer was received by the disciplinary authority. Where the disciplinary authority, on the basis of the enquiry report, proposed to impose major penalty upon the delinquent, it would serve another notice, this time a show cause notice of proposed penalty. The object of the second notice was to enable the delinquent public servant to satisfy the disciplinary authority on both the counts, one that he was innocent of the charges framed against him and the other that even if the charges were held proved against him, the punishment proposed to be inflicted upon him was unduly severe.

35. Viewed in the light of above settled legal position. we have no doubt in mind that the High Court by providing a copy of the enquiry report to the petitioner along with show cause notice of proposed penalty envisaged under article 311 of Constitution of India read with Section 126 of Constitution of Jammu and Kashmir substantially complied with the principles of natural justice. It would be appropriate to clarify at this stage that Article 311 of Constitution as it was applicable to the State of Jammu and Kashmir at the time the impugned order was passed was in *pari materia* with section 126 of constitution of Jammu and Kashmir and envisaged a show cause notice of proposed penalty to be given to the delinquent before imposing any of the major penalties envisaged under Article 311 of the Constitution. The 42nd amendment to the Constitution which, *inter alia*, took away right of the delinquent employee to have show cause notice of proposed penalty was not extended to the State of Jammu and Kashmir. The position, however, changed after 5th/6th of August, 2019.

36. From the above discussion, we are of the considered opinion that supply of copy of the enquiry report prior to the competent authority arriving at a provisional conclusion with regard to imposition of major penalty upon the petitioner was neither required at the relevant point of time, nor its non-supply has, in any way, caused any prejudice to the petitioner. The petitioner was supplied the copy of enquiry report along with show cause notice of proposed penalty. He not only responded to the notice vis-à-vis the proposed penalty, but in his reply, also contested the enquiry report on merits. The argument of learned counsel, therefore, fails.

37. In view of preceding analysis, we find no merit in this petition and the same is, accordingly, dismissed.

(SANJEEV KUMAR)
JUDGE

(PANKAJ MITHAL)
(CHIEF JUSTICE

Srinagar
28.06.2022
Sanjeev

Whether order is speaking: **Yes**

Whether order is reportable: **Yes**