Abhay Jain vs High Court Of Judicature For Rajasthan on 15 March, 2022

Author: Vineet Saran

Bench: Vineet Saran, Uday Umesh Lalit

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2029 OF 2022
[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO.6107 OF 2020]

ABHAY JAIN ….. APPELLANT

VERSUS

THE HIGH COURT OF JUDICATURE
FOR RAJASTHAN AND ANR. ……RESPONDENTS

JUDGMENT

Vineet Saran, J.

Leave Granted

2. The appellant, who joined as a judicial officer in 2013, having been discharged from service in the year 2016, filed a Writ Petition in the Rajasthan High Court, which was dismissed by the impugned judgment dated 21.10.2019 passed by a Division Bench of the High Court. Aggrieved by the same, this appeal has been filed by way of this Special Leave Petition.

3. Brief facts relevant for the purpose of the present case are that a notification inviting applications for District Judge 16:56:27 IST Reason:

> Examination, 2013 was issued on 19.07.2011. The selection was to be made from amongst the candidates of Advocates' Quota under the Rajasthan Judicial Services Rules, 2010 (for short 'RJS Rules'). In the said examination, the result of which was declared on 25.05.2013, the appellant stood first. On 15.07.2013, the appellant was appointed to the post of Additional District Judge under Rule 43 of the RJS Rules read with Article 233(1) of the Constitution of India and as per the Rule 44 of RJS Rules, the appellant was to be on probation for a period of 2 years.
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> By an order dated 16.07.2013, the appellant was posted as an Additional District & Sessions Judge No.2, Bharatpur, on which post he joined on 18.07.2013. Then on

05.05.2014, the appellant was posted as Presiding Officer, Labour and Industrial Tribunal, Bharatpur, on which post he joined on 06.05.2014. He was thereafter, by an order dated 24.02.2015, appointed as Sessions Judge, Anti-

Corruption Department (ACD), Bharatpur, on which post he joined on 25.02.2015.

4. It was during his posting as Sessions Judge, Anti-

Corruption Department, Bharatpur, that a bail was granted by the appellant, which is the genesis of the action which has been taken against the appellant.

5. In a case under Section 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, three accused namely K.K.Jalia, Alimuddin and Irfan were arrested on 29.12.2014. The said K. K. Jalia, who was the Chairman of the Municipal Corporation, was alleged to have taken a bribe of Rs.5 Lakhs; Alimuddin, who was a Police Constable, was alleged to have taken a bribe of Rs.10 Lakhs; and Irfan, was a non-official also alleged to be involved in the case. On 08.01.2015, the predecessor of the appellant dismissed the bail of K. K. Jalia and the bail of Alimuddin was also dismissed on 03.02.2015. The Investigation Officer had sent a letter to the concerned department seeking sanction of prosecution against the said two accused, K. K. Jalia and Alimuddin on 18.02.2015. Charge sheet was filed against all the three accused on 23.02.2015. It was at this stage, on 25.02.2015, that the appellant was appointed as Sessions Judge, Anti-Corruption Department.

6. Then on 04.03.2015, the second bail application of the accused Alimuddin was rejected by the appellant. The bail application of K. K. Jalia was rejected by the Rajasthan High Court on 11.03.2015. On 17.03.2015, the second bail application was filed by K. K. Jalia before the appellant. It is noteworthy that the Rajasthan High Court granted bail to the co-accused Irfan (who was a private person) on 16.04.2015, and then on 27.04.2015, bail was also granted to Alimuddin by the Rajasthan High Court.

7. On the second bail application of K. K. Jalia filed on 17.03.2015, the Court fixed 20.03.2015 along with the main file. Then on 18.03.2015, on the main file the case was fixed for 31.03.2015 for filing of sanction of prosecution of K. K. Jalia and till then the judicial custody of remand was extended in the bail matter. On 20.03.2015, the bail matter was adjourned for 31.03.2015. On 31.03.2015, the bail matter was adjourned for 13.04.2015 and in the main file, 13.04.2015 was fixed for filing of prosecution sanction against K. K. Jalia and for arguments on cognizance. On 13.04.2015, on which date the appellant was on leave, the bail matter was again adjourned by the officiating Presiding Officer for 16.04.2015, and on the main file it was noted that no sanction against K. K. Jalia was received and since the appellant was on leave, the case was fixed for 27.04.2015 for filing of sanction of prosecution against K. K. Jalia. On 16.04.2015, a fresh application of bail was filed by the accused K. K. Jalia stating that he was arrested on 27.12.2014 and charge sheet was filed on 23.02.2015, but till date no sanction of prosecution as required under Section 19 of the Prevention of Corruption Act, 1988, had been given, and that the custody of the accused K. K. Jalia was illegal as the accused could not be detained for an indefinite period. On the said date the appellant, in his order, observed that from 23.02.2015 till date i.e. 16.04.2015, there was no document on the file which would indicate

that any progress has been made with regard to grant or refusal of sanction, and accordingly, it was directed that such a progress report be filed with regard to the efforts of the Anti-Corruption Department for grant of sanction be submitted on 27.04.2015, and time was also granted to file reply to the bail application by the next date i.e. 27.04.2015. On 17.04.2015, the matter was placed with regard to the attestation of bail of Irfan, who had been granted bail by the Rajasthan High Court on 16.04.2015.

8. On 27.04.2015, on the main file, the investigation officer sought time for filing of sanction against K. K. Jalia and 08.05.2015 was fixed and till then, the judicial custody and remand of K. K. Jalia and Alimuddin was extended. In the bail application of K. K. Jalia, which was also fixed for 27.04.2015 and was taken separately, two letters had been filed. One letter dated 24.04.2015 mentioned that a file for sanction of prosecution of K. K. Jalia was submitted to the State Government, and the other letter dated 27.04.2015, which was addressed to the appellant, mentioned that a meeting to discuss whether the prosecution sanction should be granted or not was held on 23.03.2015, but no decision had been reached, and thus, the file had been sent back to the State Government to take a decision in that regard and the same was still pending. It was also pointed out that the other co-accused Alimuddin (Police Constable) had been granted bail by the Rajasthan High Court on the same date i.e. 27.04.2015. The appellant heard the matter of bail of K. K. Jalia and granted bail to him by a detailed order. On 28.04.2015, the matter for attestation of bail of Alimuddin was taken on the main file as the Rajasthan High Court granted him bail on 27.04.2015. The sanction of prosecution of K. K. Jalia was also received on the main file on 28.04.2015.

9. It appears from the record that the bail order in the case of K. K. Jalia was called for by the Rajasthan High Court on 27.04.2015 itself and on 02.05.2015 the appellant was directed by the Rajasthan High Court to submit his comments regarding the said order dated 27.04.2015. The appellant submitted his response/comments on 12.05.2015 stating therein that the fact of dismissal of bail by the Rajasthan High Court on 11.03.2015 was neither argued by the Counsel nor the copy of the order was filed or produced, even though time was granted to the prosecution on 16.04.2015 to file the reply to the bail application. In the said reply, it was admitted by the appellant that the fact of dismissal of the bail by the Rajasthan High Court came to his notice from the memo of the second bail application while he was dictating the bail order dated 27.04.2015, and it was stated by the appellant in his reply that since the order of the Rajasthan High Court dated 11.03.2015 was not produced before him, he had thought that there was definitely a change in circumstances from 11.03.2015 as the period of the custody of the accused was nearing four months and also that 48 days had passed from 11.03.2015 to 27.04.2015 and in the absence of prosecution sanction, especially when it could not be known as to when such sanction would be granted, the trial could not start. It was also stated by the appellant that other two co-accused, whose bail application had been rejected by him earlier, had already been granted bail by the Rajasthan High Court. After considering, the explanation of the appellant, the Chief Justice of the Rajasthan High Court directed to initiate departmental enquiry under Rule 16 of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'CCA Rules, 1958).

10. The said inquiry was initiated against the appellant vide Memorandum dated 07.08.2015 for acts amounting to misconduct and violation of Rule 3 and 4 of the Rajasthan Civil Services (Conduct

Rules), 1971. The allegations levelled against the appellant included, inter alia, that he should have desisted from granting bail to the accused K.K. Jalia as there had been no material or substantial change in the facts and circumstances of the case after the rejection of his earlier bail applications by the appellant's predecessors. Additionally, it was alleged that the appellant had already rejected the second bail application of the co-accused/Alimuddin on 04.03.2015 by observing therein that the matter is grave in nature and that there was no change in circumstances after the dismissal of his first bail application. It was also alleged that the appellant passed the bail order with some ulterior or oblique motives and for extraneous considerations.

11. The appellant submitted his preliminary objections to the above allegations on 29.09.2015, which came to be rejected by the Enquiry Judge vide order dated 31.10.2015, without affording the opportunity of personal hearing to the appellant.

12. The Higher Judicial Committee, which consisted of five Judges and which was constituted for deciding the confirmation and discharge of Judicial Officers, on 24.11.2015, upon inspection of the appellant's records, decided not to recommend the appellant for confirmation.

13. On 20.01.2016, a Full Court meeting was convened wherein, based on the recommendation submitted by the Higher Judicial Committee, it was decided to discharge the appellant. Notably, the appellant was discharged despite the pendency of the enquiry proceedings initiated against him. On 27.01.2016, a discharge order was passed against the appellant on the ground that the Full Court found the appellant's services to be unsatisfactory during the probation.

14. Subsequently, the enquiry against the appellant was closed on 02.05.2016. However, the department reserved the right to reopen the same. On 05.05.2016, the High Court also closed the disciplinary proceedings initiated against the appellant.

15. Aggrieved by the order dated 27.01.2016, the appellant filed a Writ Petition before the Rajasthan High Court on 18.05.2016 seeking the following reliefs:

> "(i) Quashing of impugned order dated 27.01.2016 wherein he was discharged/removed from service
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> (ii) Quashing of the enquiry proceedings initiated against the appellant by way of memorandum dated 07.08.2015
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> (iii) Quashing of conditional order dated 05.05.2016 passed by Respondent No. 1 seeking to re-open enquiry
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> (iv) Reinstatement along with consequential benefits"
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> 16. By an Order dated 21.10.2019, the Rajasthan High Court dismissed the Writ Petition filed by the Appellant against the order dated 27.01.2016. While Dismissing the Petition, the High Court observed that:

> "During the pendency of the inquiry against the petitioner, Full Court Meeting was convened on 20.1.2016 and it was decided to discharge the petitioner despite the pendency of the inquiry against him on the basis of report of Higher Judiciary Committee and in this Committee one of the member was the Inquiry Judge. Petitioner had already completed two years of required probation period on 17.7.2015 and no extension order or confirmation order was passed. Hence, the order of discharge, though appeared to be simpliciter but had been passed on account of inquiry initiated against the petitioner.

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Thus, while granting bail to the accused, the petitioner took into consideration the fact that the accused was arrested on 28.12.2014 and the charge-sheet had been filed on 23.2.2015. However, prosecution sanction order of the accused had not been received and trial could not begin till the prosecution sanction order was received. A perusal of the bail order also reveals that it was argued by the counsel for the accused that the co-accused Alimuddin had been granted bail by this Court on 27.04.2015. .....

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The material question would be as to whether the petitioner was aware of the fact that the bail petition filed by the accused Kamlesh Kumar Jalia had been dismissed by the High Court. .....

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Thus, the fact that the bail petition by the accused had been dismissed by the High Court was in the notice of the petitioner when he had passed the order dated 27.04.2015 granting bail to the accused. It is noteworthy that challan had already been presented in the court when the bail petition filed by

the accused was dismissed by the High Court on 11.3.2015. At that stage also prosecution sanction order of the accused had not been received. Thus, there was no change in circumstance warranting interference by the petitioner while granting bail to the accused on second bail application after about 40 days of the dismissal of his bail petition by this court." The High Court further held that:

> "It is not material as to whether the prosecution had sought cancellation of bail granted to the accused or not. The complainant or the State may not have bothered to seek cancellation of bail granted to the accused. Although, there was no written complaint against the petitioner with regard to grant of bail to the accused but there must have been some oral complaint against the petitioner which resulted in seeking his explanation by the High Court with regard to grant of bail by him to the accused.
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> The High Court at the time of considering the case of the petitioner for conformation must have come to the conclusion that it was not interested to ascertain the truth of allegations levelled against the petitioner and opted to pass a simpliciter order of dispensing with the services of the petitioner. The Full Court had also taken into consideration the remarks of the Inspecting Judge as well as the Administrative Judge with regard to the period 2014-II. The High Court in its wisdom came to the conclusion that the services of the petitioner, who was on a probation, did not require to be confirmed as he was unlikely to prove to be a good judicial officer. The impugned order is a simpliciter order and cannot be termed as punitive. The issuance of charge-sheet against the petitioner was not the foundation of passing of the impugned order dated 27.1.2016. Rather, the impugned order had been passed by keeping in view the overall service record of the petitioner.
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> In the present case, the service record of the petitioner available with the Committee as well as the High Court was merely a motive to assess the service record of the petitioner with a view to decide whether he was to be confirmed in service. It has

been held by the Hon'ble Supreme Court in Director Aryabhatta Research Institute of Observational Science's case (supra) that even in a case where a regular departmental inquiry has been started and charge memo has been issued and reply has been received and inquiry officer has been appointed, and if at that time, inquiry is dropped and a simple notice of termination is passed, the same would not be punitive because the inquiry officer has not recorded evidence nor given any finding on the charges. In the present case also, though charges had been framed against the petitioner and Inquiry Judge had been nominated but the Inquiry Judge had not recorded any evidence nor had given any finding on charges framed against the petitioner and thus, the inquiry Judge had not reached to a logical conclusion. The High Court in its wisdom thought of dispensing with the services of the petitioner by passing a simpliciter order without proceeding with the inquiry. After carefully considering the facts and circumstances of the case, we are of the opinion that the judgements relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner."

17. Aggrieved by the abovementioned High Court Order dated 21.10.2019, this appeal has been filed by the appellant by way of Special Leave Petition.

18. Mr. P.S. Patwalia, learned Senior Counsel for the Appellant, has submitted that the impugned discharge order of the High Court was not based upon "unsatisfactory performance" of the appellant, as is the requirement under Rule 45 and 46 of the RJS Rules, but rather the foundation of the said order lies in the enquiry initiated against the appellant vide memorandum dated 07.08.2015. Therefore, it has been submitted, that the order of discharge/termination is punitive in nature and is in violation of Article 311(2) of the Constitution of India.

To substantiate the above submission, the learned Senior Counsel highlighted the comments and observations from the Annual Confidential Reports (for short "ACR") of the appellant.

19. The learned Senior Counsel has also contended that there was no valid complaint against the appellant and that in context of the three complaints that have been relied upon by the respondent, it is crucial to note that firstly, these three complaints were never communicated to the Appellant during his service tenure; secondly, that even after the first two complaints dated 07.02.2014 and 21.04.2014, the appellant was promoted to the next higher post as District Judge in Labour Court; and thirdly, that two of the three complaints relate to 2014 and were filed and closed prior to the meeting of the Higher Judicial Committee and therefore, could not have been the basis of the decision of the Higher Judicial Committee.

20. Mr. Patwalia, has further contented that there was no infirmity found in the appellant's record and the entire recommendation of the Higher Judicial Committee is based upon the passing of the bail order dated 27.04.2015. The learned counsel has also highlighted the fact that that the Enquiry Judge of the Disciplinary proceedings against the appellant was also part of the Higher Judicial Committee which had to provide recommendation regarding discharge/confirmation of judicial

officers. Furthermore, it has been urged that the High Court in the impugned order has failed to provide any reasoning for stating as to how the allegation of misconduct pertaining to the bail order was not the foundation of the order of termination.

21. Reliance was placed on the Constitution Bench judgement of this court in State of Bihar vs. Gopi Kishore Prasad [AIR 1960 SC 689] to argue that once an enquiry is initiated on charges of misconduct and if services are terminated without following the provisions of Article 311(2) of the Constitution, then the said termination is illegal. Additionally, it was argued that the reliance placed in the impugned order of the High Court on Director, Aryabhatta Research Institute of Observational Sciences vs Devendra Joshi [(2018) 15 SCC 73] is misconceived.

22. The learned Senior Counsel relied upon this court's judgement in Ishwar Chand Jain vs High Court of Punjab and Haryana [(1988) 3 SCC 370] to argue that the appellant was not given an opportunity to improve and that there was no intimation to him regarding his performance being unsatisfactory. It was contented that the said requirement has been further elaborated in Pradip Kumar vs Union of India [(2012) 13 SCC 182], wherein this Court reinstated the officer involved therein with consequential benefits because the discharge of the officer was based on complaints and the officer was not given an opportunity to improve.

23. It was also submitted that the appellant was the topper of his batch in Rajasthan Judicial Services Examination and has had an overall good record. Moreover, it was contented that the appellant further continued on the post of Special Judge, ACB, Bharatpur, even pursuant to the passing of the bail order and that neither any complaint was made against the said bail order, nor was it challenged before the High Court.

24. With respect to the facts pertaining to the bail order dated 27.04.2015, the learned Senior Counsel has urged that if the appellant had any illegal motive, he could have granted bail to the accused K.K. Jalia on 16.04.2015 itself when the prosecution sanction was not brought on record against the accused. However, the appellant listed the matter for 27.04.2015 so as to give an opportunity to obtain the prosecution sanction against the accused and a reply could be filed by the State. In spite of the opportunity granted for obtaining the sanction and filing the reply, the learned counsel contends that no reply was filed by the State.

25. Furthermore, it has been urged by the Senior Counsel that the contention of the respondent regarding self- contradictory orders being passed on 27.04.2015 in the main file and the bail matter is not tenable. It is contended that even if the said orders are considered to be contradictory, it only shows that the appellant had no malice or motive towards extraneous consideration, since if the appellant had already pre-decided that he would grant bail to the accused K.K. Jalia due to any extraneous consideration, then the appellant would never have passed a contradictory order in the first place.

26. The learned Senior Counsel for the appellant concluded his arguments by stating 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.

27. Per contra, Mr. Vijay Hansaria, learned Senior Counsel appearing for the Respondent has submitted that the issue which arises for consideration is "Whether the action of non-confirmation of the Appellant is in accordance with Rules 45 and 46 of the Rajasthan Judicial Service Rules, 2010?"

28. It has been contented by the learned Senior Counsel that a perusal of the recommendation of the Higher Judicial Committee of 5 Judges, the decision of the Full Court and the Order of Discharge, would demonstrate that it was a discharge simpliciter, as it was neither based on any single act of impropriety nor an individual act formed the foundation of the said discharge. Hence, it is contented, that the discharge order in the present case is incapable of being interpreted as attaching any stigma to the appellant, especially in light of the fact that the appellant is not visited with any civil consequences.

29. The learned Senior Counsel for the Respondent has urged that, while it is true that disciplinary proceedings were initiated against the appellant in relation to the bail order dated 27.04.2015, the same were closed on 05.05.2016 by reserving the right to reopen the same. Meanwhile, only a discharge simpliciter order was passed. It has been submitted that this Court has previously held that even where a departmental enquiry was started, a simple termination order could be passed by the employer as a matter of right and it would not amount to a punitive termination. It was further contented that this Court has held that an employer is entitled to say that he would not continue an employee against whom allegations are made, the truth of which the employer is not interested to ascertain.

30. Reliance was placed on this court's judgement in Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. [(1999) 2 SCC 21], wherein it has been held that:

> "Even in a case where a regular departmental inquiry is started, a charge-memo issued, reply obtained, and an enquiry Officer is appointed -
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> - if at that point of time, the inquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry Officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur's case [AIR 1968 SC 1089] and in Benjamin's case (1967 1 LLJ 718 (SC)]. In the latter case, the departmental inquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J.

in Gujarat Steel Tubes case [(1980) 2 SCC 593], the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the

employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive." (emphasis supplied)

31. The learned Senior Counsel further relied upon this court's judgement in Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences [(2002) 1 SCC 520] wherein it was held that:

> "One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld." (emphasis supplied)

32. It was also contented by the learned Senior Counsel that reliance placed by the appellant on the decision of this court in Pradip Kumar (supra) is misplaced, since this court had, in that case, found that the discharge therein was violative of the rules framed under the applicable statute. Moreover, it was urged that, in that case, there was no material placed before the Court regarding the fact that the officer was otherwise unsuitable to be continued.

33. Mr. Hansaria has contended that, in light of the above judicial pronouncements, the approach in judicial review proceedings is not whether the truth about the allegations has been conclusively established, but whether the employer had the right to say that a probationer against whom allegations are made, ought to be discharged simpliciter. It was further submitted that without going into the conclusive analysis relating to the grant of the bail order dated 27.04.2015, the four factors that ought to have been considered unpalatable for an employer, especially from a judicial officer under probation are hereinbelow mentioned:

> a. Two conflicting orders were passed on 27.04.2015, one in the main matter and other in the bail application. While the custody of accused was extended and time was granted to the State to produce prosecution sanction in the main matter, bail was granted to him on the same date on the ground that the sanction order has not been produced.

b. The officer on probation considered it irrelevant or immaterial while granting the bail order to even peruse the two orders passed by the High Court. Firstly, the order granting bail to Mr. Alimuddin on the same day, but chose to incorporate it as a reason for granting bail to Mr. K.K. Jalia. Secondly, the order of rejection of the bail by the High Court on 11.03.2015, especially when such rejection was after the filing of the chargesheet. Moreover, the second bail application was filed within 7 days of the rejection by the High Court and there were no new intervening circumstances.

c. The bail application was adjourned by the appellant at the request of the Counsel of the accused on at least 4 occasions i.e. 17.03.2015, 20.03.2015, 31.03.2015 and 13.04.2015. However, on 27.04.2015, the appellant did not wait for a single day for sanction of prosecution by the State Government. This is clearly contrary to the submission made that the prosecution repeatedly took time to respond to the bail application.

d. There appears to be a conflicting stand of the officer, in his explanation dated 12.05.2015 and his reply dated 07.11.2015, with respect to the knowledge of the High Court order dated 11.03.2015 in which the court rejected the bail application of K.K. Jalia. The undisputed fact remains that the rejection of the bail by the High Court was mentioned in the first page of the second bail application and was not noticed by the appellant in the bail order passed by him on 27.04.2015.

34. Mr. Hansaria thus contended that the above four factors, especially the failure to peruse the orders passed by the High Court, could be considered as relevant factors while considering whether the appellant had failed to give satisfactory performance expected of an officer under probation under Rule 46(1) of the RJS Rules, 2010.

35. Reliance has been placed upon this court's judgement dated 18.03.2020 in Rajasthan High Court vs. Ved Priya (Civil Appeal No. 8933-34/2017) to urge that "merely because Respondent No. 1's ACRs were consistently marked "Good", it cannot be a ground to bestow him with a right to continue in service.".

36. It was further contented that the reliance placed by the appellant on this Court's order in the case of Sadhna Chaudhary vs State of U.P. [(2020) 11 SCC 760] is misplaced because that was a case of removal of a judicial officer after conducting a disciplinary inquiry and was not a case relating to a probationer. Mr. Hansaria submitted that the action of the appellant ought not to be interpreted as a bona fide mistake but should be seriously considered as negligence.

37. The learned Senior Counsel contented that in addition to the above submissions, it is also relevant to note that during the probation period of the Appellant, the High Court had received three Complaints which pertained to serious allegations of working, behaviour and integrity of the appellant, and even if these complaints were directed to be closed by the Chief Justice of the High Court, the same were still relevant.

38. Mr. Hansaria concluded his submissions by stating that the appellant has not been able to establish any gross impropriety or procedural irregularity of an extent that warrants interference by this Court.

39. For ready reference, the relevant provisions of the Constitution of India and the concerned Rules are extracted below:

> Article 311(2) of the Constitution of India "311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State (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 it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

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." Rule 45 of the Rajasthan Judicial Service Rules, 2010 "45. Confirmation.- (1) A probationer appointed to the service in the cadre of Civil Judge shall be confirmed in his appointment by the Court at the end of his initial or extended period of probation, if the Court is satisfied that he is fit for confirmation.

(2) A person appointed to the service in the cadre of Senior Civil Judge by promotion shall be substantively appointed by the Court in the cadre as and when permanent vacancies occur.

(3) A probationer appointed to the service in the cadre of District Judge by direct recruitment shall be confirmed in his appointment by the Court at the end of his initial or extended period of probation, if the Court is satisfied that he is fit for confirmation.

(4) A person appointed to the service in the cadre of District Judge by promotion on the basis of merit-cum-seniority or by Limited Competitive Examination shall be confirmed in his appointment by the Court on availability of permanent vacancies in the cadre." Rule 46 of the Rajasthan Judicial Service Rules, 2010 "46. Unsatisfactory progress during probation and extension of probation period.- (1) If it appears to the Court, at any time, during or at the end of the period of probation that a member of the service has not made sufficient use of the opportunities made available or that he has failed to give satisfactory performance, the Appointing Authority may, on recommendations of the Court, discharge him from service:

Provided that the Court may, in special cases, for reasons to be recorded in writing, extend the period of probation of any member of the service for a specified period not

exceeding one year.

(2) An order sanctioning such extension of probation shall specify the exact date up to which the extension is granted and further specify as to whether the extended period will be counted for the purpose of increment. (3) If the period of probation is extended on account of failure to give satisfactory service, such extension shall not count for increments, unless the authority granting the extension directs otherwise.

(4) If a probationer is discharged from service during or at the end of the initial or extended period of probation under sub-rule (1), he shall not be entitled to any claim whatsoever." Rule 3 of the Rajasthan Civil Services (Conduct) Rules, "3. General. – (1) Every Government servant shall at all times–

(i) maintain absolute integrity; and

(ii) maintain devotion to duty and dignity of office.

(2) (i) Every Government Servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority;

(ii) No Government servant shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

Explanation– Nothing in clause (ii) of sub–rule (2) shall be constituted as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities." Rule 4 of the Rajasthan Civil Services (Conduct) Rules, "4. Improper and unbecoming conduct. – Any Government servant who –

(i) is convicted of an offence involving moral turpitude whether in the course of the discharge of his duties or not;

(ii) behaves in public in a disorderly manner unbecoming of his position as a Government servant; or

(iii) is proved to have sent an anonymous or Pseudonymous petition to any person in authority;

(iv) leads an immoral life;

(v) disobeys lawful order or instructions of superior officer or defies the superior officer;

(vi) without sufficient and reasonable cause, neglects or refuses to maintain his/her spouse, parent, minor or disabled child who is unable to maintain himself/herself or, does not look after any of them in a responsible manner;

(vii) willfully tempers with the meter or any other equipment or the power/water line with a view to causing financial loss to any of the Departments/Companies providing public utilities like power and water;

–shall be liable to disciplinary action."

40. We have heard learned Senior Counsel for both the parties at length and have carefully perused the record.

41. The submission of the respondent that the discharge of the appellant was a discharge simpliciter and not violative of Article 311(2) of the Constitution of India is not worthy of acceptance. The High Court has erred in holding that the discharge order of the appellant was a simpliciter order and not punitive in nature. In spite of observing that the order of discharge had been passed on account of inquiry initiated against the appellant, the High Court failed to provide any reasoning as to how the allegation of misconduct pertaining to the bail order was not the foundation of the order of discharge.

42. At this juncture, it is relevant to turn to the Reports and ACRs of the appellant and the material placed before the Higher Judicial Committee to scrutinize whether the discharge was based upon "unsatisfactory performance" of the appellant, or whether it was based on the enquiry initiated against the appellant.

43. The material placed before the Higher Judicial Committee, which recommended the discharge of the appellant, clearly shows that no adverse remarks were made against the appellant except in relation to the grant of bail on 27.04.2015. The said material consisted of Bi-Annual Reports/Special Reports and the ACRs of the appellant. The Bi-annual/Special Reports for the period of July 2013-January 2014, January 2014-July 2014 and July 2014-January 2015, which were placed before the committee makes it clear that the work and conduct of the appellant was "good" and his integrity was never doubted. Furthermore, the ACR of the appellant for the year 2013 contains the comment "very good" and mentions that the integrity of the appellant was never in doubt. Similarly, the ACR for the year 2014(Part-I) records the comment "very good" for the appellant and also provides him with an integrity certificate.

44. The ACR for the year 2014(Part-II) contains the remark "good" for the appellant. During this period, the appellant was working as the Presiding Officer, Labour cum Industrial Tribunal. In this context, it is pertinent to note that the comment by the Inspecting Judge regarding the requirement to "improve judicial work" is based upon the enquiry initiated against the appellant vide chargesheet

issued on 07.08.2015, which related to his functioning as Special Judge, ACD cases Court, Bharatpur and not for the period of 2014. Additionally, the aforesaid comment by the Inspecting Judge is contrary to the comments made by him in the Special Report for the contemporaneous period which clearly records his conduct, performance and work throughout the period to be "good". Lastly, no adverse remark is made even by the Administrative Judge, who only added an advisory remark for the officer to concentrate on judicial work and improve the quality. Notably, no remark was made against the integrity of the appellant.

45. The ACR for the year 2015 has been heavily relied upon by the learned counsel of the Respondent to submit that the Inspecting Judge of the High Court remarked that the integrity of the appellant was "not free from doubt" and the integrity certificate of the appellant was withheld by the Inspecting Judge and that the Administrative judge had recorded the remark in the 2015 ACR that "integrity of the officer is doubtful. In my overall assessment, I rate the officer average".

46. In our opinion, to argue that the comments and observations in this 2015 ACR were the basis on which the appellant was discharged, is misplaced and erroneous. Firstly, a bare perusal of the ACR reveals that the top of this ACR itself carried a comment that read "Discharged from Service". Secondly, the Higher Judicial Committee had, even prior to the submission of the 2015 ACR, already recommended the discharge of the appellant. Notably, the ACR for the year 2015 was filled and submitted by the appellant on 20.01.2016, while the Higher Judicial Committee had already recommended the discharge of the appellant on 24.11.2015 itself and the impugned order of discharge was passed on 27.01.2016, admittedly, in pursuance of a Full Court meeting on 20.01.2016. Additionally, although the learned counsel for the respondent had submitted before us that the Integrity Certificate of the Appellant was withheld by the Inspecting Judge, he failed to highlight that the reason for the certificate being withheld was that the appellant had been served with a chargesheet and not because of the appellant's service record.

47. Moreover, it is not disputed that the ACRs were not communicated to him within reasonable time. In this context, a 3-Judge Bench of this Court in Sukhdev Singh vs Union of India [(2013) 9 SCC 566] has held that:

> "In our opinion, the view taken in Dev Dutt [Dev Dutt vs Union of India] that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR-poor, fair, average, good or very good-must be communicated to him/her within a reasonable period." (emphasis supplied) Hence, in light of the above, the

non-communication of the ACRs to the appellant in the present case is arbitrary and as has been held by this court in Maneka Gandhi vs Union of India [(1978) 1 SCC 248], such arbitrariness violated Article 14 of the Constitution of India.

48. Further, a Constitution Bench of this Court in Gopi Kishore Prasad (supra) has held that:

"The main question for determination in this appeal by special leave is whether the provisions of Article 311(2) of the Constitution are applicable to a probationer in the Bihar Subordinate Civil Service, who has been discharged as unsuitable on grounds of notoriety for corruption and unsatisfactory work in the discharge of his public duties. .....

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It would thus appear that, in the instant case, though the respondent was only a probationer, he was discharged from service really because the Government had, on enquiry, come to the conclusion, rightly or wrongly, that he was unsuitable for the post he held on probation. This was clearly by way of punishment and, therefore, he was entitled to the protection of Article 311(2) of the Constitution. It was argued on behalf of the appellant that the respondent, being a mere probationer, could be discharged without any enquiry into his conduct being made and his discharge could not mean any punishment to him, because he had no right to a post. It is true that, if the Government came to the conclusion that the respondent was not a fit and proper person to hold a post in the public service of the State, it could discharge him without holding any enquiry into his alleged misconduct. If the Government proceeded against him in that direct way, without casting any aspersions on his honesty or competence, his discharge would not, in law, have the effect of a removal from service by way of punishment and he would, therefore, have no grievance to ventilate in any court. Instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding him as a dishonest and an incompetent officer. He had the right, in those circumstances, to insist, upon the protection of Article 311(2) of the Constitution. That protection not having been given to him, he had the right to seek his redress in court. It must, therefore, be held that the respondent had been wrongly deprived of the protection afforded by Article 311(2) of the Constitution. His removal from the service, therefore, was not in accordance with the requirements of the Constitution." (emphasis supplied) This Court also further observed that:

"In our opinion, the controversy raised in this case is completely covered by the decision of the Constitution Bench of this Court in Dhingra's case, (1958) 1 LLJ 544 SC. The main question for decision in that case was whether the appellant Dhingra had been reduced in rank by way of punishment as a result of the order of the General Manager of the Railway. Though, in that case, this Court decided that the order impugned had not that effect, this Court went elaborately into all the

implications of the service conditions, with particular reference to the Railway Service Rules and the constitutional provisions contained in Section 240 of the Government of India Act, 1935 and Article 311 of the Constitution. The elaborate discussion in that judgment has reference to all stages of employment in the public services including temporary posts, probationers, as also confirmed officers. In so far as those observations have a bearing on the termination of service or discharge of a probationary public servant, they may be summarized as follows :

1 . Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated, without taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant, or removing him from service.

2 . The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment.

3. But, if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Article 311(2) of the Constitution.

4. In the last mentioned case, if the probationer is discharged on any one of those grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to a removal from service within the meaning of Article 311(2) of the Constitution and will, therefore, be liable to be struck down.

5. But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some such cause." (emphasis supplied)

49. A 7-Judge Bench of this Court in Shamsher Singh vs State of Punjab [(1974) 2 SCC 831] has held that:

"The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time

of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection.

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The fact of holding an enquiry is not always conclusive. What is decisive is whether the order is really by way of punishment (see State of Orissa v. Ram Narayan Das [AIR 1961 SC 177 :

(1961) 1 SCR 606 : (1961) 1 SCJ 209]). If there is an enquiry the facts and circumstances of the case will be looked into in order to find out whether the order is one of dismissal in substance (see Madan Gopal v. State of Punjab [AIR 1963 SC 531 : (1963) 3 SCR 716 : (1963) 2 SCJ 185]). In R.C. Lacy v. State of Bihar [Civil Appeal No. 590 of 1962, decided on October 23, 1963] it was held that an order of reversion passed following an enquiry into the conduct of the probationer in the circumstances of that case was in the nature of preliminary inquiry to enable the Government to decide whether disciplinary action should be taken. A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2) .....

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If the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment then a probationer is entitled to attract Article 311. The substance of the order and not the form would be decisive (see K.H. Phadnis v. State of Maharashtra [(1971) 1 SCC 790 : 1971 Supp SCR 118]).

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In the facts and circumstances of this case it is clear that the order of termination of the appellant Shamsher Singh was, one of punishment. The authorities were to find out the suitability of the appellant. They however concerned themselves with matters which were really trifle. The appellant rightly corrected the records in the case of Prem Sagar. The appellant did so with his own hand. The order of termination is in infraction of Rule 9. The order of termination is therefore set aside." (emphasis supplied)

50. The present case of the appellant is squarely covered by the abovementioned Constitution Bench judgements of this Court. Since the Government had, on enquiry, come to the conclusion, rightly or wrongly, that the appellant was unsuitable for the post he held on probation, this was clearly by way of punishment and, hence, the appellant would be entitled to the protection of Article 311(2) of the Constitution. Moreover, in the facts and circumstances of the present case, the substance of the termination order reveals that the discharge was by way of punishment. Hence, the question that whether the action of non- confirmation of the appellant is in accordance with Rules 45 and 46 of the RJS Rules is answered in the Negative.

51. We also find merit in the submission of the appellant that the adverse comments in the ACR for the year 2015 could not have been the basis on which the appellant was discharged from service. Additionally, it is pertinent to note that the learned counsel for the Respondent has himself submitted that the ACR for the year 2015 was recorded after the discharge order was passed and that the comments of the Administrative Judge were made on 08.06.2016 and are based upon the enquiry and the subsequent discharge of the appellant. Moreover, upon the perusal of the ACR for the year 2015, it is revealed that despite the comments recorded, the overall performance of the Appellant was rated as "good" by the Inspecting Judge himself. Part-II of the said ARC also contains the comment "good" on the appellant's capacity of handling files systematically and the comment "Yes" on whether the appellant is fair and impartial in dealing with the public and the bar. Therefore, we are of the opinion that the submissions of the learned counsel of the appellant holds merit that there was no material on record to showcase unsatisfactory performance of the appellant in terms of requirement under Rule 45 and 46 of the RJS Rules, 2010.

52. There appears to be no infirmity in the appellant's record and the entire recommendation of discharge by the Higher Judicial Committee is based upon the passing of the bail order dated 27.04.2015. Moreover, it is also pertinent to note that the Enquiry Judge of the Disciplinary Proceeding against the appellant was also a part of the Higher Judicial Committee which had to provide recommendations regarding discharge/confirmation of judicial officers.

53. Importantly, the appellant was never granted an opportunity to improve and there was no intimation to him about his performance being unsatisfactory. This requirement of affording an opportunity of improvement has been stressed upon by this Court on multiple occasions and has also been envisaged under Rule 46(1) of the RJS Rules, 2010. Notably, this Court in Ishwar Chand Jain (supra) has held that:

".....It is thus clear that so far as annual entry on the appellant's confidential roll is concerned there was no material against him which could show that the appellant's work and conduct was unsatisfactory. The facts and circumstances discussed earlier clearly show that the appellant's services were terminated merely on the basis of the report made by the vigilance judge which we have discussed in detail earlier. The note appended to the agenda of the meeting referred only to the inquiry report and it did not refer to any other matter. The Vigilance Judge failed to express any positive opinion against the appellant instead he observed that the complaints required further investigation. If the High Court wanted to take action against the appellant on the basis of the complaints which were the subject of enquiry by the vigilance judge, it should have initiated disciplinary proceedings against the appellant, then the appellant could get opportunity to prove his innocence. We have already discussed in detail that the facts stated in the complaints and the report submitted by the vigilance judge did not show any defect in appellant's work as a judicial officer. While considering complaints of irregularities against a judicial officer on probation the High Court should have kept in mind that the incidents which were subject matter of enquiry related to the very first year of appellant's service. Every judicial officer is likely to commit mistake of some kind or the other in passing orders in the initial stage of his service which a mature judicial officer would not do. However, if the orders are passed without there being any corrupt motive, the same should be over-looked by the High Court and proper guidance should be provided to him. If after warning and guidance the officer on probation is not able to improve, his services should be terminated.

14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for Rule of law. If judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. Having regard to facts and circumstances of the instant case we have no doubt in our mind that the resolution passed by the Bar Association against the appellant was wholly unjustified and the complaints made by Sh. Mehalawat and others were motivated which did not deserve any credit. Even the vigilance judge after holding enquiry did not record any finding that the appellant was guilty of any corrupt motive or that he had not acted judicially. All that was said against him was that he had acted improperly in granting adjournments." (emphasis supplied)

54. We are in agreement with the ratio laid down in the case of Ishwar Chand Jain (supra) that every judicial officer is likely to commit mistake of some kind or the other in passing orders in the initial stage of his service, which a mature judicial officer would not do. However, if the orders are passed without there being any corrupt motive, the same should be over-looked by the High Court and proper guidance should be provided to him. In the present case, admittedly there was no intimation to appellant about his performance being unsatisfactory and hence he was deprived of his opportunity to improve as a judicial officer.

55. In context of the three complaints filed against the appellant, it is important to note that the same were never communicated to the petitioner during his service tenure and that the complaints had been subsequently closed. Moreover, two out of the three complaints were closed prior to the meeting of the Higher Judicial Committee and therefore, could not have been the basis of the decision of the Committee. Additionally, in so far as the complaint dated 20.10.2015 (bearing No. R/V/JP/PIN/118/2015) is concerned, it is neither supported by any affidavit nor has any address been provided in it and importantly, was also closed by the respondent prior to the appellant's discharge order. In this context, it is pertinent to refer to the Standing Order No. 03./S.O./2015 dated 10.06.2015 which directed that:

> "The complaint making allegations against members of the subordinate judiciary in the states should not be entertained and no action should be taken thereon, unless it is accompanied by a duly sworn affidavit and verifiable material to substantiate the allegations made therein .....
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> The entry of the complaint in the pre-institution register for inward number will not be treated as pendency of Vigilance matter against the Judicial Officer and will not be taken into consideration against the Judicial Officer in any service matter including transfer, promotion and for compulsory retirement." (emphasis supplied) In the present case, the record clearly showcases that no verifiable complaint was filed against the appellant that could form the basis of the disciplinary proceeding against him.
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> 56. With respect to the grant of bail order dated 27.04.2015, the record reveals that when the bail application of the accused K.K. Jalia was listed before the Court of the appellant, no reply was filed by the State and the prosecution, despite being given the opportunity to file their reply, neither argued nor brought on record the fact about the bail of the accused being denied by the High Court. Additionally, it is evident from the record that the Investigating Officer produced two letters dated 24.04.2015 and 27.04.2015 by the competent authority that clearly stated that the file was submitted to the State Government for decision regarding sanction. No time was specified regarding when the decision was likely to be taken. Letter dated 27.04.2015

filed by the Investigating Officer clearly stated that the meeting was held with competent authority on 23.03.2015 and that the file was sent to the State Government for their decision. Therefore, it is evident that the competent authority could not decide the matter and had sent it to the State Government with no timeline in sight. Moreover, the counsel of the accused informed the appellant that the co-accused Alimuddin and Irfan had already been granted bail by the High Court and this was a relevant consideration to appellant's mind. The fact of Alimuddin being granted bail was even more relevant for the appellant because he was aware of Alimuddin's role in the case and also the fact that despite prosecution sanction having been granted against Alimuddin, he was granted bail by the High Court.

57. In light of the above, the appellant could not be said to be at fault in granting bail to K.K. Jalia since the bail order dated 27.04.2015 was based on the non-grant of prosecution sanction and no progress in relation to the same being brought on record. The appellant even recorded that the State should act swiftly in relation to the grant of prosecution sanctions in such matters. Also, it is settled law that the appellant, under section 439 Cr.P.C., could have granted bail to the accused even subsequent to the rejection of the bail by the High Court.

58. Additionally, we do not find merit in the submission of the learned counsel of the respondent that the appellant did not consider it relevant to look into the order of rejection of the bail by the High Court on 11.03.2015. From the record it is clear that despite being granted an opportunity to file their reply, the prosecution itself failed to either argue before the appellant or bring the High Court order on record. Moreover, even the contention of the Senior Counsel for the respondent that the appellant had given contradictory orders does not hold water since the main matter was taken prior in the day when the standard order extending remand was passed in light of there being no sanction since cognizance could not be taken. The said order was necessary, since at that time, the bail application had not been heard and the possibility was that the bail may or may not have been heard on that day, or may even have been denied. Even otherwise, if the said orders are considered to be contradictory, it only shows, as has been rightly argued by the learned counsel of the appellant, that the appellant was not motivated by extraneous considerations and had not already decided that he was going to grant bail to the accused, since in that eventuality, he would never have passed such contradictory orders in the first place.

59. We do not find merit in the contention of the learned counsel of the respondent that there appears to be a conflicting stand of the appellant, with respect to the knowledge of the High Court Order dated 11.03.2015 in his explanation dated 12.05.2015 and his reply dated 07.11.2015. Notably, the appellant in his explanation dated 12.05.2015 stated that the appellant came to know of the order dated 11.03.2015 only while dictating the bail order dated 27.04.2015 and whereas in the appellant's reply dated 07.11.2015, the reference is with respect to "date of filing" of the bail application before the High Court not being given in the memo of second bail

application filed before the appellant.

The reply dated 07.11.2015 further specifically stated that the "contents of order" dated 11.03.2015 were not in the appellant's knowledge. Therefore, there appears to be no contradiction with respect to the knowledge of the High Court order dated 11.03.2015 in the appellant's explanation dated 12.05.2015 and his reply dated 07.11.2015. In essence, the appellant honestly admitted in his comment that he had come across the reference of the dismissal of the first bail application whilst dictating the bail order but exercised his discretion in granting bail to the accused given the uncertainty and delay in prosecution sanction and the intervening grant of bail to the two other co-accused by the High Court, even when the prosecution sanction had been granted for one of the co-accused.

60. The learned counsel for the Respondent relied upon the judgement of this Court in the case of Rajasthan High Court vs. Ved Priya (supra) to content that merely because an officer's ACRs were consistently marked "Good", it cannot be a ground to bestow him with a right to continue in service. However, we hold that this reliance placed by the respondent is misplaced and erroneous. Firstly, what was considered in the said case were multiple acts of granting bail in matters under the NDPS Act without having jurisdiction to do the same. It was not the act of grant of bail in a single matter like in the present case. Additionally, unlike in the present case, the officer in that case had passed an order without proper jurisdiction. Secondly, unlike in the present case, no enquiry was initiated or pending against the officer in that case. In fact, this Court in aforesaid itself has held that:

> "True it is that the form of an order is not crucial to determine whether it is simplicitor or punitive in nature. An order of termination of service though innocuously worded may, in the facts and circumstances of a peculiar case, also be aimed at punishing the official on probation and in that case it would undoubtedly be an infraction of Article 311 of the Constitution. The Court in the process of judicial review of such order can always lift the veil to find out as to whether or not the order was meant to visit the probationer with penal consequences. .....
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> If the genesis of the order of termination of service lies in a specific act of misconduct, regardless of over all satisfactory performance of duties during the probation period, the Court will be well within its reach to unmask the hidden cause and hold that the simplicitor order of termination, in fact, intends to punish the probationer without establishing the charge (s) by way of an enquiry. However, when the employer does not pick-up a specific instance and forms his opinion on the basis of overall performance during the period of probation, the theory of action being punitive in nature, will not be attracted." (emphasis supplied) Hence the reliance placed by the

> learned counsel of the respondent on Rajasthan High Court vs. Ved Priya (supra) is misplaced.

61. Importantly, the order of grant of bail dated 27.04.2015 was never challenged by the State before the High Court. Moreover, no complaint was ever filed against the appellant with respect to the grant of bail. Hence, reliance placed by the learned counsel of the Respondent on Bimla Devi vs State of Bihar [(1994) 2 SCC 8] is also misplaced and erroneous.

62. 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.

63. A 3-Judge bench of this court in Ramesh Chander Singh vs High Court of Allahabad [(2007) 4 SCC 247] has specifically held that:

> "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 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. .....
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> 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.
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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.

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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 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.

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> ..... 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."

64. 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.

65. This court in P.C. Joshi vs State of U.P. [(2001) 6 SCC 491] 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 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 [(1993) 2 SCC 56 : 1993 SCC (L&S) 325 : (1993) 24 ATC 1] and A.N. Saxena case [(1992) 3 SCC 124 : 1992 SCC (L&S) 861 : (1992) 21 ATC 670] 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."

66. We concur with the view of this Court in the aforesaid case that merely because a wrong order has been passed by the appellant or the action taken by him could have been different, this does not warrant initiation of disciplinary proceedings against the judicial officer.

67. This court in Krishna Prasad Verma vs State of Bihar [(2019) 10 SCC 640], while setting aside the High Court's order, quashed the charges against the officer therein and granted him consequential benefits while holding that:

> "No doubt, there has to be zero tolerance for corruption and if there are allegations of corruption, misconduct or of acts unbecoming of a judicial officer, these must be dealt with strictly. However, if wrong orders are passed, that should not lead to disciplinary actions unless there is evidence that the wrong orders have been passed for extraneous reasons and not because of the reasons on the file. .....
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> .... The main ground to hold the appellant guilty of the first charge is that the appellant did not take notice of the orders of the High Court whereby the High Court had rejected the bail application of one of the accused vide order dated 26-11-2001 [Shivnath Rai v. State of Bihar, Criminal Misc. No. 30563 of 2001, order dated 26-11-2001 (Pat)] . It would be pertinent to mention that the High Court itself observed that after framing of charges, if the non-official witnesses are not examined, the prayer for bail could be removed, but after moving the lower court first. The officer may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct. It would be pertinent to mention that the enquiry officer has not found that there was any extraneous reason for granting bail. The enquiry officer virtually sat as a court of appeal picking holes in the order granting bail.
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> We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the judicial officer concerned.

> Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion, etc., and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind, etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect." (emphasis supplied)

68. Furthermore, this Court has recently held in Sadhna Chaudhary (supra) that:

> "20. We are also not oblivious to the fact that mere suspicion cannot constitute 'misconduct'. Any 'probability' of misconduct needs to be supported with oral or documentary material, even though the standard of proof would obviously not be at par with that in a criminal trial. While applying these yardsticks, the High Court is expected to consider the existence of differing standards and approaches amongst different judges. There are innumerable instances of judicial officers who are liberal in granting bail, awarding compensation under MACT or for acquired land, backwages to workmen or mandatory compensation in other cases of tortious liabilities. Such relief-oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer.
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> 21. Furthermore, one cannot overlook the reality of ours being a country wherein countless complainants are readily available without hesitation to tarnish the image of the judiciary, often for more pennies or even cheap momentary popularity. Sometimes a few disgruntled members of the Bar also join hands with them, and officers of the subordinate judiciary are usually the easiest target. It is, therefore, the duty of High Courts to extend their protective umbrella and ensure that upright and straightforward judicial officers are not subjected to unmerited onslaught.

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24. However, the facts of the present case are distinct. This court, in fact, entered into the merits of one of the allegedly erroneous orders. Not only was the judgement affirmed, but rather the compensation was further enhanced. It hence can no longer be stated that the appellant's order was wrong in conclusion. This fact is significant as it establishes that the increase in compensation by the appellant was not abhorrent.

25. Had the charge been specific that the decision-making process was effectuated by extraneous considerations, then the correctness of the appellant's conclusions probably would not have mattered as much. However, a perusal of the charges extracted above makes it evident that the

exclusive cause of inquiry, inference of dishonesty as well as imposition of penalty was only on the basis of the conclusion of enhancement of compensation. Given how the challenge to one of those two orders had been turned down at the High Court stage, and the other was both affirmed and furthered in principle by this court, the very foundation of the charges no longer survives.

26. We can find no fault in the proposition that the end result of adjudication does not matter, and only whether the delinquent officer had taken illegal gratification (monetary or otherwise) or had been swayed by extraneous considerations while conducting the process is of relevance. Indeed, many-a-times it is possible that a judicial officer can indulge in conduct unbecoming of his office whilst at the same time giving an order, the result of which is legally sound. Such unbecoming conduct can either be in the form of a judge taking a case out of turn, delaying hearings through adjournments, seeking bribes to give parties their legal dues etc. None of these necessarily need to affect the outcome. However, importantly in the present case, a necessarily need to affect the outcome. However, importantly in the present case, a perusal of the chargesheet shows that no such allegation of the process having been vitiated has been made against the appellant.

27. There is no explicit mention of any extraneous consideration being actually received or of unbecoming conduct on the part of the appellant. Instead, the very basis of the finding of 'misbehaviour' is the end result itself, which as per the High Court was so shocking that it gave rise to a natural suspicion as to the integrity and honesty of the appellant. Although this might be right in a vacuum, however, given how the end result itself has been untouched by superior courts and instead in one of the two cases, the compensation only increased, no such inference can be made. Thus, the entire case against the appellant collapses like a house of cards." Conclusion

28. In light of the above discussion, the appeal is allowed. The judgment of the High Court is set aside and the writ petition filed by the appellant is allowed. The order of dismissal dated 17-1-2006 passed by Respondent 1 is set aside, the appellant's prayers for reinstatement with consequential benefits including retiral benefits, is accepted. No order as to costs. (emphasis supplied)

69. In light of the above judicial pronouncements, we hold that the appellant may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct. Moreover, the enquiry officer virtually sat as a court of appeal picking holes in the order granting bail, even when he could not find any extraneous reason for the grant of the bail order.

Notably, in the present case, there was not a string of continuous illegal orders that have been alleged to be passed for extraneous considerations. The present case revolves only around a single bail order, and that too was passed with competent jurisdiction. As has been rightly held by this Court in Sadhna Chaudhary (supra), mere suspicion cannot constitute "misconduct". Any 'probability' of misconduct needs to be supported with oral or documentary material, and this requirement has not been fulfilled in the present case. These observations assume importance in light of the specific fact that there was no allegation of illegal gratification against the present appellant. As has been rightly held by this Court, such relief-oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer.

70. Additionally, the High Court in the impugned order has erroneously stated that there must have been some oral complaint which resulted in the explanation being sought by the Respondent. This, it is held, was based on conjectures and is in stark contravention to the proposition laid down in the above referred judgements, especially given the fact that the High Court had itself recorded that there was no written complaint against the appellant. Lastly, reliance placed by the High Court in the impugned order on Director Aryabhatta research Institute of Observational Sciences (supra) is misconceived as the facts of the said case are distinguishable on facts since in the said case, the enquiry was only a preliminary enquiry prior to the initiation of a formal inquiry and furthermore, there were many letters of the management regarding unsatisfactory performance, of which the delinquent officer was intimated in advance.

71. To conclude, we are of the firm view that in the present case there was no material to showcase unsatisfactory performance of the appellant in terms of requirement under Rule 45 and 46 of the RJS Rules, 2010. Moreover, the appellant's discharge was not simpliciter, as claimed by the respondent. The non-communication of the ACRs to the appellant has been proved to be arbitrary and since the respondent choose to hold an enquiry into appellant's alleged misconduct, the termination of his service is by way of punishment because it puts a stigma on his competence and thus affects his future career. In such a case, the appellant would be entitled to the protection of Article 311(2) of the Constitution. Moreover, the adverse comments in the ACR for the year 2015 could not have been the basis on which the appellant was discharged from service. The appellant was never granted an opportunity to improve and there was no intimation to him about his performance being unsatisfactory. Importantly, no verifiable complaint was filed against the appellant that could form the basis of the disciplinary proceeding against him. After perusing all the relevant record, we hold that the appellant was competent to pass the bail order dated 27.04.2015 and that the Respondent has not been able to prove the presence of any extraneous consideration or ulterior motive on the part of the appellant. It should also be highlighted here that neither the bail order dated 27.04.2015 was ever challenged by the State before any Court of law, nor was any complaint received against the appellant regarding the said bail order. This is not the case where there are strong grounds to suspect the appellant's bona fides. Even if appellant's act is considered to be negligent, it cannot be treated as "misconduct".

72. Accordingly, the Appeal is Allowed and the impugned order of the High Court dated 21.10.2019 is set aside and the discharge order dated 27.01.2016 is quashed. Keeping in view that the appellant has not worked as judicial officer after he was discharged, we direct that while the appellant be reinstated with all consequential benefits including continuity of service and seniority, but will be entitled to be paid only 50% backwages, which may be paid within a period of four months from today.

.....J. [UDAY UMESH LALIT] .....J. [VINEET SARAN] New Delhi March 15, 2022.