IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.555 OF 2020

Pradeep Hiraman Kale,

..**Petitioner**

Versus

1. **State of Maharashtra**,
Through Law and Judiciary Department,
Madam Cama Road, Hutatma Rajguru
Chowk, Mantralya, Mumbai – 400 032.

2. **The Registrar General**,
High Court, Mumbai – 400 001. ..**Respondents**

Mr. Nitin Gaware Patil with Mr. Divyesh K Jain for the Petitioner.
Mr. Milind More, Addl. G. P. for Respondent No.1-State.
Dr. Milind Sathe, Senior Advocate with Mr. Rahul Nerlekar for Respondent No.2-High Court.

CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.

Date on which the Arguments were concluded : 23rd APRIL 2024.
Date on which the Judgment is pronounced : 29th APRIL 2024.

Judgment :- (Per Jitendra Jain, J.)

1. **Rule**. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner seeks to challenge the order dated 5th December 2019

passed by Respondent No.1, whereby Respondent No.1 has removed the Petitioner-Judicial Officer from the Government Service in exercise of the powers conferred by Rule 5(1)(viii) of the Maharashtra Civil Services (Conduct) Rules, 1979.

Brief facts are as under:-

3. The Petitioner was a Judicial Officer appointed in 2009 by Respondent No.1-State. Pursuant to complaints received, the Petitioner was served with Articles of Charge on 5th July 2017 by framing three charges. Alongwith the Articles of Charge, the Petitioner was furnished with statement of imputation, copy of anonymous complaint along with compact disc (CD), copy of complaint dated 16th December 2013 of Shri. Bilal Sultan Mistry, copy of conversation recorded in the CD, copy of complaint dated 18th January 2014 from Shri. Babbu Mehbul Khan and copy of conversation recorded in the CD sent by the said complainant, report of Principal District Judge, Ratnagiri alongwith annexures and copy of statement of Advocate S. S. Butala. List of witnesses were also furnished to the Petitioner. Charge No.1 related to acceptance of bribe through Shri. Harish Keer, peon attached to the Petitioner in connection with acquittal of an accused for an offence punishable under the Protection of Children from Sexual Offences Act, 2012 (POCSO). In the said charge it was mentioned that the complainants approached Shri. Harish Keer for getting acquittal order in POCSO case. There were

telephonic conversation between the complainant and Shri. Harish Keer. Initially the demand was made for Rs.3 lakh and thereafter it is stated that on the request made by the complainant, Shri. Harish Keer after consulting the Petitioner agreed for Rs.2 lakh, out of which Rs.40,000/- was accepted in cash and balance Rs.1,60,000/- was accepted by cheque which was to be returned after receipt of cash.

4. On 20th July 2017, the Petitioner filed his objections to the charges. With respect to Charge No.1, the Petitioner denied his association with Shri. Harish Keer. The Petitioner further submitted that the acquittal order was solely on merits. He denied any involvement in the said incident.

5. On 28th February 2018, the Respondent No.2 after perusing the charges and defence statement decided to drop Charge Nos.2 and 3. However, with respect to Charge No.1 it was decided to hold Departmental Enquiry. The learned Principal District and Sessions Judge, Ratnagiri was appointed as the Enquiry Officer and learned Adhoc District Judge and Additional Sessions Judge, Ratnagiri as the Presenting Officer. The copy of the said letter was sent to the Petitioner.

6. Pursuant to the above proceedings, statement of various witnesses were recorded. The Petitioner was also given an opportunity to cross-examine these witnesses which was availed. After recording of the oral evidence, on 29th October 2018, the Enquiry Officer came to a

conclusion that Shri. Harish Keer demanded and accepted amount from the complainants, but it was not proved that the Petitioner was associated with him for the said purpose and the probability of instigation by other person to Shri. Harish Keer or on his own initiation cannot be ruled out, and therefore, the Petitioner is not found guilty of Charge No.1.

7. On 19th July 2019, the Respondent No.2 addressed a letter to the Petitioner informing him that the Disciplinary Authority did not accept the findings of the enquiry report, and therefore, the Petitioner was called upon to show cause as to why the grounds of disagreement with the enquiry report should not be accepted and the Petitioner should not held guilty of the Charge No.1 leveled against him. The Petitioner was not only furnished with the enquiry report but also the reasons of disagreement with enquiry report as recorded by the Disciplinary Authority.

8. On 5th August 2019, the Petitioner replied to the aforesaid show cause notice and relied upon the enquiry report and further prayed that he may be exonerated from the charge leveled against him. The Petitioner denied the allegations that at his behest Shri. Harish Keer was acting and accepted the consideration with regard to POCSO case.

9. The Disciplinary Authority after considering the aforesaid reply of the Petitioner found the Petitioner guilty of Charge No.1 and recommended his removal. Pursuant thereto, Respondent No.1-State passed the impugned order dated 5th December 2019 removing the Petitioner from Government Service. It is on this backdrop that the Petitioner is before us.

Submissions of the Petitioner :-

10. The Petitioner through his learned counsel Mr. Nitin Gaware Patil submitted that the Respondents have not discharged their onus of proving the charge against the Petitioner. There is no material to show that Shri. Harish Keer was acting at the behest of the Petitioner in accepting the bribe. The Petitioner submitted that at the time when Shri. Harish Keer accepted the money, he was not posted in the Court of the Petitioner. The Petitioner submitted that he has not been given the papers and proceedings of the enquiry against Shri. Harish Keer. The Petitioner also submitted that he had excellent disposal remark since 2009. The Petitioner also challenged the reliance placed by the Respondents on the conversation recorded on the CD's. The Petitioner relied upon the decisions in the case of ***Nirmala J. Jhala vs. State of Gujarat & Another***[1], ***R. R. Parekh vs. High Court of Gujarat & Another***[2], ***Vinayak Narayan Navkar vs. The State of Maharashtra & Others***[3] and

1 AIR 2013 SCC 1513
2 AIR 2016 SCC 3356
3 2015(3)BomCR423

Sawai Singh vs. State of Rajasthan[4] in support of his submissions and prayed that the impugned order be quashed and he be reinstated with consequential benefits.

Submissions of the Respondents :-

11. Per contra, Dr. Sathe, learned Senior Counsel for Respondent No.2 submitted that the scope of interference in the order of termination of Judicial Officer is very limited and narrow as held by the Supreme Court in the case of ***High Court of Judicature at Bombay vs. Udaysingh s/o Ganpatrao Naik Nimbalkar & Others***[5]. The Respondent No.2 further relied upon the decision of the Supreme Court in the case of ***State of Karnataka & Another vs. Umesh***[6] on the scope of judicial review of punishment imposed by the Disciplinary Authority and the standard of proof required in departmental enquiry versus criminal trial. The Respondent No.2 further submitted that the Petitioner did not discharge his burden and the onus was on him to dislodge allegation. The Respondent No.2 further submitted that the prayer made by the Petitioner for records of enquiry against Shri. Harish Keer was after the impugned order was passed. The Respondent No.2 submitted that enquiry report was perverse, and therefore, the Disciplinary Authority gave reasons for disagreement. The Respondent No.2 relied upon the findings of the Disciplinary Authority and the reasons given for

4 **(1986) 3 SCC 454**
5 **(1997) 5 SCC 129**
6 **(2022) 6 SCC 563**

disagreement with Enquiry Officer's report and prayed that this Court in the facts of the present case should not exercise its jurisdiction under Article 226 of the Constitution of India.

12. We have heard the learned counsel for the Petitioner and learned Senior Counsel for Respondent No.2 and with their assistance have perused the record of the present proceedings.

Analysis and Conclusion :-

13. At the outset, we wish to state that the scope of judicial review in matters relating to termination of judicial service is by now well settled that it is very limited to the violation of principles of natural justice or infirmity in decision making process or patent illegality and not the decision in itself. We propose to refer to some of the decisions on this issue. The disciplinary proceedings are not a criminal trial and in spite of the fact that same are *quasi judicial* and *quasi criminal*, doctrine of proof beyond reasonable doubt, does not apply in such case, but the principle of preponderance of probabilities would apply. The Court has to see whether there is some evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of tests of what a prudent person would have done and the said decision has to be applied keeping in mind the position and the nature of job the delinquent is occupying and keeping in mind the larger public interest.

14. The Supreme Court in the case of ***High Court of Judicature at Bombay Through its Registrar vs. Shashikant S. Patil and Another***[7] as regards the scope available for this Court while exercising jurisdiction under Article 226 of the Constitution of India while considering a challenge to an order passed by the Disciplinary Authority of the High Court in paragraph 16 observed as under:-

> *"16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/ disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."*

15. In the case of ***Udaysingh (supra)*** the law laid down on this subject is observed in Paragraph No.7 which reads thus :-

> *"7. Having regard to the respective contentions, the question that arises a for consideration is whether the view taken by the Division Bench is sustainable in law. As regards the nature of the judicial review, it is not necessary to trace the entire case-law. A Bench of three Judges of this Court has considered its scope in its recent judgment in B.C. Chaturvedi v. Union of India in which the entire case-law was summed up in paragraphs 12, 14 and 15 thus: (SCC pp. 759-60)*

7 **(2000) 1 SCC 416**

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent office or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

14. In Union of India v. S.L. Abbas when the order of transfer was interfered with by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a government servant.

In Administrator of Dadra & Nagar Haveli v. H.P. Vora[3] it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently in State Bank of India v. Samarendra Kishore Endow a Bench of this Court of which two of us (B.P. Jeevan Reddy and B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority."

16. Keeping in mind, the above law laid down by the Supreme Court, we are of the opinion that in the instant case, the parameters laid down by the Supreme Court for interference in the service matters and more particularly relating to Judicial Officers termination is not satisfied. There is no violation of principles of natural justice inasmuch as the Petitioner was furnished with charges and the documents relied upon in framing the charges, Petitioner replied to the said charges, Petitioner was also given an opportunity to cross-examine the witnesses of Respondents which he availed. The reasons for disagreement with the enquiry report were also furnished and show cause notice was also issued to the Petitioner in that regard. The Petitioner replied to the said show cause notice and it is only after considering the replies filed by the Petitioner and the evidence on record that the Disciplinary Authority recommended removal of service of the Petitioner which was accepted by Respondent No.1-State. Therefore, there is no violation of principles of natural justice or any infirmity in decision making process so as to exercise extraordinary discretion under Article 226 of the Constitution of India.

17. The submissions of the Petitioner would be to call upon us to re-appreciate the evidence on the basis of which the impugned order is passed. This Court under Article 226 of the Constitution of India cannot

exercise the powers of Appellate Authority to re-appreciate the evidence. The Disciplinary Authority after considering the evidence collected which are on the record has come to the conclusion that considering the nature of the service in which the Petitioner is employed, to maintain the dignity and the majesty of the Court and to avoid the reputation of the judiciary being tarnished, punishment in the form of removal of service is the appropriate punishment. In our view, we cannot re-appreciate evidence under Article 226 of the Constitution of India, and therefore, even on this count, this Court cannot exercise its discretionary powers.

18. Even otherwise, the evidence in the form of statements recorded and the cross-examination conducted by the Petitioner is on record. After applying the principle of preponderance of probability, we are of the view that the findings of the Disciplinary Authority cannot be said to be perverse or without any material on record. The evidence which instills convincing force, which may not be sufficient to free the mind wholly from reasonable doubt is still sufficient to incline a fair and impartial mind. It is settled law that interference with the orders passed pursuant a departmental inquiry can be only in case of "no evidence". Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same as in a

departmental inquiry. Strict rules of evidence are to be followed by the Criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of the probabilities is the test adopted in finding the delinquent guilty of the charge in department proceedings. Shri. Harish Keer was attached to the Petitioner when the POCSO case was being conducted. The fact that at the time of acquittal, Shri. Harish Keer was transferred and the complainant met Shri. Harish Keer at such transferred place where the negotiations for monetary consideration took place and same was accepted by Shri. Harish Keer, would not mean that the Respondent No.2 had failed to discharge the initial onus. We fail to understand as to why the complainant would go all the way to the new place to meet Shri. Harish Keer for negotiating the monetary consideration and after negotiations the figure of Rs.2,00,000/- was agreed upon of which Rs.40,000/- was accepted in cash and Rs.1,60,000/- was accepted in cheque which was to be returned on receipt of cash and that too on the eve of pronouncement of judgment by the Petitioner on POCSO case. In such type of cases there can never be a direct evidence of involvement of the delinquent officer but based on the principle of preponderance of probability and circumstantial evidence, the Disciplinary Authority has to decide the charge and punishment. It is also important to note that the Petitioner never requested for the record of the enquiry proceedings

of Shri. Harish Keer when the enquiry against him was in progress. It was only on receipt of the impugned order that a request was made on 11th December 2019 seeking papers and proceedings of enquiry against Shri. Harish Keer. Therefore, the submission of the Petitioner on this issue that the impugned order is bad on this count is an afterthought. The Petitioner ought to have led evidence to dislodge the charge which he has failed. The telephonic conversation recorded on CDs also points that the Shri. Harish Keer was instrumental in accepting bribe on behalf of the Petitioner. The principle of strict proof cannot be applied to Disciplinary Authority proceedings moreso when it comes to judicial service. The Disciplinary Authority has given the reasons for not agreeing with the Enquiry Officer's report. The Disciplinary Authority has stated that the findings of the Enquiry Officer were contrary to the settled law in connection with disciplinary proceedings. It may not be that in all cases of bribe, the delinquent officer would be personally involved in demanding the same. It is also important to note the timing of acquittal and fact that the accused was acquitted by the Petitioner in POCSO case. In our view, the Disciplinary Authority has given detailed reasons for not accepting the findings of the Enquiry Officer. The said disagreement based on the detailed reasons, is in accordance with the settled position that it is not necessary that in all cases the Disciplinary Committee should accept the findings of the Enquiry Officer. In a given

case, the Disciplinary Authority can disagree with the findings of the Enquiry Officer.

19. The complainants had recorded the phone conversation they had with Shri. Harish Keer and the said conversations were later on copied on CD, which formed the evidence in the present proceedings which are challenged before us. Witnesses Nos.1 to 4 who knew Shri. Harish Keer after listening to what was recorded on the CD confirmed the voice of Shri. Harish Keer. These witnesses were cross-examined by the Petitioner, but nothing adverse came out in the cross-examination to prove that the voice recorded on the CD is not that of Shri. Harish Keer. Witness No.5-Shri. Bilal Mistry in his evidence has stated that he met Shri. Harish Keer at Guhagar beach in relation to finalising the consideration and at that point of time, Shri. Harish Keer in the presence of the complainant called up the Petitioner with regard to reduction in the monetary consideration. In the cross examination of Shri. Babu Khan complainant, he has stated that Shri. Harish Keer had called the petitioner in his presence for negotiating the consideration. In the course of negotiations, it has surfaced that Shri. Harish Keer was in touch with the Petitioner for finalising the monetary consideration. Shri. Bilal Mistry in his evidence has also stated that one day before the date of pronouncement of the judgment cheque of Rs.1,60,000/- was handed

over to Shri. Harish Keer. The contention of the Petitioner that the CD could be tampered is to be rejected since the said contention was never raised before the Disciplinary Committee and the same is an afterthought. Even otherwise, the voice of Shri. Harish Keer has been identified by witnesses Nos.1 to 4. In the cross-examination of Shri. Bilal Mistry, he has stated that Shri. Harish Keer had informed him that the accused will be acquitted only on receipt of the monetary consideration, and therefore, Rs.40,000/- was deposited and for the balance of Rs.1,60,000/- cheque was handed over which was never encashed. The dates of cheque and the date of pronouncement also are linked to come to a conclusion of quid pro quo. The petitioner in his evidence has merely said 'No" or ' Not aware' to all the questions. In our view, this evidence which was considered by the Disciplinary Authority cannot be said to be perverse for recommending the removal of service of the Petitioner.

20. The Enquiry Officer appears to have proceeded on the strict rule of evidence with respect to what was recorded on the CD as if the proceedings are criminal proceedings. The Enquiry Officer has given a finding that Shri. Harish Keer is involved in the present incident, but the involvement of the Petitioner is not proved. The Disciplinary Authority has correctly given reasons for not accepting these findings of Enquiry Officer. In the evidence which is referred to above, it is clear that Shri.

Harish Keer in the presence of the complainant had called up the Petitioner for negotiating the monetary consideration. This, in addition to the other evidences which has come on record clearly show based on preponderance of probability that the Petitioner can certainly be said to be involved in the incident for which he has been charged.

21. A Judicial Officer has to maintain discipline in the judicial service which is of paramount importance and acceptability of the judgment depends on the credibility of the conduct, honesty, integrity and character of the office and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the Judicial Officers, the charges levied against the Petitioner has to be examined in that backdrop.

22. The stature of a judge in the society is also worth noting. It is a universally accepted norm that Judges and Judicial Officers must act with dignity and must not indulge in a conduct or behaviour which is likely to affect the image of judiciary or which unbecoming of a Judicial Officer. If the Members of the judiciary indulge in a behaviour which is blameworthy or which is unbecoming of a Judicial Officer, the Writ Courts are not expected to intervene and grant relief to such a Judicial Officer. Ordinarily, an order terminating services of a Judicial Officer by passing an order of dismissal from service or other on the

recommendation of the High Court as contemplated under Article 235 of Constitution of India would be liable to be interfered with broadly on proof of breach of a constitutional provision, principles of natural justice or the applicable service rules.

23. It is relevant to note the observation of the Supreme Court in the case of ***Ram Murti Yadav Vs. State of U. P. & Anr.***[8]

> *"14. A person entering the judicial service no doubt has career aspirations including promotions. An order of compulsory retirement undoubtedly affects the career aspirations. Having said so, we must also sound a caution that judicial service is not like any other service. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as akin to discharge of a pious duty, and therefore, is a very serious matter. The standards of probity, conduct, integrity that may be relevant for discharge of duties by a careerist in another job cannot be the same for a judicial officer. A Judge holds the office of a public trust. Impeccable integrity, unimpeachable independence with moral values embodied to the core are absolute imperatives which brooks no compromise. A Judge is the pillar of the entire justice system and the public has a right to demand virtually irreproachable conduct from anyone performing a judicial function. Judges must strive for the highest standards of integrity in both their professional and personal lives."*

24. Another decision which guides us on the judicial service is ***Tarak Singh & Anr. Vs. Jyoti Basu & Ors.***[9]

> *"21. It must be grasped that judicial discipline is self-discipline. The responsibility is self-responsibility. Judicial discipline is an inbuilt mechanism inherent in the system itself. Because of the position that we occupy and the enormous power we wield, no other authority can impose a discipline on us. All the more reason judges exercise self-discipline of high standards. The character of a judge is being tested by the power he wields. Abraham Lincoln once said: "Nearly all men can stand adversity, but if you want to test a man's character give him power." Justice-delivery system like any other system in every walk of life will fail and crumble down, in the absence of integrity.*

8 **(2020) 1 SCC 801**
9 **(2005) 1 SCC 201**

> *22. Again, like any other organ of the State, the judiciary is also manned by human beings - but the function of the judiciary is distinctly different from other organs of the State – in the sense its function is divine. Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors fail people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. Because of the power he wields, a judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the justice-delivery system resulting in the failure of public confidence in the system. We must remember that woodpeckers inside pose a larger threat than the storm outside."*

25. It is also to be noted that in the case of ***Nawal Singh vs. State of U.P. and Another***[10], it has been held that judicial service cannot be treated as a service in the sense of employment. Judges while discharging their functions exercise the sovereign judicial power of the State and hence standards expected to be maintained are of the highest degree.

26. In our view, the parameters required for conducting disciplinary enquiry cannot be compared with the parameters required in criminal trial. The purpose of disciplinary proceedings is to enquire into an allegation of misconduct against the delinquent employee and such charge is to be proved on the basis of principles of preponderance of probability and not on strict rules of evidence. In the instant case before us and after perusing the evidence on record, we are of the view

10 **(2003) 8 SCC 117**

that the impugned order cannot be termed as perverse but is based on principles of preponderance of probability. We may also observe as stated above that considering the position in which the Petitioner was employed, the punishment has to be proportionate to maintain dignity and respect of the judiciary and instill confidence and faith of the litigants in the justice delivery system.

27. Before concluding, we may deal with the decisions relied upon by the Petitioner.

(i) The first decision relied upon by the Petitioner is in the case of ***Nirmala J. Jhala (supra)***. The Petitioner relied upon paragraph 29 of the said decision. The Petitioner relied upon the conclusion reached by the Supreme Court on the facts of that case and more particularly the conclusions which states that the High Court in that case erred in shifting the onus of proving various negative circumstances upon the appellant who was delinquent in the enquiry. We have already observed above, while narrating the evidence that based on the preponderance of probability the findings of the Respondents cannot be said to be perverse or without any material and the Disciplinary Authority have discharged the onus cast upon them. Therefore, the ratio of this decision is not applicable to the facts of the present case. On the

contrary, the said decision supports the case of the Respondents since the Supreme Court observed that the power of judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority and the Court does not sit as a Court of Appeal but merely reviews the manner in which decision was made.

(ii) The second decision relied upon is in the case of ***R. R. Parekh (supra)*** and more particularly in paragraphs 13, 15 and 19 of the said decision. In paragraph 13, the procedure of disciplinary action has been reproduced starting from receipt of the Enquiry Officer report till the final decision by the Disciplinary Committee. In the instant case before us, there is no dispute that the said procedure has been followed and the Disciplinary Committee has also given reasons for not agreeing with the Enquiry Officer report. In paragraph 15 of the said decision, the Supreme Court observes that in corruption matters direct evidence may not always be forthcoming in every case involving a misconduct of this nature. We failed to understand as to how the said paragraph supports the case of the Petitioner, but on the contrary its supports the case of the Respondents. In paragraph 19 of the said decision, the Supreme Court observes that if there is some legal evidence to hold that a charge of misconduct is proved, the sufficiency of the evidence

would not fall for re-appreciation or re-evaluation before the High Court. In our view, what the Petitioner is contending before us is to re-appreciate the evidence, which based on this very decision cannot be done. This decision squarely supports the case of the Respondents rather than that of the Petitioner.

(iii) The third decision relied upon by the Petitioner is in the case of ***Vinayak Narayan Navka (supra)*** and more particularly paragraphs 8 and 9 of the said decision. The said decision was rendered on the premise that the charges were vague and it was based on the evidence recorded therein on the basis of which the charges were not proved in that case namely that the complaint was got written from some petition writer who was not examined as witness, and therefore, there was no cross-examination of such writer and furthermore the delay in making complaint was not examined by the Appellate Authority on the veracity of the complaint. The High Court came to the conclusion that there was no material on the basis of which the penalty of dismissal can be inflicted. In the present case before us, we have already observed that the evidence was sufficient to support the findings of the Disciplinary Committee, on preponderance of probability, and therefore, the reliance placed by the Petitioner on this decision is misconceived.

(iv) The last decision relied upon by the Petitioner is in the case of ***Sawai Singh (supra)*** and particularly paragraph 17 and 18. The said decision is based on the violation of principles of natural justice which as observed by us has been complied with in all respects in the present case before us and therefore, the said decision also cannot be of any assistance.

28. In view of above and looked from any angle, this is not a fit case to exercise our discretion under Article 226 of the Constitution of India. The Writ Petition is dismissed with no order as to costs.

[JITENDRA JAIN, J.] **[A. S. CHANDURKAR, J.]**