

ARUNDHATI ASHOK WALAVALKAR

v.

STATE OF MAHARASHTRA
(Civil Appeal No. 6966 OF 2004)

JANUARY 13, 2011

[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]

Service Law:

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 – rr.3 (iii), 5 (1) (vii) – Misconduct by Judicial Officer – Charged with travelling ticket less in a local train and misusing her official identity card – Punishment of compulsory retirement by disciplinary authority – Justification of – Held: Justified – Offence as alleged against the officer in memo of charges, established on her own showing, thus, the Inquiry officer was justified in holding that charges levelled against her stood proved – Punishment of compulsory retirement awarded to her not disproportionate to offence alleged against her – Thus, order passed by the High Court upholding the punishment of compulsory retirement by disciplinary authority does not call for interference.

Judiciary – Judicial Officers – Code of Conduct – Held: Judge’s official and personal conduct must be in tune with the highest standard of propriety and probity.

It is alleged that the appellant - Judicial Officer travelled without ticket in a local train thrice; and that she misused her official identity card, made unnecessary scene on the Railway platform and gave threats to the Railway staff. The charges were framed against her and the disciplinary proceedings were held. The disciplinary authority held the appellant guilty of misconduct as per Rule 3 (iii) of the Maharashtra Civil Services Conduct

A Rules, 1979 and imposed the penalty of compulsory retirement in terms of r. 5 (1) (vii) of the Rules. The appellant filed a writ petition challenging the order of compulsory retirement. The High Court dismissed the petition. Therefore, the appellant filed the instant appeal.

B Dismissing the appeal, the Court

C HELD: 1.1 There is no reason to take a different view from the findings recorded by the High Court that she had indeed travelled on that day without any ticket and when accosted, she simply passed the identity card to the hands of the ticket collector and walked away from the place. The Railway and the departmental authority in the inquiry took the same specific stand. If it was her case that she lost her identity card, it was required for her to immediately lodge a complaint thereto with the concerned authority or with the police which she never did. The said identity card was in fact returned to her by the Railway three days later. There is no justifiable reason of the identity card being recovered at the 'D' Railway Station if she had not at all travelled by train on that day. [Para 16 and 17] [365-C-E]

F 1.2 So far as the incident of 13.5.1997 is concerned, the specific defence of the appellant is that she had purchased a first class ticket on 13.5.1997 but the same was lost while boarding the train which was not accepted by the High Court holding the same to be highly improbable as she had voluntarily paid the charges after stating that Magistrates travelling without ticket could not be asked to pay the fine. The fact remains that on G 13.5.1997 also the appellant could not produce any valid ticket or pass when she was accosted and asked to produce her valid ticket/pass. The defence that she lost ticket while boarding the train could always be taken by anybody, but there must be some basic facts supporting H such statement which could not be produced by the

appellant in the instant case. [Para 18] [365-G-H; 366-A-B] A

1.3 Regarding the incident on 5.12.1997, there is no dispute with regard to the fact that on that particular day, she boarded a first class compartment at 'M' Station although she did not have a valid ticket/pass in her possession. She paid a penalty which was given to her by one of her colleagues. Later on she took a stand that she had purchased a season ticket but the said ticket was also found to have been purchased at 'D' Station. Furthermore, on 5.12.1997, when the appellant was caught without ticket and when she was asked to produce the ticket, she could not do so nor was she prepared to pay the charges on the ground that she was a Magistrate and, therefore, has a right to travel without ticket. It is established from the record that subsequently, however, she paid the amount of Rs. 102/-. [Paras 19 and 20] [366-C-E] B
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1.4 The letter written by the appellant to the General Manager, Railway, as also the fact that she could not produce any ticket or pass for her travel between M and D station clearly establishes the fact that on 5.12.1997, she had travelled without ticket. In the said letter, to the General Manager, Central Railway, Mumbai the appellant clearly stated that at times she is unable to buy tickets because of shortage of time for which she had been harassed by the ticket collectors, therefore, she should be provided a free passage in a First Class compartment of local trains for the purpose of reaching the courts in time during such emergencies. A letter written immediately after the incident on 5.12.1997 clearly indicates that she had travelled without ticket on 5.12.1997 and she had taken offence for demanding a ticket from her as she is a Magistrate and she had made complaint against the ticket collectors. The offence as E
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A alleged against the appellant in the memo of charges, therefore, for 5.12.1997 is established on her own showing and, therefore, the inquiry officer was justified in coming to the conclusion that the charges levelled against her stood proved. [Para 23 and 24] [367-G-H; 368-B A-B]

C 2.1 Rule 8(25)(e) of the Maharashtra Civil Services(Discipline and Appeal) Rules, 1979 provided and permitted an inquiry officer to recommend for the punishment to be provided in the facts of the case. [Para 26] [368-D]

D 2.2 On going through the records, it is found that the disciplinary authority considered the records and, thereafter, came to an independent finding that the appellant is guilty of the charges framed against her of misconduct and that in the facts and circumstances of the case, a major penalty like compulsory retirement from service could only be imposed on her and consequently such a punishment was decided to be imposed. The entire disciplinary proceedings got terminated with the imposition of penalty of compulsory retirement. [Para 27] [368-F-H]

F 2.3 The submission that the punishment awarded to the appellant is disproportionate to the charges levelled against her and that she should at least be directed to be paid her pension which could be paid to her if she was allowed to work for another two years; and that the appellant had completed 8 years of service and if she would have worked for another two years, she would have been entitled to pension by addition of another 10 years of service, cannot be accepted since the quantum of punishment could be interfered only when the punishment awarded is found shocking to the conscience of the court. [Paras 28, 29] [369-A-C]

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2.4 The instant case is of judicial officer who was required to conduct herself with dignity and manner becoming of a judicial officer. A judicial officer must be able to discharge his/her responsibilities by showing an impeccable conduct. In the instant case, she not only travelled without tickets in a railway compartment thrice but also complained against the ticket collectors who accosted her, misbehaved with the Railway officials and in those circumstances, the punishment of compulsory retirement awarded to her cannot be said to be disproportionate to the offence alleged against her. [Para 29] [369-C-E]

2.5 In a country governed by rule of law, nobody is above law, including judicial officers. In fact, as judicial officers, they have to present a continuous aspect of dignity in every conduct. If the rule of law is to function effectively and efficiently under the aegis of the democratic setup, Judges are expected to, nay, they must nurture an efficient and enlightened judiciary by presenting themselves as a role model. Needless to say, a Judge is constantly under public glaze and society expects higher standards of conduct and rectitude from a Judge. Judicial office, being an office of public trust, the society is entitled to expect that a Judge must be a man of high integrity, honesty and ethical firmness by maintaining the most exacting standards of propriety in every action. Therefore, a judge's official and personal conduct must be in tune with the highest standard of propriety and probity. Obviously, this standard of conduct is higher than those deemed acceptable or obvious for others. Indeed, in the instant case, being a judicial officer, it was in her best interest that she carries herself in a decorous and dignified manner. If she has deliberately chosen to depart from these high and exacting standards, she is appropriately liable for disciplinary action. [Para 29] [369-F-H; 370-A-B]

A 3. The conclusions arrived at by the disciplinary authority are accepted. There is no reason to interfere with the findings arrived at by the High Court giving reason for its decision with which are fully concurred with and finds justification. [Para 30] [370-C]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6966 of 2004.

From the Judgment & Order dated 13.04.2004 of the High Court of Judicature at Bombay in Writ Petition No. 20 of 2001.

C C.U. Singh, K.K. Tyagi, Iftekhar Ahmad, N. Annapoorani, Bipin Joshi for the Appellant.

Aniruddha P. Mayee, Charudatta Mahindrakar, S. J. Patil, Sanjay V. Kharde, Asha Gopalan Nair for the Respondents.

D The Judgment of the Court was delivered by

E DR. MUKUNDAKAM SHARMA, J. 1. This appeal was filed by the appellant herein being aggrieved by the judgment and order passed by the Division Bench of the Bombay High Court dismissing the writ petition filed by the appellant herein.

F 2. The issue that is sought to be raised in this appeal by the appellant is whether the Disciplinary Authority was justified in imposing on the appellant the punishment of compulsory retirement in terms of Rule 5(1)(vii) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 on the ground that the said appellant-Magistrate was found travelling without ticket in a local train thrice and on each occasion, the behaviour of the said appellant-Magistrate with the Railway staff in asserting that the Magistrates need not have a ticket was improper and constituted grave misconduct.

G 3. The allegation against the appellant was that she had travelled without tickets on 21.2.1997, 13.5.1997 and also on 5.12.1997 when she was caught. The charges here not only related to such incidents of ticketless travelling but also about

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misusing her official identity card and for making unnecessary scene on the Railway platform and giving threats to the Railway staff which was considered to be misconduct unbecoming of a judicial officer as per Rule 3(iii) of the Maharashtra Civil Services Conduct Rules, 1979.

4. In order to understand the gravity of the charges and since it was the submission of the counsel appearing for the appellant that she was not responsible for any travelling without tickets, we have to narrate the background facts leading to the issuance of memorandum of charges against her.

5. On 28.5.1992, the appellant was appointed as a Metropolitan Magistrate at Bombay. Allegations were made by the Railway officials against the appellant for three incidents that happened on 21.2.1997, 13.5.1997 and on 5.12.1997. While the appellant on 5.12.1997 boarded the train at Mulund, she was accosted by two ticket collectors during the course of her journey from Mulund to Dadar who asked her to produce ticket or her pass. The appellant, however, stated that she had given her orderly money to buy a season pass which would be produced at the Dadar Railway Station. Even at Dadar Railway Station, she could not produce any ticket for her travel between the stations i.e. from Mulund to Dadar when she was asked to pay the Railway fare and fine for having travelled without ticket from Mulund to Dadar. However, another Metropolitan Magistrate travelling by the next train reached the Dadar Station and on being informed about the plight of the appellant, he came to the Station Superintendent and handed over to the appellant Rs. 102/- which was paid by the appellant to the railway officers against a receipt. Even prior to the said date, it was alleged that the appellant travelled without tickets on two dates i.e. 21.2.1997 and 13.5.1997.

6. On receipt of the aforesaid allegations made against the appellant by the Railway officers, a preliminary inquiry was held, on completion of which a Report was submitted on 25.3.1998 holding that the incidents of ticketless travelling by

A the appellant on the aforesaid three dates had been established
against the appellant.

B 7. Consequent thereto, a Memorandum of Charges was
framed against the appellant and the same was issued on
17.12.1998. There were two specific articles of charges
framed against the appellant which were to the following effect:-

C (a) The petitioner claimed that the Magistrates are not
required to buy ticket or pass and are allowed to
travel in any local train, in first class without any
travel authority for the purpose of attending duties.

D (b) The petitioner was caught thrice for travelling in first
class compartment of local train without ticket /
travel authority and when caught the petitioner
entered into arguments with ticket checking staff
and on 05.12.1997 at about 10:30 to 11 a.m.,
created a scene and threatened the ticket
collectors at Dadar railway station when the
authorities insisted that the petitioner pay the
necessary charges for travelling without ticket.

E 8. Alongwith the aforesaid Memorandum of Charges, the
articles of charges with the statement of imputation of
misconduct with list of charges alongwith list of witnesses were
forwarded to the appellant.

F 9. The aforesaid disciplinary proceeding of the appellant
was held alongwith two other Metropolitan Magistrates namely
Mrs. Rama Waghule and Mr. V.V. Phand. Since we are not
concerned with the charges framed against the other two
officers, we refrain from referring to the same in the present
G case.

H 10. After receipt of the aforesaid Memorandum of
Charges, the appellant sent her reply taking up a definite stand
that the alleged incident of ticketless travelling on 21.2.1997 was
deliberately concocted and imaginary whereas regarding the

remaining two incidents of ticketless travelling, it was stated by her that the same were due to unavoidable circumstances as set out more particularly in the said reply. A

11. The disciplinary authority having not been satisfied with the reply submitted by the appellant ordered for conducting an inquiry against the appellant and appointed the inquiry officer for holding a departmental inquiry against the appellant with reference to the charges levelled against her. After conducting a detailed inquiry and examining a number of witnesses, the inquiry officer on 28.10.1999 submitted his report stating that the charges alleged against the appellant are proved. The inquiry officer held that the appellant was found travelling without ticket at least thrice and her behaviour on each occasion was far from proper and not commensurate with the behaviour of a judicial officer. The aforesaid Report submitted by the Inquiry Officer was considered by the disciplinary authority consisting of the Chief Justice and Judges of the Bombay High Court and it was decided to issue a notice to the appellant to show cause. Consequently, a show cause notice was issued to the appellant asking her to explain as to why the findings recorded by the inquiry officer would not be accepted and why a major penalty including a penalty of dismissal from service would not be imposed on the appellant. B
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12. The appellant submitted an application on 24.01.2000, pleading that she may be permitted to examine herself and three independent witnesses as and by way of additional evidence. The said application was, however, rejected by the disciplinary authority, but the High Court extended the time for filing the reply pursuant to which she submitted her reply to the show cause notice on 9.3.2000. After receipt of the aforesaid reply, the disciplinary authority considered her case and took a decision that she was guilty of misconduct and therefore decided to impose the penalty of compulsory retirement which was accepted by the State Government and consequently the impugned order of compulsory retirement was issued against F
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A the appellant on 27.9.2000.

13. Being aggrieved by the order passed, the appellant filed a writ petition in the High Court challenging the legality and validity of the aforesaid order of compulsory retirement from the service.

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14. The Division Bench of the High Court, as stated earlier dismissed the writ petition as against which the present appeal was filed. When the matter was listed, we heard the learned counsel appearing for the parties at length and also perused the records and scrutinised the same very minutely in order to arrive at a categorical finding regarding the guilt of the appellant.

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Before dwelling further it will be useful to examine few relevant facts of the present case. There are three incidents on the basis of which charges of misconduct against the appellant were framed. The said incidents were on 21.2.1997, 13.5.1997 and 5.12.1997. So far as the incident of ticketless travelling on 21.2.1997 is concerned, it is the case of the Railway as also of the Disciplinary Authority that she had travelled without ticket on the said date and when she was accosted to show her pass or ticket, she simply passed her identity card to the hands of the ticket collector and went away before she could be caught physically.

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The aforesaid identity card of the appellant was however, returned to her on 24.2.1997 by the Railway officials. The aforesaid incident was made a charge against which she had taken a categorical defence that she had lost her official identity card and on receiving information that the same was found at the Dadar Railway Station, she got it collected through a Constable from the Railway authorities on 24.2.1997. Her specific case in the departmental proceeding against the said charge was that she had never travelled by train on 21.2.1997.

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The aforesaid incident was made a charge against which she had taken a categorical defence that she had lost her official identity card and on receiving information that the same was found at the Dadar Railway Station, she got it collected through a Constable from the Railway authorities on 24.2.1997. Her specific case in the departmental proceeding against the said charge was that she had never travelled by train on 21.2.1997.

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15. So far as the said defence is concerned, the High Court found the same to be without any basis particularly in view of the fact that if the appellant was travelling as stated by her in a car during the month of February, 1997, there was no reason why her official identity card could be found and traced at Dadar

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Railway Station. It was also held that she was the best person to give some idea as to how she lost her identity card at the Dadar Railway Station. It was also held that since no evidence was led by the appellant on that behalf and since also the Constable who had allegedly collected the identity card from the Railway authorities on 24.2.1997 had not been examined by her to establish her defence, the aforesaid defence taken by the appellant was not accepted by the High Court and it was held that the said charge of ticketless travelling on 21.2.1997 is proved in the facts and circumstances of the present case.

16. We find no reason to take a different view from the aforesaid findings recorded by the High Court. The specific stand of the Railway and also of the departmental authority in the inquiry is that the appellant when accosted for her ticketless travelling, she simply passed her identity card to the hands of the ticket collector and went away and giving no opportunity to the ticket collector to detain her. If it was her case that she lost her identity card, it was required for her to immediately lodge a complaint thereto with the concerned authority or with the police which she never did. The said identity card was in fact returned to her by the Railway officials on 24.2.1997. We could not find any justifiable reason of the identity card being recovered at the Dadar Railway Station if she had not at all travelled by train on that day.

17. There could be no other conclusions than what is arrived at by the High Court that she had indeed travelled on that day without any ticket and when accosted, she simply passed the identity card to the hands of the ticket collector and walked away from the place.

18. So far as the incident of 13.5.1997 is concerned, the specific defence of the appellant is that she had purchased a first class ticket on 13.5.1997 but the same was lost while boarding the train which was not accepted by the High Court holding the same to be highly improbable as she had voluntarily paid the charges after stating that Magistrates travelling without

- A ticket could not be asked to pay the fine. Fact remains that on 13.5.1997 also the appellant could not produce any valid ticket or pass when she was accosted and asked to produce her valid ticket/pass. The defence that she lost ticket while boarding the train could always be taken by anybody, but in our concerned view, there must be some basic facts supporting such statement which could not be produced by the appellant in the instant case.

19. So far as the incident on 5.12.1997 is concerned, we find that there is no dispute with regard to the fact that on that particular day, she boarded a first class compartment at Mulund Station although she did not have a valid ticket/pass in her possession. She had paid a penalty which was given to her by one of her colleagues. Later on she had taken a stand that she had purchased a season ticket but the said ticket was also found to have been purchased at Dadar station.

20. On 5.12.1997, when the appellant was caught without ticket and when she was asked to produce the ticket, she could not do so nor was she prepared to pay the charges on the ground that she was a Magistrate and therefore has a right to travel without ticket. It is established from the record that subsequently, however, she paid the amount of Rs. 102/-

21. In this connection, we may also refer to a letter written by her on 8.12.1997 to the General Manager, Central Railway, Mumbai. The said letter was admittedly written by her and it reads as follows:-

"I would like to mention to you that sometimes, I am required to enter into your local Trains to reach my Court in time, as the vehicle given to us is a pooling one which takes a very long time due to unexpected traffic on the roads or break downs. During such occasions, I am unable to buy tickets because of short of time and consequently it had happened so, that I had to face your nagging ticket collectors. Your lady ticket collectors at Dadar instead of

understanding our difficulties have further harassed us in the most insulting manner and this has left a deed scar in our mind. If you care to know how nasty your people could be, you may depute a representative to whom we can explain the facts.

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I am aware that the Metropolitan Magistrates handling the matters of any railway police station on central line get first class free pass right from Nagpur to Igapturi. Even the staff attached to such Magistrates also get free passes. We also attend to the work of railways on Saturdays, Sundays and holidays. Are we therefore, not entitled, at least to stand in the first class compartments of local trains only for the purpose of reaching our Courts in time during such emergencies ? Please do the needful in this matter urgently by giving necessary instructions to the ticket collectors so that we are not humiliated by your ticket collectors on this count and made to pay fine.

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If you are of the negative opinion, that even this little courtesy cannot be extended to us, please communicate to me, so that I am prepared for such eventualities. Your early response would be highly appreciated."

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22. The aforesaid letter as also the fact that she could not produce any ticket or pass for her travel between Mulund and Dadar station clearly establishes the fact that on 5.12.1997, she had travelled without ticket.

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23. Despite the aforesaid position, she had written a letter to the General Manager, Central Railway, Mumbai clearly stating that at times she is unable to buy tickets because of shortage of time for which she had been harassed by the ticket collectors, therefore, she should be provided a free passage in a First Class compartment of local trains for the purpose of reaching the courts in time during such emergencies.

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24. A letter written immediately after the incident on

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A 5.12.1997 clearly indicates that she had travelled without ticket on 5.12.1997 and she had taken offence for demanding a ticket from her as she is a Magistrate and she had made complaint against the ticket collectors. The offence as alleged against the appellant in the memo of charges therefore for
B 5.12.1997 is established on her own showing and therefore, the inquiry officer was justified in coming to the conclusion that the charges levelled against her stood proved.

C 25. The next question that is posed before us is whether the inquiry officer was justified in recommending punishment to the appellant.

D 26. We have looked into the aforesaid issue also in the light of the provisions of the Rules. Rule 8(25)(e) of the Rules provided and permitted an inquiry officer to recommend for the punishment to be provided in the facts of the case. That provision which found place in the earlier Rules, however, came to be deleted from the aforesaid Rules by the amendment brought in the Rules in the year 1997. In that context, it was submitted by the learned counsel appearing for the appellant
E that since a recommendation has been made by the inquiry officer regarding punishment, the entire findings are vitiated and therefore liable to be set aside and quashed.

F 27. We are, however, unable to accept the aforesaid submissions. On going through the records, we find that the disciplinary authority considered the records and thereafter came to an independent finding that the appellant is guilty of the charges framed against her of misconduct and that in the facts and circumstances of the case, a major penalty like compulsory retirement from service could only be imposed on
G her and consequently such a punishment was decided to be imposed. Finally, the entire disciplinary proceedings got terminated with the imposition of penalty of compulsory retirement.

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28. It was also submitted by the learned counsel appearing for the appellant that the aforesaid punishment awarded is disproportionate to the charges levelled against her and that she should at least directed to be paid her pension which could be paid to her if she was allowed to work for another two years. It was submitted by the learned counsel for the appellant that the appellant had completed 8 years of service and if she would have worked for another two years, she would have been entitled to pension by addition of another 10 years of service.

29. We are, however, unable to accept the aforesaid contention for the simple reason that we could probably interfere with the quantum of punishment only when we find that the punishment awarded is shocking to the conscience of the court. This is a case of judicial officer who was required to conduct herself with dignity and manner becoming of a judicial officer. A judicial officer must be able to discharge his/her responsibilities by showing an impeccable conduct. In the instant case, she not only travelled without tickets in a railway compartment thrice but also complained against the ticket collectors who accosted her, misbehaved with the Railway officials and in those circumstances we do not see how the punishment of compulsory retirement awarded to her could be said to be disproportionate to the offence alleged against her. In a country governed by rule of law, nobody is above law, including judicial officers. In fact, as judicial officers, they have to present a continuous aspect of dignity in every conduct. If the rule of law is to function effectively and efficiently under the aegis of our democratic setup, Judges are expected to, nay, they must nurture an efficient and enlightened judiciary by presenting themselves as a role model. Needless to say, a Judge is constantly under public glaze and society expects higher standards of conduct and rectitude from a Judge. Judicial office, being an office of public trust, the society is entitled to expect that a Judge must be a man of high integrity, honesty and ethical firmness by maintaining the most exacting standards of propriety in every action. Therefore, a judge's

- A. official and personal conduct must be in tune with the highest standard of propriety and probity. Obviously, this standard of conduct is higher than those deemed acceptable or obvious for others. Indeed, in the instant case, being a judicial officer, it was in her best interest that she carries herself in a decorous and dignified manner. If she has deliberately chosen to depart from these high and exacting standards, she is appropriately liable for disciplinary action.
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- C 30. We fully agree with the conclusions arrived at by the disciplinary authority. We also find no reason to interfere with the findings arrived at by the High Court giving reason for its decision with which we fully agree and find justification.

- D 31. We, therefore, find no merit in this appeal and the same is dismissed but without any costs.

D N.J.

Appeal dismissed.