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NATIONAL JUDICIAL ACADEMY

Conference on Functions of Registrar Vigilance /Intelligence

12TH – 14TH October 2015

SELECTED READING/REFERENCE MATERIALS

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Allahabad High Court

Responsibilities/Duties

Registrar Vigilance

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1. Conducts all vigilance complaints against Judicial Officers and after conclusion of enquiry, submits the enquiry reports in sealed cover directly to Hon'ble the Chief Justice.
2. The Special Officer (Vigilance) in the High Court after receiving the reports submitted by the Vigilance Officers in the district Judgeship, be authorized to:
    - Examine the reports along with material forming part of the proceedings before the Vigilance Officer in the district Judgeship, be authorized to.
    - And put up his report along with all material and records as received from the Vigilance Officer in district Judgeship, before the Hon'ble Administrative Judge of the concerned Session Division for His Lordship's kind perusal and orders.
    - And further action be taken in accordance with the orders/directions of the Hon'ble Administrative Judge concerned. Further, the complaints received here at Allahabad against the staff in the district judgeships may be ordered to send to the District Vigilance Officer through District Judge concerned after placing the same before the Hon'ble Administrative Judge concerned for preliminary enquiry and report of the Vigilance Officer in district Judgeship to be submitted to the Special Officer Vigilance through the District Judge concerned.

Gauhati High Court

Responsibilities/Duties

Registrar Vigilance

- Transfer and posting of all Judicial Officers of all States.
- Leave (only of 'Grade-I Officers), of all Judicial Officers of all States
- Disciplinary matters (including complaints and inquiries) pertaining to all Judicial Officers in all States
- Inspection of all Courts and Tribunals under the supervisory jurisdiction of the Gauhati High Court
- ACRs of the Judicial Officers of all States.
- Communication of the ACR Remarks of Judicial Officers
- Scrutiny of Judicial Officers for continued utility.
- In-Charge of the matters relating to recruitment of Judicial Officers of all States under Gauhati High Court.
- Any other matter pertaining to discipline and vigilance not covered by any other specific heading.
- ACP Scheme of Judicial Officers
- Selection Grade & Super-time Scale of Grade-I Officers
- Any other matter entrusted by Hon'ble the Chief Justice

Gujrat High Court

Responsibilities/Duties

Registrar Vigilance

- All matters relating to the allegations of corruptions against the Judicial Officers and staff members working in the Subordinate Courts in the State, dealt with by the Vigilance Cell of the High Court.

- Any other work assigned by the Honourable the Chief Justice

Himachal Pradesh, High Court

Responsibilities/Duties

Registrar Vigilance

- Complaints against Judicial Officers and staff of the High Court and Subordinate Courts.
- Grant of station leave/ casual leave to Judicial Officers and permission to make use of earmarked vehicle by them.
- Grant of earned leave to Judicial Officers and making leave arrangements including arrangements for looking after administrative and financial matters of courts during the leave period of Presiding Officers.
- Grant of increments to the Judicial Officers.
- General vigilance of the staff of the Registry, particularly with regard to punctuality and regularity.
- Annual Confidential Reports of Judicial Officers except his/her own.
- Monthly work done statements of civil and criminal cases in respect of Subordinate Courts.
- Matters pertaining to holding of Circuit Courts by Judicial Officers.
- Permission in favour of Judicial Officers to proceed to a different station to conduct a departmental inquiry or to attend an inquiry as witness or a Court as witness pursuant to notice/ summons within the State by performing journey in official vehicle.
- All matters relating to grant of permission for Purchasing/ disposing of the immovable properties by Judicial Officers/ ADJs/ DJs on lease, mortgage, sale, gift or otherwise.
- Jail appeals and all matters relating to under trial prisoners.

- Periodical Statements regarding NDPS Act, Mentally ill persons, Under Workmen Compensation Act, Non-deposit of Judicial Fine, Citizens, Under trial Prisoners, Spot Trial under MV Act, expeditious disposal of summary cases Institution disposal and Pendency of Civil and Criminal cases.
- Processing of periodical statements regarding Jail Inspection and reports regarding inspection of Subordinate Courts by the District & Sessions Judges and also reports regarding inspection of own courts by the Presiding Officers of the Subordinate Courts.
- To devise targets in order to clear back log in District Judiciary.
- Monitoring the implementation of Mission Mode Programme.
- To act as Secretary of H.P. High Court Legal Services Committee and provide legal to the entitled person at High Court level.
- Disposal of R.T.I. appeals as Appellate Authority at High Court level.
- Arrangements for holding *Lok Adalats* for High Court.
- Disciplinary proceedings against the Judicial Officers.
- Disciplinary proceedings against the Officers and staff of the Registry.
- Processing of requests for advances and withdrawal from GPF received from Judicial Officers and Staff of the Registry.
- Passport matters relating to employees of the High Court as well as of District Judiciary including the Judicial Officers.
- Monitoring the expenditure of the Grants under the Thirteenth Finance Commission
- Matters pertaining to sexual harassment.
- Declaration of Judicial Officers as Drawing & Disbursing Officers in respect of other Courts, during the leave period of Presiding Officers of those other Courts.
- All such functions/ duties that may be assigned by Hon'ble the Chief Justice/ High Court.

Jharkhand High Court

Responsibilities/Duties

Registrar Vigilance

- He will be in charge of vigilance department of the court and assist the judges in inspection of the civil court and compliance of minutes of the inspecting zonal judges.
- Incidental returns from civil courts including disposal charts of judicial officers.
- Matters relating to allegation petitions received in the court against the judicial officers of the state of Jharkhand.
- Matters relating to Departmental proceeding ordered to be initiated against judicial officers of the state.
- Framing of charge, appointment of inquiry officer as well as the presenting officer for conducting departmental proceedings.
- Matters relating to recording of annual confidential remarks in respect of the Judicial Officers of the State, communication of adverse remarks, receiving representations from the Officers for expunction of adverse remarks. Custodian of ACRs of Judicial Officers.
- Modification of zonal structure of the sub-ordinate Courts as well 7 as matters relating to nomination of zonal Judges.
- Dealing with the enquiry reports submitted by the Hon'ble Zonal Judges as well as the Registrar Vigilance for consideration in the Court in connection with any matter referred thereto.
- To place vigilance reports before the meeting of Hon'ble Full Court, Hon'ble understanding Committee, Hon'ble ACR Committee, Hon'ble Screening Committee as well as Hon'ble Appointment/ Promotion/Selection/ACP and Absorption Committee.
- Matters relating to Inter district transfer & posting of ministerial employees of Civil Courts, their Mutual transfers, administrative transfers & deputations etc

Orissa High Court

Responsibilities/Duties

Registrar Vigilance

- All allegations against Judicial Officers as well as the Non Judicial Staff of the District Judiciary.
- All Vigilance enquires.
- Acquisition of Movable and Immovable Properties of Judicial Officers.
- All matters relating to the Rules Section.
- Matters relating to the reports of the Law Commission.
- Any other matter that would be specifically entrusted by the Hon'ble Chief Justice

Punjab and Haryana High Court

Responsibilities/Duties

Registrar Vigilance

- Processing of all the complaints received against the Judicial Officers and to put up the same in a time bound manner
- Holding of discrete or preliminary inquiries and evolving a confidential mechanism for such inquiries. Supervision of Inquiry Branch and Inquiry Cell.
- Critical analysis of the complaints or discrete/preliminary inquiry reports to assist the Competent Authority in deciding as to whether or not a regular inquiry into the allegation(s) is required
- Preparation of Draft Charge-sheets/Memorandum of Allegations
- Preparation of panel of former Judges and Judicial Officers for their appointment as Inquiry Officers.

- Preparation of panel of former Judicial Officers for their appointment as Presenting Officers in the regular inquiry.
- Scrutiny of `assets and liabilities statements' of Judicial Officers and supervision of Vigilance Branch.
- Scrutiny of cases of Judicial Officers for their retention in service beyond the age of 50, 55 and 58 years and supervision of Gazette-II Branch.
- Maintenance of ACRs of the Judicial Officers and timely communication of the adverse/advisory remarks, processing of the representations, if any, received against such reports.
- Establishment of field-based network to assess the over-all and spoken reputation of the Judicial Officers

Madras High Court

Responsibilities/Duties

Registrar General as Vigilance

- General Administration and policy matters.
- Postings, Transfers, Probation, Confirmation and Promotion of Judicial Officers (all cadres).
- Petitions, Complaints, etc., against the Judicial Officers.
- Disciplinary Proceedings against the Judicial Officers.
- Deputation of Judicial Officers to other departments or for training.
- Grant of additional charge allowance to the Judicial Officers.
- Grant of No Objection Certificate and Other Certificates relating to travel abroad to the Judicial Officers. Permission to Judicial Officers to reside outside their headquarters.
- Amendments and Interpretations of all Service Rules.
- Revision of Civil and Criminal Rules of Practice and circular orders.

- Vigilance Cell.
- Finance.
- All matters relating to Judicial Officers of Pondicherry State except leave and G.P.F.
- Giving information to answer questions in Legislatures and Parliament.
- Furnishing information to the Governments and other High Courts, etc.,
- All matters relating to Family Courts.
- Appointments, Postings, Transfers, Probation, Confirmation, Promotion and Disciplinary Proceedings pertaining to the Officers and Staff of High Court.
- Grant of leave to officers and members of the staff of the High Court.
- Permission under Tamil Nadu Government Servant Conduct Rules to staff of subordinate judiciary and officers and staff of the High Court.
- All matters relating to Madurai Cell Section (Nomination of staff to the Madurai Bench for transfer etc.,) All matters relating to 'A' Section (Accounts and Establishment), 'F' Section, 'G' Section.
- Memorials and Appeal petitions relating to Disciplinary matters of the Staff of Subordinate Judiciary.
- Inter-District Transfer of Personal Assistant to District Judges and Sheristadar.
- Recording of Annual Confidential Reports of the Judicial Officers and Officers of the High Court Service including Officers of the Official Assignee Office.
- All matters relating to Judicial Academy.
- Matters which are not specifically allotted to other Officers.
- Other matters that may be specifically allotted by the Hon'ble The Chief Justice from time to time

Kerala High Court

Responsibilities/Duties

Registrar Vigilance

The Registrar General is the Chief Administrative Officer of the High court. The other Registrars discharge the administrative and judicial functions assigned.to them. All other officers of the High Court assist the Registrar General and act in his name. The Registrar General co-ordinates the functioning of all departments and sections of the High court and' ensures the proper functioning of the High court Registry. He occupies in the office of the High Court a position analogous, to that of the Chief Secretary to Government Secretariat.

The work in the High Court falls into two distinct categories viz the' Judicial and the Administrative. The Judicial branch deals with the receipt, posting and disposal of cases and all matter pertaining to the judicial work. All other items of work including the administrative and supervisory control over the Subordinate Courts and Tribunals are dealt with in the Administrative branch. The Administrative branch is divided into two divisions - (i) dealing with matters connected with the, administration of the High Court establishment and (ii) dealing with the administrative duties and functions discharged by the ‘High court as the Head of the Judicial Department. The first division is under the direct charge of the Registrar General and the second division is under the direct charge of the Registrar (subordinate Judiciary). The Registrar (Administration) will be in charge of the entire buildings and grounds of the High court. The allocation of work among the Registrars is determined by the Honourable the Chief Justice and among the Joint Registrars, Deputy Registrars and Assistant Registrars by the Registrar General from time to time. There is a Vigilance cell in the High court under the direct control pf the Registrar (Vigilance), subject to the overall control of the Honourable the Chief Justice

The Registrar (Vigilance) is in direct charge of the matters connected with the Vigilance Cell of the High Court and he reports directly to the Honourable the Chief Justice. In the discharge of his duties, he is assisted by the Deputy Superintendent of Police and other Police Officers posted to the cell. He also attends to other items of work which the Honourable the Chief Justice may assign to him, from time to time.

The Vigilance cell in the High court has been constituted for the purpose of enquiring into the allegations or complaints against 'Judicial officers and staff of the High court and

subordinate courts. Petitions containing allegations or complaints received in the High court are processed in the normal administrative channel. Without the ' involvement of the vigilance cell till a decision is taken by the Honourable the chief Justice for enquiry by the vigilance cell. Once such a decision is taken the file is transferred to the Vigilance cell and the Registrar (Vigilance) is then exclusively responsible for all steps including correspondence till the enquiry report is submitted. The vigilance enquiry report would be treated as confidential. apart from enquiring into the allegations in the petitions received in the 'High Cour1, the Officers of the Vigilance Celt should keep vigil for detecting instances of corruption/misconduct involving moral turpitude among members of the staff of High court and subordinate courts, verify confidentially the information and report to the Honourable the Chief Justice instances which merit discreet enquiries.

Karnataka High Court

Responsibilities/Duties

Registrar Vigilance

The following subjects are dealt in the Vigilance Cell:-

- Complaint petitions
- Review of final orders passed by the disciplinary- Authorities in-enquiry cases regarding the officials of the subordinate court.
- Appeals preferred against the orders of disciplinary authority
- Review of the quarterly returns regarding disciplinary inquiry cases
- Maintaining of property statement of all judicial officers and the chief administrative officers of the district courts
- To accord permission to sell and purchase movable /immovable properties by the judicial officers and the chief administrative officers.
- Miscellaneous files
- Any other matter entrusted by Hon’ble the Chief Justice

High Court of Chhattisgarh

Responsibilities/Duties

Registrar Vigilance

- Intimation regarding acquisition of movable properties by judicial officers
- Investigation into all complaints and allegations against judicial officers and the staff of the subordinate judiciary

High Court of Tripura, Agartala

Responsibilities/Duties

Registrar Vigilance

- ACRs of the Judicial Officers & communication of the remarks in the ACR.
- Consideration of the representation submitted by the Judicial Officer for expunction of adverse remarks in the ACRs.
- Vigilance & Disciplinary matter (including complaints & inquiries) pertaining to all Judicial Officers
- Vigilance & Disciplinary matters (including complaints & inquiries) pertaining to all staff of the High Court.
- Consideration of continued utility of all Judicial Officers on attaining the age of 50/55/58.
- Granting of Selection Grade/Super Time Scale to the District & Session Judges and also for granting ACP to Judicial Officers of the State.
- Matter relating to Inspection of Sub-ordinate Court by Hon'ble Portfolio Judges, District Judges and Presiding Officers of the concerned Sub-ordinate Courts of their own Courts and all other matters connected thereto.

- Maintenance of all confidential records including the ACRs of the Judicial Officers of the State.
- Keeping in safe pertaining to competitive examination conducted by the High Court in connection with recruitment of Judicial Officer and Staff of the High Court.
- Framing of Rules of the High Court & Sub-ordinate Courts.
- All matters relating to Rule Section of the High Court.
- All matters relating to Designation of Advocates as Senior Advocated by the High Court and verification of their Income Tax Returns
- Matters for recruitment including promotion of all Judicial Officers.
- Matters of recruitment, promotion & posting in respect of all staff including Officers under the High Court Service.
- All correspondence concerning the judiciary and to co-ordinate between High Court and the State/Central Government in administrative affairs.
- Matters relating to recruitment, promotion, transfers etc. of all the staff members of Sub-ordinate/ District Judiciary.
- Secretary, High Court Mediation Committee & State Mediation Committee.
- Member-Secretary, High Court Legal Services Committee.
- Lawazima Court of the High Court except the matters as mentioned in Order No. F. 40 (21) HCT/BRNCH/REGISTRY/ 2013/7046-82 dated 10.05.13.
- All matters relating to Judicial Officers of Sub-ordinate Judiciary including Leave, Leave Encashment & vesting of Judicial Powers.
- Any other matters assigned by the Hon’ble Chief Justice, Hon’ble Judges & Registrar General.

Annual Confidential Report

- Chhattisgarh Judicial Officers (Confidential Rolls) Regulation, 2015
- Confidential Report for Bihar Judicial Services Officers (Subordinate and Superior)
- Jharkhand Judicial Officers work disposal (Grading) Rules, 2015

Newspaper Articles

- *Inquiries conducted by it cannot be considered investigation, says court The Hindu*
- *Two judges caught in corruption case; sent to judicial custody Millennium Post*
- *High Court marked Registrar Vigilance inquiry against DRT Presiding Officer Supreme Laws Advocates and Consultants*

Inquiries conducted by it cannot be considered investigation, says court

The Hindu

The High Court of Karnataka has declared that its vigilance cell cannot be described as a "police station" and the inquiries conducted by the cell against judicial officers and other court staff cannot be considered "investigation" as per the provisions of the Code of Criminal Procedure (CrPC).

"At best, the materials collected by the cell could be considered as preliminary inquiry for conducting investigation. The process so adopted by the cell would not come within the purview of investigation as defined under Section 2 (h) of the CrPC," the court said.

Justice A.V. Chandrashekara delivered the verdict while dismissing Sharanappa Sajjan's plea that registration of a First Information Report (FIR) against him by the Basavakalyan police was illegal as the vigilance cell was already conducting "investigation" against him. The judicial officer has been booked under Sections 7, 8, 12, 13(1), 13(2) and 13 (d) of the Prevention of Corruption Act.

It was also contended in Mr. Sajjan's plea that the High Court's vigilance cell itself is a "police station" and inquiries conducted by the cell is nothing but an "investigation".

However, the court held that just because some police officers are posted to the cell it cannot be described as a station, in the absence of notification by the State government declaring it a police station.Mr. Sajjan was caught red-handed by the officials of the vigilance cell in December 2014 based on a complaint filed by one Kirtiraj, an advocate, who said that the judicial officer had sent a tout with an offer that he [Sajjan] would show favour in the case if he [the complainant] paid him Rs. 5 lakh.

Also, Justice Chandrashekara said the complaint given by Kirtiraj cannot be treated as an FIR but the report, lodged by the district judge after the preliminary inquiry by the vigilance cell, would be the FIR for proceeding with the investigation.

Two judges caught in corruption case; sent to judicial custody

Millennium Post

Two judges, who were suspended last month on charges of taking money to settle cases during their posting in Vapi court in 2014, have been arrested by the vigilance cell of the Gujarat High Court under Prevention of Corruption Act. Judges--A D Acharya and P D Inamdar, who were caught on camera allegedly discussing about settlement of money to pass favorable orders, were on Friday sent to 14 days judicial custody by a Valsad court.

According to Registrar General of the High Court B N Karia, the vigilance cell investigated the case and filed an FIR in the case of alleged corruption. Karia said they have been produced in a Valsad court and the Vigilance Department of the High Court has also initiated process of the case. According to sources in the High Court, the two arrested judges were kept in the Gujarat High Court building on Wednesday and were produced before a Valsad district court on Thursday.

The two judges were on Friday sent to the judicial custody in Navsari sub-jail jail by Valsad district court judge M MMansuri after they unsuccessfully moved a bail plea before the court. The Vigilance Cell of the High court initiated inquiry in the case on a complaint by a Vapi-based lawyer Jagat Patel who had alleged that they indulged in corruption.

According to Patel's complaint, he had fixed spy cameras in the court-rooms of both the judges which recorded their activities for three months from February to April 2014. In the recording, they were allegedly found talking to lawyers on phone and in person about dealing and negotiating the amounts to give favorable orders.

High Court marked Registrar Vigilance inquiry against DRT Presiding Officer

Supreme Laws Advocates and Consultants

The Punjab and Haryana marked an inquiry into the allegations of misconduct and misdeeds, by S. Harcharan Singh, presiding officer, DRT-I, Chandigarh. DRT I hears cases related to Haryana, Chandigarh, and Himachal Pradesh. The Registrar Vigilance has been asked to submit the inquiry report by July 28. The registrar of DRT I has been ordered to be present during next hearing. The court also impleaded union ministry of finance banking division party in the case and has also ordered its officer to be present in the court during hearing.

It was so shocking to hear that Harcharan Singh even passes orders in some cases on such dates when even those cases are not listed before DRT-I AND-II. The DRT-I and DRT-II (for Punjab) has been given ordered by Court to update their websites and cause list of daily cases and daily orders and also final judgements on the respective website.

The court has also ordered Registrar Vigilance to interact with the members of Debt Recovery Tribunal Bar Association, Chandigarh during the enquiry who had leveled accusations of misbehavior and irregularities against Harcharan Singh.

It is commonly seen and observed by various bank officers that Hracharan Singh misbehaves with them after summoning them and his approach is malevolent against them. To the relief of Bank officials, the court has ordered that no bank official would be called in DRT.

DRT Bar Association president IP Singh submitted that senior bank officials have taken up the issue with the centre but no action has been taken so far. It has also been brought into court notice that Harcharan Singh got CCTV Cameras removed from there within a

week of his joining. DRT Bar Association President GS Anand and RS Bhatia, and other advocates also raised their grievances against the conduct of Harcharan Singh.

Relevant Articles

- *Corruption and the Judicial System by Professor Mohan Gopal*
- *Evaluating Judicial Performance by Professor Mohan Gopal*
- *Administration of district courts – inspection, disciplinary proceedings, annual confidential reports – staff recruitment By Hon'ble Justice m. Thanikachalam, former Judge, High Court, Madras*
- *Strengthening of Vigilance cells in the High Courts and progress made in setting-up of vigilance cells in each district. Chief Justice Conference*
- *Importance of Registrar Vigilance by Calcutta High Court*
- *Central Vigilance Commission by Hon'ble Justice P. Sathasivam*
- *Identifying the different objectives of 'Inspection' and 'Vigilance*

Corruption and the Judicial System

Professor Mohan Gopal

Corruption within the judicial system is one of the most important reasons for the persistence of high levels of corruption in India because a corrupt judicial system shields impunity. A corruption-free judicial system is an essential (although by no means sufficient) prerequisite for combating corruption. One of the most urgent – and yet most neglected – priorities in the fight against corruption is making the judicial system itself corruption free.

There is urgent need today for an effective strategy to rid the judicial system of corruption. The strategy will have to address four major challenges. First, we do not have an adequate understanding of the nature and extent of corruption in the judicial system, and its possible remedies. There is a lack of transparency about what is being done internally in the judicial system to combat corruption. Second, we do not have enforceable, statutory standards and definitions on judicial conduct and ethics that define, precisely and accurately, what constitutes corruption in the judicial system. The resulting ambiguity allows corruption to flourish.

Third, there is no effective independent institutional mechanism to combat corruption in the judicial system. Fourth, key 'duty holders' on whom the judicial system depends for its effectiveness and integrity – the Bar, the police and ministerial staff – are notoriously complicit in corruption and, powerful sections amongst them have emerged as a vested interest against much needed judicial reforms. Little wonder that the trickle of corruption cases that manages to wobble its way into courts, ends up being deliberately detained in the judicial system for years, postponing or even defeating accountability.

Virtually *nothing* is known authoritatively about corruption in the judicial system – there is lack of transparency and a shroud of secrecy over the issue. The general impression, widely held, and reflected, for example, in a perception survey done many years ago by Transparency International, is that the judicial system is highly corrupt. There has been no systematic study of corruption in the judicial system or research into it. There is no systematic data about the incidence of corruption in the judicial system. Research is impeded by considerable fear of the contempt power of courts.

Equally little is publicly known about steps being taken by the higher judiciary against corruption in the subordinate courts. All High Courts have strong and active (even internally feared) in-house vigilance sections addressing corruption amongst subordinate court judges. These vigilance units are usually staffed by judicial officers on deputation. Complaints received by High Courts against judicial officers and court staff are investigated by these units. Action is taken in a large number of cases by High Courts against court staff as well as judicial officers.

Though across the country, a significant (but publicly unknown) number of judicial officers are said to be expelled from service because High Courts have found substance in complaints of corruption against them. However, these actions remain shrouded in secrecy. Therefore, the adequacy of these actions cannot be independently assessed. India is perhaps the only major democratic country in the world that does not have an enforceable set of statutory standards on judicial conduct and ethics. Criminal liability under the Prevention of Corruption Act is not a substitute for statutory standards on conduct and ethics – the framework for administering a system of conduct and ethics is intended to protect the institution, and is fundamentally different from the criminal law framework in terms of types of wrongdoing, standard of proof and procedural law.

At the initiative of then Chief Justice of India, Justice J.S. Verma – known for his outstanding probity during and after his tenure in office – the full court of the Supreme Court of India adopted in 1997 a broad (and quite gentle) ‘Restatement of Values of Judicial Life’ consisting of sixteen values that should govern judicial conduct. The

Restatement was subsequently ratified and adopted by the Chief Justices' Conference in 1999.

However, the Restatement of Values is a only a set of non-enforceable, non-mandatory guidelines, rather than an enforceable law. Its content is very limited, covering three areas in a somewhat cursory manner: some types of conflict of interest, some aspects of engagement with social and political activities, and the acceptance of gifts. The Restatement does not come with an institutional framework for monitoring and enforcement.

There is no corresponding statement of values for judges of the district and local judiciary, who are covered today only by general rules of conduct applicable to civil servants of their state.

The enforcement mechanism to monitor and enforce even the cursory standards that currently exist for subordinate court judges is entirely in-house and non-transparent. Members of the public may file complaints with the High Court. However, the procedure for filing such complaints is not well established. Nor are complainants kept informed about action taken on their complaints. Where corruption is established, it is not clear whether judicial decisions tainted by corruption – which may have wrongly altered rights and obligations – are corrected and if so how. In the absence of clear standards, enforcement of ethical standards amongst judges is often viewed by judicial officers as arbitrary, resulting in a pervasive sense of 'fear' amongst judicial officers about the vigilance function.

The framework to counter misconduct by Supreme Court and High Court judges is set out in the Constitution and the Judges Inquiry Act. It provides a narrowly restricted process for holding these judges accountable for misbehaviour and incapacity, filtered through a stiff requirement for support by Members of Parliament. The Supreme Court of India acknowledged as far back as in 1991 (in connection with judicial review of the impeachment proceedings against Justice V. Ramaswami) that removal of these judges from office is a 'political process' by Parliament. The worldwide best practice today is to

provide independent judicial commissions that include a mixture of judges, lawyers and members of the public to process complaints against judges and hold them accountable, even while retaining the power of removal in the legislature. India lacks such a state of the art mechanism for its superior judiciary that will protect judicial independence while still ensuring transparency and accountability.

An illustrative example is the framework for judicial conduct in the State of Maryland in the United States of America. The statutory Maryland Code of Judicial Conduct, based on the model code developed by the American Bar Association, in contrast, covers in meticulous detail a wide range of rules of conduct that judges are legally mandated to follow. A most interesting enforceable, statutory legal obligation imposed on aryland judges is: 'A judge shall comply with the law, including this Code.'

Other obligations cover such matters as promoting confidence in the judiciary, avoiding lending the prestige of judicial office, performance of judicial duties, impartiality and fairness, bias, prejudice, and harassment, external influences on judicial conduct, competence, diligence, and cooperation, ensuring the right to be heard, responsibility to decide, decorum, demeanour, and communication with jurors, ex parte communications, judicial statements on pending and impending cases, disqualification, supervisory duties, administrative appointments, disability and impairment, responding to judicial and lawyer misconduct, cooperation with disciplinary authorities, extra-judicial activity, appearances before governmental bodies and consultation with government officials, appointments to governmental positions, use of non-public information, affiliation with discriminatory organizations, participation in educational, religious, charitable, fraternal, or civic organizations and activities, appointments to fiduciary positions, service as arbitrator or mediator, practice of law, financial, business or remunerative activities, compensation for extra-judicial activities, acceptance and reporting of gifts, loans, bequests, benefits, or other things of value, reimbursement of expenses and waivers of fees or charges, reporting requirements and rules governing political activity.

There is a very transparent and independent mechanism in Maryland to enforce these standards. Complaints may be filed by any person with the Maryland Commission on

Judicial Disabilities, an independent statutory body, against any judge for violation of the Maryland Code of Judicial Conduct. The simple form in which complaints are to be made may be downloaded from the website of the commission. All complaints are first investigated by the commission's investigative counsel and brought to a judicial inquiry board, consisting of two judges, two lawyers and three members drawn from the general public who are not lawyers or judges.

The inquiry board investigates each complaint and submits a report, including recommendation, to the commission, which consists of eleven persons appointed by the Governor of Maryland, by and with the advice and consent of the state Senate. They include three sitting judges (one appellate judge, one circuit court judge, one district court judge); three lawyers, each admitted to the Maryland Bar and so engaged for at least seven years; and five public members, *none of whom is a lawyer or active or retired judge*. The commission has the power to investigate complaints against any judge of the Court of Appeals, Court of Special Appeals, Circuit Courts, District Courts, or Orphans' Courts; to conduct hearings concerning such complaints; to issue reprimands to judges; to recommend to the Court of Appeals the removal, censure, or other appropriate disciplining of a judge or, in an appropriate case, retirement.

Anyone can go to the website of the commission to see how many complaints have been filed against judges and the fate of these complaints (http://www.courts.state.md.us/cjd/). The site reveals, for example, that 123 complaints were filed against judges in the year 2010 for transgression of the code. Some 75% of the complaints were against judges of the highest tiers of courts. Some 75% of the complaints came from members of the public and 25% from prison inmates – only 3% came from the Bar. Action was taken against six judges for violation of the code of judicial conduct. All the gory details of actions taken against judges (including their names and details of the charges and findings) are available on-line for the whole world to see. This mechanism is over and above the democratic accountability of the judiciary – the Maryland judges are elected to office.

Why is it that we cannot have such a transparent mechanism of accountability in India? Three reasons are usually cited. First, that revealing the details of wrongdoing by judges

and action taken against them will erode the faith and confidence of people in the judiciary. There is no evidence that this is true anywhere in the world. The Maryland mechanism has been in place now for over 45 years. It has not diminished in any manner either the independence of the judiciary or people's respect for or faith and confidence in the judiciary which remains high.

The judiciary in Maryland – and in other parts of America – is not free from the social ills of bias, racism, prejudice and corruption. What gives confidence to people is not the illusion that their judges are angelic, divine beings who are perfect in every way. We know this is not true of any human institution anywhere in the world. What in fact establishes faith and confidence in the judiciary is a credible and transparent mechanism for accountability that reassures people that the few 'bad apples' are weeded out.

Our judges will be the first to admit that while the vast majority of judges are above board, there are undeniably a few bad apples in the judiciary, not unlike other human institutions in our country. What is needed today is a credible and transparent mechanism that will reassure the people that these bad apples are being dealt with effectively and swiftly. Such a mechanism is also necessary to protect the fair name of the vast majority of judges and of our judiciary which is today respected all over the world. A lack of transparency is in fact resulting in an overestimation of levels of corruption among judges rather than shoring up confidence in the judiciary.

The second reason cited against a transparent and independent system of judicial accountability is that it will be abused in the realities of our country where we have to deal with political, caste, communal and regional antagonisms that may not be prevalent in western jurisdictions. It is undoubtedly true that the social context of our country is far more complex than that in many other countries. However, a strong and credible accountability mechanism will be able to weed out motivated and frivolous complaints that are also common in other jurisdictions. In most countries some 80% to 90% of complaints against judges made to independent statutory bodies are dismissed at the preliminary stage. If such a mechanism is established in India, we may also find that a large proportion of complaints will end up getting dismissed.

The third reason often cited is that we have a far heavier case load and our judge numbers are also much higher. This is not factually true. Let us compare Maryland (population of 53 lakh) with Himachal Pradesh (population of 68 lakh). Himachal Pradesh had some 1.2 lakh of new cases filed in 2009; whereas Maryland had some 20 times that number: 22 lakh new cases. Himachal has some 120 judges; Maryland has some 275 judges. The per judge new case load of Himachal Pradesh judges is about 1,000 cases; that of Maryland judges is some 8,000 cases. If a larger, more busy judicial system like Maryland can handle a transparent system of judicial accountability, surely so can Himachal Pradesh or any other state in India.

Given the absence of adequate standards, institutions and statistics, it is impossible to make any well founded assertion about the nature of corruption in the Indian judicial system. From anecdotal evidence, however, it may safely be concluded that the biggest cause of corruption in the Indian judicial system is found in the Bar. To be sure, the Indian Bar boasts of many legendary figures who are truly world class lawyers, and have contributed immensely to the rule of law in India. However, there is no one who will deny that vast sections of those who are enrolled as advocates are not carrying on the profession consistent with established professional standards.

No Bar amongst major countries in the world today is as poorly regulated – in terms of entry, supervision of conduct and sanctions – as the Indian Bar. Judicial corruption is virtually impossible without the involvement of advocates. Effective ethical regulation of the Bar is therefore essential, if the Indian judicial system is to be made corruption-free. Bar reform has stalled in India in the face of the emergence of the Bar as a powerful group that has a vested interest in injustice – the agitation of the Bar against the efforts to rationalize the power to arrest is a sad example of the perverse role of sections of the Bar in India today.

The police, witnesses, accused, and court staff are all duty holders in the judicial system. They bear equal responsibility with the Bench and the Bar to ensure that the judicial system works with integrity to enforce anti-corruption laws. Their roles and

responsibilities in the judicial system are also poorly defined and regulated. Perjury, for example, is rarely punished.

Against this background of the weaknesses of the entire judicial system's regulation of ethical conduct, including the Bench and the Bar, it should come as no surprise that the Indian judicial system has almost entirely failed to discharge its required role in holding corrupt officials accountable. Whereas India is considered one of the countries with the highest prevalence of corruption in the world, it is quite remarkable that the country has one of the lowest number of corruption cases filed in the judicial system.

Hardly 4,000 cases were filed under the Prevention of Corruption Act in the entire country in 2009 – including all cases filed by the CBI and anti-corruption and vigilance departments of all the states. The CBI itself hardly files 300 or so cases on bribery and disproportionate assets in a year. Most of these involve petty corruption by holders of petty offices. The low number of cases being filed for corruption is evidence that cases involving large-scale corruption are not being filed in courts and the kingpins of corruption are going scot-free without being held accountable.

The handful of corruption cases that are filed in court face long delays. A delay of up to 17 or 18 years is not unusual. By the time the appellate stage is concluded, punishment is rare. Instead, the *process* has itself turned into the punishment, which benefits those who have violated the law because they escape formal punishment; but unjustly punishes those who are innocent. For the innocent, eventual acquittal is no compensation for the wreckage caused to their lives by the cruelty of the process. Delays arise from a variety of machinations indulged in by duty holders at all stages – during investigation, prosecution and trial. The poor quality of investigation is a major reason for delays in trials. Overworked and underpaid prosecutors are not given the tools necessary for effective prosecution and in some cases their own role is often believed to be corrupted.

There is also a large agenda of legislative reform needed to strengthen the effectiveness of legal measures against corruption in India. This is beyond the scope of this essay.

It would be quite easy to fix these problems, and to put in place a transparent, accountable and sensible regulatory framework, based on international standards and experience, consisting of ethical standards and institutions that would enforce high standards of ethics and conduct on all the duty holders of the Indian judicial system – Bench, Bar, police, ministerial staff, witnesses and accused – and make the judicial system corruption proof/corruption free (not in the sense that no one would be corrupt in the judicial system, but in the sense that no one would be corrupt in the judicial system and be able to get away with it).

In turn, a corruption-free judicial system that would hold the corrupt accountable on a timely basis would be a 'game changer' in the overall fight against corruption. This reform would, however, diminish the impunity enjoyed by the corrupt in a weakly regulated judicial system that we have today. Powerful vested interests in the Bench, the Bar and the executive are blocking much needed reforms of the judicial system. Only strong public opinion can overcome their resistance. The message must go out very clearly – without the judicial system making itself corruption free, India will never be able to effectively combat corruption. Public opinion needs to demand that the Indian judicial system must be made transparent and accountable to the people of India.

Evaluating Judicial Performance

Professor Mohan Gopal

This is such an important topic that it deserves a conference all by itself. I would like to start with a request, that I have made to several thousand judges who have come to the National Judicial Academy in India – we have a very large number of people and judges, so that is not a particularly impressive figure. I would like to ask each of you to write on a piece of paper – and if you do it I will collect it from you later, at the end of the session here – what do you think is the difference between a good judge and a great judge?

In other words, in one sentence, one idea, the one quality that distinguishes a good judge from a great judge. I would be very curious to see what answer will come from this very mixed international group, because I have got a fairly clear answer from several thousand Indian judges, and I will not share it with you now so that it should not influence your thinking. Perhaps if I have a chance I will share it later. I am a professor so I am entitled to use this time for some little research work. I would be very grateful if you can put just one idea. I would be grateful if you can pass that on to me and I will then share that with you. If I can get one or two minutes or a few seconds at some point I will share that with you if I can.

Now, I would like first of all to compliment the wonderful program. I have gone through this 360 Degree Program as a manager at the World Bank, where they have this program, and that is an exactly identical program, not in the context of judges but in the context of managers, and I have found it to be actually a very helpful program, and I am very

delighted that it is being extended to the judiciary. I will carry this message back to India. I think it would be a very valuable contribution.

Internationally, there is an increasing number of frameworks for evaluating judicial performance. I think the initial feeling that judicial performance should not be evaluated because it is inconsistent with judicial independence is giving way to a cautious approach to using judicial evaluation, largely self-evaluation by judges, as a constructive means, as the Chief Justice put it, of improving judicial performance. It is also starting to become, very importantly, an instrument of judicial accountability. There, it starts to move beyond this warm and fuzzy, sort of, 'helpful intervention' to becoming more and more of an instrument of accountability, where there is public participation and there has to be consequences to poor performance, like for every other public official.

Recently, in July 2008, the European Commission for Efficiency of Justice put together what I thought was an excellent framework, that sets out some 115 measurable parameters for evaluating judicial performance in five main areas. This is not just the performance of judges but the performance of the entire court system, the judge as well as the entire system. That is another controversial issue: do you measure only the judge, or do you measure the court itself, and if there is a bench of judges how do you tease out the responsibilities of the individual judge from the other judges, and what about the role of the jury, and so on. I am not entering into those issues, but the five main areas identified by the CEPEJ criteria are: strategy and policy of the courts, human resources and status of the judiciary, means of justice, including finance and ICT, the operations process – all activities from preparation of cases to the conducting of hearings and decision-making and execution by the judge; so much of this will actually fall within that category of operations process – and access to justice and public trust and confidence. I think that provides, really, an excellent overall framework for the evaluation of judges. For those of you who are interested, there is not only a description of these principles but also a detailed framework that can be applied for evaluation. It is undoubtedly a valuable contribution.

We also have a number of excellent frameworks for evaluation judicial performance developed in the United States, in a number of jurisdictions and a number of courts. I

think perhaps the US is a leading jurisdiction in terms of judicial accountability with a very large number, over 80% of the judges at the state level being elected. Therefore, the US has a very strong tradition of evaluating judicial performance. There are a number of such frameworks. In particular there is, for example, the Trial Court Performance Standards, developed by the National Centre for State Courts and the Bureau of Justice with assistance from the Department of Justice, which also focuses on five areas: access to justice, expedition and timeliness, equality, fairness and integrity, independence and accountability, and public trust and confidence.

On my part I think these more comprehensive frameworks, that look not only at the performance of the judges but at the performance of the entire institution are preferable to frameworks that look only at the performance of the judge in the court, or at the processes that the judge manages. While these frameworks evaluate the performance of courts as institutions, there is an excellent framework for evaluating the performance of individual judges, and that is found in the UN-sponsored Bangalore Principles of Judicial Conduct. As you know, there are six values that are set out in the Bangalore Principles of Judicial Conduct: independence, impartiality, integrity, propriety, equality, competence and diligence. This is a judge-focused framework.

My intention today, in the remaining time available to me, is not to dwell further on these and other available frameworks for evaluating judicial performance, either at the level of the judge or the court. I would like instead to focus on one single point, which is my central submission, which is that these frameworks are deficient and not adequate for countries such as our country, my country, countries which are struggling with the challenge of justice-oriented social transformation and social change. 9 Let me explain what I mean. In 1912, in a very important article written in the Central Review, entitled Social Justice and Legal Justice, Roscoe Pound argued that the most significant feature of the transition that was taking place in the United States at the social level in the aftermath of the Civil War, and the change that was taking place in the judicial system, was, and I quote, “a change in our attitude towards the fundamental question, ‘what is justice?’ For what do courts and law exist, and what do we expect of them?” Pound argued that responding to social change, the concept of justice has advanced through various

stages. The first stage with justice was equated with dispute settlement. The second stage with justice was equated with maintenance of harmony and order. In the third stage, justice was equated with individual freedom. He argued that a fourth stage had developed in society, but had not yet been reflected in the courts, and that was what he called 'social justice'. That is, justice including ensuring that the needs of people are satisfied, not only that they have freedom. Now, Pound blamed courts and academicians for allowing this gap between the social concept of justice and the legal concept of justice to exist, which disparity impeded the effectiveness of courts.

My main point here is not to discuss Pound's views of justice but to point out that when society is going through a struggle for justice, ideas of justice change. It is very important to monitor not only the processes of courts – whether the judge is being polite and efficient and listening and so on, and there is timeliness, and efficiency, and effectiveness, but also to monitor the substantive idea of justice that is being delivered by courts. If not, the gap between what Pound calls 'legal justice' and 'social justice' will start to emerge, and no matter how efficient courts are they will not serve their social role and their social function. And, for countries such as ours, such as mine, India, where we are engaged primarily in a struggle for social justice, it is at the end of the day very important to monitor whether courts are actually, in substantive terms, delivering the right concept of justice or not. And, if not, no matter how efficient they are they are socially not only useless but they may actually be counterproductive.

Now, keeping this in mind, we at the National Judicial Academy have developed a different framework for looking at the evaluation of the performance of courts, which is anchored in the unique nature of our constitution. We have very specific provisions in our constitution that actually make the constitution an instrument of social change. The [Indian] constitution has been described as an instrument of social revolution. Therefore, picking up a cue from this, in 1982 the Supreme Court of India actually declared, expressly in a judgment, that the role of the judiciary is to be an arm of social revolution.

We believe that this is a central issue that should be monitored in evaluating the effectiveness of the judiciary. Is the judiciary actually delivering this mandate of facilitating the kind of social change that is central for the success of the constitution and

the future of the country? From this perspective we have developed a six-point framework for evaluating the performance of courts and judges. The six points include evaluating first the role of courts and the role of judges. This can be applied at the level of individual judge or at the level of court. The first point is evaluating the role of courts. There we look at whether the courts are actually, in terms of the substance of their decisions, delivering the unique definition and concept of justice that is defined in the constitution, which is actually very similar in letter and spirit to international-law concepts of use/cogence, and international-law ideas of human rights.

We applied this by developing what we have called a 'rights protection index'. We look at whether or not in the decisions of courts, and to what extent, courts, and the decisions of judges, are actually protecting rights. If they protect rights then we say that they have high effectiveness and if not we say there is low effectiveness, because we believe that this is the instrument through which courts actually advance the course of substantive justice. From this perspective, the second factor we monitor is organisational effectiveness in discharging this role. Is the organisation effectively configured to achieve this role? The third factor we look at is, do judges and lawyers have the necessary qualities and attitudes and knowledge and skills – we call it QASK – to deliver this role of advancing social justice? The fourth question we ask is, is judicial method adequate to ensure that this role is being effectively fulfilled? The fifth criterion that we ask about is, are the management techniques of courts effective to ensure that this role is being achieved? The sixth question we ask is, is there access to justice on the part of those who need protection of their rights? There we find, for example, after our analysis that in fact such access is lacking in India. The main role of the courts seems to be to prosecute poor people for petty crime, rather than protect their rights, and so with this feedback we are trying to transform the role of the courts towards greater protection of rights, in order to advance the course of social justice.

So, we have developed this six-point framework, and building on that we have expanded that into a sixty-point social-justice-oriented evaluation framework for the judiciary. We believe that this is particularly relevant to countries such as ours, developing countries, non-OECD countries, which at this point of time are engaged in a struggle for social

justice and social transformation, which is missing from the frameworks that have been developed in the context of countries that may have had such struggles in the past, may be coming on to such struggles in the future, but are not centrally concerned with such struggles at this point of time. I will conclude by just saying that, because it is such a vast topic I decided to focus on this one central issue: how will the evaluation frameworks for the judiciary help to advance the course of social justice?

Administration of district courts – inspection, disciplinary proceedings, annual confidential reports – staff recruitment

By Hon'ble Justice m. Thanikachalam, former Judge, High Court, Madras

Beloved Respected Brother Hon'ble Justice D. Murugesan, other Dignitaries and my dear brother judges assembled here, to one and all my good wishes and happy morning. At the outset, I must thank the President, Board of Governments, Tamil Nadu State Judicial Academy, Chennai – Hon'ble Justice D. Murugesan and Hon'ble Justice P. Jyothimani, for giving me an opportunity, to stand before you, remembering me, though I had left the service in the year 2007 early. Dear Brothers, all of you are senior judges of the Tamil Nadu Judicial Service and I feel personally, you may not require any detailed lecture regarding the administration, inspection etc. generally. Whatever may be our capacity, sometimes experience counts much and in this view alone to add, I want to share my experience also with you, since I had served in the Tamil Nadu Judiciary as Inspecting Authorities for more than 10 years.

It is the known principle / fact, that you are the connecting bridge, conduit between the Hon'ble High Court of Judicature at Madras and the Sub-ordinate Judicial Officers, you are responsible for the well administration of the District or ill-administration of the District. An Institution, though you are supposed to pay more concentration on judicial side, requires to flourish, satisfying its needs, there should be a good governance that is a defined, regularized, channelized administration.

If the administration cracks or by the indiscipline among us, failed to serve its purpose, then as the administrative Head of the District, you may be held responsible and therefore, you must know your administration. Our administration (Judicial) is entirely different from the administration available in other Departments since we are judicial oriented, answerable to the Hon'ble High Court as well as there is an accountability to the people in rendering social justice, satisfying the aim of the legislation

Punctuality: There should be punctuality in coming to the Office and Court. As the head of the Court, when you maintain the punctuality certainly your staff will follow you and if you commit delay, that will be followed under the impression, the Judge may not be available to question. In order to control the deficiency in punctuality, as and when you reach the Office, giving margin for the office time, you should call for the Attendance Register, note down the absentees, if it is persistence, in the days to come, do not hesitate to take action, since as you know 3 days delay attendance will curtail ½ day Casual Leave. As the administrator of the Office, you should not always delegate or transfer your power, to subordinate namely Sarasdhar or P.A., though you can direct them, to perform the duties. Our system requires, maintenance of so many records, and all the records are inter-connected. Therefore, make it a point, that all the registers are available, if not available, using some other registers, certifying the non-availability.

To have check and fix responsibilities, then to take action against the defaulter, an Office should compulsorily have Office Order, assigning the works, to be performed by the Staff, depending upon cadrewise. The Headministerial Officer or the Sarasdhar as the case may be, should be directed to prepare Running Note File periodically, say for every month or depending upon the need and work for each branch, noting the deviation, mistakes, omissions etc., and seeing the Running Note, you should give appropriate directions in the Running Note itself for rectification, fixing the time, failure informing, disciplinary proceedings will follow, thereby, you can periodically avoid omissions, commissions, make the records perfect, thereby answering the higher authorities also on seeing the perfect records as and when required.

Service register: This register is very important for the Staff, since that alone gives the right and benefits, where alone, we record everything, in respect of Government Servant.

It must be verified annually regarding the entries relating to the Government Servant are noted or not, e.g. taking Earned Leave, going on loss of pay, taking Medical Leave, calculating Earned Leave, deductions as and when taken etc., which will enable the Government Servant to know his position then to go freely on his attaining superannuation.

Transfer: Under your control in a District, there are many Courts, many Staffs and some of them may be working in the same place years together, thereby creating vested interest, not attending their legitimate work. As you know, as far as possible, there should be periodical transfers, as per the rules and regulations since no one can claim, that his service is indispensable in a given seat, and you should see, this kind of vested interest should be avoided.

Circulars:- It is also your duty, whenever encountered with a problem, to rectify the same uniformerly, issue periodical Circulars, based upon the rules and regulations, requesting or directing the Staff to follow the rules strictly, serving its purpose.

Registers (general): There are many registers, to be maintained as prescribed under Civil Rules of Practice and it may not be possible for me at present to invite you to all the registers with reference to the rules number and its purpose and my request is, to be a very good administrator, first you must know the rules relating to your administration, then automatically everything will be at your palm.

Inspection: As all of you know, though we are in the Computer age still we are following the old system of filling, entering/registering in so many registers, and I understand, there is no change even now. The affected parties namely litigants are entrusting their valuable records, filing their case, trusting us and therefore, it is our great responsibility, to maintain the records properly, not only for the assessment of the concerned judges, but also for the assessment by the appellate judges, since your order is not the final. Unless you maintain the record properly, making necessary entries, including running index for the papers filed, it may not be possible for you to submit the records forthwith, to the appellate authorities and I have seen many cases, appeals were waiting, for the receipt of the records years together, from the lower Courts, which should be avoided.

How to avoid: Under the rules, (which I do not remember exactly), there should be annual inspection of every Court, in addition to, surprise inspection as and when required, apart from inspection by the Hon'ble High Court also. You should not take the inspection of the lower Courts, so lightly, as if, it is a holiday or some change, but it should be taken very seriously. There should be preparation of notes prior to your personal inspection, for which, Form is prescribed by the Hon'ble High Court, as per the Civil Rules of Practice and Circular Order, Form No.15, which will give you a great guidelines, about the availability of the registers, how it should be checked etc., For

Example, I will illustrate the method of inspection to some extent, which may cover the entire records from the date of inception of the cases, till the termination of the case also:

Filing of Plaint: C.F. Register – Suit Register

IA Register – Disposal Register – E.A. Register

EP Register – Appeal Register etc., - (explain the procedure in detail)

All the papers which are relevant, orders, including judgments, EP, FS should be recorded in the Suit Register, for which, a separate number is assigned. Therefore, if you take a pending case or a disposed case, having the papers, you can travel all the registers and find out the commissions, omissions, irregularity if any and that will serve effectively the annual inspection.

During the annual inspection, you are expected to verify:-

Maintenance of all the registers, Permanent Advance, Register, Cheque Issue Register, Cheque Receipt Register, Correspondingly Deposit Register, Repayment Register, Cheque Application Register etc., Therefore, you should not satisfy, by the preliminary notes of the annual inspection alone, and you should check it personally also, as said above and based upon this, you should give your remarks, about the performance of the judge concerned or the Office concerned, including Head Ministerial Officer, which will tell up in their administration.

Post inspection: As inspecting authority, I have seen in many offices, after inspection, things forgotten, which should not be the case. During the inspection, you might have pointed out the dereliction, commission, omission which should be rectified as far as possible, unless, it cannot be rectified for unavoidable reasons. Therefore, all the brother judges are requested to take it serious, regarding the rectification report, that alone will serve the purpose of annual inspection effectively. On the administrative side as well as, on the judicial side, you have to make necessary inspection, such as whether proper Court fees are collected, pleadings are proper as mandated under C.P.C., question of limitation, to some extent, maintainability of the case also. Your carrier or your performance is judged by your Judgment that is the "end product" of your labour, which will reflect you and show to others, who are you, what is your capacity and what is your social approach etc., please, avoid entrusting the typing of pleadings to the Stenographers.

There also you should endeavor to extract the pleadings briefly. In many Courts, I have seen, issues were obtained, from the parties, typed – avoid. Order 14 mandates the duty on you. In the preamble of the judgment, say all the prayers sought for, briefly and correspondingly in the operative portion of the judgment, give the details regarding the relief granted, relief negative, grant of interest, costs etc., in detail, instead of saying, Suit decreed as prayed for since it may cause problem in drafting the decree, which is generally done by the Office. Further, until the regular decree is drafted, operative portion may be us as decree to prefer appeal (Vide Order 20). As inspecting authority to make the Sub-ordinate judge to be more sensitive, please inspect the records in this line also.

Disciplinary proceedings: Where there is no discipline, there bound to be mis-management, omission affecting the system itself, as cancer. As the appointing authority, you can take action:

for inaction or over action and omission – dereliction of Duty, insubordination etc., and even you can suspend under Section 17(e) of the Tamil Nadu Civil Services (Disciplinary and Appeal Rules) depending upon the nature of the offence, when we feel the continuation of the Staff may cause problem in the public interest etc.,

Minor Punishment, Major Punishment, who can give the punishment: Even though the Officer is not an appointing authority, he can also taken action, frame charges and as

classified under Tamil Nadu Civil Services Disciplinary and Appeal Rules, within the power of the Enquiry Officer, they can impose punishment, except major punishment, which can be inflicted by the appointing authority alone.

Annual Confidence Report: You are expected to assess the work of your Sub-ordinate Officers including P.A. Sarashdar for whom you should write Annual Confident Report, which guides the higher authorities or even you while considering the promotion and other disciplinary proceedings when the seniority alone is not the criteria and efficiency could be taken. Now, it appears even the mode of assessment prescribed by specific words.

Strengthening of vigilance cells in the high courts and progress made in setting-up of vigilance cells in each district.

Chief Justice Conference

Article 235 of the Constitution of India vests control over District Courts and subordinate courts thereto, in the High Court. In exercise of this supervisory power, the High Courts are required to keep vigilance on subordinate Judicial Officers so as to have a check on misadventures by an errant officer. Inspection of subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts.

The object of such inspection is assessment of the work performed by a subordinate Judge, his capability, integrity and competency. It also provides an opportunity to the Inspecting Judge to point out the mistakes and deficiencies committed by the Judicial Officer, so that he may improve his working. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court in High Courts such as Delhi and by a Committee of Judges in some other High Courts and become part of Annual Confidential Report and are foundations on which the career of a Judicial Officer is made or marred. Inspection, therefore, has to be both effective and productive.

It should not be a one-day or one-hour or few months' routine but round the year monitoring of the work of Judicial Officers by the Inspecting Judge is required. If used properly, this mechanism can be an effective tool in the hands of the High Court, to keep a check on Judicial Officers, and for regular assessment of their performance.

Though vigilance cells have been constituted in every High Court, it is felt that the process adopted and the methodology used by them does not yield quick and effective results. These cells have not been able to achieve the desired deterrent effect and earn confidence of the litigating public. Inquiries conducted by these cells do not proceed expeditiously and are not monitored regularly. They seem to be satisfied with processing the complaints received by the High Court, which many a time may be motivated and mala fide.

There is an imperative need to galvanize the working of these cells in order to achieve the desired results. It is also necessary that these cells are headed by Senior Judicial Officers of proven merit and integrity, who work under direct control of the Hon'ble Chief Justice of the High Court.

The Joint Conference of Registrar Generals of High Courts and Law Secretaries of the States held on 23rd December, 2006 recommended that- 'there should always be a Vigilance Cell in each District, to be headed by a senior Judicial Officer. The Vigilance Cell shall keep effective control on the staff of the Courts and regularly monitor their activities so that the image of the Courts is not tarnished in the eyes of general public.

The dates in the cases should invariably be given only by the Presiding Officer and the practices and procedures should be streamlined so as to minimize the contact of the litigants with the members of the staff.'

In this regard, the Chief Justices Conference held on April 6- 7, 2007, resolved as under:

(a) The Vigilance Cells constituted in every High Court should be headed by a Senior District Judge of impeccable integrity and should be under the direct control of the Chief Justice of the High Court.

(b) To monitor and watch the members of the Ministerial staff of subordinate courts in the States, the High Courts will setup the separate Vigilance Cells in High Court. It should be manned by an officer of the rank of Senior District Judge and should have enough subordinate staff to assist him in the discharge of his duties, especially looking into the fact that the ambit of its application shall cover all the subordinate courts in the State."

This subject was again discussed in the Chief Justices Conference held on 17-18, April, 2008 and it was resolved as follows: "That (a) Vigilance cells in the High Courts be strengthened, wherever required. (b) Vigilance cells, headed by a senior District Judge with adequate supporting staff, be set-up for each region, to monitor and watch the activities of ministerial staff of Subordinate Courts."

As per the information received by the Supreme Court Registry, Vigilance Cells are working in most of the High Courts which are headed by an officer of the rank of a District Judge to monitor the activities of ministerial staff of Subordinate Courts and to look into the complaints against them. The High Courts where such Vigilance Cells have not been set up so far, need to set up the same at an early date.

Importance of Registrar Vigilance

Calcutta High Court

More often than not, vigilance cells are understood to be internal units that respond only to specific complaints, by affected victims, against a certain stakeholder who is part of the institution. Nothing could be further away from truth. This is all the more true for judiciary as, unlike other institutions created by our constitution, it has a citizen-institution interface of a large magnitude on a day-to-day basis and all the functionaries, from the sub divisional courts to the Supreme Court, are required to sit and discharge their constitutional duties in open where ordinary citizen – stakeholder, as litigants, can sit and watch the processes of "rule of law" in real action.

This scenario is all the more true for sub-divisional and district courts which, for a majority of the citizenry, are the last resort for justice, for reasons mostly economic. Clearly therefore, the way these institutions and their human components basis, leave a deep impact on such stakeholders, and through them, on the society at large. It is here that vigilance Cells belong – the true function of Vigilance Cells belong – the true function of vigilance is to "guard" the areas of institution-citizen interface, to detect and polish out rough and jagged edges and to ensure the interface is smooth and satisfying to ordinary citizen-stakeholders.

Since, most officials and members of staff of Judiciary keep busy with discharge of judicial functions and running of courts, on a daily basis, it is left for the vigilance cells to keep a hawk-eye on such officials and members of staff, but discreetly, to detect and weed out such persons who seek to sell not only themselves but the entire institutional honour and prestige. An aberration of an individual appears to be the "norm" to such ordinary litigants, whose innocence and ignorance is sought to be abused and exploited by such unscrupulous persons for their personal gain, at immense cost of the institution.

Thus, for vigilance to be effective and decisive is this fight against the unscrupulous, it is mighty important that every such institution-citizen interface should be identified and be subjected to a transparent and time-bound response mechanism- much interface should be manned only by persons of impeccable integrity, who must be also patient, courteous, persevering and sensitive in their approach to work. It is for the vigilance cells to evolve a mechanism to identify and mark such interface at all levels, and also ensure that TTBR is in place. Vigilance boxes, kept at all levels of the institution for collecting complaints, must be available at conspicuous places and must be cleared at regular intervals to help citizens share information about such unscrupulous elements. In fact, a strong and effective interface also would reduce the need for such citizen-stakeholders to visit other internal offices or to try and figure out some other convenient and easy way to obtain what they seek.

By the nature of their work, judges ought not be in know of happenings outside of their Court-rooms and any information with them reaches only through the filtered channels of people who can speak to the judge, in the ordinary course, after court timings.

It is here that vigilance cells must exist and operate – outside of court-rooms and in offices.

Vigilance cells must also keep vigil on happenings, inside and outside, of the court-complexes to detect and address issues, existing as well as anticipated, which may have a bearing on the functions, image and honour of the institution. With that view, vigilance must have a close and working relationship with local intelligence units, sharing and obtaining relevant information and actionable intelligence, presently, this mechanism is completely lacking.

Vigilance cells must have the wherewithal to detect intrusions into the institutions, especially judges private chambers and residences, and it is absolutely important that regular agents of service-providers, orderlies, peon, PSOs, and Pas and their movements and interactions should be closely monitored and regulated, to detect if such persons are acting as conduits or intruding into confidential matters of the judges. Presently, such mechanism are completely lacking.

Vigilance cells themselves should be manned by devoted and passionate persons of sound integrity, extreme sensitivity and heightened sense of rationality and discreetness, to ensure that such cells only act as hawk eyes to the institution and not as the secret police manipulating situations at the whims of the powers-to-be within the institution.

In order to ensure a corruption free judicial system, a strong vigilance cell with sufficient infrastructure is necessary for combating the complaints received.

A vigilance cell, headed by impartial and neutral judicial officers as registrar would de3crease inflow of complaints. On time disposal of disciplinary proceeding initiated against judicial officers and staff members would ensure enhancement of confidence in the system.

It is advisable to evolve a proper method or mechanism to avoid such vexations, unscrupulous and dishonest attempts of interested persons to tarnish the image of judiciary.

In order to augment the prevalent system, responsible to combat the complaint pertaining to corruption, the proposal of the management expert to set up judicial accountability office and judicial accountability committee, may be set up in each high court, so that the member of the judicial service may be able to discharge their judicial function within the bounds of their authority, and this would put a further check to make corruption free judicial system.

Speech of the Hon'ble Chief Justice of India

Hon'ble Justice P. Sathasivam

Corruption is the biggest threat to democracy. In a healthy democracy, institutions must be independent and strong that helps facilitate good governance, accountability and transparency. However, six decades of independence in our country have witnessed a steep rise in the magnitude and complexity of corruption in public life. Values in public life and perspective of these values have undergone tremendous change. It seems that the consequences of corruption are well known, perhaps not well realised. It is because, either we have given up hope of making our country a less corrupt or we have come to terms with corruption, accepting it as a facet of life. Both these attitudes are hazardous for working of our democracy. The Central Vigilance Commission being apex integrity institution entrusted with the task of overseeing vigilance administration and implementing government policies against corruption has greater responsibility in addressing the issue. Undoubtedly, the Commission has always been committed to mitigate corruption at all levels by stressing on various preventive and punitive measures.

The Commission‟s role as a watchdog became more crucial after the Supreme Court judgment in the Vineet Narain case popularly known as Jain Hawala Case. After this judgment, with the enactment of Central Vigilance Commission Act 2003, the Commission acquired statutory authority, namely the superintendence over functioning of CBI in so far as cases handled by it under Prevention of Corruption Act. Recognizing the eminence of the Commission in dispensing the functions enumerated in the Act, the Supreme Court has on more than one occasion, reposed faith in the Commission and has entrusted highly sensitive cases to assist the Court in monitoring them. Thus, it is obligatory on every officer of the Commission to function in a manner to ensure, fair, impartial and unbiased functioning of the agency and ultimately uphold and preserve the trust of the people in the institution of democracy. I have learnt that the Commission has undertaken many new initiatives for combating and preventing corruption. Leveraging of

technology to combat corruption is one such significant initiative. Central Vigilance Commission has been continuously emphasizing Public Sector undertakings and other organizations for adoption of latest technological initiatives like e-tendering, e-procurement, e-payment etc. Further, the Commission has also laid down guidelines for promoting strong internal control mechanism for transparency, fair play, objectivity in matters related to public administration. With the advent of Lokpal and Lokayukta Act 2013, I foresee a greater co-operation and interaction between these institutions, with their strength coming together to make good governance a reality in this country. Further, delay in receiving sanction for prosecution of public officials will not be an issue anymore in view of the provisions in Lokpal Act. Another significant, yet, ignored factor is that in order to improve vigilance administration, it is necessary to sensitize the citizens of this country about corruption. If we want to make things happen, we must first believe that it can happen. As said by Russell, every opinion becomes respectable if you hold it for a sufficiently long time. Today, the citizens of this country view corruption as inevitable, but as a French thinker remarked, the inevitable becomes intolerable the moment it is perceived to be no more inevitable. Spreading awareness about the ill effects of corruption and the ways of fighting, it is the most effective strategy to reduce corruption. Awareness leads to empowerment. India, in the recent past, has been more vocal than ever before in denouncing the act of corruption. Central Vigilance Commission must work more vigorously for safe guarding the trust of the people. Nevertheless, the problem of corruption is pervasive and reach of vigilance institutions is limited. While anti-corruption agencies are striving to address the widespread problem of corruption, their task cannot be truly accomplished without active participation of all stake holders. It must be realized that corruption in our country not only threats the concept of constitutional governance but also degrades the institution of democracy and the rule of law. Our Constitution does not grant liberty to anyone to be corrupt. The efficacy of every single fundamental right, originally envisaged are a product of judicial activism depends on immunity from corruption in public and political life. The Constitution of India is envisaging a democratic culture, does not the permit the exploitation of public resources, power, position and pre-eminence for private gains. The Commission has been stressing on predictive, proactive and participative vigilance measures in addition to building of

public awareness to fight corruption. The Vigilance Awareness Week which is being observed every year at the instance of CVC with different themes and focus has been making good impact amongst all stake holders including civil society.

Role of media in combating corruption is equally significance. Today, we are in transitional phase where old values are crumbling and new values are formed. Media also plays extremely vital role in our lives. It is like a mirror to the society which reflects contemporary thoughts and action and shapes people‟s perception. It wields enormous power to affect their opinion. In such a backdrop, media owns huge responsibility of disseminating true and fair information about scams or scandals. Neither the truth should be suppressed nor untruth exaggerated. An unbiased, ethical and fair publication can result into virtual cycle of transparent policy making, clean government and faster economic growth. Besides, the enactments like Right to Information Act, 2005, the public awareness has grown. It has also necessitated greater transparency and accountability in public life which are positive signs of healthy democracy

Then I want to say something about delay in disposal of cases. Despite, timely amendments and strict interpretation rendered by Courts to the provisions of the Prevention of Corruption Act, corruption tends to be like a cancer in our society. One of the primary factors is the delay caused in disposal of corruption cases. Delay in trial allows the guilty to get away as they are not awarded the punishment which they deserve whereas, to double jeopardy for the innocent persons to suffer frivolous, malicious cases. Now, I am going to cite one illustration; in the case of V.S. Achutanandan Vs R.Balakrishna Pillai & others, this is from Kerala, this case has been reported in all journals of the Supreme Court, 2011 (Vol.3) Supreme Court cases 370. I am the author of the judgment, I had the occasion to highlight the grim reality of corruption cases involving public servants which normally take longer time to reach its finality. Now I am to give various dates. In that case, the contract in question was of the year 1982 and the State Government initiated prosecution only in 1991 after 9 years. The trial prolonged for nearly 9 years and the Special Court passed the order convicting the accused only in 1999. The appeal was decided by the High Court in 2003 and finally by Supreme Court in 2011. In that case, it is observed, I quote one paragraph from that judgment, “Though the issue

was handled by a Special Court constituted for the sole purpose of finding out the truth or otherwise of the prosecution case, the fact remains it had taken nearly 2 decades, in 2011, to reach its finality. We are of the view that when a matter of this nature is entrusted to a Special Court or a Regular Court, it is proper on the part of the Court concerned to give priority to the same and conclude trial within a reasonable time. The High Court having overall control and supervisory jurisdiction under Article 227 of the Constitution of India, is expected to monitor and even call for quarterly report from the Court concerned for speedy disposal. In as much as the accused is entitled to speedy justice, it is the duty of all in charge of dispensation of justice to see that issue reaches its end as early as possible." Unquote. Stopping for a moment, yesterday, a senior most judge of Supreme Court from Japan along with her colleague visited Supreme Court and she came and met me in my chamber. When we exchanged, the judicial system, she informed me in Japan there is a legislation – every case either civil or criminal or constitutional matter should be disposed of within 2 years. Unfortunately, here we are not having that system, but certain cases, for example, cases against women, rape, after filing of charge-sheet, the Court is expected to dispose it of within 6 months, but unfortunately, and we the Courts are not in a position to complete the same within the time. So this one illustration, this case and the quotation just now I read may be a message to all the Courts dealing with this kind of cases. That is the reason the Government constitutes special courts for this type of cases. And I request through this august gathering and through our friends in media, the courts dealing with such corruption matters should make all endeavor for early completion of the trial.

Coming to our subject, the trend is continuing even today, that delay is continuing even today. Our Chief Commissioner has furnished certain details about the pending matters. As Head of the judiciary it is my duty to inform, as on 31/12/2013, over 6500 cases are under trial under Prevention of Corruption Act, of which around 3500 cases are more than five years old. The Chief Commissioner has said that ten year old cases, I am giving five year old cases. As a matter of fact, when I assumed office as Chief Justice of India in July, first letter I have written to all the Chief Justices to identify the cases arising from Prevention of Corruption Act, cases pertaining to women and give priority not only in High Court but also in all Special Courts, wherever it is pending and I am asking them to

send the periodical compliance reports. For example, now January is over, now they have to send how many cases have been listed in the High Court and subordinate courts under this caption and they have to inform how many have been disposed of. If there is any problem they are free to inform, I am ready to take up the matter with the Government. And from the moment I assumed office, I have been requesting the Central and State Governments to set up more Special Courts for speedy disposal of such cases and Government is equally interested in this issue. Besides, I have directed the Registry of the Supreme Court to list such matters that is cases arising under Prevention of Corruption Act at the top of the list for speedy disposal.

I am also very glad that CVC has been actively engaging with various international anti-corruption agencies/organizations as a measure of international cooperation creating knowledge management system for International Association of Anti-Corruption Authorities (IAACA), has been one of the collaborative initiatives which is laudable. As far as Golden Jubilee is concerned, the CVC has drawn a detailed plan for not only celebrations but also for meaningful and purposeful deliberations. A commemorative postal stamp to mark the Golden Jubilee of CVC has been released. The CVC has also come out with Coffee Table Book, titled „The Untiring Eye". I am also pleased to release the documentary just now specially made for this occasion. The theme of the Seminar "Combating corruption: Role of Accountability Institutions, Investigating Agencies, Civil Society and Media" arranged as a part of celebrations is a very timely and of interest. Needless to mention, that a number of constructive ideas for action have emerged out of these deliberations and I am sure that the CVC would be making use of these ideas taking it forward for implementation. These changes are not difficult to bring in, it is the will which is missing. Perils of democracy are the result of loopholes within it. To plug them, we need to fight enduringly until it is completely eradicated. As slavery was once a way of life and now whatever analogous in economic duress remain, has become obsolete and incomprehensible. So the practice of bribery in the central form of exchange of payment for official action will become obsolete.

Before parting, I would like to deal with comments made by the Hon'ble Law Minister regarding complaints against judges, I read it in the newspaper. Now, I have a highest

regard for our Hon'ble Law Minister, unfortunately he was not given accurate and proper information about the role of the judges and how the judiciary functions. The mechanism to deal with complaints against sitting judges of the Supreme Court and High Courts is provided in the in-house procedure. Complaints received by the Chief Justice of India are examined and ultimately if it is found that deeper probe is required into the allegations contained, a three member committee is constituted for making fact finding inquiry. If the committee reports that the misconduct disclosed is serious as to call for initiation of proceedings for removal of the concerned judge, the Chief Justice of India (i) may advise the concerned judge to resign or seek voluntary retirement, (ii) withdraw judicial work and the government may be intimated that this has been done since allegations are so serious as to warrant initiation of proceedings for removal of the concerned judge in terms of the constitutional provisions. A copy of the report is furnished to the concerned judge. At present, Ladies and Gentleman, for information, in a reply to the Minister's statement, I am making, at present, no request of the government or any of its agencies is pending in the Supreme Court. So far as, this is about judges of the high court and Supreme Court. So far as the judges of the sub-ordinate courts are concerned, according to our constitutional scheme, the control over district courts and courts sub-ordinate thereto in all respects vest in the high court. Different High Courts have over the years, evolved procedures for exercising the control over the subordinate courts. Judicial officers are also governed by service rules which also provide procedures with regard to disciplinary proceedings etc.

Not only this, collectively, the issue has also been addressed at various intervals at the higher levels. In the Chief Justices" conference held in 2009 in the very same hall, the issue pertaining to strengthening of vigilance cell in the High Courts was discussed and it was resolved that the vigilance cells will be under direct control of the Chief Justices of the High Court and all complaints in the first instance, will be placed before the Chief Justice of the High Court, who will refer the same to the vigilance officer of that Court. Normally, the vigilance officer is senior District Judge. Vigilance officer upon inquiry will submit a report to the Chief Justice in that regard. In case, an inquiry is to be proceeded with, for the purpose of imposing minor or major penalty, the complaint will be referred to a Committee of Hon'ble Judges –minimum 3 Judges Committee to be

nominated by the Chief Justice of the High Court which may also include the Hon'ble Judge in charge of the place where the delinquent officer is discharging his function, that is called Administrative Judge or Portfolio Judge. The cases relating to major penalties only such as compulsory retirement, dismissal or removal be placed before the full court of the High Court. After approval by the High Court, then it will be forwarded to the Government for passing orders. Complaints and enquiries be disposed of as early as possible as but not later than one year. So why I am mentioning it, as far as you take it from me, judiciary is concerned, we are answerable to the public and Constitution, whatever comes definitely, we will take note of and by virtue of the powers conferred under our Constitution, we have a separate mechanism, that is why I want to by way of reply, I highlighted these provisions and our scheme

"Identifying the different objectives of 'Inspection' and 'Vigilance'

The matter relates to identifying the different objectives of 'inspection' and Vigilance'.

Regarding Inspections:

As far as the objective of inspection is concerned, it would be apt to quote the relevant provisions of Rules & Orders (Civil) and (Criminal) in this respect. The provisions are being reproduces as under:-

Rule 566 of High Court Rules & Orders (Civil): "The object of inspection is to satisfy the District Judge and through him the High Court that the Courts are functioning properly, that rules are understood and followed and that work is disposed of promptly and regularly. At the same time the inspection offers the District Judge an opportunity of helping and instructing his Civil Judges and of correcting faults in procedure which would not normally require reference in an appellate judgment and full advantage should be taken of this opportunity"…. "Inspection with its opportunities for helping junior Judges and for improving the standard of the judicial administration generally is one of the more important aspect of a District Judge's work, and is an aspect to which he should devote considerable attention. Unhelpful and routine notes are to be strongly deprecated."

Rules & Orders (Criminal):

703:…. "An inspection note is not only a commentary on the court inspected but also on the officer inspecting. The important quality is insight and penetration, and attention should be given to the Court's method and attitude in trying cases rather than to legal points unless there are mistakes of an obvious kind in law or procedure. It is important that when an error or a fault is revealed the way to avoid it should be explained at the same time, to show not only what was done wrong but also how it should have been done and way."

Thus the object of inspection is to satisfy the District Judge and through him, the High Court, that the courts are functioning efficiently and that the work is disposed of promptly and regularly. It also gives opportunity to the District Judge to make remedial measures

and correct the faults in the procedure creeping into the work of subordinate judges. District Judge also evaluates as to whether the Judge whose inspection he is carrying out, has not shown undue delay in disposing of the case. The more careful the inspection is, the higher will be the quality of work in Courts. Minor matters should be disposed of in a personal discussion with the judicial officer but all important points should find a place in the inspection report. Various sections such as account section, copying section, record room, library, establishment etc. are required to be inspected to ensure their proper, efficient and corruption free working.

It is quite clear that the standard of work, both of judicial and administrative nature shall witness an enhancement in terms of quality and quantity, if the inspection is carried out as per norms and guidelines.

An approved note about the ambit and scope of "inspection" dated 26-06-1996 (Flag-A) prepared by the then Registrar (Vigilance) is submitted for kind perusal.

***Regarding Vigilance*:**

"Vigilance" means to be watchful, to be alert as to what is happening and what may happen. Role of Vigilance is to protect the Institution from internal dangers which are more serious than external threats. Vigilance is surveillance for the prevention of improper behavior and conduct of the duty holders. Vigilance is to keep watchful eye on the activities of the court official to ensure integrity of personnel in dealing with the litigants. It is to ensure clean and prompt administrative action towards achieving efficiency and effectiveness of the court officials in particular and the courts in general.

The objective of Vigilance is identifying places and points of corruption. A vigil over work both judicial and administrative and the conduct and contacts of officials is also an important objective of Vigilance.

Vigilance administration may be improved by creating a culture of honesty, by greater transparency/ openness in administration and speedy disposal of departmental enquiries.

The term ‘Vigilance’ is wrongly understood as barely enquiring, fixing responsibility etc. Vigilance is not only punitive but also preventive in nature. Prevention of misconduct is as important function of vigilance as punishment is. The principle behind preventive vigilance is “Prevention is better than cure” and the purpose is to reduce corruption and bring about a higher order of morality in official functioning. Preventive Vigilance is nothing but adoption of a package of measures to improve the system so as to eliminate corruption. This can be done by identifying sensitive and corruption prone areas by detection of failure in quality or speed of work.

As part of preventive Vigilance, a system of maintaining the list of officers of doubtful integrity shall be required to be maintained. Similar such list of Class-III and Class-IV employees shall also be required to be prepared. The purpose of maintaining this list is to enable the organization to take such administrative action as is necessary and feasible. The action can be transfer from sensitive place and post, non-sponsoring the names for deputation, refusal of re-employment after retirement etc. The names of officers/ officials should be retained in this list for a specified period.

Instances of preventive Vigilance in judiciary may be seen when the High Court issues advise or non-recordable warnings to judicial officers in matters in which the impugned acts are not so serious enough to bring them within the ambit of “misconduct”. Similarly, circulars issued from time too time, in order to curb undesirable traits/practices, are also instances of preventive vigilance.

When one talks of punitive Vigilance, the concept of “misconduct” has to brought forth. When the impugned act is proven to be misconduct, the delinquent is liable to be punished as per rule 10 of M.P. Civil Services Classification Control and Appeal Rules, 1966. The delinquent may be subjected to major/minor penalty as per the nature of misconduct. The term ‘misconduct’ has although not been defined in M.P. Civil Services Conduct Rules, 1965, yet , a fair idea van be gathered about the concept of ‘misconduct’ from perusal of specific instances of misconduct enumerated from Rule 3-A to Rule 23-A of M.P. Civil Services Conduct) Rules, 1965 apart from the general Rule 3. It may be seen that amendments in rules have incorporated discourteous behavior and deliberated adjournments as instances of misconduct amongst others.

General rule 3 of M.P. Civil Services (Conduct) Rules, 195 provides that a Government Servant shall maintain at all times, absolute integrity, devotion to duty and do noting which is unbecoming of a Government Servant. While the expression 'integrity' denotes uprightness or honesty, 'devotion to duty' is faithful service. It must be remembered that ability enable an officer to get promotion but it takes integrity and devotion to duty to keep him there. Integrity or honesty is not a concept or a word, it is a way of life.

Apart from integrity and devotion to duty officers/ officials must display strong moral character. Law Lexicon defines "Moral Turpitude" as "Anything done contrary to justice, honesty, principle or good morals, an act of baseless, vileness or depravity in the private and social duties".

Work ethics of an officer/ official should be such which is free from any kind of moral turpitude and employs using one's skill with.

It would be apt to cite the case of "State of Punjab v. Ram Singh Ex. Constable AIR 1992 SUPREME COURT 2188" in which it has been held that 'misconduct' may involve moral turpitude, it must be improper or wrong behavior, unlawful behavior, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty, the act complained of bears forbidden quality of character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

It may be seen that Rules relating to misconduct are concerning Government servants, yet the standard of conduct expected of them has to be notch higher than other Government Servants because of sanctity attached to the judicial system as a whole and in order to maintain and enhance reposition of faith in the system amongst the public at large. The Preamble of Bangalore Principles of Judicial Conduct, 2002 underlines the importance of maintenance of high standards of judicial conduct and enjoins the judges to strive to enhance and maintain confidence in the judicial system.

Rules of propriety and conduct for judicial officers have apart from being underlined in the aforementioned Bangalore Principles of Judicial Conduct, 2002, also been emphasized in Restatement of values of judicial life (Code of Conduct), 1999 and D.O. letters/ circulars sent out to Judicial Officers from time to time.

Inspection and Vigilance:

It can thus be seen that the objective of 'Inspection' is to periodically monitor the functioning of a Judicial Officer/ Official and propel and guide him in respect of any procedural and legal lapses. It is for correction and guidance of duty-holders.

On the other hand, the objective of 'Vigilance' is keeping a vigil over work, both judicial and administrative as well as the conduct and to identify as to whether the impugned acts of the judicial officer and the court staff comes within the ambit of misconduct as provided under the M.P. Civil Services (Conduct) Rules, 1965.

Cases of ACR

- *Shah Syed Ahadur Rahman, SDJM v. Hon'ble Gauhati High Court*
- *Dev Dutt v.Union of India & Ors (2008) 8 SCC 725*
- *Desh Bhushan Jain v. State Of U.P. And Anr. 2007 (4) AWC 3209*
- *Rajendra Singh Verma v .Lt. Governor (NCT of Delhi*
- *M.S. Bindra v.Union Of India and Ors*
- *Nawal Singh v. State Of U.P. & Another (2003(8) SCC 117*
- *High Court of Judicature v .P.P. Singh & An (2003) 4 SCC 239]*
- *Pawan N. Chandra v. Rajasthan High Court*

Shah Syed Ahadur Rahman, SDJM,

v.

Hon'ble Gauhati High Court, Through the Registrar General, Guwahati, Assam

Writ petition (c) no. 6191 of 2013

Bench: Hon'ble Justice Mr. K Sreedhar Rao, Hon'ble Mr. Justice Ujjal Bhuyan

Relevant Fact:

Petitioner is a judicial officer belonging to the Assam Judicial Service. He was appointed in the year 2002 and at the time of filing this petition, he was serving as Sub-Divisional Judicial Magistrate (SDJM), Charaideo, Sonari in the district of Sivasagar. Petitioner seeks promotion from Grade III to Grade II in the Assam Judicial Service w.e.f. the year 2011. According to the petitioner, though his name figured in the zone of consideration for promotion in the year 2011, he was not promoted. In the promotion carried out in the year 2012 his name was not even included in the list of eligible candidates. Aggrieved, he has filed the present writ petition seeking the relief as indicated above. From the documents annexed to the writ petition it is seen that a promotion exercise was carried out for promotion from Grade III to Grade II of the Assam Judicial Service in respect of 6 vacancies in the year 2011. In the zone of consideration which was short listed by applying the 1:3 ratio, petitioner was placed at Sl.No.18. But he was not promoted.

In the next year i.e. in the year 2012, the High Court issued a notification dated 13-06-2012 notifying 50 officers in Grade III as being eligible for promotion to Grade II on the basis of seniority-cum-merit. But name of the petitioner was not included in the list of 50 officers though the officers from Sl.No.07 onwards were junior to him. The High Court issued another notification dated 13-06-2012 promoting 26 officers belonging to Grade III to Grade II. W.P(C) No.6191 OF 2013 Page 3 of 13 5. According to the petitioner, the criteria for promotion from Grade III to Grade II as per the Assam Judicial Service Rules, 2003 is "seniority-cum-merit subject to overall suitability". Annual Confidential Rolls (ACRs) of last 5 years are to be considered and those officers having minimum two

"good" grading in ACRs are considered for promotion provided their integrity and character is beyond doubt or there is no doubt.

ACRs of 2009, 2010 and 2011 were communicated to the petitioner. Petitioner was graded "good" in the years 2009 and 2010. In the year 2011, he was graded as "average" with the remark "integrity: doubtful". There was a further remark of the accepting authority to keep the petitioner under watch. Petitioner submitted representation dated 18- 06-2012 for expunction of adverse remark in the ACR for the year 2011. Petitioner was informed by the Registrar (Vigilance) of the High Court vide letter dated 10-10-2012 that the remark "integrity: doubtful" was expunged while the grading of "average" and the other remark were left undisturbed.

Petitioner Contention:

Petitioner has contended that since he had two "good" grading and the adverse remark of "doubtful: integrity" having been expunged, he is required to be considered for promotion to Grade II at least alongwith the promotees of 2012.

Registrar General of the High Court has filed an affidavit. It is stated that petitioner does not have any legally enforceable vested right to be promoted. Petitioner's case for promotion was duly considered but he was not given promotion as he failed to fulfill the requisite criteria prescribed under the Assam Judicial Service Rules, 2003 as amended. Criteria for promotion from Grade III to Grade II are as follows:-

(i) the officer must have been in the cadre of Grade III for a period not less than 5 years; W.P(C) No.6191 OF 2013 Page 4 of 13

(ii) seniority-cum-merit subject to overall suitability;

(iii) ACRs of last 5 years are to be considered and officers having minimum of two "good" grading in the ACRs will be considered provided their integrity and character is beyond doubt. Petitioner was considered for promotion in the year 2012.

For this purpose ACRs of last 5 years i.e. from 2007 to 2011 were considered. Out of the 5 years, petitioner had two "good" and three "average" gradings with an adverse remark of "integrity: doubtful" in the year 2011. Therefore, considering his overall

suitability, petitioner could not be promoted from Grade III to Grade II in the year 2012. Merely having two "good" grading is not enough to get promotion if integrity is found doubtful which the most paramount consideration is. The Promotion Committee duly considered all relevant factors and thereafter recommended promotion of the best deserving candidates. Finally it is stated that process of promotion has again been initiated for which judgments of the petitioner were also called for.

Petitioner has submitted rejoinder affidavit to the affidavit of the Registrar General. He has contended that petitioner certainly has a right to be a considered for promotion. He has stated that the adverse remark of "integrity: doubtful" in his ACR for the year 2011 having been expunged, the same would mean that there was no adverse remark as against the petitioner. Therefore, an adverse remark which has since been expunged cannot be used against the petitioner to deny him promotion in as much as such a remark must be treated as non-existent in the eye of law.

Considering the nature of the grievance expressed by the petitioner, it would be apposite to refer to the proceedings of the meeting of the Committee for Recruitment of Judicial Officers (for short the Committee hereafter) held on 07-06-2012. In that meeting, the matter regarding regular promotion from Grade III to Grade II in the Assam Judicial Service was considered. 25 vacancies in Grade II of the Assam Judicial Service were identified to be filled up by eligible and suitable Grade-III officers on promotion. As per Schedule E to the Assam Judicial Service Rules, 2003 (Rules), the zone of consideration was in the ratio of 1:3. Accordingly, candidatures of 75 officers in Grade III were scrutinized. As per Rule-7 of the Rules, promotion from Grade III to Grade II has to be on the basis of the criteria indicated in Schedule E. To be eligible, an officer in Grade III must have rendered service for a period of not less than 5 years in that grade. The criteria for promotion are - (i) seniority-cum-merit subject to overall suitability, (ii) ACRs of last 5 years having minimum two "good" grading in ACRs provided their integrity and character is beyond doubt or there is no doubt. The Committee noted that Schedule F to the Rules which was incorporated by the Assam Judicial Service (Amendment) Rules, 2008 mandates the following criteria in the case of promotion from Grade III to Grade II – (a) ACR for last 5 years, (b) Evaluation of judgments, (c) Performance in oral interview.

W.P(C) No.6191 OF 2013 Page 6 of 13 The Committee further noted that the norm of performance in oral interview was disapproved by the Hon'ble Apex Court in its order dated 14-07-2009 passed in Civil Appeal No.1867/2006 (Malik Mazhar Sultan and another -Vs- UP Public Service Commission and others). The Committee therefore noted that performance in oral interview would no longer be a criteria for judging suitability.

The Committee also noted that another Committee of three Hon'ble Judges had recommended on 10-02-2012 that the following marks should be allotted for the various gradings secured by an officer in his ACR

- Outstanding - 10
- Very Good - 08
- Good – 06
- Average - 05
- Poor – 03

The said Committee had recommended that the judgment segment of the assessment ought to be out of 50 marks in total and the Bench mark of suitability for this segment of the process ought to be 30 marks. It was further recommended that the judgments be examined by each member of the Selection Board and the average of the marks awarded be worked out for the purpose. In respect of ACRs, the said Committee recommended a Bench mark of 30 out of 50 marks for the block of five relevant years. In addition to the segment-wise Bench marks, the said Committee recommended a combined Bench mark (judgment and ACR) of 65 out of a total of 100.

Once this Bench mark was achieved, seniority would then be the determinative factor. The Full Court in its meeting held on 20-02-2012 resolved that 50 marks will be the Bench mark along with the requirements of rules W.P(C) No.6191 OF 2013 Page 7 of 13 of integrity and character beyond doubt. 25 marks will be the Bench mark for the ACRs and 25 mark will be for judgments. The Committee thereafter applied the following criteria for recommendation of the candidates for promotion:-

- Seniority-cum-merit subject to overall suitability.
- ACRs of five years with the Bench mark of 25 out of 50.

- Evaluation of judgments with the Bench mark of 25 out of 50.
- Total Bench mark of 50 comprised of the two segments of judgment and ACR (the candidates being required to individually secure 25 marks in each of the segments).
- Seniority to be the determinative factor, once the candidates secured the composite Bench mark of 50.
- Integrity and character to be beyond doubt."

The meeting of the Committee dated 07-06-2012, it is seen that petitioner secured an average of 22.2 marks in judgment writing and 28 as ACR W.P(C) No.6191 OF 2013 Page 8 of 13 marks. Thus petitioner achieved the Bench mark in ACR as well as the aggregate Bench mark of 50 (28 + 22.2 = 50.2). However, petitioner failed to achieve the Bench mark of 25 in judgment writing. From a cursory glance of the marks awarded by the Hon'ble Members of the Committee, it is seen that there is vast variation in the marks awarded by at least two Hon'ble Members, the second Member awarding 10 whereas the third Member awarding 41.

Having noticed the above, we may now revert back to the affidavit filed by the Registrar General. Though it is stated in the affidavit that the Promotion Committee had considered the relevant factors and the statutory criteria while considering promotion and that the petitioner failed to fulfill the requisite criteria, the affidavit has not disclosed the methodology adopted in the promotion process. The affidavit is silent about the Bench marks fixed by the Committee in the meeting held on 07- 06-2012 and the failure of the petitioner to meet the Bench mark in the judgment writing segment. The above aspects ought to have been disclosed in the affidavit. A judicial officer should know how he was assessed and why he was not recommended for promotion. Fairness and transparency demands that the concerned officer should know the procedure that was adopted while considering his case for promotion and why he failed to make the cut. Moreover, this will also help the officer in identifying areas of weakness and to take corrective steps. Compounding the matter further, the Register General in the affidavit has stated that out of the 5 years, the petitioner had two "good" and three "average" gradings including an

adverse remark of "integrity : doubtful". He says that the High Court therefore did not promote the petitioner from Grade III to Grade II in 2012 after taking into consideration his overall suitability. It is reiterated that mere two "good" grading is not enough to get promotion if integrity is found doubtful. Considering the nature and responsibility in the higher positions of judicial service, it is more W.P(C) No.6191 OF 2013 Page 9 of 13 important to lay emphasis on personality and character as well as suitability of an officer. The Promotion Committee had considered all the above factors

Thus from a reading of the affidavit of the Registrar General, one gets the impression that one of the factors for which petitioner was not promoted was the adverse remark of "integrity: doubtful" in the petitioner's ACR for the year 2011. The second impression one gets is that more emphasis was placed on personality, character and suitability of an officer while considering promotion.

Coming to the first impression i.e. that the petitioner was not promoted because of the adverse remark of "integrity: doubtful" in his ACR for the year 2011, it is seen that petitioner had submitted a representation for expunction of the said adverse remark. Petitioner was informed by the Registrar (Vigilance) vide letter dated 10-10-2012 that the High Court had expunged the adverse remark "integrity: doubtful" while maintaining the grading of "average" and the other remark of the accepting authority that the officer may be kept under watch.

The effect of expunction of adverse remark, though latter in point of time, would be that such remark never existed. In the present case, it would mean that the adverse remark "integrity: doubtful" which has been stated to be the most para-amount consideration while considering promotion in the affidavit of the Registrar General, was nonexistent. Therefore, on that basis, the High Court could not have formed an opinion that petitioner was not fit for promotion.

Judgment:

Once minimum necessary merit requisite for efficiency of administration is achieved, the senior even though less meritorious shall have priority. Comparative assessment of merit is not required. The requirement of minimum merit can be prescribed by fixing a Bench

mark. The underlying emphasis when the criterion of "seniority-cum-merit" is applied is of minimum merit. What then can be construed to be minimum merit while applying the criterion of "seniority-cum-merit" which lays greater emphasis on seniority? Though minimum merit is not capable of any precise definition and would depend on the fact situation of the particular case, in the context of the criterion of "seniority-cum-merit", the minimum merit should be such that the emphasis on seniority does not get diluted.

In this case we are considering promotion from Grade III to Grade II in the Assam Judicial Service. This is the first promotion in the service. Petitioner had entered judicial service in the year 2002. He seeks consideration for promotion to Grade II in the year 2012 i.e. after 10 years of his entry into the service. In the context of such promotion, a three judge Bench of the Apex Court in the later judgment in Malik Mazar Sultan (Supra) held that in such cases normally promotions are given based on evaluation of the ACRs and seniority. In case of necessity, judgments can also be perused for the purpose of evaluation.

From a conjoint reading of the affidavit filed by the Registrar General and the proceedings of the meeting of the Committee, it is quite discernible that the overriding emphasis that was given while undertaking W.P(C) No.6191 OF 2013 Page 13 of 13 the promotion exercise was on merit. Registrar General in his affidavit has infact stated that it is more important to lay emphasis on personality and character as well as on suitability while considering promotion. The Committee by prescribing separate Bench marks of 25 out of 50 in the segments of judgment writing and ACR and a further Bench mark of 50 in the aggregate perhaps laid more emphasis on merit than what was required to determine minimum merit in the context of the statutory criterion of "seniority-cum-merit subject to overall suitability". There appears to have been some dilution of the statutorily prescribed criterion of "seniority-cum-merit" by administrative decisions. In addition we may also point out the wide divergence in the award of marks allotted by two Hon'ble Members in respect of the petitioner while evaluating judgments.

Therefore, in the facts and circumstances of the case as noticed above, we are of the considered opinion that the case of the petitioner for promotion from Grade III to Grade II in the Assam Judicial Service in the selection carried out in the year 2012 is required

to be considered afresh by a Review Promotion Committee. Ordered accordingly. Any promotion if given to the petitioner in the meanwhile will not come in the way of the fresh consideration of the case of the petitioner for promotion to Grade II in the year 2012 by the Review Promotion Committee.

Dev Dutt

v.

Union of India & Ors.

(2008) 8 SCC 725

Bench: H.K. Sema, Markandey Katju

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

Desh Bhushan Jain

V

State Of U.P. And Anr. on 6 July, 2007

2007 (4) AWC 3209

Bench: R Agrawal, V Nath

According to the petitioner, after obtaining degree in law, the petitioner started practicing in the field of law. The Allahabad High Court conducted selections in the year 1995-96 for the Higher Judicial Service. The petitioner also applied and he was selected and appointed directly on 3.8.1996 as a Higher Judicial Service Officer. His first place of posting was at Moradabad as Additional District and Sessions Judge wherein he remained posted upto 5.6.2000. He was transferred to Farrukhabad and joined there on 7.6.2000. However, subsequently he was posted at Nalnital where he joined on 9.6.2000. He remained posted there till 2.9.2001 when he was transferred to Saharanpur where he remained posted from 4.9.2001 to 17.11.2003. Thereafter, he was posted as Special Judge, SC and ST, at Basti, which post he held from 19.11.2003 to 6.6.2005. He was appointed as Additional District and Sessions Judge, Court No. 1, Basti from 6.6.2005, which post he held till the filing of the present petition.

According to the petitioner, while he was posted at Saharanpur, the then District Judge, Saharanpur reported adverse remarks for the period 1.4.2003 to 17.11.2003. However, in respect of the preceding years, i.e., 2002-03, the same District Judge, Saharanpur, has himself given good and favourable remarks to the petitioner even certifying his integrity. The petitioner feeling aggrieved against the alleged adverse remarks for the period 1.4.2003 to 17.11.2003 reported by the District Judge, Saharanpur, preferred a representation on the administrative side before the Allahabad High Court through the Registrar General, respondent No. 2. The petitioner sought expunction of the adverse remarks.

The matter relating to recording of entries in the character roll of the petitioner for the year 2003-04 came up before the Administrative Judge, Saharanpur and the Administrative Judge recorded the following entry in the character roll of the petitioner:

The work and performance of the officer in the working days is satisfactory. He has good relation with the member of the Bar and brother officers. He had made regular inspections which were effective. He is a fair and impartial officer. Disposal of cases are good. On overall assessment he is rated to be a good officer. Integrity certified.

It appears that the representation preferred by the petitioner against the adverse remarks reported by the District Judge, Saharanpur, was not specifically disposed of by the

Administrative Judge and had, therefore, remained pending. The representation was placed before the Administrative committee. The administrative Committee, in its meeting held on 6.4.2005, had been pleased to reject the said representation, which order was communicated to the petitioner vide letter dated 29.4.2005

The remarks of the District Judge be restored. The overall assessment of good and certificate of Integrity given by then Hon'ble Administrative Judge is overruled by the Administrative Committee. The representation of the officer is thus rejected.

The adverse remarks as reported by the District Judge, Saharanpur, for the period 1.4.2003 to 17.11.2003, pertaining to the year 2003-04 as also the order of the Administrative Committee, reproduced above, are under challenge in the present writ petition on the ground that the same are patently illegal, contrary to law and violative of Articles 14 and 16 of the Constitution. Further, as per the circular letter of the High Court, Annual Confidential Report for the year 2003-04 cannot be segregated in two parts as the same is against the concept of service jurisprudence. The alleged adverse remarks which had been recorded in the service record of the petitioner, is patently misconceived, contrary to law, besides being perverse and contrary to material on record and cannot be sustained as they are self-contradictory and appears to have been awarded in a casual manner without assessing the true aspect of the matter. The adverse remarks have also been challenged on merits. Further, the Administrative Judge who is the authority to record entries in the character roll of the petitioner, having given good entry, the adverse remarks reported by the District Judge stood wiped off and therefore, nothing remained for consideration before the administrative committee and the administrative committee had no power of review of the good remarks given by the Administrative Judge to a judicial officer, like the petitioner. The order passed by the Administrative Committee is, therefore, patently illegal and without jurisdiction.

Judgment:

The court rely on Nawal Singh v. State of U.P. and Anr. The Apex Court, provides the following principles emerges:

- ***While evaluating the material, the authorities should not altogether ignore the reputation in which the officer was held till recently;***
- ***The maxim "Nemo Flrut Repente Turpissimus" (no one becomes dishonest all of a sudden) is not unexceptionable but it is a salutary guideline to judge the human conduct;***
- ***To dunk an officer into the puddle of doubtful integrity, it is not enough that the doubt fringes on a mere hunch;***
- ***Mere possibility is hardly sufficient to assume that it would have had happened;***
- ***rumor mongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts;***
- ***If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of the quasi-Judicial officer;***
- ***The higher Courts after hearing the appeal may modify and set aside erroneous judgment of the lower courts;***
- ***A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure-contestants and lawyers breathing down his neck. He does not enjoy the detached atmosphere of the higher Court. Every error, however gross It may be, should not be attributed to improper motives; and***
- ***The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke. Sometimes, there may not be concrete or material evidence to make it part of the record.***

Applying the principles laid down in the aforesaid cases to the facts of the present case, we find that the adverse remarks given by the District Judge regarding the petitioner being corrupt and thus, his integrity being highly doubtful was based on hearsay and rumors. There was no material on record to substantiate the same except the rumors which the District Judge had heard in the civil court and the complaint of Sri Ravindra Kapoor, advocate, whose irrelevant question in cross-examination was disallowed by the petitioner and the statement of Sri Ilam Chand Sharma, A.D.G.C. (Crl.) who was

transferred from the Court of the petitioner on the latter's complaint. Thus, the opinion of the District Judge was not based on any substantial material except the hearsay and rumours on the basis of which the adverse remarks of the officer being corrupt cannot be given. Thus, there being no other material before the District Judge, Saharanpur, to support the adverse remarks, the same cannot be sustained.

Rajendra Singh Verma

Vs.

Lt. Governor (NCT of Delhi)

(2011) 10 SCC 1

The Hon'ble Supreme Court has observed as under ""Normally, the adverse entry reflecting on the integrity would be based on formulations of impressions which would be the result of multiple factors simultaneously playing in the mind. Though the perceptions may differ, in the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in the confidential rolls to judicial review. Sometimes, if the general reputation of an employee is not good though there may not be nay tangible material against him, he may be compulsorily retired in public interest. The duty conferred on the appropriate authority to consider the question of continuance of a judicial officer beyond a particular age is an absolute one. 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 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".

M.S. Bindra

v.

Union Of India And Ors

Bench: S. Saghir Ahmad, K.T. Thomas

To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity"

Nawal Singh

V

State Of U.P. & Another

(2003(8) SCC 117),

Bench: M.B. Shah, Dr. Ar. Lakshmanan.

The Supreme Court observed that judiciary stands on a different footing and no other service could be compared with the judicial service. The observation reads thus: “At the outset, it is to be reiterated that the judicial service is not a service in the sense of an employment. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. Further, the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility."

High Court of Judicature

V

P.P. Singh & An

(2003) 4 SCC 239]

Bench: Cji, S.B. Sinha, Ar. Lakshmanan

The Court held that:—It is also true that the powers of the Chief Justice under Articles 235 and 229 of the Constitution of India are different and distinct. Whereas control over the subordinate courts vests in the High Court as a whole, the control over the High Court vests in the Chief Justices only. (See All India Judges' Association's case). However, the same does not mean that a Full Court cannot authorize the Chief Justice in respect of any matter whatsoever. In relation to certain matters keeping the rest of it in itself by the Full Court, authorization to act on its behalf in favour of the Chief Justice on a Committee of Judges is permissible in law. How far and to what extent such power has been or can be delegated would be discernible only from the Rules. Such a power by the Full Court can also be exercised from time to time."

Pawan N. Chandra

V

Rajasthan High Court

Bench: B.N. Agrawal, G.S. Singhvi

The appellant joined Rajasthan Judicial Service in the year 1982. While he was working as Civil Judge (Senior Division) cum Additional Chief Judicial Magistrate, Nimbahera, the following adverse remarks were recorded in his Annual Confidential Report for the year 1996:

"Integrity doubtful. He is not fair and impartial in dealing with the public and the Bar. He is calculating and planning to earn more money. His honest is not absolute. His image in public is not bright. Capacity to handle files systematically - not adequate. He took no pains to disposal old cases. Capacity to control the proceedings in court with firmness and follow the procedure prescribed by law-inadequate. Below Average, Integrity certificate withheld for the year 1996".

The representation made by the appellant for expunging the adverse remarks was rejected by the High Court on administrative side and the writ petition filed by him was dismissed by the impugned order.

We have heard learned counsel for the parties.

In compliance of the direction given by the Court, learned counsel appearing for the High Court has produced the service record of the appellant including his Annual Confidential Reports. A perusal thereof shows that during the entire service tenure of the appellant from 1982 till date, no adverse remark has been recorded about his integrity except for the year 1996. From 1982 to 1995 and 1997 till date, the appellant has, by and large, been rated as a good officer. During these years his immediate superiors have written positive about his performance and integrity. Only in some of the years he has been rated as an average officer. For the year 1993, his performance was described as below average but on representation the said remark was expunged. In this backdrop, the sweeping adverse remarks made in the Annual Confidential Report of the appellant for 1996 casting doubt on his integrity, impartiality and capacity to work cannot be treated as justified more so because the same were primarily based on the complaints made by two accused whose bail application etc. had been rejected by the appellant and the High Court committed an error by refusing to expunge the adverse remarks despite detailed representation made by the appellant which was duly supported by tangible evidence. In the totality of the circumstances, we are of the view that the High Court was not justified in recording the adverse remarks in the Annual Confidential Report of the appellant for the year 1996.

In the impugned order, the High Court has referred to the fact that in 1984, two judgments of the appellant were found below standard and in 1992 he was not found sitting in the court during the working hours on 3.4.1992 and concluded that his record cannot be treated as clean. The High Court has also taken adverse view of the appellant's assertion that the adverse entry of below average made in his Annual Confidential Report for the year 1993 was expunged by observing that the expunging of remarks cannot be made basis for claiming that his service record was clean. In our view, the approach of the High Court was clearly erroneous. Once the adverse remarks had been expunged, the same could not be relied upon for making an observation that the appellant's record was not clean.

Accordingly, the appeal is allowed. The adverse remarks reproduced in the earlier part of this order are directed to be expunged from the Annual Confidential Report of the appellant for the year 1996. Needless to say that the appellant shall be entitled to all consequential benefits.

Cases on various facets of Registrar Vigilance

- *K.P. Tiwari v. State Of M.P1994 SCC Supl. (1) 540*
- *Ishwar Chand Jain v. High Court of Punjab & Haryana 1988 AIR 1395*
- *Pyare Mohan Lal v. State Of Jharkhand & Ors 2010 (10) SCC 693*
- *Sharanappa v.State of Karnataka Criminal Petition no.200315/2015*
- *High Court of Judicature at Allahabad v. Sarnam Singh [(2000) 2 SCC 339]*
- *Radha Bhatnagar v. Jharkhand High Court, Ranchi W.P.(S) No. 1638 of 2013*
- *Union of India v. M.E. Reddy 1980 AIR 563, 1980 SCR (1) 736*
- *Registrar General v. R.Perachi & Ors*
- *High Court of Judicature v. Ramesh Chand Paliwal & Anr*
- *N.K. Singh v. Union Of India 1995 AIR 423, 1994 SCC (6) 98*
- *Smt. Sushila nagar v. The High Court of Judicature for Rajasthan & Ors. D.B. civil writ petition no.959/2004*
- *R.C. Sood v. High Court of Judicature (1998) 5 SCC 493*
- *Shamsher Singh & Anr v. State Of Punjab 1974 AIR 2192, 1975 SCR (1) 814*
- *State Of Andhra Pradesh v. S. Sree Rama Rao 1963 AIR 1723, 1964 SCR (3) 25*
- *Union of India v. Parma Nand 1989 SCR (2) 19*

K.P. Tiwari

V

State Of M.P

1994 SCC Supl. (1) 540

Bench: Sawant, P.B.

The Hon'ble High Court reversed the order passed by the lower court making remarks about interestedness and motive of the lower court in passing the unmerited order, this Court observed that one of the functions of the higher court is either to modify or set aside erroneous orders passed by the lower courts. Our legal system acknowledges fallibility of judges. It has to be kept in mind that a subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure -- contestants and lawyers breathing down his neck. He does not enjoy the detached atmosphere of the higher court. Every error, however gross it may be, should not be attributed to improper motives. The Judges of the High Court have a responsibility to ensure judicial discipline and respect for the judiciary from all concerned. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary if the higher courts express lack of faith in the subordinate judiciary for some reason or other. That amounts to destruction of judiciary from within

Ishwar Chand Jain

v

High Court of Punjab & Haryana

1988 AIR 1395

Bench: Singh, K.N. (J

The Hon’ble Court observed that while exercising control over subordinate judiciary under Article 235 of the Constitution, the High Court is under a Constitutional obligation to guide and protect subordinate judicial officers. An honest and strict judicial officer is likely to have adversaries. If complaints are entertained in trifling matters and if the High Court encourages anonymous complaints, no judicial officer would feel secure and it would be difficult for him to discharge his duties in an honest and independent manner. It is imperative that the High Court should take steps to protect honest judicial officers by ignoring ill-conceived or motivated complaints made by unscrupulous lawyers and litigants.

Pyare Mohan Lal
V
State of Jharkhand & Ors
2010 (10) SCC 693
Bench: J.M. Panchal, Deepak Verma, B.S. Chauhan

The Hon’ble court held that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this 'washed off theory' will have no application when case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration an earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record

pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant

Sharanappa

v

State of Karnataka

Criminal Petition no.200315/2015

Hon'ble Mr. Justice A.V.Chandrashekara

Relevant Facts:

One Kirtiraj, son of Kashinath Poste, a resident of Bidar, is a practicing advocate. His father has filed 3 civil appeals before the court presided over by this petitioner. According to the first informant-Kirtiraj, the petitioner had sent a tout to him assuring to do official favour in the pending cases, provided he paid Rs.5,00,000/- as bribe.

The complainant informed the Lokayukta about the same on 9.12.2014 and even lodged a complaint to the High Court Vigilance Cell on 12.12.2014. On 15.12.2014, Kirtiraj addressed a complaint to the Principal District & Sessions Judge, Bidar, Registrar- Vigilance, High Court of Karnataka, Administrative Judge of Bidar District and Hon'ble Chief Justice of the High Court of Karnataka, making a clear allegation against this petitioner for having demanded bribe from him to do an official favour in the cases filed by his father which are pending before him..

The Principal District Judge, Bidar, forwarded the said written complaint to the Registrar-Vigilance, High Court of Karnataka, to do the needful. On receipt of the letter, the Registrar-Vigilance placed the matter before Hon'ble the Chief Justice and the Hon'ble Chief Justice, in consultation with the Hon'ble Administrative Judge of Bidar, directed the Registrar-Vigilance to enquire into the matter.

On the basis of the same, the Deputy Superintendent of Police attached to the Vigilance Cell laid a trap at Basavakalyan and it appears that the petitioner was trapped while receiving bribe on 22.12.2014. Trap panchnama was drawn and the statements of material witnesses were recorded by the Vigilance Cell.

On receipt of the report from the Deputy Superintendent of Police attached to the Vigilance Cell, the matter was placed by the Registrar-Vigilance before the Hon'ble Chief Justice and obtained approval for initiating a criminal case. In turn the Registrar- Vigilance requested the Principal District Judge, Bidar, to lodge a report in this regard to the jurisdictional police. Accordingly on 27.12.2014, the Principal District Judge, Bidar lodged a report with the jurisdictional Superintendent of Police, Bidar, who in turn forwarded it to the jurisdictional SHO of Basavakalyan to register a case.

That is how the case came to be registered against the accused in Crime No.239/14. On receipt of First Information from the Principal District Judge, Bidar, a case came to be registered and substantial investigation is stated to have been done by the police by collecting materials from the Vigilance Wing of the High Court of Karnataka and statements of relevant witnesses recorded by the Vigilance Cell.

Since the case is registered on the basis of the report of the Principal District Judge, Bidar, the Registrar-General has addressed a letter dated 20.1.2015 to the Chief Secretary to the Government of Karnataka to designate the presiding officer of the additional district and sessions court at Bidar to try the said case.

Contention of the Petitioner:

The learned counsel representing the petitioner has raised an important issue in regard to the registration of a criminal case against this petitioner and continuation of the investigation by the respondent police. It is argued that the FIR had already been lodged by the first informant to the Registrar-Vigilance and on the basis of the same,

investigation was taken up by the Deputy Superintendent of Police of the Vigilance Cell of the High Court and even a trap was laid and therefore, the question of registration of case in Crime No.239/14 and consequent investigation does not arise. It is his case that registration of a case in Crime No.239/14 by the respondent police is hit by the provisions of Section 162, Cr.P.C.

Counsel of State of Karnataka:

Learned HCGP, Mr.Maqbool Ahmed has vehemently argued that the steps taken by the Registrar-Vigilance on the directions of the Hon'ble Chief Justice and conducting trap with the assistance of the Deputy Superintendent of Police of Vigilance Wing is not an 'investigation,' but an enquiry conducted by the High Court and this is covered by the provisions of Article 235 of the Constitution of India. He has argued that the steps taken by the Vigilance Cell is not 'investigation' in terms of Section 2(h), Cr.P.C. and Vigilance Cell is not a 'police station' in terms of Section 2(s), Cr.P.C.

After hearing the learned counsel for the petitioner and the learned HCGP, the following points arise for the consideration of this court:

- Whether the Vigilance Cell of the High Court of Karnataka is a 'police station' under Section 2(s), Cr.P.C.?
- Whether the steps taken by the Vigilance Cell on receipt of report from the first informant-Kirtiraj could be considered as 'investigation' as contemplated under Section 2(h), Cr.P.C.?
- Whether this is a fit case to exercise the power vested under Section 482, Cr.P.C. to quash criminal proceedings initiated against this petitioner, a judicial officer?

Judgment:

Point nos. (1) and (2): Since these two points are inter-connected, they are taken up together for common discussion. Mr.Sheelavanth representing the petitioner has argued that the Vigilance Wing is a police station for all practical purposes and therefore, the report received by the Registrar General and placed before the Hon'ble Chief Justice for

obtaining permission is FIR for all practical purposes within the provisions of Section 154, Cr.P.,C. and therefore subsequent trap conducted and recording of statements of material witnesses is part of investigation as defined under Section 2(h), C r. P.C .

Vigilance Cell means a Cell created in the High Court of Karnataka and it came to be established with effect from 4.5.1971 vide Government Order No.GAB.(4) HSC.68, BANGALORE. The Vigilance Cell has been set up as per the provisions of the High Court (Vigilance Cell) Functions Rules, 1971. These rules have come into effect from 21.9.1971, the day on which it was published in the Official Gazette on 7.10.1971 vide notification No.ROC.502/1965 dated 21.9.1971. These rules have been framed on the basis of power vested in the High Court under Article 235 of the Constitution of India.

Though the above Rules framed in pursuance to Article 235 of the Constitution is not a legislation, it has all the force of law. It is better to read Article 235 of the Constitution of India. The same is extracted below:

Article 235. Control over subordinate courts The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

As per the powers vested in the High Court under Article 235 of the Constitution of India, the High Court (Vigilance Cell) Functions Rules, 1971, have been framed and published in the Gazette on 7.10.1971. Thus the Vigilance Cell came to be established by virtue of the Govt. Order dated 4.5.1971 and it has received constitutional sanction. Rule 2(d) contemplates 'special officer. ‘The Registrar-Vigilance is the head of the Vigilance Wing.

Both the Registrar-Vigilance and the Deputy Superintendent of Police of Vigilance Cell directly report to the Hon'ble Chief Justice and work as per the directions and order which the Hon'ble Chief Justice may, from time to time, issue. Rule 3 of the said Rules enables the Hon'ble Chief Justice to issue necessary directions or order, from time to time, in consultation with the jurisdictional administrative judge of the district concerned.

The 'Special Officer' has to obtain necessary orders from the Hon'ble Chief Justice by submitting papers with regard to the items found in clauses (a) to (d) of Rule 5. In the instant case, the complaint received by the Registrar-Vigilance from Kirtiraj Poste was placed before the Hon'ble Chief Justice who, in consultation with the Hon'ble Administrative Judge of the district of Bidar, directed the Registrar-Vigilance to conduct an enquiry and submit a report. With the assistance of the police attached to the Cell, the Registrar-Vigilance held an enquiry and also laid a trap in regard to the demand allegedly made by this petitioner for bribe to do official favour relating to cases of the complainant's father pending before him. By no stretch of imagination, the Vigilance Cell can be considered as a 'police station' and receipt of complaint and process adopted by the Registrar-Vigilance cannot be considered as 'investigation.' It is useful to refer to the definition found ion Section 2(s), Cr.P.C. relating to 'police station and the same is extracted below:

"police station" means any post or placer declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government I this behalf.'If the Vigilance Cell were to be treated as a 'police station' and the Deputy Superintendent of Police/Registrar General were to be treated as SHO, it should have been declared generally or specially by the State Government to be a police station and no such notification is forthcoming. Even otherwise, in view of ensuring the independence of the judiciary and protection of judiciary from executive interference, the State Government cannot declare the Vigilance Cell of the High Court as a 'police station' and this can be done only if the High Court wants the State Government to do so. Just because the police officers and officials have been posted to the Vigilance Cell, it will not clothe the State Government with any power to declare it as a police station

The limited enquiry that would be held is to know whether it is a fit case to institute disciplinary proceedings. If the misconduct is of grave nature, it enables the Hon'ble Chief Justice of the High Court, in consultation with the administrative Judge, to initiate criminal prosecution either by filing a complaint in terms of Section 2 (d), Cr.P.C. or by filing a report to the jurisdictional police which would be the first information in terms of Section 154, Cr.P.C. Whatever materials collected by the Vigilance Cell in the present case and whatever statements of witnesses are recorded by the Vigilance Cell are in aid of ascertaining as to whether disciplinary proceedings could be initiated.

Article 235 of the Constitution does not inhibit the High Court to initiate criminal prosecution so as to keep judges in the courts subordinate to it and members of the staff under control. So far as consequential departmental enquiry to be held and the action to be taken in cases of positive report is concerned, it would be governed under Article 309 of the Constitution.

Learned counsel for the petitioner has relied on the Constitutional Bench decision rendered in the case of LALITHA KUMARI. What is held in the said decision is that there cannot be investigation unless FIR is reported in terms of Section 154, Cr.P.C. based on the report lodged by the person relating to commission of a cognizable offence. The Hon'ble apex court has also gone into the aspect whether a preliminary enquiry could be held before registration of a case relating to a cognizable offence. What is amplified in the said decision is that if the information received does not disclose a cognizable offence, preliminary enquiry may be conducted to ascertain whether a cognizable offence is forthcoming or not. A preliminary enquiry may be conducted in regard to an offence relating to matrimonial disputes, family disputes, commercial offences, medical negligence cases, corruption cases where there is abnormal delay in reporting the case.

These illustrations are only exhaustive which warrant preliminary enquiry. Such preliminary enquiry can be conducted by a police officer of a police station on receipt of a report disclosing cognizable offence. It is further held that a preliminary enquiry is time-bound and in any case it should not exceed 7 days from the date of the report. It is further made clear that the causes for delay must be reflected in the general diary maintained at the police station and in case the enquiry ends in closing the complaint, a copy of such

entry should be made available to the first informant forthwith indicating the reasons therefor.

Section 154, Cr.P.C. requires that there must be information and it must disclose a cognizable offence. It is true that an allegation made in the complaint before the Registrar-General or before the Principal District Judge did disclose commission of a cognizable offence. But the Vigilance Cell is not a 'police station' to register it as FIR and take up 'investigation' in terms of Section 2(h), Cr.P.C. In the present case, the High Court has not chosen to file the complaint in terms of Section 2(d), Cr.P.C. which would enable the concerned court to hold proceedings under Section 200,Cr.P.C. On the other hand, the report submitted by the complainant to the Principal District Judge was in turn forwarded to the Registrar General and it is the basis for giving oral direction to the principal district judge at Bidar to lodge FIR to the jurisdictional police for registration of a case relating to a cognizable offence punishable under the relevant provisions of the Prevention of Corruption Act. Therefore the report so submitted by the District Judge on the oral instructions of the Registrar-Vigilance, High Court of Karnataka, to the Superintendent of Police, Bidar, who in turn has forwarded the same to the SHO is the only first information in terms of Section 154, C r.P.C .

After the receipt of First Information and registration of case in Crime No.239/14 for the offences punishable under Sections 7, 8, 12, 13(2), 13(1) and 13(d) of the Prevention of Corruption Act, the I.O. has recorded the statements of several witnesses and has also collected requisite materials from the Vigilance Cell. A case diary is also maintained relating to the progress made in which the names of complainant-Kirtiraj Poste, Ramalingegowda-Inspector and in charge Deputy Superintendent of Police, Channegowda-Inspector and other police officials attached to the Vigilance Wing have been shown as witnesses. Even the Accounts Sheristedar of Bidar district court and Veerendra-SDA working in the district court at Bidar have been shown as witnesses. Material objects like trap mahazar drawn have been collected from the Vigilance Cell. Statements of witnesses recorded would be the basis for conducting inquiry by the Vigilance have been received. In fact, the Assistant Superintendent of Police, Humnabad,

has taken over the investigation and has recorded the statements of relevant witnesses and that would be the basis. At the best, the materials collected by the Vigilance Cell prior to registration of case by the police could be considered as preliminary enquiry for conducting investigation. The process so adopted by the Vigilance Cell would not come within the purview of 'investigation' as defined under Section 2(h), Cr.P.C. since the Vigilance Cell is not a 'police station within the definition of Section 2(s), Cr.P.C.

There was no other way for the police except to register a case for cognizable offence since the First Information lodged by the Principal District Judge disclosed cognizable offence of a serious nature that too, attributed to a judicial officer of demanding and receiving bribe. What is the effect of materials already collected by the Vigilance Cell and collected by the police would be in the realm of appreciation of evidence. It can, therefore, be said that there is absolutely no bar for the police to register a case and to conduct investigation and the materials collected by the Vigilance Cell and the statements recorded do not come within the purview of 'investigation' and therefore registration of case by the respondent police is not hit by Section 162, Cr.P.C.

The Constitutional Bench decision in the case of LALILTHA KUMARI (supra) relied on by the learned counsel for the petitioner is clearly distinguishable vis- à-vis the facts of the present case and hence it is not helpful to the case of the petitioner. Therefore, the report given by the Principal District Judge, Bidar, alone is the First Information in terms of Section 154, Cr.P.C. and the complaint lodged by Kirtiraj Poste is not FIR and therefore 'investigation' as contemplated under Section 2(h), Cr.P.C. had not commenced when the Vigilance Cell started an 'enquiry.' Therefore, both the points will have to be answered in the negative.

Point no. (3): While exercising power under Section 482, Cr.P.C., this court does not function as a court of appeal or revision. The jurisdiction vested in this court is inherent. Though it is wide, it has to be exercised sparingly, carefully and with caution, that too, when such exercise is justified by the tests specifically laid down in the section itself. It is made clear that courts exist for advancement of justice and that Section 482, Cr.P.C. is not an instrument handed over to the accused to cut short prosecution and bring about its

sudden death in the form of 'quashing proceedings.' Inherent power should not be exercised, according to the Hon'ble apex court, to stifle a legitimate prosecution.

In the present case, the report lodged by the Principal District Judge really discloses the commission of a cognizable offence. When information is lodged at the police station and offence is registered, mala fides of the first informant would be of secondary importance. It is the materials collected during investigation by the police and evidence led in court which decide the fate of the accused person. Therefore this court is of the definite opinion that the case on hand does not require the use of extraordinary power vested in this court under Section 482, Cr.P.C. Accordingly the petition is liable to be dismissed.

High Court of Judicature at Allahabad

V.

Sarnam Singh

Bench: S.Saghir Ahmad, D.P.Wadhwa

[(2000) 2 SCC 339]

The Apex Court while examining the scope of Article 235 of the Constitution, laid down the criteria and guidelines for scope of inspection by the Inspecting Judge and taking note of the fact that no adverse material was available against the judicial officer, has interfered with the order of compulsory retirement. The Apex Court, while considering unblemished service record of the incumbent judicial officer, recorded a finding that sans the latest confidential reports written by the inspecting judge, which too are found by the High Court on judicial side to be unjustified, arbitrary and based on non-existent facts, finally concluded that the compulsory retirement order was not supported by any material and as such the same was interfered with. Besides that the judgments on which the petitioner has placed reliance are essentially dealing with those cases of compulsory retirement where the orders were passed for extraneous reasons and there is no legal precedents cited by the petitioner showing indication to upset an order of compulsory retirement based on

subjective satisfaction of the appointing authority without there being any semblance of proof to substantiate the allegation of malice, arbitrary exercise of power, or non-availability of any material for forming an opinion that the incumbent has outlived his utility in the services. Therefore, we do not propose to deal with all these precedents as they are clearly distinguishable.

In R.C. Chandel

V

High Court of Madhya Pradesh & Anr

Bench: R.M. Lodha, Anil R. Dave.

[(2012) 8 SCC 58]

While considering the compulsory retirement of a judicial officer in public interest, found that the order passed on recommendation by the High Court based on consideration of entire service record of the officer concerned, cannot be made subject matter of judicial review to go into adequacy or sufficiency of such materials. The Apex Court, while laying down parameters vis-à-vis a judicial officer for discharging his judicial duty, has made following observations that inJudicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and the rule of law to

survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty.

Radha Bhatnagar

V

Jharkhand High Court, Ranchi

W.P.(S) No. 1638 of 2013

Hon'ble the chief justice Hon'ble Mr. Justice Shree Chandrashekhar

Relevant Facts:

On the recommendation of the Bihar Public Service Commission the petitioner was selected for appointment on the post of Munsif and by Notification dated 30.11.1995 issued by the Department of Personnel and Administrative Reforms, Government of Bihar, the petitioner was provisionally appointed on the post of Munsif and she was posted at Ara (Bhojpur). Vide Notification no. 1993 dated 24.02.1998 she was regularised in service. After the bifurcation and reorganisation of the State of Bihar, the petitioner was allocated Jharkhand cadre and vide Notification dated 21.04.2001, the petitioner was posted as Judicial Magistrate, Khunti, Ranchi where she joined on 08.05.2001. Subequently, the petitioner was confirmed in service by Notification dated 02.08.2005 and she was granted benefit under the Assured Career Progression Scheme by Notification dated 30.08.2006 whereby the first A.C.P. was granted w.e.f. 18.12.2000 and second A.C.P. w.e.f. 18.12.2005. The petitioner while serving on transfer as Sub-Divisional Judicial Magistrate, Madhupur at Deoghar was communicated the adverse entry in her A.C.R. for theyear 2008-09 issued vide letter no. 30 dated 20.10.2011 under the signature of the District Judge, Deohar. The petitioner therefore, submitted her representation dated 22.11.2011 for expunction of the said adverse entry in her A.C.R.

However, it was kept pending and in the meantime, some judicial officer even junior to the petitioner were promoted to the cadre of Civil Judge, Senior Division vide Notification dated 20.03.2012 and therefore, the petitioner submitted another representation dated 21.03.2012 making a request for placing her representation before the Hon'ble High Court so that her case for promotion in the cadre of Civil Judge, Senior Division can be considered. However, vide memo dated 15.05.2012 issued under the signature of the Registrar General-cum-Registrar (Vigilance) In charge, High Court of Jharkhand, the petitioner was informed that her representation seeking expunction of adverse entry in her A.C.R. for the assessment year 2008-09 has been rejected by the Hon'ble High Court. Immediately thereafter, by Notification contained in memo no. 6792 dated 29.05.2012 issued under the signature of Deputy Secretary, Department of Personnel and Administrative Reforms and Rajbhasha, Government of Jharkhand the petitioner was made to retire from service compulsorily w.e.f. 30.05.2012 under Rule 74 (b) (ii) of the Jharkhand Service Code. Challenging the decision to retire her compulsorily from service, the petitioner has approached this Court by filing the present writ petition.

Counter Affidavit filed by High Court:

The High Court of Jharkhand appeared and filed counter-affidavit stating that following the guidelines in the letter dated 14.10.2008 of the Hon'ble the Chief Justice of India, a list of judicial officers who had attained the required age, was placed before the Hon'ble the Chief Justice who had been pleased to refer the matter to the Screening Committee of the High Court.

After considering the entire service records, overall performance and the vigilance report of all such judicial officers, the Screening Committee of the High Court in its meeting held on 11.04.2012 resolved and recommended that the services of ten judicial officers including the present petitioner are not required to be continued and they were recommended to be compulsorily retired from service under the Rule 74 (b) (ii) of the Jharkhand Service Code, 2001. The recommendation of the Screening Committee was placed before the Hon'ble the Chief Justice and the Hon’ble Chief Justice was pleased to refer the matter to the Standing Committee of the High Court for its consideration. The

Standing Committee of the High Court vide its Minutes dated 09.05.2012 resolved to accept the report of the Screening Committee and accordingly, a recommendation was sent to the State Government. The State Government accepted the recommendation of the High Court of Jharkhand and consequently Notification dated 29.05.2012 was issued for compulsory retirement of the petitioner in public interest. It is denied that the matter relating to compulsory retirement of a judicial officer is required to be placed before the Full Court rather, Standing Committee of the High Court enjoys the power to make recommendaton to the State Government for compulsory retirement of a judicial officer in terms of Rule 8 (1) (ix) of the High Court of Jharkhand Rules, 2001. It is further stated that the petitioner failed on more than one occassion to secure satisfactory remarks in her A.C.R. besides, adverse entry for the assessment year, 2008-09.

Counsel on behalf of Petitioner:

The learned counsel appearing for the petitioner has confined his argument only to the challenge to the order of compulsory retirement of the petitioner from service. The learned counsel has submitted that the "extracted copy of remarks of A.C.R. with regard to over all assessment of the petitioner" which was provided to the petitioner on her request though R.T.I. would indicate that the overall performance of the petitioner has been satisfactory and there has been no remark touching upon the integrity of the petitioner and therefore, the recommendation under Rule 74 (b) (ii) of the Jharkhand Service Code, 2001 is not supported by the materials on record. It is further submitted that in the absence of the service record of the petitioner for the last three years preceeding the order of compulsory retirement, the subjective satisfaction of the recommending authority lacks objectivity which renders order of compulsory retirement bad in law.

Counsel Appearing on behalf of High Court of Jharkhand:

The learned counsel appearing for the High Court of Jharkhand submitted that the "extracted copy of the remarks of A.C.R." does not reflect the complete picture of the petitioner's ability, efficiency, utility and integrity. It is submitted that serious complaints

were received against the petitioner which were inquired into and she was constantly put "under watch" of the concerned District Judge by the order of the Hon'ble Inspecting Judge. It is further submitted that, what is to be examined is "overall performance on the basis of entire service record" for coming to the conclusion whether it is in the public interest to retire the employee concerned compulsorily. Since in the present case after considering the materials on record including entire service record of the petitioner, the Hon'ble High Court recommended compulsory retirement of the petitioner under Rule 74 (b) (ii) of the Jharkhand Service Code and the State Government accepted the recommendation of the High Court and issued Notification retiring the petitioner in public interest, the matter doesnot require interference by this Court. It is further submitted that in case of a judicial officer the reputation of the officer and impression of the immediate superior officers are of utmost importance. In case of the petitioner, the District Judge as well as Hon'ble Inspecting Judge have recorded adverse remarks and the petitioner was kept "under watch" and therefore, it cannot be contended that the petitioner's integrity was beyond doubt.

When the petitioner was posted at Dhanbad and Koderma several complaints were received against her and report was called for from the District Judge, Dhanbad. After receiving the report from the District Judge, Dhanbad, the Hon'ble Inspecting Judge vide Minutes dated 19.09.2007 ordered calling for report from the District Judge, Koderma where the petitioner in the meantime had been transferred. It appears that vide Minutes dated 05.12.2007 the Hon'ble Inspecting Judge ordered that, "keeping in view the report submitted by the District Judge, Dhanbad, officer concerned may be kept under watch by the District Judge, Koderma for atleast six months". Six months thereafter, a report was again received from the District and Sessions Judge, Koderma in which he informed that the petitioner was not carrying good reputation due to her short temperament and behaviour with the members of the Bar. The petitioner was ordered to be kept "under watch" for further period of six months. It appears that during this period complaints levelling allegations touching the integrity of the petitioner were also received by the District Judge. It was also reported that the petitioner was not herself recording evidence

and even for cross-examination the case was sent to the Pleader Commissioner for recording the cross-examination. Vide Minutes dated 27.02.2009 it was ordered that the "officer concerned may be kept on watch for further six months". The District and Sessions Judge, Koderma again reported that several complaints against the integrity of the petitioner were received. It was further reported that on confidential inquiry the District and Sessions Judge found that the petitioner was carrying a bad reputation. Finally, vide Minutes dated 09.12.2009 the Hon'ble Zonal Judge referred the matter to the Standing Committee for taking proper action against the petitioner and the Standing Committee in its meeting held on 28.03.2011 resolved to initiate departmental proceeding against the petitioner. However, in the meantime the proceeding under Rule 74 (b) (ii) was initiated and therefore, no further step was taken for intiating departmental proceeding against the petitioner.

Judgment:

It is noticed that the immediate superior officer of the petitioner, i.e. the District and Sessions Judge reported that the petitioner was carrying bad reputation and several complaints against her integrity were received. The Hon'ble Inspecting Judge accepted the report of the District Judge and on three occasions ordered that the petitioner be put "under watch" for six months. We find no substance in the contention of the learned counsel for the petitioner that in absence of any adverse 13 entry reflected in the "extracted copy of remarks of A.C.R." touching upon the integrity of the petitioner, the order of compulsory retirement is bad in law.

We further find that throughout her career, the petitioner remained an average officer and except for assessment year 2002-2003 her performance was average or satisfactory only. Even in the year, 2004 the Hon'ble Chief Justice who was the Inspecting Judge has recorded in the A.C.R. of the petitioner that the officer should improve on all fronts. On overall assessment of the entire service record of the petitioner the Screening Committee recommended that the petitioner be retired compulsorily and the Standing Committee of the High Court further examined the materials on record including the recommendation of the Screening Committee and resolved that the petitioner was required to be retired

compulsorily. The recommendation of the High Court was accepted by the State Government and order of compulsory retirement under Rule 74 (b) (ii) of the Jharkhand Service Code, 2001 was issued in public interest. It is well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority

As noticed here-in-above, the petitioner remained an average officer throughout her career and there had been serious allegations touching upon her integrity as a judicial officer. The District Judge as well the Hon'ble Inspecting Judge have commented adversely against the petitioner. Merely because the A.C.R. of the petitioner for the last three years were not available, the order of compulsory retirement of the petitioner from service cannot be held to be not based on relevant materials. In the result, we find no merit in this writ petition and accordingly, this writ petition is dismissed.

Union of India

v

M.E. Reddy

1980 AIR 563, 1980 SCR (1) 736

Bench: Fazalali, Syed Murtaza

The Hon'ble Supreme Court has held that It will indeed be difficult if not impossible to prove by positive evidence that a particular officer is dishonest but those who have had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoy.

Registrar General

V

R.Perachi & Ors

Bench: J.M. Panchal, H.L. Gokhale

This appeal by Special Leave seeks to challenge the judgment and order dated 28.08.2008 passed by a Division Bench of the Madras High Court (at Madurai Bench) in W.P. (MD) No.7121/2007. The Division Bench has allowed the writ petition filed by the first respondent who is working as a Sheristadar in the District Judicial Service in the State of Tamil Nadu.

The Division Bench by its impugned judgement and order has quashed and set-aside the transfer of the first respondent from District Thoothukudi to District Ramanathapuram, and directed the High Court to restore him in District Thoothukudi with his seniority, and confer on him the post of Personal Assistant (P.A.) to the District Judge, Thoothukudi.

Relevant Facts:

The first respondent joined the Tamil Nadu Judicial Ministerial Service as a Typist on 11.4.1979, and was initially posted in the Court of Judicial Magistrate II Class at Kovilpatti in District Thoothukudi (formerly known as Tuticorin). Over the period he was promoted from time to time and from 15.10.2001 onwards he was working as Sheristadar Category I in Court of Principal District Judge, Thoothukudi. He was also holding the additional charge of the post of P.A. to the District Judge, Thoothukudi, since that post had fallen vacant. It is his case that he was expecting the regular promotion in the post of P.A. to the District Judge.

It so transpired that the first respondent alongwith other two employees in the District, that is one S. Kuttiapa Esakki, Sheristadar, Sub- Court, Kovilpatti and one T.C. Shankar, Head Clerk in the Court of Principal District Judge, Thoothukudi came to be transferred outside the district by order dated 19.9.2006 issued by the appellant on behalf of the High Court on administrative grounds. These other two employees filed writ petitions bearing nos. WP (MD) No.9378 and 10528 of 2006 before the Madurai Bench of Madras High Court, but the petitions came to be dismissed by the High Court by its order dated 20.4.2007. The first respondent did not challenge his transfer at that time and joined at the place where he was transferred in district Ramanathapuram.

The first respondent came to know that the post of P.A. to the District Judge, Thoothukudi was being filled, and on 21.4.2007 he made a representation to the Principal District Judge, Thoothukudi, the respondent no.2 herein for being considered for that post. The first respondent learnt that the fourth respondent was promoted to that post of P.A. to the District Judge though he was due to retire shortly on 31.8.2007. He is junior to the first respondent as well as to the third respondent. Third respondent went on medical leave in July 2007 and that is how fourth respondent was promoted to that post. Later on, the first respondent learnt that he was not considered for this post for the reason that he was already transferred outside that district, and the reasons for the decision were recorded in the proceeding of the second respondent dated 6.6.2007.

At this stage the first respondent obtained necessary information by filing an application under the Right to Information Act, 2005 and then filed a writ petition on 24.8.2007 bearing W.P. (MD) No.7121/2007 before the Madurai Bench, and prayed that the proceeding dated 6.6.2007 bearing No.2697 concerning his non-consideration for that post be called from the file of the second respondent, and be quashed and set-aside. He also prayed that a selection panel be prepared for the post of P.A. to the District Judge, Thoothukudi by including his name in that panel, and necessary orders be passed. The Principal District Judge was joined as the first respondent, the High Court was joined as the respondent no.2, and the two concerned employees were joined as respondent no.3 and 4 in that petition.

The first respondent contended in his petition that in spite of his transfer from District Thoothukudi, he retained his lien on his post in that district. That was the basis of his prayers. He did not challenge his transfer from that district. It is material to note what is stated of his affidavit in support of his writ petition. This para reads as follows:-

I submit that the 2nd respondent is well within his powers to transfer any employee from one district to another district on administrative grounds and there was no malafide exercise in the present transfers. However, the 3rd and 4th respondents were left out though they too were the candidates. In any case, one cannot challenge the transfers but

the same shall not have the effect of obliterating the lien I hold and any right to be considered for the promotion as PA to the District Judge, Thoothukudi.

Thus, it would be seen that the first respondent accepted that it was within the powers of the appellant, i.e. the Registrar General representing High Court Administration to transfer the employees from one district to another, and there was no malafide exercise in the present transfer. His only submission was that he retained his lien on his post in district Thoothukudi in spite of his transfer therefrom, and he should be considered for promotion to the post of P.A. in that district.

Petition opposed by District Judges:

The writ petition was opposed by the second respondent herein i.e. by the District Judge, Thoothukudi by filing an affidavit dated 20.3.2008. He pointed out that the first respondent was transferred outside district Thoothukudi along with earlier mentioned two employees S. Kuttiapa Esakki and T.C. Shankar by the High Court under a common order on the basis of a confidential letter received from the then Principal District Judge, Thoothukudi. The District Judge also pointed out in his affidavit that the first respondent can claim appropriate promotion in the district where he was transferred on the basis of his original seniority, but he can no longer claim it in district Thoothukudi wherein he had lost his lien. He referred to Rule 14(A) (d) of the Fundamental Rules of Tamil Nadu Government which lays down that the lien of a Government servant on his post shall stand terminated on his acquiring lien on another permanent post.

It was therefore, pointed out in the affidavit that after the writ petitions filed by the earlier mentioned two employees were dismissed, the employees who were in the zone of consideration were considered for the promotion to the post of P.A. to District Judge, Thoothukudi, and the selection was made after considering the merit, ability and seniority of the candidates concerned as per rules 8 and 19 of Tamil Nadu Judicial Ministerial Service Rules. As far as the claim of the first respondent to the lien on a post in Thoothukudi is concerned, it was pointed out that first respondent had not challenged his transfer from Thoothukudi. It was, therefore, submitted that the petition be dismissed.

Since, the above referred Rule 14-A was relied upon, we may quote the same which reads as follows:

"14-A:

(a) Except as provided in clauses (c) and (d) of this rule, a Government servant's lien on a post may, in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

(b) Deleted.

(c) Notwithstanding the provisions of Rule 14(a), the lien of a Government servant holding substantively a permanent post shall be terminated while on refused leave granted after the date of retirement under Rule 86 or corresponding other rules. Vide G.O.829, Personnel and Administrative Reforms Department, dated 26.8.1985.

(d) A Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Government or the Central Government or any other State Governments) outside the cadre on which he is borne."

Counter Affidavit filed by Registrar General:

A counter affidavit dated 18.7.2008 was filed by the then Registrar of the High Court, and it was pointed out that the first respondent himself had not alleged any malafides to challenge his transfer. He had also admitted that transfer was within the powers of the High Court Administration. The affidavit stated that the transfers were effected on the basis of the report/directions received from the Vigilance Cell of the Madras High Court, however, the transferred employee will retain his seniority in the Ramanathapuram district under explanation 1 of Rule 39 of the Tamil Nadu Judicial Ministerial Service Rule right from the date of his first appointment in Thoothukudi district.

In view of these affidavits filed in reply to his petition, the first respondent amended his petition nearly after nine months by filing an application dated 21.4.2008 with supporting affidavit, and now sought to add the prayer that the records relating to the transfer order

dated 19.9.2006 be also called from the files of the High Court, and the same be quashed and set- aside.

The amended petition was opposed by the then Registrar General of the High Court by filing one more affidavit dated 1.8.2008. She pointed out that the first respondent was transferred along with two other employees outside the district Thoothukudi on administrative grounds by the High Court under administrative proceeding dated 19.9.2006. She also pointed out that a complaint had been received from the staff of the judicial department of that district by the Vigilance department of the High Court on 2.1.2006. The complaint stated that the first respondent along with some other employees had formed a coterie in the District Court and they were dominating the District Administration whereby the Court was suffering in its work, and therefore these employees be transferred to other district. That letter was forwarded to the District Judge, Thoothukudi for his comments, who in turn wrote back to the High Court on 28.4.2006 placing it on record that departmental enquiries were pending against the first respondent and three other employees on the charges of corruption. The District Judge had also opined that if these employees were continued in the district, the administration would be very much spoiled. It is, therefore, that the High Court Administration directed that the first respondent and the concerned employees be transferred outside the district on administrative grounds. There was no malafide intention whatsoever in these transfers.

Thereafter the first respondent sent a mercy petition to the High Court submitting that he was on the verge of promotion to a higher post viz., that of P.A., and therefore, he may be promoted in district Thoothukudi and if necessary be transferred to the nearest district Tirunelveli. The High Court considered that representation but rejected it by its proceeding dated 8.5.2007. Incidentally, Ramanathapuram is also a district adjoining Thoothukudi.

The writ petition was thereafter considered by a Division Bench of the Madras High Court at Madurai which passed the impugned order. The High Court did not accept the plea of the first respondent that he retained a lien in district Thoothukudi. It held that his lien in that district stood terminated in view of the above referred Rule 14 (A) (d) of the

Fundamental Rules, and also in view of the proposition laid down by this Court in Jagdish Lal Vs. State of Haryana], that an employee cannot simultaneously claim a lien on two posts. The Division Bench also did not find any error in the proceeding / order dated 6.6.2007 of the Principal District Judge, Thoothukudi wherein he had recorded that the first respondent could not be taken up for consideration for promotion in district Thoothukudi, since he had been transferred outside that district.

Judgment by Division Bench:

The Division Bench, however, held that although the High Court had the power to transfer the first respondent from one District unit to another unit, it had to be seen whether such power had been exercised by a competent authority or not. The Division Bench further held in para 20 of its judgment that as per Article 216 of the Constitution, High Court means `the Chief Justice and his companion Judges and the matter should have been placed before the full Court'. The bench also observed that in any case no committee had been constituted by the High Court in that matter before taking the decision to transfer, and the impugned transfer was a unilateral decision taken by the then Honourable Chief Justice of Madras High Court. The Division Bench thereafter noted that the impugned order of transfer had been passed on an anonymous letter and thereafter on the basis of a report from the District Judge and after ordering of a vigilance enquiry.

Judgment by Supreme Court:

As far as the first ground on which the High Court has interfered with the order of transfer is concerned, namely that it was not passed by a competent authority, the appellant has produced the relevant material before this Court which clearly shows that the Full Court had passed a resolution under which the subject of vigilance enquiries was retained with the Chief Justice. Besides, in view of the pending inquiry against the appellant, the District Judge of Thoothukudi had expressed that it was not desirable to retain the appellant in that district. The control of the High Court over the subordinate courts under Article 235 of the Constitution includes general superintendence of the working of the subordinate courts and their staff, since their appeals against the orders of the District

Judges lie to the High Court. `The word control referred to in Article 235 of the Constitution has been used in the comprehensive sense and includes the control and superintendence of the High Court over the subordinate courts and the persons manning them both on the judicial and administrative side'. This control over the subordinate courts vests in the High Court as a whole. `However, the same does not mean that a Full Court cannot authorize the Chief Justice in respect of any matter whatsoever'. The Full Court of the Madras High Court had passed a resolution way back in the year 1993 to retain the subject of "Vigilance Cell" with the Chief Justice. Therefore, it was fully within the authority of the then Chief Justice to take the decision to transfer the appellant outside district Thoothukudi. The transfer was particularly necessary in view of the complaint that was pending against him. The Division Bench has observed that the complaint was an anonymous one.

Even so, the same had the other ground on which the Division Bench has interfered with the transfer order is that according to the Division Bench, but for this transfer order there was no other impediment for the District Judge to promote the respondent no.1. The Division Bench was of the view that the first respondent had lost the opportunity of getting promoted to the post of P.A. to the District Judge on account of this transfer, and therefore the same was punitive. As far as this finding of the bench is concerned, it ought to have noted that the transfer is an incident of service, and the first respondent himself had clearly stated in his affidavit in support of the petition that there was no malafide exercise in the present transfer. As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the concerned unit. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the decision of the then Chief Justice to transfer him outside that district could not be faulted.

The fact that the first respondent could not be considered for promotion to the post of P.A. in district Thoothukudi was undoubtedly the consequence of this transfer outside that district. However, in view of what is stated above, that itself cannot make his transfer a punitive one. As rightly stated by the then Registrar General in her affidavit before the High Court, the first respondent would be retaining his original seniority though he was transferred in another district. He was in the cadre of Sheristadar and he continued in that cadre in district Ramanathapuram after he was transferred to that district. In district Thoothukudi, he was officiating as P.A to the District Judge since that post was vacant, but his substantive post was that of Sheristadar. The officiating work did not create any right in him to be continued in the post of P.A. That was not also his case, and that is how he had sought to be empanelled for being considered for the promotion to the post of P.A, though in district Thoothukudi. Since the first respondent was no longer in district Thoothukudi, obviously he could not be included in the panel prepared for consideration for the post of P.A. in that district.

The Division Bench also erred in ignoring that the first respondent had been transferred under a common order alongwith two other employees i.e. S. Kuttiapa Esakki, and one T.C. Shankar. The Writ Petitions filed by them had been dismissed. Besides, a judgment of a co-ordinate bench in A.K. Vasudevan was cited before the Division Bench wherein the facts were almost identical. It was therefore, not expected of the Division Bench to take a different view from the point of view of judicial discipline.

Thus it is very clear that the impugned judgment and order are wholly unsustainable, and in complete disregard of the law laid down by this Court. This Court has, therefore, to allow this appeal and to set-aside the judgment and order dated 28.8.2008 passed by the Madras High Court on W.P.(MD) No. 7121 of 2007. Accordingly, this appeal is allowed and the order dated 28.8.2008 passed by the Madras High Court on Writ Petition (MD) No. 7121 of 2007 is set-aside. The said writ petition shall stand dismissed. There will, however, not be any order as to the costs.

Been looked into by the Vigilance Cell, and the District Judge had reported that departmental enquiries were pending against the appellant and the other employees against whom the complaint had been made. The District Judge had also opined that it

was undesirable to retain the appellant in his district from the point of view of the administration of that district. In view of all these factors, the Chief Justice had to take the necessary decision. It is, therefore, difficult to accept the view of the Division Bench that the Chief Justice unilaterally transferred the appellant outside the district, and the decision ought to have been taken either by the Full Court or a Committee appointed by the Full Court. In view of what is pointed out above, there was no reason for the Division Bench to take such a view in the facts of the present matter.

High Court of Judicature

v

Ramesh Chand Paliwal & Anr on 19 February, 1998

Bench: S. Saghir Ahmad, G.B. Pattanaik

The order under challenge was with respect to the issue whether the post of Deputy Registrar should be filled from amongst the officers belonging to the establishment of the High Court, or from the judicial side. A Division Bench of Rajasthan High Court had opined that the subject be placed before the Full Court, since according to the bench the Chief Justice ought not to have brought in the officers from the judicial side for an administrative post. This Court set-aside that direction by holding that it amounted to encroachment upon the authority of the Chief Justice, and was contrary to the constitutional scheme. This was a matter concerning an officer of the High Court covered under Article 229 of the Constitution. What the Apex Court has observed in para 38 of this judgment is quite relevant for the present matter and worth reproducing

As pointed out above, under the constitutional scheme, Chief Justice is the supreme authority and the other Judges, so far as officers and servants of the High Court are concerned, have no role to play on the administrative side. Some Judges, undoubtedly, will become Chief Justices in their own turn one day, but it is imperative under the constitutional discipline that they work in tranquility. Judges have been described as

"hermits". They have to live and behave like "hermits" who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat. This is necessary so that their latent desire to run the High Court administration may not sprout before time, at least, in some cases."

N.K. Singh

V

Union Of India on 25 August, 1994

1995 AIR 423, 1994 SCC (6) 98

Bench: Verma, Jagdish Saran (J)

The Hon'ble Court observed that Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

Smt. Sushila nagar

Vs.

The High Court of Judicature for Rajasthan & Ors.

D.B. civil writ petition no.959/2004

Hon'ble the Chief Justice Shri S.N. Jha

Hon'ble Shri Justice Ajay Rastogi

Relevant Facts:

The case of the petitioner briefly stated is that on her appointment to the Rajasthan Judicial Service she was posted as Additional Munsif and Judicial Magistrate at Ajmer in March, 1992. Shri Uma Shanker Vyas, a batch senior to her, was also posted there. In the beginning he tried to be intimate with her and later tried to make advances. He then spread rumours about her character. Once he was admonished by the then District Judge, Ajmer Shri D.C. Dalela. On intervention of other judicial officers, however, he submitted a written apology on 22.8.1992 and the petitioner did not pursue the matter.

The petitioner has then referred to the conduct of Shri Magha Ram Choudhary posted as Additional Chief Judicial Magistrate No.1, Ajmer from 1992-94. According to the petitioner he was an elderly person and she gave him due respect. But, strangely, she started receiving anonymous letter which she finally found had been written by him. Letters contained "adolescent expressions tending to be some time romantic". In July, 1997 the petitioner was again posted at Ajmer as Civil Judge (Junior Division) South when Shri K.L. Vyas was the District Judge. He happened to be uncle of Uma Shanker Vyas. Shri Narendra Kumar Purohit, Shri Rakesh Kumar Mathur and Shri Vinay Kumar Goswami were also posted there as Additional District Judges and Additional Chief Judicial Magistrate respectively. They took the petitioner for ride in their car on the pretext of searching a venue for Lok Adalat. The petitioner later came to know that the venue was already fixed and their object simply was "to have her company for entertainment". There were other lady judicial officers posted at Ajmer but they were not

asked to accompany them. The petitioner alleged that this was so because she belonged to Scheduled Caste community and therefore "considered to be an available commodity".

Shri K.L. Vyas called her to Dak Bungalow at Beawar after office hours which she refused. He put pressure on the Beawar Bar to make complaint against her character. In order to victimize her, she was assigned duty during Diwali holidays even though male officers were available. A judicial staff of Court of Additional District Judge, Beawar who had been accused of teasing girls was posted in her Court. Shri K.C. Singhal, Additional District Judge posted at Beawar during 1997-99 asked her to bring a packet from Jaipur where she had gone to see her parents. After the packet was handed over to Shri Singhal at Beawar, she came to know that it contained liquor bottles. She complained to Shri Singhal but, it seemed, he did not take it easy because she started receiving strange phone calls and she got the telephone disconnected. After Shri Singhal was posted at Chittorgarh in February 1999, she got a new telephone connection. She again started receiving blank calls which were traced to the residence of Shri Singhal.

On 26.5.2001 the petitioner made a complaint, alongwith supporting documents, to the Registrar General of the High Court in respect of the above- mentioned incidents. On 10.6.2001 she sent some more documents. When no action was taken on the complaint the petitioner approached the National Women Commission and the Supreme Court of India. On receipt of the letter from the Registrar General, Supreme Court of India, dated 9.7.2001, the matter was placed before the Chief Justice and an enquiry was made. The enquiry was held by the Registrar General (Vigilance) who submitted report on 9.11.2001 recommending disciplinary action against Shri Magha Ram Choudhary and Shri K.C. Singhal. Shri Uma Shanker Vyas, Shri Narendra Kumar Purohit, Shri Rakesh Kumar Mathur and

Shri Vinay Kumar Goswami were let off. The petitioner submitted a number of applications to supply her copy of the enquiry report and other related documents but it was only in September, 2003 that copy of the report was supplied. She submitted representation against the enquiry report immediately on 23.9.2003. She also submitted

application to prosecute the concerned officers under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

It may be stated here that the conduct of Shri K.L. Vyas does not appear to have been examined because he had superannuated from service and died soon after. Shri K.C. Singhal was compulsorily retired and in the circumstances the departmental proceeding commenced against Shri Magha Ram Choudhary alone. The charge-sheet served on him referred to the period 10.6.1992 to 25.5.1993 even though, according to the petitioner, the enquiry report adverted to allegations for the subsequent period too. Her case is that she pointed out the mistake to the Registrar (Vigilance) who was acting as the Presenting Officer in the departmental enquiry. He moved application for amendment of the charge on 6.9.2003. The Enquiry Judge (a sitting Judge of the High Court) however, by order dated 18.10.2003 rejected the application.

The petitioner also made allegation against previous Enquiry Judge and, it is said, on her complaint on 30.9.2002 the Enquiry Judge was changed. The petitioner has referred to at length guidelines laid down by the Supreme Court in Vishakha Vs. State of Rajasthan, and alleged that the guidelines were not followed in dealing with her complaint. The petitioner in the circumstances filed the writ petition in her own words "being aggrieved by the exoneration of the four judicial officers complaint against, rejection of charge amendment application and non-compliance of the guidelines laid down by the Hon'ble Supreme Court as well as non-enforcement of prevention of atrocities on SC/ST against the accused officers" seeking reliefs noticed at the outset.

At this stage it may be mentioned that the petitioner had initially impleaded, besides the High Court and the State of Rajasthan as respondent nos.1 and 3 respectively, Shri Magha Ram Choudhary as respondent no.2. Later, on her application, Shri Narendra Kumar Purohit, Shri Rakesh Kumar Mathur, Shri Vinay Kumar Goswami and Shri Uma Shanker Vyas were added as respondent nos.4 to 7 and notice was issued to them.

The High Court has filed reply and additional affidavit. Respondent nos.4 to 6 have filed a common reply while respondent No.7 has filed a separate reply. The petitioner has filed

rejoinder to the said replies and an additional affidavit. In its reply, the High Court stated that the complaint filed by the petitioner on 26.5.2001, received in the office on 1.6.2001, was placed before the Administrative Judge on 3.7.2001. The Administrative Judge opined that no specific misconduct had been alleged against any particular officer, allegations were about things alleged to have taken place on 7-8 years ago and therefore no action was possible. However, later on receipt of copy of the same complaint from the Registrar General of the Supreme Court, the Chief Justice ordered preliminary enquiry. The enquiry revealed prima facie case of misconduct against officers, namely Shri Magha Ram Choudhary, and Shri K.C. Singhal; no case was found against the remaining four officers. The report was approved by the Chief Justice on 9.11.2001 and regular departmental enquiry was ordered against Shri Magha Ram Choudhary and Shri K.C. Singhal. The petitioner made representation on 7.1.2002 for reconsideration.

After considering the report and the entire record on 14.2.2002 the Administrative Judge found that no case was made out for reconsideration and the representation dated 7.1.2002 was rejected. The petitioner made yet another representation on 23.9.2003 seeking reconsideration which was rejected by the then Administrative Judge on 3.8.2004. As regards the reliefs sought by the petitioner it has been stated in the reply that the matter essentially relates to proceeding in a departmental enquiry between the delinquent and the Department (High Court) and the complainant has no locus standi to seek direction for conducting enquiry in a particular manner, that too during pendency of the departmental enquiry. The petitioner has set the ball in motion and it is for the disciplinary authority to decide whether any misconduct is made out or not. The application for amendment of the charge was filed by the Presenting Officer and the acceptances or rejection thereof could be challenged by either the delinquent or the Presenting Officer, as the case may be. The complainant/petitioner can not make grievance particularly when she had not moved any kind of application for amendment of the charge. The subject matter of preliminary enquiry was the period from 10.6.1992 to 25.3.1993 when the complainant and the delinquent (Shri Magha Ram Choudhary) were posted at Ajmer. Rejection of the application for amendment of the charge thus provided no cause of action to the petitioner to challenge the order.

It has further been stated in the reply that the petitioner was placed under suspension on 20.4.2001 in view of disciplinary proceedings under Rule 16 and two under Rule 17 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 - pending against her. On 27.4.2001 she made representation alleging victimization and injustice and sent copies thereof to the Hon'ble Judges of the High Court. In her representation she complained of being forced to resign. Reports of her resignation appeared in local newspapers. The matter was also raised in the Rajasthan Legislative Assembly on 1.5.2001 which too was reported in the local newspaper. The matter was placed before the Full Court on 24.5.2001 under Agenda No.XIII as under :

"Matter regarding propriety and veracity of allegations raised in the Rajasthan State Assembly at the behest of Smt. Sushila Nagar, RJS and further to consider the propriety of sending the representation to the Hon'ble Judges of this Court regarding circumstances she was being forced to submit her resignation"

The Full Court resolved as under:-

"Having considered the matter and after due deliberation it is RESOLVED that a show cause notice by the Full Court be issued to Smt. Sushila Nagar as to why action should not be taken against her with regard to the propriety of sending the representation to the Hon'ble Judge of this Court regarding the circumstances she was being forced to submit her resignation."

It has also been stated in the reply that pursuant to the directions of the Supreme Court in Vishakha Vs. State of Rajasthan (supra), a Complaints Committee comprising of Hon'ble Mrs. Justice Gyan Sudha Misra and Hon'ble Mr. Justice Ashok Parihar has been constituted to look into the cases of sexual harassment of the female employees working in the office of the Rajasthan High Court.

Reply by Respondent:

Respondent nos.4 to 6 in their reply have challenged the locus standi of the petitioner to file the writ petition. It has been stated that the preliminary enquiry did not reveal any

case against them and in proceeding under Article 226 of the Constitution of India, the High Court cannot go into findings of fact recorded in the preliminary enquiry as it is not open to the High Court to reappraise the evidence. On facts it has been stated that the complaint was made on 26.5.2001 after four years of the alleged incident. In the representation made to the Registrar General on 27.4.2001 there was no whisper of allegation against these respondents. She got the issue raised in the Rajasthan Legislative Assembly on 1.5.2001 without levelling any allegation against the respondents. In her interview to the media also there was no mention of these respondents. In the complaint to the Rajasthan State Human Rights Commission on 16.5.2001 too nothing was said against the respondents. On 22.5.2001 she gave interview to the correspondent of the Hindustan Times but again did not utter a single word against these respondents. On 24.5.2001, the Full Court resolved to issue show cause notice to the petitioner. Only then, on 26.5.2001, for the first time, allegations were made against these respondents because they happened to be posted in the Registry of the Jaipur Bench of the High Court at that time. The respondents have asserted that the allegations against them are false and frivolous, and an afterthought, designed to make out defence in the departmental enquiries against her. The respondents have referred to the factual background which is not necessary to notice for disposal of this writ petition.

In his reply, respondent No.7 has stated that the enquiry officer found no prima facie material to warrant departmental enquiry against him. Neither the finding of the enquiry officer nor the order (of the Chief Justice) closing the enquiry against the respondent has been challenged by the petitioner. Without challenging the finding and order of the High Court on administrative side, relief no.2 seeking direction to proceed against the remaining officers cannot be granted. The respondent has challenged the maintainability of the writ petition on the ground of delay and laches. Whereas the preliminary report was submitted in November 2001, the petition was filed after three years. The respondent submits that remedy of writ petition is extra-ordinary and equitable in nature and relief cannot be granted to a person if he comes with unclean hands and much after the cause of action had accrued. Respondent no.7 has also averred that the writ petition is an abuse of the process of law, an effort to undermine and malign the judiciary. He has dealt with

at length the allegations made against him. These statements are in the nature of defence which is not necessary to notice for disposal of this writ petition.

Issues:

- Whether the enquiry was not held in accordance with law and whether there has been violation of the guidelines laid down in Vishakha case;
- Whether the complainant can seek amendment of the charge and/or challenge the findings of the enquiry officer in the preliminary enquiry and, further, seek direction to initiate departmental enquiry against the persons accused of misconduct.

We shall first consider the question as to whether there was violation of the guidelines laid down in Vishakha case and therefore there should be a fresh or further enquiry.

In this connection, before proceeding further, we would like to disapprove the stand of the High Court that the alleged incidents having taken place prior to the judgment in Vishakha case, guidelines would not apply. Such a plea could be accepted if the acts constituting sexual harassment at workplace would not amount to misconduct but for the judgment in Vishakha case. Where the act does not constitute an offence on the date it is committed it cannot be subject matter of prosecution or proceeding, but that principle is applied only in a criminal case. Misconduct is misconduct and irrespective of the date of the offence, enquiry into complaints of sexual harassment after the judgment in Vishakha case will have to be dealt with in accordance with the guidelines. As a matter of fact, the judgment does not enact any law, it only recognizes the fundamental rights of working women under Articles 14, 15, 19 and 21 of the Constitution of India and fixes guidelines for enforcement of those rights. Having made these remarks, we may now notice the guidelines. They are ten in number but in the present case we may only notice guidelines 4, 5, 6 and 7 which read as under :-

Criminal proceedings: Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular,

it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary action: Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint mechanism: Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them. The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

On behalf of the petitioner, much emphasis was laid on guideline 7. The sheet anchor of the argument of Ms. Indira Jaisingh was that enquiry should have been held by the Complaints Committee constituted in accordance with the guidelines, that is to say, by a Committee headed by woman judge and comprising of women - not less than half as members. Further, some NGO should have been associated with the enquiry. Preliminary

Enquiry, held by the Registrar General (Vigilance) in the instant case, therefore was not in accordance with law.

We have given our anxious consideration to the submissions of the counsel. In our understanding, the Complaints Committee referred to in the Guidelines is intended to be a permanent committee or body in every department which can look into complaints relating to sexual harassment at workplaces as a fact finding body. The enquiry by the Complaints Committee is different from disciplinary enquiry. Where the enquiry by the Complaints Committee reveals facts amounting to any offence under Indian Penal Code or any other law the employer is required to initiate appropriate action in accordance with law, and where the enquiry reveals conduct amounting to misconduct in employment as defined in the relevant service rules, appropriate disciplinary action is required to be taken by the employer in accordance with the concerned rules. This is evident from a conjoint reading of the Guidelines. If we read guideline 7 first and then guidelines 4 and 5, the true import of the guideline would become clear. First, the matter should be looked by the Complaints Committee and where facts disclosed in the enquiry by the Committee constitute a criminal offence, criminal proceeding should be initiated and where facts so disclosed constitute misconduct in employment, disciplinary action should be initiated. Ultimately, in case of misconduct, the complaint has to be dealt with in accordance with the relevant rules. This is evident from the words "appropriate disciplinary action should be initiated by the employer in accordance with those rules" in guideline 5.

Adverting to the instant case, admittedly, the preliminary enquiry was held as precursor of regular departmental enquiry. It is almost a practice in this Court to hold a preliminary enquiry before holding departmental enquiries under rules 16 or 17, as the case may be, of the Rajasthan Civil Service (CCA) Rules. The point for consideration is where preliminary enquiry is held in which statements of witnesses are recorded, documents are received in evidence and thereafter findings are reached about existence of prima facie case necessitating regular enquiry, the enquiry so held can be said to be falling short of the enquiry contemplated in Vishakha case so as to warrant a further enquiry ? As seen above, the objection of enquiry by Complaints Committee is to verify facts, prima facie, to find out as to whether the conduct alleged amounts to `criminal offence' or

`misconduct', but where an enquiry is held " in accordance with the rules" to use the phraseology in guideline 5, the direction of the Supreme Court must be deemed to have been substantially complied with.

In the instant case, on consideration of the report of preliminary enquiry, the Chief Justice passed the following order on 9.11.2001 :-

"It is concluded that no misconduct or any act which is unbecoming of a Judicial Officer is made out against Shri Uma Shanker Vyas, Shri N.K. Purohit, Shri Vinay Kumar Goswami and Shri Rakesh Kumar Mathur. So no action or Departmental Enquiry is warranted against these officers. Hence action is dropped." The respondents have taken a specific plea that the said order of the Chief Justice was not challenged by the petitioner and unless the same is challenged and set aside or otherwise modified, no departmental enquiry can be held against the concerned officers.

Before adverting to the question whether and to what extent the complainant can challenge the findings and conclusion of the Enquiry Officer we may conclude the discussion regarding compliance of directions in Vishakha case. We are of the view that having regard to the position of judicial officers under the Constitution of India, any enquiry by outsiders including representatives of a non- government organization would be subversive of the constitutional scheme and therefore there cannot be literal compliance of the guidelines and directions in Vishakha case. Under Article 235 of the Constitution, the control over the subordinate courts vests in the High Court and the High Court cannot share this power with any outside agency.

In view of the above categorical and emphatic declaration of law, there can be little doubt that the conduct of a judicial officer can be only internally examined by senior judicial officer and Judges of the High Court themselves, and not by any outside agency.

Coming to the second question we are not inclined to accept the stand of the respondent-officers as a proposition of law, that the complainant cannot challenge the findings of the Enquiry Officer.

If the complainant were denied the right, it would mean that he/she has no remedy against the report. Law cannot be interpreted in a manner so as to render a person remedyless. If no other remedy is available, he can certainly file writ petition and seek judicial review. But at the same time, we have no doubt in our mind that the scope of such a judicial review would be no different from the judicial review of finding of guilt in disciplinary proceeding. The scope of judicial review of administrative decisions is well settled by catena of decisions. We may notice some of them.

Judgment:

Judicial review is not an appeal from a decision but a review of the manner in which the decision was arrived at. In other words, judicial review can be made of the manner in which decision was taken and not the correctness of the decision itself. Where decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice giving the individual the opportunity to defend himself and to meet the case against him, the Court cannot substitute its own judgment for that of the administrative authority on a matter which falls squarely within the sphere of jurisdiction of that authority. While making judicial review of an administrative decision, the Court cannot re-appraise the materials on record or go into adequacy or otherwise of the same. Where there are some materials available with the authority it is not open to the High Court to review the materials or give its own finding on the basis of those materials.

The grievance of the petitioner arising from the challenge to the findings in the preliminary enquiry report and the question of grant of relief including issuance of directions for regular departmental enquiry against respondent-officers has to be considered in the light of the legal position stated above. From the report of preliminary enquiry it appears that statements of as many as 27 witnesses were recorded which included the petitioner and her witnesses. The Enquiry Officer also took on record a large number of documents, Exhibits PE-1 to PE-41. Records of the office viz. log book of the car, report of the then District Judge, attendance register of the complainant etc. were called and taken on record. The Enquiry Officer went into the allegations individually

against the officers and on the basis of the statements of witnesses and the documents on record, came to the conclusion that no "prima facie material" was available to warrant departmental action against Shri Uma Shanker Vyas after lapse of 10 years especially after the written apology by him for a dispute that had arisen between them which had been settled amicably by the officers posted at Ajmer at the relevant time. The Enquiry Officer found the action of Shri Magha Ram Choudhary and Shri K.C. Singhal as "constituting gross misconduct and acting in a manner unbecoming of a judicial officer". As regards Shri Narendra Kumar Purohit, Shri Rakesh Kumar Mathur and Shri Vinay Kumar Goswami, the Enquiry Officer found that the complainant had tried to implicate them but utterly failed as nothing had come out against the officers. No wonder, as suggested on behalf of the officers, they were named in the complaint as all three of them happened to be posted in the Registry at Jaipur at the relevant time, and coming as it did only two days after the Full Court Resolution of 24.5.2001, the complainant probably suspected that they had played some role. The Resolution was by the Full Court and any suspicion on the part of the petitioner apparently was too far- fetched and without any foundation. The fact that the complaint related to incidents of 1994 and made after several years cannot be ignored. Notwithstanding the delay in making complaint, the allegations having been found prima facie true against Shri Magha Ram Choudhary and Shri K.C. Singhal, decision was taken to initiate departmental enquiry against them. In absence of specific materials, there was no basis to treat the respondents-officers on the same footing.

It is plain that while making judicial review this Court cannot re-appraise the materials, arrive at its own conclusion substituting them for the conclusion arrived at by the Enquiry Officer and approved by the Chief Justice, and issue direction for departmental enquiry or fresh enquiry against them. If a delinquent cannot challenge the correctness of adverse findings which may have led to even his dismissal from service, it is difficult to appreciate as to how the complainant can be allowed to challenge the finding of the Enquiry Officer exonerating the accused officer. In the facts and circumstances it cannot be said that the enquiry was superficial or perfunctory.

It is not the case of the petitioner that she was denied opportunity to participate in the enquiry. In fact, as seen above, she examined witnesses, besides herself, and produced

documents which were taken into consideration. Had this been a case of total denial of opportunity to the petitioner to substantiate her case, the position might have been different. Opportunity of hearing having been allowed and the enquiry held in accordance with the settled practice and procedure of this Court, in the absence of any procedural error it is not possible to direct a departmental enquiry against the concerned officers. Relief no.2 which is the main relief sought by the petitioner and essence of her case thus cannot be granted.

Apropos relief no.1, that is, quashing of the order of the Enquiry Judge by which the application for amendment of the charge was rejected, we find substance in the stand of the respondents that no such application having been filed by the petitioner for amendment of charge, she cannot make any grievance of the order on merit. It may not be out of place to mention that while rejecting the application for amendment of charge, the Enquiry Judge noticed that the allegations related to the period 10.6.1992 to 25.5.1993 and there was no justification to amend the charge so as to cover the subsequent period.

Before closing the discussion, we may briefly deal with the submission of Ms. Indira Jaisingh that after the petitioner made complaint in 1992 as many as ten charge-sheets were issued against her. The High Court has enclosed statement giving particulars of the complaints and the action taken thereon against the petitioner. It appears that in all 21 complaints were received between 1993 and 19.7.2004 out of which nine were `filed' and in one of them she was exonerated. In one complaint advisory remark was issued against which appeal was pending at the relevant time. Some complaints have been shown to be pending which include five departmental enquiries three under rule 16 (for major penalties) and two under rule 17 (for minor penalties), as mentioned above. The charge-sheets in these enquiries were issued respectively on 22.9.2000, 20.1.2001, 6.6.2001, 28.7.2001 and 21.12.2001. Thus two enquiries were initiated prior to the date of the complaint of the petitioner on 22.9.2000 and 20.1.2001. Be that as it may, it cannot be said that the petitioner was slapped with departmental enquiries only because she dared to make complaint against the concerned officers as suggested on behalf of the petitioner.

In the above premises, we conclude that no case has been made out for interference by this Court. The writ petition is accordingly dismissed along with miscellaneous applications, if any

R.C. Sood

V

High Court of Judicature

(1998) 5 SCC 493

Bench: A.S. Anand, S.P. Bharucha, B.N. Kirpal

A preliminary enquiry against R.C. Sood, then posted as Registrar in the High Court, was conducted by Additional Registrar (Vigilance) in respect of certain complaints and the report of preliminary enquiry was approved by the Chief Justice on 31.1.1994. Later, on 27.10.1994 on the request of a Judge, the then Chief Justice referred the matter to the Full Court. On 30.11.1994 the Full Court constituted a Committee of three Judges for fresh preliminary enquiry, the earlier order of the Chief Justice dated 31.1.1994 approving the report of the Additional Registrar (Vigilance) and closing the file was revoked. A question arose among other things about the competence of the Chief Justice to approve the report of preliminary enquiry. After referring to the relevant rules, viz. rules 14, 15 and 32 of the High

Court Rules, 1952, the Supreme Court observed as under:-

"Every complaint received against a judicial officer is not required to be brought before the Full Court unless and until the question of removal or dismissal of the judicial officer arises. It was competent for the Chief justice especially in view of the provision of sub-rule (2) of Rule 32, while dealing with the complaint received against the petitioner, to decide that no action thereon was called for. No illegality or impropriety was, therefore, committee by the Chief Justice when he decided on 31.1.1994 that the complaint of Vijay

Singh did not call for any disciplinary action against the petitioner. It is only if the Chief Justice was of the view that disciplinary action may be called for that that by virtue of clauses (e), (f) and (g) the matter would have required to be brought before the Full Court. That apart, the Chief Justice could under clause (l) have brought the complaint to the notice of the Full Court, but he chose not to do so. This was because he was apparently satisfied about the hollowness of the complaint on the basis of the preliminary report of the Additional Registrar (Vigilance) which was received by him."

Though the issue which directly arose for consideration related to power of the Chief Justice vis-a-vis that of the Full Court, the decision makes two points first, it recognizes and upholds the practice of preliminary enquiries by Registrar in- charge Vigilance on receipt of complaints; and second, it recognizes and upholds the power of the Chief Justice to approve the report of the preliminary enquiry.

Shamsher Singh & Anr

v

State Of Punjab on 23 August, 1974

1974 AIR 2192, 1975 SCR (1) 814

Bench: Ray, A.N. (Cj), Palekar, D.G., Mathew, Kuttyil Kurien, Chandrachud, Y.V. & Alagiriswami, A., Bhagwati, P.N. & Krishnaiyer, V.R.

The enquiry was held by the Vigilance Department of the State Government on reference by the High Court into allegations of misconduct. The findings of the Vigilance Department ultimately led to termination of services of the appellant. Strongly disapproving the course adopted by the High Court, a Bench of seven Judges of the Supreme Court observed as under:-

The High Court for reasons which are not stated requested the Government to depute the Director of Vigilance to hold an enquiry. It is indeed strange the High Court which had

control over the subordinate judiciary asked the Government to hold an enquiry through the Vigilance Department. The members of the subordinate judiciary are not only under the control of the High Court but are also under the care and custody of the High Court. The High Court failed to discharge the duty of preserving its control. The request by the High Court to have the enquiry through the Director of Vigilance was an act of self-abnegation. The contention of the State that the High Court wanted the Government to be satisfied makes matters worse. The Governor will act on the recommendation of the High Court. This is the broad basis of Article 235. The High Court should have conducted the enquiry preferably through District Judges. The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Article 235 by asking the Government to enquire through the Director of Vigilance."

State Of Andhra Pradesh

V

S. Sree Rama Rao on 10 April, 1963

1963 AIR 1723, 1964 SCR (3) 25

Bench: Shah, J.C.

The Supreme Court stated the law in these words: The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. 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. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice of in violation of the statutory rules prescribing the mode of enquiry or

where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

It is well settled now that a High Court in the exercise of its jurisdiction under Art.226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence.

Union of India

v

Parma Nand

1989 SCR (2) 19

Bench: Shetty, K.J. (J)

The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to appreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. A review of the above legal position would establish that the disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities, have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review; cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed

by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."