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HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 9906/2010

Legal Representatives of late Shri B.D.Saraswat (dead) S/o Shri Tikam Chand Saraswat, resident of 8/7, Jai Narayan Vyas Colony, Behind Police Station, Bikaner:

1. Shri Amit Saraswat S/o Late Shri B.D. Saraswat, Aged About 47 Years,
2. Miss Madhu Saraswat D/o Late Shri B.D. Saraswat, Aged about 38 years,

All L/Rs resident of 8/7, Jai Narayan Vyas Colony, Behind Police Station, Bikaner.

----Petitioners

Versus

1. The State of Rajasthan through the Secretary, Department of Personnel, Government of Rajasthan, Jaipur (Rajasthan).
2. The High Court of Judicature for Rajasthan at Jodhpur through its Registrar.

----Respondent

For Petitioner(s)	:	Mr. M.S.Singhvi, Sr. Adv. Assisted by Mr. Hemant Dutt, Adv. Mr. Abhishek Mehta, Adv. Mr. Chirag Kalani, Adv.
For Respondent(s)	:	Mr. G.R.Punia, Sr. Adv. Assisted by Mr. Sanjay Rewar, Adv. Mr. Rajesh Panwar, Sr. Adv.-cum AAG assisted by Mr. Ravindra Puri Goswami, AGC & Mr. Rajesh Punia, Adv.

HON'BLE MR. JUSTICE MUNNURI LAXMAN

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

Judgment Reserved on : 08/08/2025

Judgment Pronounced on : 03/11/2025

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[Per Hon'ble Mr. Justice Munnuri Laxman] :

1) The present writ petition assails the report of the Enquiry Officer dated 06.03.2009, the resolutions of the Full Court dated 01.07.2009 and 02.02.2010, and the order of the His Excellency the Governor dated 08.04.2010 and to set aside such proceeding and consequently, seeks reinstatement in service with all consequential benefits.

2) The delinquent officer/petitioner died on 26.05.2012 during the pendency of the proceedings, and his wife and children were brought on record. Subsequently, the wife also died during the pendency of the present proceedings, and the petitioner is now represented by their children.

3) The background of the facts discloses that the petitioner was appointed as a District Judge (entry level) through direct recruitment and subsequently, promoted to selection grade. While serving as a Special Judge in the Special Court under the N.D.P.S. Act at Pratapgarh, a complaint was lodged against him by Ashok Kumar Vaishnav, an Advocate (complainant). He alleged that the petitioner had rejected the bail applications filed by him of the accused, Paras S/o Amba Lal, in FIR No. 442/2004, Police Station Pratapgarh, vide orders dated 06.10.2004 and 02.12.2004. However, a subsequent bail application filed by Ms. Kala Arya, Advocate, after the dismissal of the earlier applications filed by Ashok Kumar Vaishnav, was allowed with an alleged oblique motive or for extraneous considerations. It was further alleged that such relief was granted despite an order passed by the High Court in S.B. Criminal Misc. Bail Application No. 3844/2004, wherein the counsel appearing for the accused-Paras

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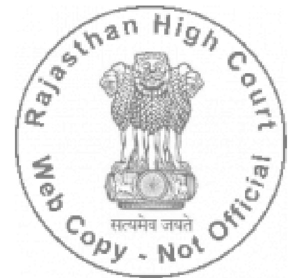
had sought leave to withdraw the bail application with liberty to file a fresh one after the challan was submitted but changed advocate filed bail application before filing of challan.



4) Acting upon the complaint of PW-2 Ashok Kumar Vaishnav, the Hon'ble Chief Justice appointed Justice Shri N.P. Gupta as Enquiry Officer to initiate disciplinary proceedings against the petitioner under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the CCA Rules, 1958"), by order dated 01.09.2005. The Enquiry Officer issued the following Statement of Charge and Statement of Allegation in support of the charge, which read as under:

STATEMENT OF CHARGE

> "That you, Mr. B.D. Sarswat while posted and functioning as Judge, Special Court, N.D.P.S, cases, Pratapgarh, District. Chittorgarh, N.D.P.S. cases, Pratapgarh. District, Chittorgarh granted bail on 24-02-2005 to Paras S/o Amba Lal, resident of Sakariya, P.S. Rathanjana in Cr. Misc. Case No. 20/05, relating to FIR No.442/2004 or P.S Pratapgarh, moved on behalf of accused applicant Paras by Advocate Ms kala Arya, with oblique motives/ externeous considerations whereas earlier application of this accused Paras was rejected by you, in respect of this FIR on 06-10-2004 (Cr. Case No. 133/04) and 02-12-2004 (Cr. Case No. 166/04). when they were presented by Advocate Mr Ashok Kumar Vaishnav: despite fact that SB Cr. Misc. Bail Applilcation No. 3844/04, moved by aforesaid accused applicant Paras was dismissed by Hon'ble High Court, on the ground that it was not pressed by counsel for the accused, with liberty to file fresh bail application after the challan. Since no challan was filled on 24-02-2005, when you granted the bail to Paras, on changing of Advocate. Aforesaid grant of bail reflects to be out come of oblique motive/ externeous considerations on your part and amounts to gross misconduct, punishable under rule 16 of the CCA Rules,1958."

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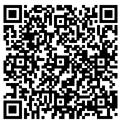

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STATEMENT OF ALLEGATION REGARDING CHARGE:

"While you posted and functioning as Judge, Special Court. N.D.P.S, Cases, Pratapgarh Distt. Chittorgarh the first bail application No. 133/04 for the accused Paras in relation to FIR No. 442/2004 of P.S. Pratapgarh Distt. Chittorgarh was filed on 05-10-2004 by advocate Mr Ashok Kumar Vaishnav, which was rejected by you on 06.10.2004, accused filed bail application in Hon'ble High Court. Jodhpur bearing S.B Cr. Misc. Bail Application No. 3844/04 which was rejected on 23.11.2004. The second bail application, presented by advocate Mr Ashok Kumar Vaishnav in your court was also rejected by you on 02-12-2004. After dismissal of the bail application by Hon'ble High Court. Being withdrawn with liberty to file fresh after filing of challan: when presented for the third time before you by advocate for the third time before you by advocate Ms Kala Arya you granted bail on 24-02-2005 to accused Paras in the said case. In the order of granting bail application, you have not made any reference of rejection of earlier bail applications, order of Hon'ble High Court and if there was any change of circumstances after rejection of first and second bail applications nor challan was filed on 24-02-2005, as observed by Hon'ble High Court. Thus, you granted bail to aforesaid accused Paras in relation to FIR No.-442/2004 P.S. Pratapgarh, upon change of advocate, with oblique motives/ externeous considerations and committed gross misconduct punishment u/s 16 of the CCA Rules, 1958."

5) The petitioner submitted his explanation to the charge on 05.12.2005. The Enquiry Authority, not being satisfied with the explanation, proceeded to conduct an enquiry in accordance with due procedure. To support its case, the Department relied on the evidence of PW-1, Dwarka Nath Sharma, the then Public Prosecutor of the Court where the delinquent officer was posted, and PW-2, Ashok Kumar Vaishnav, Advocate (the complainant). The Department also relied upon documentary evidence marked

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as Exhibits A/1 to A/8. Additional documents filed by the Department were also taken on record, having been duly admitted. In support of his case, the petitioner (the delinquent officer) examined himself as a witness and relied upon the documents filed at various stages, including bail orders dated 05.09.2005 passed by him in Criminal Bail Application Nos. 104/2005 and 105/2005.

6) After the closure of evidence by both parties and upon hearing them, the Enquiry Officer submitted his report dated 06.03.2009, holding that the charge levelled against the delinquent officer/petitioner was proved. The report concluded that the orders granting bail to the accused, Paras, upon the change of advocate, clearly amounted to passing orders with an oblique motive and for extraneous consideration, thereby petitioner passed order in favour of changed advocate and disfavoured the earlier advocate, i.e., PW-2 Ashok Kumar Vaishnav.

7) The Enquiry Officer's report was placed before the Full Court on 01.07.2009. The Full Court took cognizance of the report and directed that a copy of the same be furnished to the delinquent officer, and sought his explanation in response thereto. However, it appears that the petitioner/delinquent failed to submit any explanation before the Full Court which took further decision. Consequently, by its resolution dated 02.02.2010, the Full Court treated the matter as one of 'No Explanation to the Enquiry Report' and unanimously decided to accept the report and impose the punishment of dismissal. The Full Court accordingly recommended that the State Government

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pass appropriate orders dismissing the petitioner from service. Acting on this recommendation, the State Government, by order dated 08.04.2010, dismissed the petitioner from service. Challenging the same, the present writ petition has been filed.

8) Heard the learned counsel for both the sides.

9) Mr. M.S. Singhvi, the learned Senior Counsel appearing for the petitioner has contended that the petitioner submitted his reply/explanation to the enquiry report on 05.02.2010, as directed by the Full Court. However, this reply was submitted after the Full Court had already recommended the petitioner's dismissal to the State Government by its resolution dated 02.02.2010. While passing the dismissal order on 08.04.2010, His Excellency the Governor did not consider the petitioner's reply/explanation to the enquiry report. As a result, the dismissal order passed by the Governor is liable to be treated as a non-speaking order.

10) The learned Senior Counsel appearing for the petitioner also submitted that the Appointing Authority (His Excellency the Governor) did not afford the petitioner any opportunity of hearing before passing the order dated 08.04.2010. Such an opportunity was required to be given, as both the enquiry report and the recommendation of the Full Court were based on adverse material. Had the petitioner been given an opportunity of hearing, he could have explained his position with respect to the adverse findings of the enquiry report and the recommendation of the Full Court. The failure to provide such an opportunity resulted in a violation of the principles of natural justice.

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11) The learned Senior Counsel also submitted that there is no material on record to show that the Full Court recorded any findings while accepting the enquiry report submitted by the Enquiry Judge. Such action is in violation of the procedure prescribed under Rule 16(10) of the CCA Rules, 1958. Recording of findings by the Full Court was necessary, as the enquiry report was not binding upon it.

12) The learned Senior Counsel also submitted that the findings recorded by the Enquiry Officer suffer from illegality due to breach of the principles of natural justice, as additional evidence was casually admitted without any relevance to the charge. This procedure caused serious prejudice to the petitioner, and these irrelevant documents were improperly made basis of the conclusions. It is also his submission that the findings recorded by the Enquiry Officer suffer from ex facie perversity and error, as the entire evidence if considered does not establish that the orders were passed with an oblique motive or extraneous consideration. In the absence of any evidence, either from the departmental witnesses or the delinquent officer, the Enquiry Officer recorded findings that the grant of bail on the third application, filed by the changed advocate, was the result of extraneous considerations and oblique motives. Such findings are wholly unsupported by evidence.

13) The learned Senior Counsel appearing for the petitioner also contended that the scope of the enquiry was expanded beyond the original charges, and additional documents related to this expanded scope were used to conclude that the orders were passed with extraneous consideration and oblique motive. The

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Enquiry Officer failed to properly appreciate the petitioner's defence, wherein he categorically explained the justification for passing the bail order.

14) The learned Senior Counsel further contended that the resolution of the Full Court in accepting the enquiry report and in recommending dismissal suffers from violation of the principles of natural justice. Furthermore, the Full Court erred in recommending the extreme punishment of dismissal, considering the nature of the allegations and the evidence on record. Moreover, the disciplinary proceedings are liable to be quashed on the ground that the order granting statutory bail to the accused, Paras, was in accordance with the statutory provisions as well as the law laid down by the Apex Court.

15) Per contra, Mr. Rajesh Panwar, Senior Advocate-cum-AAG appearing for the State and Mr. G.R.Punia, Senior Counsel appearing for the Department have submitted that the Appointing Authority, i.e., His Excellency the Governor, is not required to provide an opportunity of hearing while imposing the punishment of dismissal. However, an opportunity of hearing is required before accepting the findings of the enquiry report. In the present case, the petitioner failed to avail such opportunity which was given to him before the Full Court which subsequently accepted the enquiry report and recommended his dismissal. The petitioner submitted explanation to the enquiry report only after enquiry report was accepted and recommendation was made of dismissal. Therefore, it cannot be said that the order passed by His Excellency the Governor suffers from non-speaking order and passed in violation of principles of natural justice.

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16) The learned Senior Counsel appearing for the respondents also submitted that after receiving the enquiry report, the Full Court afforded the petitioner an opportunity to submit his remarks to the findings of the Enquiry Officer. The petitioner failed to utilize this opportunity, and the Full Court's recommendation was made in the context of non-response from petitioner. Therefore, the recommendation of the Full Court do not suffer from any violation of the principles of natural justice.

17) The learned Senior Counsels also submitted that while accepting the enquiry report, the Full Court is not required to provide any special reasons for its acceptance for reasons that such decision has been taken by constitutional body in exercise of administrative functions. Therefore, the procedure adopted by the Full Court in accepting the enquiry report and recommending the imposition of the punishment of dismissal cannot be said to be in violation of any statutory rule.

18) The learned Senior Counsels appearing for the respondents also contended that the enquiry report and its findings are based on valuable evidence on record. The Enquiry Officer, in accordance with the existing rules, afforded an opportunity to file additional documents and allowed both parties to produce new evidence. Permitting the Department to submit additional evidence at various stages does not constitute a procedural error warranting interference by this Court.

19) The learned Senior Counsels appearing for the respondents also submitted that there is ample evidence on record to show that the petitioner/delinquent officer demonstrated discriminatory conduct towards the complainant by

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disfavouring him and favored the selective advocates. Such conduct itself demonstrates the existence of extraneous consideration and oblique motive. The findings of the Enquiry Officer are supported by the evidence, and he did not enlarge the scope of the enquiry. The additional material was only corroborative in nature and cannot be said to be beyond the scope of the enquiry.

20) Lastly, it is contended by the learned Senior Counsels appearing for the respondents that the Enquiry Officer has thoroughly considered the defence put forth by the petitioner to justify the bail orders passed by him. The Full Court's recommendation for the punishment of dismissal does not suffer from any violation of the principles of natural justice. Furthermore, the recommendation for dismissal cannot be regarded as disproportionate to the evidence on record as the bail orders were found to be the result of extraneous considerations, and they were rightly taken into account. The orders passed by the respondents required no interference by this Court.

21) We have considered the arguments advanced by both the parties and carefully perused the material available on record.

22) In the present case, the specific charge against the petitioner was that the delinquent officer showed favoritism to the advocate who filed the third bail application by granting bail, whereas bail applications filed by the complainant/advocate for the same accused were dismissed. Accused, Paras, was an accused in FIR No. 442/2004 of Police Station Pratapgarh. The FIR pertained to offences under Section 8 read with Section 18 of

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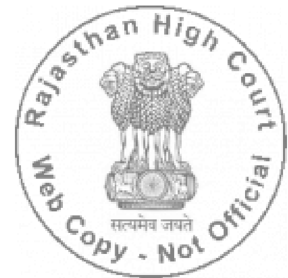
the N.D.P.S. Act, involving the seizure of 1.5 kilograms of opium. Moreover, by the time bail was granted to Paras, he had been in custody for 157 days, and no charge-sheet had been filed on the date the statutory bail was granted.



23) In this regard, it is relevant to refer to Section 8 and 18 of the N.D.P.S. Act, which read hereunder:-

> "**8. Prohibition of certain operations.—**No person shall—
>
> (a) cultivate any coca plant or gather any portion of coca plant; or
> (b) cultivate the opium poppy or any cannabis plant; or
> (c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes."
>
> xxx xxx xxx
>
> "**18. Punishment for contravention in relation to opium poppy and opium.—** Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports,

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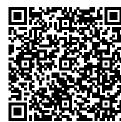


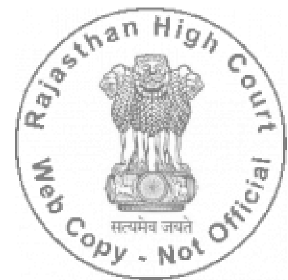
imports inter-State, exports inter-State or uses opium shall be punishable,--

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees."



24) It is also relevant to refer to a Central Government Notification specifying 'small quantity' and 'commercial quantity', more particularly the narcotic drugs and psychotropic substance of Opium referred at Serial No. 92 of the Notification, which reads hereunder:-

Sl. No.	Name of Narcotic Drug & Psychotropic Substance [International non-proprietary name (INN)]	Other non-proprietary name	Chemical Name	Small Quantity (in gm.	Commercial Quantity (in gm./kg.)
(1)	(2)	(3)	(4)	(5)	(6)
92.	Opium		And any preparation contain opium	25 gm.	2.5 kg.

24.1 From reading of Section 8 of the NDPS Act, it is clear that possession of opium is prohibited, and Section 18 of the N.D.P.S. Act prescribes three categories of punishment: for small quantity, for intermediary quantity and for commercial quantity. The quantity of opium recovered in this case falls within the

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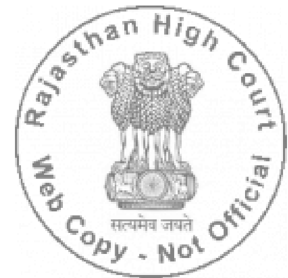
intermediary category, being neither small nor commercial quantity. Therefore, the punishment applicable under Section 18(c) is rigorous imprisonment, which may extend up to 10 years, along with a fine that may extend up to Rs.1 lakh.



25) Section 36-A(4) of N.D.P.S. Act is also relevant to mention here, which reads hereunder:-

> "**Section 36A(4**) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days."

25.1 From reading of the above provision, it is clear that if an accused is charged with an offence under Section 19, Section 24, Section 27-A, or any offence involving commercial quantity, the period of custody permitted under Section 167(2) of the Cr.P.C., which is normally 90 days, shall be extended to 180 days. If the investigation cannot be completed within 180 days, the Special Court may, upon receiving a report from the Public Prosecutor indicating the progress of the investigation and reasons for detention beyond 180 days, extend the custody period up to one year.

26) The Apex Court in the case of ***Rajeev Choudhary vs. State (N.C.T.) of Delhi,*** reported in (2001) 5 SCC 34, held that the words used in Section 167(2) proviso (a) of Cr.P.C.,

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particularly "imprisonment for a term of less than 10 years," should not be interpreted as a minimum sentence of 10 years or more, but rather mean that the imprisonment may be for a period of 10 years or less. In other words, if the offence is punishable with imprisonment up to 10 years, the permissible period of custody under Section 167(2) of the Cr.P.C. is 90 days.

27) A conjoint reading of Section 167(2) proviso (a) of Cr.P.C. and Section 36A(4) of NDPS Act makes it clear that the offence for which the accused Paras was charged is punishable only up to 10 years. This means the maximum custody period under Section 167(2) of the Cr.P.C. shall be 90 days, as the quantity of seized contraband is not commercial, and he was not charged under Sections 19, 24, or 27-A of the N.D.P.S. Act, and only such offences custody period is 180 days, subject to a further extension of up to one year.

28) The complainant/advocate in this case filed the first bail application seeking regular bail under Section 439 of the Cr.P.C. The delinquent officer, after considering the merits, dismissed this bail application on 06.10.2004 (Annexure 7). Subsequently, the accused approached the High Court by filing S.B. Criminal Misc. Bail Application No. 3844/2004, which was dismissed as withdrawn with liberty to file a fresh bail application after the challan was filed. The same advocate then filed a second bail application under Section 439 Cr.P.C., subsequent to the High Court's order dated 23.11.2004, which was rejected on 02.12.2004.

29) The third bail application was filed by another advocate, Miss Kala Arya, seeking statutory bail under Section 167(2) read

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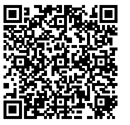

with Section 439 of the Cr.P.C. The delinquent officer allowed the application vide order dated 24.02.2005. By the time the third bail application was filed, the accused had completed 157 days in custody. It is also not in dispute that two applications i.e. first and second bail application filed by the complainant (Ashok Kumar Vaishnav) for grant of bail, were filed under Section 439 Cr.P.C. seeking regular bail on merits.

30) The bail applications clearly demonstrate that the complainant/advocate had never sought default/statutory bail; his applications were for grant of bail on merits. Whereas, the third bail application was a statutory/default bail application under Section 167(2) read with Section 439 of the Cr.P.C. The evidence on record shows that, prior to allowing the statutory bail application, the delinquent officer adjourned the matter for four days to enable the prosecution agency to file the charge-sheet, though such a procedure is not mandated. Nevertheless, these facts indicate that an opportunity was afforded to the Investigating Agency to file the charge-sheet before grant of statutory bail.

31) Admittedly, as on the date of filing the third bail application, the 90-day custody period was completed and no charge sheet had been filed. Even on the date of passing order on third bail application, the charge-sheet had still not been filed. In this background, the third bail application was allowed. The delinquent officer had no option but to allow the application, given that the maximum permissible period of custody i.e. 90 days had expired and no charge sheet had been filed within that time. The delinquent officer had no choice to decide the matter

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on merits. If the case was to be decided on merits, granting bail merely on the change of advocate, while ignoring the rejection of two earlier bail applications filed by the complainant, Ashok Kumar Vaishnav, could have assumed that the order was passed for extraneous consideration or with an oblique motive. Here is the case where the delinquent officer had no choice or discretion to refuse bail, as he was statutorily bound to allow the application upon being satisfied that the 90-days period had been completed and no charge-sheet had been filed as on the date of the order. In this background, the grant of bail on the third application filed by a different advocate, in compliance with the statutory mandate, cannot be said to have been for extraneous consideration or oblique motive.

32) The evidence of PW-2, the complainant/advocate, indicates that he claimed to have raised a ground regarding entitlement to default bail in the second bail application. However, this assertion is contrary to the averments made in the second bail application itself, as well as to the admissions made during cross-examination. Moreover, the bail order does not reflect any arguments made by PW-2 concerning statutory bail. In fact, at the time the second bail application was filed, the 90-days period had not yet elapsed. The Enquiry Officer's finding that the grant of bail on the third application filed by another advocate, coupled with the rejection of the two previous bail applications filed by the complainant, demonstrates extraneous consideration or oblique motive, suffers from perversity. No reasonable person, on a fair assessment of the evidence, could have arrived at the conclusion that the order passed on the third

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bail application was tainted by extraneous consideration or oblique motive. The reason is that the two bail applications filed by PW-2 under Section 439 of the Cr.P.C. were limited to consideration on merits of the case. In contrast, the third bail application was not based on merits but was a statutory entitlement of the accused upon fulfilling certain conditions, namely, that the 90-day custody period had been completed and no charge sheet had been filed.

33) The orders impugned in the present writ petition are also unsustainable for the reason that there are no details with regard to extraneous consideration/ulterior motive which is foundation for initiating disciplinary proceedings. In this regard, it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of ***Abhay Jain Vs. The High Court of Judicature for Rajasthan and Ors.*** reported in ***(2022) 13 SCC 1***, wherein it was held as follows:

> "66. We also find merit in the submission of the learned counsel of the appellant that the charges filed against the appellant are vague in nature and that absolutely no details have been provided regarding the said allegation of passing the bail order for extraneous considerations/ ulterior motive. In this context, there is no detail provided as to what was the said extraneous consideration or ulterior motive, but merely an inference has been drawn on the basis of suspicion. Further, the record reveals that no complaint or other material exists which could form the basis of the said allegations.
>
> 67. A Three-Judge bench of this court in Ramesh Chander Singh vs High Court of Allahabad has specifically held that:
>
> > "12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the

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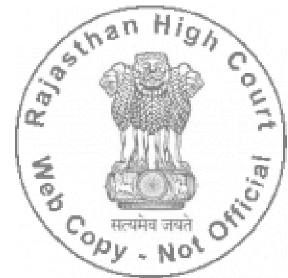
appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, the High Court must take extra care and caution.



……..

5. ….However, the learned Judge inquiring the matter eventually came to the conclusion that the bail had been granted by the appellant in utter disregard of judicial norms and on insufficient grounds and based on extraneous consideration with oblique motive and the charges had been proved. It is important to note that the Judge who conducted the enquiry has not stated in his report as to what was the oblique motive or the extraneous consideration involved in the matter.

……..

10. The counsel for the respondent pointed out that on three previous occasions the bail had been declined to the very same accused and as there was no change in the circumstances, the appellant-officer should not have considered the fourth bail application as well. Of course, in the previous bail applications, many of the contentions raised by the accused were considered, but an accused has the right to file bail application at any stage when undergoing imprisonment as an under-trial prisoner. The fact that the two other accused had already been enlarged on bail was a valid reason for granting bail to accused Ram Pal. Moreover, accused Ram Pal had been in jail for one year as an under-trial prisoner and the charge-sheet had already been filed. In our opinion, if accused Ram Pal were to be denied bail in these circumstances, it would have been a travesty of justice especially when all factors relevant to be gone into for considering the bail application were heavily loaded in favour of grant of bail to accused Ram Pal.

……..

11. We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should have been actuated by malice, bias or illegality. The appellant-officer

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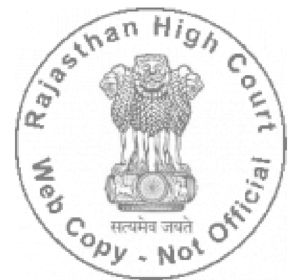
was well within his right to grant bail to the accused in discharge of his judicial functions. Unlike provisions for granting bail in TADA Act or NDPS Act, there was no statutory bar in granting bail to the accused in this case. A Sessions Judge was competent to grant bail and if any disciplinary proceedings are initiated against the officer for passing such an order, it would adversely affect the morale of subordinate judiciary and no officer would be able to exercise this power freely and independently.



……….

18. ...The fact that it was a case of daylight murder wherein two persons died, is not adequate to hold that the accused were not entitled to bail at all. Passing order on a bail application is a matter of discretion which is exercised by a judicial officer with utmost responsibility. When a co-accused had been granted bail by the High Court, the appellant cannot be said to have passed an unjustified order granting bail, that too, to an accused who was a student and had been in jail for more than one year. If at all, the inspecting Judge had found anything wrong with the order, he should have sent for the officer and advised him to be careful in future."

68. Hence, in light of the above judicial pronouncement, we hold that the accused K.K. Jalia had the right to file bail application at any stage when undergoing imprisonment as an under-trial prisoner. The fact that the two other co-accused had already been enlarged on bail was a valid reason for granting bail to accused K.K. Jalia. If the High Court was to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect appellant's bona fides and the order itself should have been actuated by malice, bias or illegality. This is clearly not the case in the present matter. The appellant was competent and well within his right to grant bail to the accused in discharge of his judicial functions.

69. This court in P.C. Joshi vs State of U.P. held that:

"That there was possibility on a given set of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The enquiry officer has not found any other material, which would reflect on his reputation or integrity or good faith or devotion to duty or that he has been actuated

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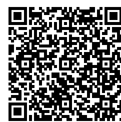

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> by any corrupt motive. At best, he may say that the view taken by the appellant is not proper or correct and not attribute any motive to him which is for extraneous consideration that he had acted in that manner. If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus judicial officers cannot act independently or fearlessly. Indeed the words of caution are given in K.K. Dhawan case and A.N. Saxena case that merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceedings against the judicial officer. In spite of such caution, it is unfortunate that the High Court has chosen to initiate disciplinary proceedings against the appellant in this case."

From a close perusal of the above judgment, it is clear that the Apex Court on several occasions has disapproved the practice of initiating disciplinary proceedings against officers of subordinate judiciary on the ground of judgments/orders passed by them are wrong. Further, similar to the above case, there are no details in the case on hand with regard to extraneous/oblique motive. The facts in the present case are better than the facts contained in the judgment referred hereinabove. In the referred judgment, there was discretion for the officer to pass orders granting bail, however, there is no such discretion in the present case as the order is required to be passed when certain conditions as required under the statute are fulfilled. Since the requirement of statute is fulfilled the order is consequential without exercise of any discretion at all.

34) The scope of consideration of two applications of complainant and application for grant of statutory bail by changed advocate are fundamentally different. In the case of the

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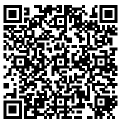

third bail application, the delinquent officer had no discretion but to grant bail, whereas in the two earlier applications, there was no statutory right to bail; those applications were to be decided solely on their merits. Therefore, we are of the view that the findings recorded by the Enquiry Officer, as accepted by the Full Court, suffer from perversity and are unsupported by evidence.

35) To deal with contention that the Enquiry Officer went beyond the scope of the charge by holding that differential treatment was given to different advocates while referring to the bail applications of Ramesh and Ayub in the same FIR, though, they were not part of the charge-sheet, however, such evidence was significant factor influencing the Enquiry Officer's conclusion that PW-2 and other advocates were treated differently. In fact, PW-2 had no grievance regarding the bail applications of accused Ramesh and Ayub, and further, they were not part of the charge. The finding of proof of charge by enquiry officer was also based on this evidence, which should not have been used to establish the charge.

36) The scope of interference under Article 226 & 227 with regard to disciplinary proceedings has been succinctly stated by the Apex Court in the case of **Registrar General, Patna High Court Vs. Pandey Gajendra Prasad & Ors.**, reported in AIR 2012 (6) SCC 357. The relevant paras of the said judgment read as follows:

> "17. According to the Division Bench, both the orders by the first respondent being purely discretionary in terms of his statutory powers, did not warrant any disciplinary action against him on the ground of judicial indiscretion or misconduct. We are constrained to observe that the Division Bench has failed to bear in mind the parameters laid down in a catena of decisions of this Court while dealing

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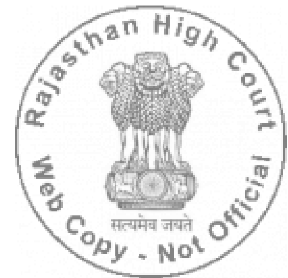
with the collective decision of the Full Court on the administrative side. It is evident that the Division Bench dealt with the matter as if it was exercising appellate powers over the decision of a subordinate court, granting or refusing bail, and in the process, overstepped its jurisdiction under Article 226 of the Constitution.



18. It is trite that the scope of judicial review, under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. While exercising such jurisdiction, interference with the decision of the departmental authorities is permitted, if such authority has held the proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by consideration extraneous to the evidence on the merits of the case, or if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. (See: Shashikant S. Patil & Anr. (supra).

19. Explaining the scope of jurisdiction under Article 226 of the Constitution, in State of Andhra Pradesh Vs. S. Sree Rama Rao[3], this Court made the following observations:

> "….The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

20. Elaborating on the scope of judicial review of an assessment of the conduct of a judicial officer by a Committee, approved by the Full Court, in Syed T.A. Naqshbandi & Ors. Vs. State of Jammu & Kashmir & Ors.[4] this Court noted as follows:

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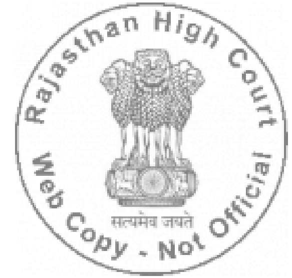

"7. …..As has often been reiterated by this Court, judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions of administration of justice with which we are concerned in this case, by going into the correctness as such of ACRs or the assessment made by the Committee and approval accorded by the Full Court of the High Court."

21. In Rajendra Singh Verma (Dead) Through LRs. & Ors. Vs. Lieutenant Governor (NCT of Delhi) & Ors. [5], reiterating the principle laid down in Shashikant S. Patil & Anr. (supra), this Court observed as follows:

"191. … in case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the Judges of the High Court who go into the question and it is possible that in all cases evidence would not be forthcoming about integrity doubtful of a judicial officer."

It was further observed that:

"192. ….If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any [pic]judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions. When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ court under Article 226 or

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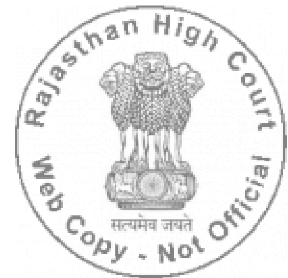
this Court under Article 32 would not interfere with the order."

22. In the present case, the recommendation of the Standing Committee to dismiss the first respondent from service was based on the findings in the enquiry report submitted by the enquiry officer pursuant to the departmental enquiry; his reply to the show cause notice; his ACR and other materials placed before it. The recommendation of the Standing Committee was approved and ratified by the Full Court.



23. There is nothing on record to even remotely suggest that the evaluation made, firstly by the Standing Committee and then by the Full Court, was so arbitrary, capricious or so irrational so as to shock the conscience of the Division Bench to justify its interference with the unanimous opinion of the Full Court. As regards the observation of the Division Bench on the reputation of the first respondent based on his ACRs, it would suffice to note that apart from the fact that an ACR does not necessarily project the overall profile of a judicial officer, the entire personal file of the respondent was before the Full Court when a conscious unanimous decision was taken to award the punishment of his dismissal from service. It is also well settled that in cases of such assessment, evaluation and formulation of opinion, a vast range of multiple factors play a vital and important role and no single factor should be allowed to be blown out of proportion either to decry or deify issues to be resolved or claims sought to be considered or asserted. In the very nature of such things, it would be difficult, rather almost impossible to subject such an exercise undertaken by the Full Court, to judicial review, save and except in an extra-ordinary case when the court is convinced that some exceptional thing which ought not to have taken place has really happened and not merely because there could be another possible view or there is some grievance with the exercise undertaken by the Committee/Full Court. [(See: Syed T.A. Naqshbandi (supra)]."

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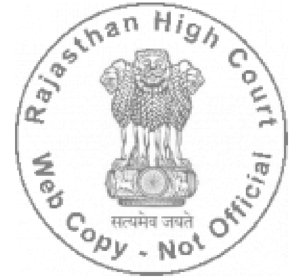
37) The Apex Court in the case of **State of Rajasthan & Ors. Vs. Bhupendra Singh**, reported in 2024 RJ-JD18500, held as follows:

> "28. Turning our gaze back to the facts herein, we find that the learned Single Judge and the Division Bench acted as Courts of Appeal and went on to re-appreciate the evidence, which the above-enumerated authorities caution against. The present coram, in *Bharti Airtel Limited v A S Raghavendra, (2024) 6 SCC 418*, has laid down:
>
> > '29. As regards the power of the High Court to reappraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference. We do not think such a situation prevailed in the present facts. Further, the ratio of the judgments relied upon by the respondent in support of his contentions, would not apply in the facts at hand.'
>
> *(emphasis supplied)*



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38) The findings of the Enquiry Officer on the charges are vitiated if reliance is placed on extraneous evidence, to come to conclusion that delinquent officer guilty of charges. The findings were also based on irrelevant evidence, particularly the bail orders relating to Ramesh and Ayub, which were not the subject matter of the charge. The findings of enquiry officer are, on their face, arbitrary, and no reasonable person could have arrived at such a conclusion based on evidence on record. The evidence on record do not even reasonably probabilise the conclusion which was drawn by Enquiry Officer that the delinquent officer passed the order on the third bail application for extraneous consideration or with oblique motive when no discretion lies with him.

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39) Dealing with the admission of additional evidence, the rules enable the Enquiry Officer to allow the additional new evidence. The enquiry report clearly reflects that both parties were allowed to produce additional new evidence; in fact, the rules permit the admission of such evidence subject to satisfaction of relevancy and a valid explanation for its previous non-production. The enquiry report further shows that such evidence was allowed to be produced with the consent of the parties. Since the petitioner gave consent, he cannot contend that allowing the additional evidence violated the principles of natural justice. Therefore, the contention in this regard is rejected.

40) The other contention of learned Senior Counsel for the petitioner is that before imposing punishment by His Excellency the Governor, the explanation submitted by the petitioner ought to have been considered, and an opportunity of hearing should have been afforded to him to explain the adverse remarks in the enquiry report. The High Court, while exercising its constitutional powers, recommended the dismissal of the petitioner. At the stage of imposition of punishment by His Excellency the Governor, there is no requirement to provide any further opportunity of hearing. In this regard, it is relevant to refer to Article 311(2) of the Constitution of India, which reads as under:-

> "**311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—**(1) 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 civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

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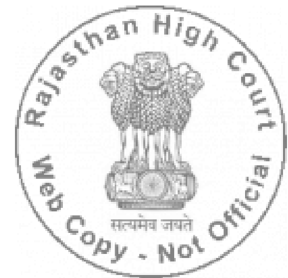

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(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

[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 <u>it shall not be necessary to give such person any opportunity of making representation on the penalty proposed</u>: Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]

40.1) From a reading of the above provision, it is clear that no opportunity of making representation and hearing is required to be given at the stage of imposition of the penalty. The argument that the explanation submitted after the decision of the Full Court should be considered is also untenable, as that stage was already been over. Therefore, the said argument of the learned Senior counsel is unsustainable and same is rejected.

41) The argument that the order of dismissal is not a speaking order is also misconceived. The order of His Excellency

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the Governor is not required to be as elaborate as that of a judicial order. The order His Excellence, the Governor reflect the application of mind, On this ground also, the said contention is rejected.

42) The argument of learned Senior Counsel for the petitioner is that since there are no findings of the Full Court while accepting the enquiry report, the recommendation of the Full Court for dismissal is required to be interfered. This Court is of the view that the Full Court, being a constitutional body, exercises administrative functions. The multiple constitutional functionaries are part of decision-making process. Therefore, while considering the enquiry report, the said constitutional body deemed to have applied its mind and had taken a conscious decision. There is no need to give specific findings like any other disciplinary authorities. Therefore, this contention is also rejected.

43) For the reasons detailed herein before, we are of the view that the findings in the impugned order of enquiry report, as accepted by the Full Court suffers from perversity and vitiated on account of consideration of extraneous evidence. No reasonable person would have arrived at a conclusion which the Enquiry Officer and Full Court had arrived on the basis of evidence on record. Hence, the finding of enquiry officer and order of the Full Court in accepting the report of Enquiry Officer is required to be set aside. Consequently, the order of His Excellency Governor dismissing the petitioner from service is also required to be set aside.

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44) The normal rule is that when the Court finds that the termination is illegal, reinstatement with full back wages follow except where there is evidence to show that the employee was gainfully employed during the period of enforced idleness. However, this rule is subject to certain exceptions, such as the closure of the industry or organization, severe financial crisis of employer, or the employee having secured better employment elsewhere. In the present case, the respondents have failed to establish that the petitioner's case falls within any of the exceptional circumstances that would justify denial of full back wages. The case of petitioner do not fall under any exception. Therefore, we are inclined to grant back-wages to the petitioner with all allowances.

45) The order of dismissal was passed on 08.04.2010. The delinquent officer date of birth is 02.02.1951 and he would have retired 28.02.2011. Thus, the petitioner is entitled to full back wages for the period from 08.04.2010 to 28.02.2011, along with continuity of service and all consequential benefits including pension benefits.

46) In the result, the writ petition is allowed. The impugned order of the Enquiry Officer dated 06.03.2009, the resolutions of the Full Court dated 02.02.2010, and the order of the His Excellency the Governor dated 08.04.2010 are set aside. The respondents are directed to pay full back wages for the period from 08.04.2010 to 28.02.2011, along with continuity of service and all consequential benefits including pension benefits treating the deemed reinstatement of the petitioner from the date of order of dismissal and he shall be treated on duty till the date of

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retirement. The pensionary benefits shall be granted to the family of the petitioner, accordingly.

47) In the circumstances, no order as to costs.

48) Pending interlocutory applications, if any, shall stand disposed of.

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(BIPIN GUPTA),J (MUNNURI LAXMAN),J

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