Registrar General,Patna High Court vs Pandey Gajendra Prasad & Ors on 11 May, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2319, 2012 (6) SCC 357, 2012 AIR SCW 3383, 2012 LAB. I. C. 2663, (2013) 5 KANT LJ 223, (2012) 3 ALLMR 984 (SC), (2012) 1 CLR 1203 (SC), (2012) 06 ADJ 16 (SC), (2012) 3 JCR 138 (SC), (2012) 3 JCR 217 (SC), 2012 (3) ALL MR 984, 2012 (3) SERVLJ 221 SC, 2012 (5) SCALE 404, 2012 (1) CLR 1203, 2012 (06) ADJ 16 NOC, (2012) 134 FACLR 548, (2012) 4 MAD LW 767, (2012) 3 SCT 348, (2012) 4 SERVLR 743, (2012) 2 ESC 269, (2012) 5 MAD LJ 142, (2012) 5 ANDHLD 119, (2012) 5 SCALE 404, (2012) 5 ALL WC 4492, 2012 (2) KLT SN 121 (SC)

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Bench: D.K. Jain, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA			
CIVIL APPELLATE JURISDICTION			
CIVIL APPEAL NO. 4553 0F 2012			
(Arising Out of S.L.P. (C) No. 1430 OF 2011)			
REGISTRAR GENERAL, PATNA HIGH COURT	--	APPELLANT	
VERSUS			
PANDEY GAJENDRA PRASAD & ORS.	--	RESPONDENTS	

JUDGMENT

D.K. JAIN, J.:

Leave granted.

This appeal, by special leave, is preferred by the Patna High Court, through its Registrar General, against the judgment and order dated 21st May, 2010, rendered by a Division Bench of the High Court in the writ petition filed by respondent no.1. In the said writ petition the first respondent had challenged the decision of the Full Court recommending his removal from service as a Railway Judicial Magistrate. By the impugned judgment, the notification/communication dismissing him from service has been set aside with a consequential declaration that the said respondent shall be reinstated and paid 40% of his back wages as compensation. He has also been granted liberty to make representation to the High Court regarding the balance

60% of his back wages.

The first respondent in this appeal was appointed in Bihar Judicial Service on 29th March 1986, in the cadre of Munsif. In October, 1999, he was functioning as a Railway Judicial Magistrate, Barauni Dist., Begusarai. On receipt of some reports, alleging misconduct on the part of the said respondent, the District and Sessions Judge conducted a preliminary inquiry. Upon consideration of his report, the Standing Committee, consisting of five Judges of the High Court, issued a show cause notice to respondent no. 1. Dissatisfied with his reply, the Standing Committee recommended initiation of departmental proceedings against him and to place him under suspension. The said recommendation was subsequently approved by the Full Court.

The Enquiry Officer, framed four charges against the respondent. However, in his final report, he found the following two charges as proved:

"Charge - II You Sri Pandey Gajendra Prasad while functioning as Railway Judicial Magistrate, Barauni granted bail to accused Ajay Kumar Yadav on 26.11.99 in Rail P.S. Case No.64/99 (G.R. No.2400/99) initially registered under section 47(A) of the Excise Act for illegal possession of several packets of Ganja not-with-standing the fact that recovery of Ganja falls under N.D.P.S. Act and even before the release of Ajay Kumar Yadav a petition was filed on behalf of prosecution on 4.12.99, to add section 17, 18 and 22 of N.D.P.S. Act, but instead of passing any order on the said petition you entertained bail application of another accused namely Ram Kishore Kusbaha and on 9.12.99 allowed him bail and thereafter on 16.12.99 accepted bail bonds of both the accused persons and released them on bail.

The grant of bail in N.D.P.S. Act by a Judicial Magistrate is without jurisdiction raising the presumption of extraneous consideration.

Your aforesaid act of granting bail to accused under N.D.P.S. Act indicates that the bail was granted for consideration other than Judicial which tantamount to Judicial indiscipline, gross misconduct, improper exercise of Judicial discretion and a conduct unbecoming of a Judicial Officer.

Charge – III You Sri Pandey Gajendra Prasad while functioning as Railway Judicial Magistrate, Barauni granted bail to one Tara Devi alias Haseena Khatoon in Barauni Rail P.S. Case No.76/98 (G.R. No.2428/98) not-with- standing the fact that her anticipatory bail application bearing Cr. Misc. No.7301/99, which was preferred by her against rejection of her anticipatory bail by the Sessions Judge, Begusarai vide order dated 11.12.99 in A.B.A. No.224/98, was dismissed as withdrawn by this Hon'ble Court on 30.4.99.

The aforesaid act of your granting bail to the said accused being member of a gang of lifters engaged in railway thefts, who committed crime within Barauni Junction and adjoining station and was thus named accused in several cases indicates that the bail was granted for consideration other than

judicial which tantamount to Judicial indiscipline, gross misconduct, improper exercise of Judicial discretion and a conduct unbecoming of a Judicial Officer." The Standing Committee accepted the enquiry report and recommended imposition of punishment of dismissal from service on the first respondent. As aforesaid, the recommendation was approved by the Full Court and accepted by the Governor. Consequently, vide a Notification dated 19th June, 2006, issued by the Govt. of Bihar; which was communicated to him on 24th June, 2006; the first respondent was dismissed from service. Aggrieved thereby, he filed a writ petition in the High Court. Quashing the order of dismissal, the Division Bench of the High Court commented on the afore-extracted charges as follows:

> In Re: Charge II:
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> "Undoubtedly, the investigating officer had filed an application on 04.12.1999 to add Sections 17, 18, 22 of the N.D.P.S. Act which the petitioner had directed to be kept on record. In a criminal trial various kinds of petitions are filed which are kept on record. Some are pressed, order passed, others simply remain on record and are never pressed. If the prosecution was so sanguine for the need to prosecute under the N.D.P.S. Act, it was for the Assistant Public Prosecutor to take steps in accordance with law by pressing that application. The petitioner as a Judge was not expected to become the prosecutor also as that was not his role. If no one pressed that application, he was under no compulsion to suo-motu treat it as a case under N.D.P.S. Act to deny liberty of the citizen. The aspect of the petitioner was dealing with the liberty of the citizen in custody based on prosecution materials laid before him when he exercised his judicial discretion, is a matter which has a foremost bearing in our mind. To us, it is primarily for the prosecution to answer that if the F.I.R. was lodged on 02.11.1999, why was it so lax in a matter as serious under the N.D.P.S. Act and why it acted so casually and took as long as 08.02.2000 to submit final form under N.D.P.S. Act. The departmental enquiry report proceeds on a wrong presumption at paragraph 22 that in the facts the petitioner granted bail without having jurisdiction to do so as a Magistrate under the N.D.P.S. Act.

If he granted bail on 16.12.1999 and the N.D.P.S. Act came to be added on 08.02.2000, can it be simply logically concluded that it was a deliberate mistake in exercise of judicial discretion unbecoming of a judicial officer based on the records as they stood on the date when he was considering liberty of the citizen.

Paragraph 22 of the report itself states that his error lay in not keeping in mind that a petition was pending for conversion to the N.D.P.S. Act to conclude that he committed a grave error in law by granting bail in a case of allegation of recovery of Ganja and a case under the N.D.P.S. Act. It has to be kept in mind that even in the original allegation it was "Ganja like substance" and not that it was ganja" In Re: Charge III:

> "In so far as charge No.3 is concerned, we have absolutely no hesitation in holding that the petitioner acted in terms of his statutory powers under Section 437(1)

proviso Cr.P.C. which makes an exception in favour of women. The women accused was granted bail after 15 days of custody. She was not named and there was no recovery from her in an allegation of luggage lifting on the platform. If the male co accused had been granted bail after seven months of custody, the distinction to us being too apparent, can it be said that the exercise of discretion to grant bail to a women in exercise of powers under the Code of Criminal Procedure amounted to conduct unbecoming of a judicial officer and a gross misconduct only because she had surrendered beyond time observed by the High Court." On the first respondent's general reputation, the High Court thus observed:

"We have examined the judicial records of the officer. In a case of grant of bail for extraneous consideration, there may not be direct and tangible evidence available, therefore impressions have to be gathered from the surrounding circumstances. We find it difficult to arrive at any such conclusion against the petitioner. However, in order to fortify our thinking, we also proceed to examine his annual confidential report more particularly with regard to the column for judicial reputation for honesty and integrity. The consistent remarks are that "his reputation is good", "yes", "judicial reputation good", "yes"." Hence the present appeal by the High Court. The State of Bihar and its two functionaries have been impleaded as respondent nos.2 to 4 respectively.

Mr. Pravin H. Parekh, learned senior counsel appearing for the appellant, submitted that the case of first respondent having been examined first by the Standing Committee, constituted by the Chief Justice and then approved by the Full Court after due deliberations, the Division Bench of the High Court ought to have refrained from interfering with the order of punishment, particularly when the question of malafides on the part of the Full Court was not raised by the first respondent. It was argued that the Division Bench has misdirected itself in examining the findings of the enquiry officer as if it was sitting in appeal and substituted its own findings and opinion thereon, which is beyond the purview of judicial review under Article 226 of the Constitution. In support, reliance was placed on the decision of this Court in B.C. Chaturvedi Vs. Union of India & Ors.[1], wherein it was held that where the findings of the disciplinary or appellate authority are based on some evidence, the court cannot re- appreciate the evidence and substitute them with its own findings. It was stressed that the judicial service not being a service in the sense of an employment, as it is commonly understood; as the judicial officers exercise sovereign judicial function; the standard principles of judicial review of an administrative action cannot be applied for examining the conduct of a judicial officer.

Per Contra, Mr. Subhro Sanyal, learned counsel appearing on behalf of the first respondent, supporting the impugned judgment submitted that the charges framed against the first respondent included those cases wherein the judicial discretion vested in a judicial officer had been exercised and the exercise of such power by the first respondent could not be said to be an act tantamounting to judicial indiscipline

or misconduct. It was submitted that in the absence of any adverse comments in the Annual Confidential Reports ("ACR"), the High Court was justified in setting aside the order of punishment of dismissal of the first respondent from service.

Having considered the matter in the light of the entire material placed before us by the learned counsel, including the personal file of the first respondent and the settled position of law on the point, we are of the opinion that the Division Bench exceeded its jurisdiction by interfering with the unanimous decision of the High Court on the administrative side.

Article 235 of the Constitution of India not only vests total and absolute control over the subordinate courts in the High Courts but also enjoins a constitutional duty upon them to keep a constant vigil on the day to day functioning of these courts. There is no gainsaying that while it is imperative for the High Court to protect honest and upright judicial officers against motivated and concocted allegations, it is equally necessary for the High Court not to ignore or condone any dishonest deed on the part of any judicial officer. It needs little emphasis that the subordinate judiciary is the kingpin in the hierarchical system of administration of justice. It is the trial judge, who comes in contact with the litigant during the day to day proceedings in the court and, therefore, a heavy responsibility lies on him to build a solemn unpolluted atmosphere in the dispensation of justice which is an essential and inevitable feature in a civilized democratic society. In High Court of Judicature at Bombay Vs. Shashikant S. Patil & Anr.[2], highlighting a marked and significant difference between a judicial service and other services, speaking for a bench of three Judges, K.T. Thomas, J. observed as follows:

"23. The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious". A dishonest judicial personage is an oxymoron." In short, it is the constitutional mandate that every High Court must ensure that the subordinate judiciary functions within its domain and administers justice according to law, uninfluenced by any extraneous considerations. The members of the subordinate judiciary are not only under the control but also under the care and custody of the High Court. Undoubtedly, all the Judges of the High Court, collectively and individually, share that responsibility.

Bearing in mind the scope of Article 235 of the Constitution, we may now advert to the facts at hand. As aforesaid, according to the report of the enquiry officer only charges nos.II and III, as extracted above, stood proved against respondent no.1. It is manifest that in both cases, the charge is related to the grant of bail by respondent no.1. While it is true and relevant to note that 'grant of bail' is an exercise of judicial

discretion vested in a judicial officer to be exercised depending on the facts and circumstances before him, yet it is equally important that exercise of that discretion must be judicious having regard to all relevant facts and circumstances and not as a matter of course. In the instant case, the findings of the enquiry officer in respect of the two charges were:

i) In Re: Charge No. II - That respondent no.1 granted bail to the accused persons in a case falling under the ambit of the N.D.P.S. Act. The recovery of ganja of any quantity falls within the purview of the N.D.P.S. Act triable by a Special Court. As a result, no sooner than 4th December 1999, when an application was filed by the prosecution before respondent no.1 to add certain provisions of the N.D.P.S. Act in that particular case, he was divested of the jurisdiction to deal with the case and thus, ought to have transferred the same to a court of competent jurisdiction, which was not done. It is pertinent to note here that in the reply to the show cause notice issued to him, the first respondent acquiesced that he was aware of the application filed to bring the case within the purview of the N.D.P.S. Act. However, he still chose to entertain the bail application of the second accused on 8th December, 1999, which clearly implies that he voluntarily exercised his discretion in granting bail in a case which was in the realm of the N.D.P.S. Act and wherein he lacked jurisdiction to deal with the matter.

ii) In Re : Charge No. III - That the first respondent granted bail to Tara Devi alias Haseena Khatoon, who was a member of a gang of lifters engaged in railway thefts. Admittedly, anticipatory bail application preferred by her was rejected by the Sessions Judge, Begusarai and was dismissed as withdrawn by the High Court vide order dated 30th April, 1999, with an observation that if the accused surrenders within four weeks, her bail application would be considered on its own merit. It is pertinent to note that on 6th March, 1999, she was declared an absconder and a permanent warrant of her arrest was also issued by respondent no.1 himself. However, when she was arrested by the police in connection with another case (being Barauni Rail P.S. Case No. 51/2000) she was granted bail by respondent no.1, on the ground that being a woman she was entitled to the benefit of the exception under Proviso to Section 437(1) of the Code of Criminal Procedure, 1973. It is therefore clear that respondent no.1, failed to take into consideration the fact that accused was a proclaimed absconder, had disobeyed the direction of the High Court and had failed to surrender herself within the time frame granted to her.

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 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.

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)).

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:
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> 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." 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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> "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." 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:
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> "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:

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

Having regard to the material on record, it cannot be said that the evaluation of the conduct of the first respondent by the Standing Committee and the Full Court was so arbitrary, capricious or irrational that it warranted interference by the Division Bench. Thus, the inevitable conclusion is that the Division Bench clearly exceeded its jurisdiction by interfering with the decision of the Full Court.

However, before parting with the judgment, we deem it necessary to make a mention about the recording of the ACRs of judicial officers. We feel that the present system of recording the ACRs leaves much to be desired and needs to be revamped. Experience has shown that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, conduct and performance of each individual on one hand and unable to check subjectivity on the other. This undoubtedly breeds discontent in a section of the judicial service besides eroding proper and effective superintendence and control of the High Court over subordinate judiciary. The process of evaluation of a judicial officer is intended to contain a balanced information about his performance during the entire evaluation period, but it has been noticed that many a times, the ACRs are recorded casually in a hurry after a long lapse of time (in some cases even after the expiry of one year from the period to which it relates), indicating only the grading in the final column. It needs no elaboration that such hurried assessment cannot but, be either on the basis of the assessment/grading of the preceding year(s) or on personal subjective views of the Inspecting Judge(s), which is unfair to the judicial officer. Undoubtedly, ACRs play a vital and significant role in the assessment, evaluation and formulation of opinion on the profile of a judicial officer, particularly, in matters relating to disciplinary action against a judicial officer. The ACRs of such officer hold supreme importance in ascertaining his conduct, and therefore, the same have to be reported carefully with due diligence and caution. We feel that there is an urgent need for reforms on this subject, not only to bring about uniformity but also to infuse objectivity and standardisation.

In Bishwanath Prasad Singh Vs. State of Bihar & Ors.[6] and High Court of Punjab & Haryana, Through R.G. Vs. Ishwar Chand Jain & Anr.[7], highlighting the importance of ACRs, this Court had observed that the power to make such entries, which have the potential for shaping the future career of a subordinate officer, casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of the subordinate judiciary. This Court also stressed on the need for the assessment to be made as an ongoing process continued round the year and the record to be made in an objective manner. We are constrained to note that these observations have not yet engaged the attention of most of the High Courts in the country.

In the final analysis, for the aforesaid reasons, we allow the appeal, set aside the impugned judgment of the Division Bench and uphold the validity of Notification dated 19th June 2006, dismissing the first respondent from judicial service. There will however, be no order as to costs.

	|.....J.
	|(D.K. JAIN)
		..……..……..J.
	|(ANIL R. DAVE)
NEW DELHI;		
MAY 11, 2012.		

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[1] (1995) 6 SCC 749

[2] (2000) 1 SCC 416
[3] (1964) 3 SCR 25
[4] (2003) 9 SCC 592
[5] (2011) 10 SCC 1
[6] (2001) 2 SCC 305
[7] (1999) 4 SCC 579