GAHC010007032019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : W.P. (C) No. 265 of 2019

Manoj Kumar Kalita,
Aged about 46 years,
Son of Late Ramanimohan Kalita,
Resident of Amiyonagar,
Chandmari, Guwahati – 781003
Under Chandmari Police Station
In the District of Kamrup, Assam.

..... Petitioner.

VERSUS

1) The State of Assam represented by the Commissioner & Secretary, Judicial Department, Government of Assam, Dispur, Guwahati – 781006.

2) Gauhati High Court, represented by the Registrar General, Gauhati High Court, Guwahati – 781001.

3) Registrar General, Gauhati High Court, Guwahati – 781001.

..... Respondents.

Advocate for Petitioner : Mr. K. Sarma, Adv.
Advocate for Respondents : Mr. H. K. Das, Standing Counsel for the Gauhati High Court.
Mr. D. Nath, Govt. Advocate for the State.

Date of hearing :: **08.03.2021**
Date of judgment :: **25.05.2021**

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH

Judgment

Heard Mr. K. Sarma, Adv., Ld. Counsel for the petitioner and also heard Mr. H. K. Das, Ld. Standing Counsel for the Gauhati High Court and Mr. D. Nath, Ld. Govt. Advocate for the State.

2. The present petition has been filed by the petitioner, who was serving as a Senior Judicial Assistant in this Court, being aggrieved by the order of dismissal from the High Court Service, on conclusion of the departmental proceeding initiated against him wherein an adverse finding was given against him, which was acted upon by the Disciplinary Authority for dismissing him from service.

3. For better appreciation of the issues involved in this writ petition, the relevant facts as can be gleaned from the pleadings may be stated as follows.

4. The petitioner entered service of the Gauhati High Court having been appointed as a Lower Division Assistant/Junior Administrative Assistant on compassionate ground vide order dated 28/09/2000, after the death of his father who was also serving in this High Court.

Subsequently, the petitioner was promoted to the higher post of Senior Administrative Assistant vide order dated 30/07/2007.

5. It appears that sometime in the month of October 2012, the Registry of this Court received intimation from the Additional District & Sessions Judge (FTC), Kamrup, Guwahati about the judgement and order dated 29.09.2012 passed by the aforesaid court in Sessions Case No. 190 (K)/2006 convicting the petitioner and others under Section 304 Part I read with Section 149 of the IPC, sentencing him to undergo rigorous imprisonment for five years and to pay a fine of ₹ 1000.

6. The High Court on being informed of conviction of the petitioner, initiated the process for disciplinary proceeding against the petitioner and placed him under suspension as per resolution of the Administrative Committee held on 10.10.2012. Accordingly, the petitioner was placed under suspension by an order dated 12.10.2012. Thereafter, a show cause notice was served upon the petitioner on 13.12. 2012.

7. It may be pertinent to reproduce the relevant portions of the aforesaid show cause notice dt. 13.12.2012, as it will have a bearing on the claim of the petitioner in this proceeding and merit of the case.

> " You are hereby directed to show cause under Rule 23 Part – IV of the Gauhati High Court Services (ACC) Rules, 1967, read with Article 311 of the Constitution of India as to why any of the penalties prescribed under Rule 22 of the said Rules shall not be inflicted on you on the following charge based on the statement of allegation enclosed herewith:
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> 1. "That prior to your appointment as Junior Administrative Assistant in the Registry of the Gauhati High Court, a case No. 247/96, under Section 147/148/149/326/302 of the IPC was registered against you in the Chandmari Police Station. Subsequently, a Sessions Case No. 190 (K) / 06 was instituted in the Court of Sessions Judge, Guwahati in which you were held guilty under Section 304, Part – I read with Section 149 of the IPC and were sentenced to undergo rigorous imprisonment for five (5) years and to pay a fine of ₹ 1000 only. On 30.7.2007, you were also promoted to the post of Senior Administrative Assistant.
>
> At no point of time, you informed the High Court regarding the pendency of the said criminal case against you which amounts to grave misconduct on the part of a Government servant.
>
> You are, therefore, charged accordingly"

8. In response, the petitioner submitted his reply on 25.03.2013 to the show cause notice. As to what he had stated in the reply to the show cause notice would be also relevant as regards the factual position of the case from the perspective of the petitioner which also can be also taken note by this Court for ascertaining the material facts of the case.

(i) In his reply the petitioner stated about his appointment as Jr Administrative Assistant (JAA) in the year 2000 and of his joining service on receipt of satisfactory police verification report about his character, antecedents and conduct. He also mentioned about

his promotion to the higher post of Senior Administrative Assistant (SAA) in 2007.

(ii) He also stated that a First Information Report was falsely lodged by one Smt. Shayama Das on 25.06.1996 alleging assault of her husband before the Chandmari Police Station, which was registered as Case No. 247/1996 under Sections 147/148/149/236/302 of the IPC and he was arrested in connection with the aforesaid case but was released on bail after about 50 days.

(iii) He also claimed that he received the summon for appearing in connection with the said case only on 30.6.2005. He stated that at the time of his appointment as a Junior Administrative Assistant, he was not appearing before the trial court nor was he charge sheeted and as such there was no question of suppression of any fact of the pendency of the case.

(iv) He, however, admitted that since the date of receipt of summon from the court to face trial he did not inform the Registry of this Court, of the pendency of the said case. He explained it by claiming that since pendency of any criminal case in a court of law is a part of the judicial record, it was within the knowledge of the judicial authority and as such the question of suppression of pendency of the case on the part of the petitioner did not arise. What he wants to contend is that by implication the High Court would also know of the pendency of the case in the trial court, being a judicial proceeding, even if he had not formally informed the High Court.

(v) He stated that though he was convicted by the trial court, he was granted bail by the High Court on 10.10.2012 and the appeal against his conviction was admitted by the High Court.

(vi) The petitioner also pleaded for dropping the departmental proceeding by exonerating him from the charges and reinstate him in service considering the long service rendered by him and also his dependents including ailing mother and three brothers.

9. Nevertheless, the enquiry was held against him and the Enquiry Officer submitted his report holding the charge proved against the petitioner. The petitioner submitted his reply on 17.06.2014 to the second show cause notice served upon him along with a copy of the enquiry report.

10. The petitioner in his second reply submitted on 17.06.2014, reiterated what he had stated in his reply to the first show cause notice of the charge. However, in his reply to the second show cause notice, curiously enough, he stated that the verification report submitted by the police before he was appointed in service was not brought on record during the enquiry to rebut his contention that nothing adverse was mentioned against the petitioner in the police report. He also raised objection to the enquiry report on the ground that the enquiry officer had exceeded his jurisdiction in indicating imposition of punishment of dismissal. However, no allegation of violation of principles of natural justice or any other procedural lapses were raised in this reply. He, however, did not deny the fact that he himself did not inform the High Court of his arrest or the pending criminal case at any point of time. He on the other hand stated that he has an ailing mother, an unmarried sister and a minor son who are dependent on him and accordingly, pleaded that a lenient view be taken while imposing any punishment.

11. The Enquiry Report along with the reply of the petitioner with the relevant documents were placed before the Committee constituted for dealing with all matters relating to Officers and Staff of the High Court. The Committee in its meeting held on 25.07.2014 on considering the materials on record took the view that the petitioner need not be penalised on the charge. However, the Committee also observed that continuation of the service of the petitioner would depend on the outcome of the criminal appeal filed by the petitioner and till such time, the petitioner would remain under suspension.

The relevant portions of the resolution of the Committee are reproduced hereinbelow, as the same would have a bearing on issues raised and also considering the fact that the petitioner has made the Committee's resolution the basis for his challenge to the subsequent decision of the Administrative Committee as well as the impugned order of dismissal.

> "The Committee has very carefully considered the findings recorded by the Enquiry Officer, the representation made by the charged employee and also the other related materials furnished by the Registry. The employee was placed under suspension because of his involvement in a criminal case [Sessions Case No. 190(K)/2006] and his conviction under Section 304, Part–I read with Section 149 IPC with the sentence of rigorous imprisonment for 5 (five) years. The employee has preferred an appeal and the same is now pending disposal before this Court. However, he was charged with non-disclosure of material fact in not disclosing his

involvement in a criminal case.

In consideration of the materials on record, it appears that the employee was appointed on compassionate ground and thus he had no occasion to make any declaration regarding the criminal case, as is required to be done in case of regular appointment. In the verification report also, the police did not submit any adverse materials against him. Moreover, as stated by him, he was not aware of any further proceeding in respect of Chandmari Police Station Case No. 274/1996, which eventually culminated to the aforesaid Sessions Case in 2006.

Considering all these aspects of the matter and also having regard to the long length of service already rendered by the employee and also the decision of the Apex Court in ***Commissioner of Police & Ors. Vs. Sandeep Kumar,*** *reported in* ***(2011) 4 SCC 644,*** the Committee is of the considered view that the employee need not be penalised on the charge aforementioned because of the circumstances narrated above. However, his continuation in service would depend on the outcome of the criminal appeal, which is now pending before the High Court.

The Registry may expedite the process for early disposal of the criminal appeal. Till then, the employee will remain under suspension as before."

12. In terms of the resolution of the aforesaid Committee, the petitioner remained under suspension. Subsequently the appeal preferred by the petitioner before the Gauhati High Court, the Appellate Court, in Criminal Appeal No. 207 of 2012 was disposed of in favour of the petitioner vide judgement and order dated 04.01.2018, by allowing the same by holding that from the totality of the evidences and the facts and circumstances of the case, the prosecution has not been able to discharge its burden to prove the guilt of the accused/appellants beyond all reasonable doubts and therefore, conviction and sentence of the accused/appellants deserves to be set aside.

13. Armed with the aforesaid favourable order of the Appellate Court in his favour, the petitioner applied on 11.01.2018 for reinstatement in service by dropping the departmental proceeding initiated against him with all the attending service benefits.

14. The matter was then placed before the Administrative Committee of the High Court which considered the matter on 29.01.2018 which recommended imposing penalty of dismissal from service, on which basis the impugned order of dismissal dated 05.02.2018 was issued, which are challenged in this writ petition.

Since the petitioner has assailed not only the dismissal order but also the recommendation of the Administrative Committee on 29.01.2018, it would be pertinent to

reproduce the relevant portions of the decision of the Administrative Committee. Accordingly, the same are reproduced as below.

> "The committee considered the response submitted by the delinquent against the Enquiry Report submitted by the Enquiry Officer. The committee also considered the Resolution dated 25.07.2014 of the Committee constituted for dealing with all matters relating to officers in the Staffs of the High Court and the case law (***Commissioner of Police & Ors. Vs. Sandeep Kumar, reported in (2011) 4 SCC 644)*** referred to therein.
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> The Enquiry Officer had found the delinquent guilty of suppressing the fact relating to pendency of a criminal case **[Sessions Case No. 190(K)/2006]**, and his arrest and detention in the said case prior to his appointment and also about commencement of trial in the resultant Sessions Case, at the time of his promotion from the post of JAA to SAA.
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> The Committee also considered Rule 59 of the Gauhati High Court Service Rules, 1967.
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> The Committee also considered the case of ***Avtar Singh vs. Union of India, and others,*** reported in ***(2016) 8 SCC 471,*** wherein the Hon'ble Supreme Court clarified the ratio laid in ***Commissioner of Police & Ors. Vs. Sandeep Kumar*** (supra). It is observed in ***Avtar Singh*** (supra) that the employer would be justified to take into consideration various aspects, such as, in concluded criminal cases, whether suppression of material fact would have rendered an incumbent unfit for appointment and, even if acquittal had been made, whether such acquittal is honourable or on account of grant of benefit of doubt. It was held that in case an employer comes to the conclusion that conviction or grant of acquittal in a criminal case would not affect the fitness for employment, the incumbent may be appointed or continued in service.
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> In the case in hand, the delinquent was involved in a serious case. Charges were framed against him u/s 147/148/149/326/302 IPC and at the end of trial he was convicted u/s 304 Part-I IPC read with Section 149 IPC, and sentenced to undergo rigorous imprisonment for five (5) years and also to pay a fine of ₹ 1000 only. There is no doubt that the offences involved moral turpitude. He was the main accused in the said case and he allegedly used axe while committing the offence. The delinquent was acquitted by the appellate court giving the benefit of doubt.
>
> Having regard to the above, and the law laid down by the Hon'ble Supreme Court in ***Avatar Singh's*** (supra) Case, the committee resolves to accept the Enquiry Report.
>
> Now, coming to the point of imposition of punishment upon the delinquent, he is found to be not fit to continue in the High Court Service and, accordingly, the penalty of dismissal from service, as prescribed in **Rule 22** of the **Gauhati High Court Service Rules,** may be imposed. The period of suspension shall be treated as not on duty and he will not be entitled to anything save and except the subsistence allowances, already paid to him during the period of suspension."

15. The petitioner has challenged the aforesaid actions of the High Court resulting in dismissal of his service mainly on the following grounds.

(i) It has been contended that the petitioner had been penalised on account of alleged nondisclosure of a case, which was not of a serious nature and in which the petitioner has been ultimately honourably acquitted and as such when the very basis on which action has been taken does not exist anymore, penalising the petitioner will not be sustainable.

(ii) The petitioner also has taken serious objection to the decision of the Administrative Committee held on 29.01.2018 which recommended imposition of penalty of dismissal contrary to the earlier decision of another Committee on 25.07.2014 which deals with all matters relating to Officers and Staff of the High Court, which opined that the petitioner need not be penalised by assigning proper reasons thereof, viz, that the petitioner was appointed on compassionate ground and there was no occasion to make any declaration regarding the criminal case as required to be done in the case of a regular appointment and in the police verification report there was no adverse material against him and also the petitioner was not aware of any further proceeding in respect of the aforesaid case till he was charge-sheeted. The Committee of the Officers and Staff while recommending so, considered the long length of service already rendered by the petitioner and decision of the Apex Court in ***Commissioner of Police Vs. Sandeep Kumar*** (supra).

(iii) The petitioner, accordingly, contended that the Administrative Committee could not have overruled the earlier well-considered decision of the Committee for Officers and Staff, which was also approved by then Chief Justice, which categorically recommended that the petitioner need not be penalized.

(iv) In any event, the penalty of dismissal is too harsh considering the facts and circumstances of the case.

16. Ld. Counsel for the petitioner has also questioned the competence of the Administrative Committee to record that the petitioner was the main accused in the said case and he allegedly used axe while committing the offence, when the trial court had already acquitted the petitioner.

Ld. Counsel for the petitioner also has submitted that the petitioner has not been

provided with any alternative remedy of appealing against the dismissal order.

Ld. Counsel for the petitioner also submitted that the petitioner is presently suffering from cancer and as such this Court under the circumstances may reduce the penalty from dismissal to any other lesser penalty to tide over the financial hardships faced by the petitioner on whom many are dependent including his aged mother and unmarried sister.

17. In support of his submission, the Ld. Counsel for the petitioner has relied on the following decisions of the Apex Court, (i) ***G.M. Tank v. State of Gujarat*, (2006) 5 SCC 446** and (ii) ***Commissioner of Police Vs. Sandeep Kumar*** (supra).

Referring to ***G.M. Tank*** (supra) case, Mr. K. Sharma, Ld. Counsel for the petitioner contents that as the petitioner was acquitted from the criminal charges, the question of penalizing the petitioner departmentally does not arise.

Further referring to ***Sandeep Kumar*** (supra) case, the Ld. Counsel submitted that since the charges were not serious which originated from a property dispute in which he was ultimately honourably acquitted, the High Court could have taken a lenient view and reinstated the petitioner in service.

18. On the other hand, Mr. H.K. Das, Ld. Standing Counsel for the High Court has vehemently opposed the claim of the petitioner contending, inter alia, that the acquittal of the petitioner was not honourable and the High Court could under the circumstances dismiss him from service as he was found guilty of serious misconduct. It has been submitted that the petitioner was acquitted by the Appellate Court by giving the benefit of doubt and it was not a clear and honourable acquittal and it cannot be said that the petitioner was found innocent of the charges.

It has been also submitted that the petitioner is guilty of suppressing the material fact of being accused and arrested in a criminal case not only at the time of entry in service but even when he was promoted to the higher post. He never voluntarily disclosed these facts and it came to the notice of the High Court only when the judgement and order convicting the petitioner by the trial court was communicated to the High Court by the trial court. It clearly showed his mala fide intention for concealing these facts which under the rules the petitioner was required to disclose to the High Court.

19. As regards the contention of the Ld. Counsel for the petitioner that the Administrative Committee could not have ignored the decision of the Committee for Officers and Staff which in unequivocal terms recommended that the employee need not be penalised on the charge, Mr H.K. Das, Ld. Standing Counsel for the High Court submits that the decision of the aforesaid Committee was not final and at that time, the appeal filed by the petitioner before this Court was still pending. Moreover, the Administrative Committee took the final decision after considering the judgement and order passed by the Appellate Court in the aforesaid case and found that the petitioner was not honourably acquitted but acquitted by giving him the benefit of doubt and as such the decision of the Administrative Committee could not be faulted with.

It has been submitted that the decision of the Administrative Committee could not be assailed unless the same was vitiated by mala fide, which is not the case herein.

It has been also submitted that the decision of the Administrative Committee was taken by invoking Rule 59 of the Gauhati High Court Service Rules, 1967 (hereinafter referred to as the "Service Rules") which mandates a member of the High Court Service to inform the Registry promptly in writing if he has been arrested on criminal charges made or proceeding taken against him in connection with his position as a member of the High Court Service or otherwise which is likely to embarrass him in the discharge of duties or which involves moral turpitude, even though he might have been subsequently released on bail and failing to do the aforesaid would attract disciplinary action from the authority.

It was also submitted that it is clear and not denied by the petitioner that the petitioner never informed the Registry of this Court at any point of time, till it came to the notice of the High Court only after being informed by the trial court of the conviction of the petitioner. As such, the petitioner has been suitably penalised for violating the aforesaid provision of the Service Rules.

20. Ld. Standing Counsel for the High Court also submitted that the fact that the petitioner had used a dangerous weapon like axe clearly shows that he was engaged in an act involving moral turpitude which was also noted by the Administrative Committee. However, he concealed all these material facts of being involved in a criminal case from the

High Court and as such he was liable for the penal action.

It has been submitted that being an employee of the High Court, the petitioner was expected to be more careful, diligent and not to hide any such incriminating information and his actions were in violation of the Service Rules and as such imposition of penalty of dismissal does not call for any interference from this Court.

21. As regards the contention of the petitioner that the petitioner has been deprived of an alternative remedy, Ld. Standing Counsel has submitted that there is a provision for appeal as provided under Rule 30 of the Gauhati High Court Service Rules, 1967 against any order passed by the Registrar/Registrar General which the petitioner opted not to invoke.

22. Referring to the claim of the petitioner that he is suffering from cancer and as such deserves a lenient action, Ld. Standing Counsel has submitted that no material has been brought on record to show that he is suffering from cancer.

23. In support of his contention that mere acquittal, unless honourable, does not disentitle the competent authority to take disciplinary action, Mr. H.K. Das, Ld. Standing Counsel has relied on the following decisions.

(i) *Avtar Singh v. Union of India*, (2016) 8 SCC 471.

(ii) *State (UT of Chandigarh) v. Pradeep Kumar*, (2018) 1 SCC 797.

It has been also submitted that the decision in ***Commissioner of Police Vs. Sandeep Kumar*** (supra) has been explained and distinguished in ***Avtar Singh*** (supra).

Further, as to what amounts to honourable acquittal, Ld. Counsel has referred to the decision in***State (UT of Chandigarh) v. Pradeep Kumar*, (2018) 1 SCC 797** and contends that if the acquittal is because of the failure of the prosecution to prove the charge beyond reasonable doubt, such an acquittal cannot be considered to be an honourable one.

24. From the above, it is clear that the issues to be considered and decided in this petition are as follows:

(i) Whether the petitioner concealed any material information from the authorities, non-disclosure of which would entail penal action from the Authority?

(ii) Could the Administrative Committee take a decision on 29.01.2018 different from

and not consistent with the earlier decision or opinion taken on 25.07.2014 by the Committee constituted to deal with all matters relating to Officers can Staff of the High Court?

(iii) Was the petitioner honourably acquitted by the Appellate Court in Criminal Appeal No. 207/2012? If not or if so, what would be the effect of such acquittal of the petitioner in the disciplinary proceeding against him?

(iv) Can the petitioner be said to be guilty of moral turpitude after he was acquitted by the Appellate Court?

25. To deal with the first issue, it has to be first ascertained as to the information which the petitioner has been charged of concealing and not disclosing to the authority.

The charge of the authorities against the petitioner as evident from the show cause notice dated 13.12.2012 is that prior to his appointment as Junior Administrative Assistant in the Registry of the Gauhati High Court, a criminal case under Section 147/148/149/326/302 IPC was registered against him in Chandmari Police Station and subsequently, a Sessions Case, under No.190(K)/2006 was registered against him and was convicted under Section 304, Part – I read with Section 149 IPC. In the meantime, the petitioner was also promoted to the higher post of Senior Administrative Assistant on 30.7.2007.

Thus, the specific charge against the petitioner was that, the petitioner, "**at no point of time**", informed the High Court about the pendency of the said criminal case which amounts to a grave misconduct on his part. In other words, neither at the time of appointment as JAA in 2000 nor at the time of promotion to the post of SAA in 2007 or thereafter till the High Court was informed, he never furnished any information about his arrest or the pendency of the case and trial.

26. As regards this, the plea of the petitioner as can be seen from the second reply to the show cause notice on conclusion of the enquiry was that, at the time of his initial appointment, necessary police verification was made and no adverse report was made against him in the said report. According to him, if the pendency of any such criminal case was shown in the police verification report, perhaps he would not have been appointed. On the other hand, he further makes the claim that the police verification report was not

brought on record in course of the enquiry which would have supported his claim that there was no such adverse report.

From the above, what is clear is that the petitioner specifically did not deny the fact that he did not bring to the notice of the Registry of this Court or inform of the complaint/case against him. But he takes shelter behind the police verification report, which apparently did not mention anything about such factum of the criminal case pending against him. As regards the criminal trial, which was proceeded against him, his plea was that it was a judicial proceeding and as such can be said to be within the knowledge of the High Court.

27. In the opinion of this Court, such pleas of the petitioner are sterile. The police verification obviously will be based on information they have in their records and or be based on the information that may be furnished by the petitioner himself. If the police verification had not properly reflected the records, it may be either due to their lapses which may be *bona fide* or *mala fide,* of which this Court, is not inclined to examine in this proceeding. At the same time, if the police had verified from the petitioner himself, then certainly he did not inform the police. Whatever may be the case, without going any further as to the reason why the said fact was not reflected in the police verification report, the question is, does it have the effect of effacing this fact that the petitioner was charged of certain criminal offence before he entered service? In the opinion of this Court, it certainly does not.

28. It may be also observed that assuming that the police for genuine reasons did not reflect this fact in their report and the petitioner also without any malicious intent did not inform the authorities of the High Court at the time of his appointment in 2000, however, his subsequent conduct throws a serious doubt on his *bona fide* and intention not to disclose this information.

In his reply dated 25.03.2013 to the show cause notice dated 13.12.2012 issued to him, he states that after he was released on bail he did not receive any intimation or summon for appearance till the order summoning him was passed by the trial court on 30.06.2005. It is also to be noted that after two years of receiving the summon, he was given promotion to the higher post of Senior Administrative Assistant on 30.07.2007. As a

staff of the Registry, he is expected to be acquainted with the Service Rules which provide for consideration of his ACRs/service records apart from seniority for being considered for promotion. However, when he knew that he was summoned by the trial court on 30.06.2006, he certainly did not bring it to the notice of the Registry soon thereafter nor after his promotion. If this fact had been brought to the notice of the Registry before the promotion, perhaps his promotional opportunity could have been adversely affected and his case could have been kept in "sealed cover". Thus, he opted to remain silent and did not convey about his involvement with the criminal case even then, in order not to jeopardise his promotional opportunity. The Registry was kept in dark of the ongoing criminal trial. He also did not inform the Registry after the promotion as any such information could have also lead to review of his promotion.

29. One also wonders, how the petitioner managed to appear in the trial court and face the trial regularly in-spite of serving as a Junior/Senior Administrative Assistant in the High Court, without permission of the High Court.

On working days, the petitioner could not have attended the trial court without taking leave from his duty in the High Court and if he had to take leave, he must have submitted necessary leave application. If he had applied leave by assigning the reason as appearance before the trial court, the High Court obviously would have come to know of such criminal trial going on against him. It appears that he did not inform the High Court at any point of time that he was facing trial when he was attending the trial court. It is not known, nor it is on record as to what he had stated in such leave application. If he had mentioned so in the leave application, he would have brought to the notice of this Court even now also, to show that he did not conceal such criminal proceeding. If, on the other hand, if he had appeared before the trial court to face the trial without taking leave, then of course, his misconduct would be aggravated.

However, perhaps it may not be necessary to dwell in detail any further in this regard in the light of the finding by the Enquiry Officer that he never informed the High Court about the pendency of the criminal case against him. He also never claimed that he did inform the High Court at some point of time.

30. It is also to be noted that on the day he was convicted and sentenced by the trial court, the petitioner would have been required to remain present in the trial court to face the verdict of the trial court. It is on record that on that day, he sought earned leave for thirty days on medical ground when he had all the opportunity to disclose about the trial he was facing. Instead of mentioning about his imminent verdict in the application for leave submitted on 29.09.2012, he stated that he had undergone a major surgery of hernia at Dispur Hospital on 10th August, 2012 and as suddenly some post operational complications had arisen, he was advised by his doctor to take rest for a month and accordingly he requested for grant of earned leave for 30 days from 29th September to 30th October. In the opinion of this Court, this application was merely a facade to conceal his imminent detention, if convicted on 29th of September, 2012, when the verdict was scheduled to be announced by the trial court. He, thus, continued with the misconduct of not disclosing the pending criminal case. If so, it is obvious that his misconduct was a continuing one. Ordinarily, once the verdict of conviction was pronounced by the trial court, the petitioner would have been immediately taken into custody and sent to jail for serving out the sentence which was imposed. It is on record that the petitioner later filed an application before the Gauhati High Court, the Appellate Court, being Cril. Misc. Case No. 826 of 2012 in Cril. Appeal No. 207 of 2012 for suspension of the judgement and order of conviction passed by the trial court, grant of bail, which was duly allowed by the Appellate Court vide order dated 10.10.2012 suspending the operation of the judgement and order convicting the petitioner and also permitting the petitioner to go on bail of ₹ 15,000 with one local surety. The grant of bail by the Appellate Court clearly shows that he was in prison after being convicted. This fact of imprisonment was also not intimated to the authorities in the High Court.

31. It is to be noted that the petitioner himself had never informed the Registry of this Court about his trial as well as conviction and imprisonment and the filing of criminal appeal. As evident from above, the petitioner was granted bail by the Appellate Court only on 10.10.2012. The application filed by the petitioner seeking on leave for 30 days on 29.09.2012 was merely a subterfuge to conceal his imminent imprisonment if convicted. Thus, this act of the petitioner in applying for earned leave clearly betrays his futile attempt

to keep the highly disconcerting incident under wraps.

32. This Court under the aforesaid circumstances, would unhesitatingly hold that the petitioner deliberately concealed the disturbing facts of his arrest, trial and conviction in a criminal case and kept the authorities of the High Court in dark. His plea that the police verification report did not reflect the aforesaid facts does not absolve him from the responsibility to inform the Registry. If the police verification report does not reflect the said fact, it does not mean that such an incident had not taken place.

It was a fact which was within his special knowledge and it was his duty to disclose this fact to the authority and he cannot take the plea that it was not mentioned in the verification report. Certain adverse inference could be drawn against him for non-disclosure of such fact, by holding that he intentionally concealed the same, keeping in mind the principle contained in Section 106 of the Indian Evidence Act, in which event he would certainly be liable for disciplinary action under the Service Rules.

33. The next question which arises and requires to be considered is whether such an act would attract departmental action?

34. The High Court authorities as well as the Administrative Committee had referred to Rule 59 of the Gauhati High Court Service Rules 1967 in taking disciplinary action against the petitioner.

Rule 59 reads as follows,

> " **59. Arrests on a criminal charge** - It shall be the duty of a member of the High Court Service who has been arrested on criminal charge made or proceeding taken against him in connection with his position as a member of the High Court Service or otherwise which is likely to embarrass him in the discharge of his duties or which involves moral turpitude, to intimate the fact of his arrest and the circumstances connected therewith, to the Registrar promptly in writing even though he might have subsequently been released on bail. Failure on the part of the member of the High Court Service concerned to so inform will be regarded as suppression of the material information and will render him liable to disciplinary action on this ground alone, apart from any action that may be taken against him on the conclusion of the case against him."

The aforesaid rule therefore makes it incumbent on a member of the High Court Service to inform promptly in writing the authorities if he had been arrested on a criminal

charge and failure to do so would attract disciplinary action. Such arrest may be in connection with a criminal charge or in a proceeding against him in connection with his position as a member of the High Court Service or otherwise which is likely to embarrass him in the discharge of his duties or which involves moral turpitude.

The rule further provides that disciplinary action can be taken not only for failure to report about such arrest but also separately in respect of the case against him on conclusion of the case.

35. The Administrative Committee while recommending the dismissal of the petitioner from service referred to Rule 59 in the light of the finding of the Enquiry Report.

The Administrative Committee noted the finding of the Enquiry Officer that the petitioner was found guilty of suppressing the fact relating to pendency of the criminal case, his arrest and detention in the said case prior to his appointment.

The Administrative Committee also noted the finding of the Enquiry Officer about the suppression of fact of the commencement of the trial at the time of his promotion from Junior Administrative Assistant (JAA) to Senior Administrative Assistant (SAA).

The Administrative Committee also noted the fact that the petitioner was ultimately convicted by the trial court under Section 304 Part – I IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine ₹ 10,000, though subsequently the Appellate Court acquitted the petitioner by giving benefit of doubt. The Administrative Committee also noted that there is no doubt that the offence involved moral turpitude.

The Administrative Committee, accordingly, by relying on the decision in ***Avtar Singh*** (supra) accepted the Enquiry Report and recommended dismissal of the petitioner from service under Rule 22 of the Gauhati High Court Service Rules.

In doing so, the Administrative Committee observed that the decision of the Apex Court in ***Commissioner of Police Vs. Sandeep Kumar*** (supra) which was relied upon by the earlier Committee to deal with all matters relating to Officers and Staff had been duly explained and distinguished in ***Avatar's*** case (supra).

36. This Court is of the opinion that the decision of the Administrative Committee to

accept the finding of the Enquiry Officer that the petitioner was found guilty of suppressing the fact relating to pendency of the criminal case, his arrest and detention in the said case prior to his appointment does not call for any interference. So is the decision of the Administrative Committee to accept the finding of the Enquiry Officer about suppression of fact of the commencement of the trial at the time of his promotion from JAA to SAA. It may be also noted that the petitioner has not questioned the findings by the Enquiry Officer about the non-disclosure of the aforesaid facts as contained in the Enquiry Report. His plea as noticed was that the police verification report did not contain any such adverse report, which this Court has already considered to be of no help to him.

37. Even though the arrest of the petitioner and his release on bail in the aforesaid case after filing of the FIR against him and others may have taken place in 1996 before the petitioner entered service in 2000, nevertheless, the aforesaid criminal case did not culminate in acquittal before he entered service. Hence, as the case continued even after he entered service, it could not be said to be a closed chapter.Thus, when he was appointed as JAA in 2000 he continued to remain on bail and the criminal case pending against him. In other words, his arrest in 1996 was merely kept in abeyance because of the bail. His status as a person who was arrested and on bail, even before he was appointed as JAA, and thus before he was a member of the Gauhati High Court Service, continued even after he became a member of the Gauhati High Court Service. It was thus incumbent upon him to inform the High Court about the said incident, which still remained a live issue. In fact, on conviction by the trial court on 29.09.2012 the said bail shall be deemed to have been cancelled as the petitioner would be required to undergo imprisonment in terms of the conviction order dated 29.09.2012. The petitioner was granted bail again in aforesaid case subsequently by the Appellate Court on 10.10.2012 and the said bail was discharged only when the Appellate Court set aside the conviction and sentence on 04.01.2018. Thus, till the bail was discharged, his arrest remained suspended by virtue of the bail granted to him.

However, the conviction resulting in his imprisonment, and though subsequently enlarged on bail was also not brought to the notice of the High Court.

The charge against the petitioner as contained in the show cause notice dated 13.12.2012 very clearly mentioned that the petitioner "***at no point of time***", informed the

High Court about the pendency of the said criminal case against him, which amounts to a grave misconduct on his part.

The charge essentially means that the petitioner did not inform of his arrest in connection the aforesaid case when he entered service in the High Court in 2000 and also after he became a member of the High Court Service. The charge had been duly proved during the enquiry, which finding of fact had not been assailed by the petitioner.

38. In this regard it may be apposite to refer to Rule 41 under Part V of the Service Rules which provides that every member of the High Court Service shall always maintain absolute integrity and devotion to duty. It also provides that no member of the High Court Service shall engage in any activity which is prejudicial to the discipline and order in the Registry.

In the opinion of this Court, the ingenious attempt of the petitioner in trying to hide the trial and possible conviction by the trial court by applying for earned leave for 30 days on 29.09.2012, on the eve of pronouncement of judgement, on the ground of rest required due to medical reasons, does indicate that he failed to maintain absolute integrity and devotion to duty as required under Rule 41. Rule 62 of Part V further provides that any member of the High Court Service contravening the provisions of any of the Rules in Part V shall render him liable to disciplinary action.

In the opinion of this Court, the act and conduct of the petitioner as noticed by the Administrative Committee certainly comes within the purview of Rule 41 and is also liable for disciplinary action under Rule 62 under Part V of the Gauhati High Court Service Rules, 1967, though there is no specific reference to Rule 41 or Rule 62 in the deliberations of the Administrative Committee.

This Court is of the view that non-reference to either Rule 41 or Rule 62 in the deliberations will not make any difference to the decision of the Administrative Committee for the reason that "*it is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.*" **[**See ***N. Mani v. Sangeetha Theatre*, (2004) 12 SCC 278]**

39. Ld. Counsel for the petitioner has taken much pain in trying to convince the Court that the Administrative Committee could not have taken the decision on 29.01.2018 recommending imposing the penalty of dismissal on the petitioner contrary to the earlier recommendation of the Committee constituted for dealing with all matters relating to Officers and Staff of the High Court held on 25.07.2014.

As discussed above, the Committee for the Officers and Staff keeping in mind the factual background in the light of the decision of the Hon'ble Supreme Court in ***Commissioner of Police vs. Sandeep Kumar*** (supra) had taken the view that the employee need not be penalised on the aforesaid charge. However, at the same time the Committee also recommended that his continuation in service would depend on the outcome of the criminal appeal which was pending before the court at the time. Thus, the opinion of the said Committee was not final as far as the issue of continuation in service of the petitioner is concerned.

The aforesaid decision of the Committee was obviously influenced by the liberal view adopted by the Apex Court in ***Sandeep Kumar*** (supra). However it is to be noted that the aforesaid case of ***Sandeep Kumar*** (supra) decided in 2011, was considered by the Apex Court in the subsequent case of ***Avtar Singh*** (supra) in 2016 and the Apex Court noted that the offence suppressed in the said case of ***Sandeep Kumar*** (supra) related to Section 325/34 IPC and at the time the incumbent was 20 years of age and the Apex Court by taking a lenient view held that the said suppression did not relate to involvement in a serious case. But, the Hon'ble Supreme Court in ***Avtar Singh*** (case) went on to observe that,

> "**30.** The employer is given "discretion" to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each

and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service.

40. The Apex Court in ***Avtar Singh*** (case) after considering various previous decisions in this regard summed up the legal position in the following words:

"**38.** We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may

take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, *holding* departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressioveri or suggestiofalsi, knowledge of the fact must be attributable to him.

39. We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits."

41. From the above, it is clear, *inter alia,* that information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of the required information. In the present case, the petitioner did not furnish any truthful information, rather, he knowingly suppressed it.

It has been also held in ***Avatar'***s case that in a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate. As a corollary, as

in the present case, the High Court is not bound to keep the petitioner in employment merely because he has been acquitted if the facts and circumstances do not warrant so.

In the present case, even though, the petitioner who was given benefit of doubt in the criminal trial by the Appellate Court, may claim that at the time of appointment of compassionate ground there was no requirement of declaration of any such pending case or his arrest earlier, yet, the moment he enters service in the High Court, he was under obligation to disclose it under Rule 59 as well as Rule 41. Thus, even if it is a case where such information was not asked for at the time of initial appointment on compassionate ground as claimed by the petitioner, yet there was a duty to disclose it after he joins service as required under Rule 59 and Rule 41. He cannot take shelter under the police verification report, which did not contain a comprehensive and correct portrayal of his antecedents.

As far as suppression of the aforesaid facts are concerned, it was clearly attributable to him and it was his responsibility to bring to the notice of the High Court irrespective of the police verification report.

42. The Apex Court also clarified that if acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature on technical ground, and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

43. Thus, in view of the subsequent decision in ***Avatar Singh***'s case (supra) explaining the law as well as the earlier decision in ***Sandeep Kumar*** (supra), in the opinion of this Court, the Administrative Committee was within its right to take a different view from the earlier position taken by the Committee for Officers and Staff.

In any event, the earlier Committee had also observed that continuation of the petitioner in service would depend on the outcome of the criminal appeal pending at that time. The Administrative Committee, accordingly, took the decision not to continue his service after examining the judgment of the Appellate Court which acquitted the petitioner by giving benefit of doubt and observing that the offence was a serious one and it involved moral turpitude.

44. It would therefore, be necessary to examine whether the Administrative Committee

was right in coming to such conclusion, which also leads to the third issue raised by the petitioner that the acquittal of the petitioner was an honourable one and therefore he deserves to be reinstated in service.

45. As to what amounts to "honourable acquittal" in a criminal case, has escaped precise definition for the reason that it is not defined in the Criminal Procedure Code or any statutes, though the parameters of the same had been more less understood. As to what is an honourable acquittal in the context of service jurisprudence was considered by the Apex Court after referring to earlier decisions, in ***State (UT of Chandigarh) v. Pradeep Kumar*, (2018) 1 SCC 797** wherein, it was held that,

> "**10.** The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in *Inspector General of Police* v. *S. Samuthiram* [*Inspector General of Police* v. *S. Samuthiram*, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] , in which this Court held as under: (SCC p. 609, para 24)
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>> "*24*. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI* v. *Bhopal Singh Panchal* [*RBI* v. *Bhopal Singh Panchal*, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."
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> **13.** It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh* [*Commr. of Police* v. *Mehar Singh*, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910]

and *Parvez Khan* [*State of M.P.* v. *Parvez Khan*, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] cases, it isthat a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character."

46. In the light of the above and various judicial pronouncements in this regard, it may be stated that,

A. An honourable acquittal in a criminal case in the context of service jurisprudence may be:

(i) Where the accused has been completely exonerated as devoid of any merit in the criminal case after full consideration of the prosecution case. **[*Inspector General of Police v. S. Samuthiram*, (2013) 1 SCC 598].**

(ii) As a corollary, where the Prosecution has miserably failed to prove all the important ingredients of the offence, by adducing material evidences and witnesses.

(iii) Where the complainant or the eyewitnesses had failed to identify the accused resulting in his acquittal. **[*Joginder Singh* v. *State (UT of Chandigarh),* (2015) 2 SCC 377].**

B. As to what does not amount to an honourable acquittal in a criminal case in the context of service jurisprudence may be:

(i) Where the acquittal is based on some serious flaw in the conduct of the prosecution case, shoddy investigation, or slovenly assimilation of evidence, or lackadaisical if not collusive conduct of the trial, etc. **[*Union of India v. Purushottam*, (2015) 3 SCC 779]**

(ii) Where the acquittal is because of faulty procedure adopted or on technical grounds. **[*Inspector General of Police v. S. Samuthiram*, (2013) 1 SCC 598]**

(iii) Where the acquittal is because of witnesses turning hostile or being won over. **[*Inspector General of Police v. S. Samuthiram*, (2013) 1 SCC 598; *Baljinder Pal Kaur v. State of Punjab*, (2016) 1 SCC 671]**

(iv) Where the acquittal is based on compromise. **[*Commr. of Police v. Mehar Singh*, (2013) 7 SCC 685; *State of M.P. v. Abhijit Singh Pawar*, (2018) 18 SCC 733]**

(iv) Where the acquittal is the result of the failure of the Prosecution to prove the case of serious and heinous nature, beyond reasonable doubt because of lapses on the part of the Prosecution. **[*Avtar Singh v. Union of India*, (2016) 8 SCC 471; *C.R. Radhakrishnan v. State of Kerala*, (2017) 13 SCC 365; *Reserve Bank of India v. Bhopal Singh Panchal*, (1994) 1 SCC 541]**

47. The standard of proof in a criminal case is proof beyond all reasonable doubts, and in a departmental proceeding, it is the preponderance of probabilities. Many a times criminal cases end in acquittal because the prosecution has not been able to prove the case beyond reasonable doubt. As already discussed, in the context of service jurisprudence, an acquittal in a criminal case based on benefit of doubt does not stand at par with a clean acquittal on merit after a full-fledged trial.

Applying the aforesaid principles, it can be said that where an accused is acquitted in a criminal trial, and by hypothetically applying the principle of preponderance of probability, if the accused can still be convicted, in such a case, the acquittal by the criminal court cannot be said to be honourable acquittal for the purpose of service benefits, for the reason that if a person is seeking to get the benefit of honourable acquittal, he must be able stand the test of preponderance of probability as well, which lays down a less stringent standard. For the acquittal to be honourable, he should be able to overcome the less rigorous yardstick, for, if the prosecution is not able to convict even on the standard of preponderance of probability (by hypothetically applying it), it would be a clear indication that there is absolutely no merit in the prosecution. In such cases, the acquittal will be honourable.

In the alternative, it may be stated that, if a departmental action is initiated on the same charge based on the same set of evidences, if there can be a finding of guilt in the departmental enquiry, an acquittal by the criminal court in the same charge cannot be said to be an honourable acquittal from the perspective of service jurisprudence.

If there was no merit at all in the criminal case which led to his acquittal, there is hardly any scope for finding of guilt even in a departmental proceeding also. In such case, the acquittal in the criminal case can be considered an honourable acquittal.

48. In the present case, no departmental action was held against the petitioner on the charge of being responsible for the death of the deceased. However, in a hypothetical scenario, if the said charge is made against the petitioner in a departmental proceeding and by applying the standard of preponderance of probability, if the charge can be established, it can be said that the acquittal by the criminal count was not honourable. If it could not be established in a departmental proceeding, acquittal by the criminal court would be honourable acquittal.

In this regard, one may refer to the decision of the Apex Court in ***R.P. Kapur v. Union of India, AIR 1964 SC 787,*** wherein the Constitution Bench held that if the trial in a criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, but even in case of acquittal, departmental proceedings may follow, when the acquittal is other than honourable.

49. In the light of the discussion as above, we may now examine the implication of the acquittal given to the petitioner by the Appellate Court, as to whether it amounts to honourable acquittal as claimed by the petitioner or not.

As we proceed to examine the order dated 04.01.2018 passed by the Appellate Court setting aside the conviction and sentence of the petitioner, certain salient features of the judgement may be noted.

In Paragraph 7 of the appellate order, the Appellate Court observed that from the testimony of PW 1, PW 2 and PW 3, it appears that initially the quarrel took place between PW 2 and the appellant Manoj (petitioner herein). Evidently thereafter, the accused persons allegedly caused damage to the shop of the complainant and when the husband of the

complainant, the deceased, raised objection, the quarrel took place. The Appellate Court further noted that it is also evident that the members of both the sides sustained injuries and there were also cross cases.

From the above observation of the Appellate Court, what is important to note is that the fact that there was a quarrel between the two parties, one belonging to the petitioner and his family members and other belonging to the deceasedand his family members, had been established.

It may be also noted that there was no hint or indication or finding by the Appellate Court that there were other persons involved in the quarrel other than the family members of the petitioner and the victim's family, who could be also responsible for the death of the deceased. On the other hand, the Appellate Court also noted that some neighbours had intervened and dispersed the conflicting groups and some of them had taken the injured to the hospital.

Therefore, it is very unlikely that those who had intervened to disperse the quarrelling parties would cause any such grievous fatal injury. Had there been such an unlikely scenario, there would have been some indication/evidence in this regard, which is missing.

50. The Appellate Court noted that three persons from the informant side also sustained injuries and there was a cross case filed by the accused party and the accused had also sustained injuries.

The Appellate Court, thus, made the observation that admittedly there was a long-standing enmity between the parties because of land dispute and admittedly both the parties sustained injuries in the occurrence and initially the accused persons did not attack the victim or any members of the victim's family but they only caused damage to the shop of the victim.

51. The Appellate Court also examined the post-mortem report and noted the opinion of the Doctor to the effect that the cause of death of the victim was due to comma resulting from injuries sustained on his head, and two injuries were caused by heavy sharp cutting weapon and five other injuries were caused by blunt weapon.

It may be noted that there is a finding of the Appellate Court that there was a quarrel

between two groups, the petitioner's party, and deceased's party. The use of sharp heavy weapon and blunt weapon in the quarrel has been established as clearly indicated in the post mortem report and injuries received by the members of both the quarrelling parties. In that context, use of axe, a sharp and heavy weapon to cause the fatal injury on the head of the deceased is quite possible, though it could not be established beyond reasonable doubt. According to the Appellate Court, it was the petitioner who had used it to strike the deceased.

52. The question as to who had caused the head injury by using a sharp and heavy weapon leading to death of the deceased was the moot point of consideration both by the trail court as well as by the Appellate Court. While the trial court held the petitioner responsible for the death of the deceased by hitting with an axe, based on the evidence of PW 1 (the informant and wife of the deceased) and her two sons, PW 2 and PW 3, the Appellate Court, however, did not lend much credence to their testimony and considered their testimony to be doubtful as the same was not corroborated by any independence witness.

As regards the testimony of PW 1, the Appellate Court noted that during the cross examination, she admitted to have had a dispute with the accused persons over a plot of land since 1993 and she did not state in her statement recorded under Section 161 CrPC as to which of the accused was armed with what weapon.

According to the Appellate Court, since the PW 1 did not mention in the complaint (FIR) that the petitioner was armed with axe, her testimony in the trial that the petitioner had hit the deceased with an axe could not be relied upon. However, it may be also noted that the Appellate Court did not give any finding that the petitioner was not armed with an axe at any point of time. What the Appellate Court was concerned was that there was no credible evidence that it was the petitioner who hit the deceased with an axe. There is an observation by the Appellate Court that there is no clear evidence as who was armed with which weapon. The finding of the Appellate Court was not that there was no use of such weapon, such as axe etc. The presence of these weapons was not ruled out, but the Appellate Court doubted as to which of the accused had used which weapon to fix the criminal liability for the violent death of the deceased.

The Appellate Court referred to the deposition of PW 2 that the petitioner was not armed when there was initial confrontation between PW 2 and the petitioner. This observation was in the context of ascertaining whether it was the petitioner who hit the deceased with an axe. But it is on record, even according to the Appellate Court that the conflict continued after the initial confrontation between PW 2 and the petitioner.

It is a different matter that the Appellate Court did not believe the testimony of PW 1 at the trial that the petitioner hit her husband with an axe.

As regards PW 2, the Appellate Court noted that he stated that his mother did not allow him and PW 3 to go out to see what was happening. The Appellate Court noted that when there was an altercation between PW 2 and Manoj initially, Manoj did not have any weapon in his hand. The Appellate Court also noted that according to PW 2, his mother (PW1) also sustained an injury on her finger but he did not see as to who had caused such an injury. The Appellate Court noted that PW 2 admitted that the accused Manoj and two other accused also sustained injuries in the same incident, and they were taken to the hospital. During the cross examination, PW 2 also stated that two neighbours took them to the police station.

As far as PW 3 is concerned, the Appellate Court noted that PW 3 stated that he could not see the occurrence properly and on reaching the place of occurrence, he noticed that his father was lying at the place of occurrence. He also stated that neighbours came there and dispersed the accused persons from the place of occurrence. During the cross examination, PW 3 admitted having stated before the police that his father was assaulted by rod but did not see as to who had assaulted his father.

53. The Appellate Court after assessing the testimony of PW 1, PW 2 and PW 3 did not find their evidence to be convincing or rather doubtful as regards causing the death of the deceased by the petitioner Manoj by hitting with an axe, as summarised in Paragraph 16 of the appellate order which is reproduced hereinbelow.

> "**16.** Dispassionate scrutiny of the testimony of PW 1, PW 2 and PW 3 makes it appear, that although PW 1 has elaborately stated in her evidence after 10 years of occurrence, the accused Manoj was armed with axe, Purnima with dao, Naba with axe, Newton with dao Apurba with stick, but in the FIR lodged by herself immediately after the occurrence, she did not state specifically as to which

> accused was armed with what weapon. She also admittedly did not state before police as to which accused assaulted whom or by what weapon. She also admittedly did not state before the police regarding her husband sustained an injury. She had stated about the injury sustained by PW 2. This being the petition, the testimony of PW 1 that she had seen the accused Manoj and Naba hitting the victim with axe and "chiprang" is hardly convincing. According to PW 3, he and PW 2 were kept confined in the house and the door was bolted from outside, because of which he could not see the occurrence. When he and PW 2 to came to the place of occurrence, he found his father lying on the ground. According to PW 3, the PW 3 and PW 2 came together to the place of occurrence; whereas, according to Aswini (PW 2), he came first and PW 3 came later. If the evidence of PW 1, PW 2 & PW 3 is believed that PW 1 kept PW 2 and PW 3 confined inside the room and bolted the door from outside, the question arises how they could see the occurrence. PW 3 himself admitted that because of remaining inside the house he could not see the occurrence and only after arriving at the place of occurrence found his father lying with injury. Therefore, the testimony of PW 2 and PW 3, that they had seen the accused Naba and Monoj hitting the victim with axe and "chiprang" also appear to be doubtful."

54. According to the Appellate Court, it cannot be ascertained as to who the aggressor was, though admittedly quarrel took place between the two parties because of land dispute. The Appellate Court's observation was that though there were neighbours who took the injured to the hospital, the prosecution did not examine any of the independent witnesses in support of the prosecution case, and for the PW 1, PW 2 and PW 3 were evidently inimical to the petitioner and other accused and were thus interested witnesses.

Accordingly, the Appellate Court acquitted the petitioner by giving benefit of doubt and gave the finding as follows.

> "**19.** Thus, the unreliability of the testimony of PW 1, PW 2, and PW 3, who are evidently interested witnesses, and inimical to the appellant, non-examination of any of the independent witnesses, who were admitted to present at the place of occurrence and absence of explanation from the prosecution as to how three persons from the accused side sustained an injury cast serious doubt on the case projected by the prosecution, more particularly as to who caused the injury to the victim, which ultimately caused his death. Although PW 1 and PW 2 stated that the accused Monoj and Naba hit on the head of the victim, but from the discussion made hereinabove revealed that such testimony of these two witnesses are not reliable and worthy of inspiring confidence. What therefore, crystallises from the totality of the evidence and the facts and circumstances of the case is that prosecution has not been able to discharge its burden to prove the guilt of the accused/appellants beyond all reasonable doubt and therefore, conviction and sentence of the accused/appellants deserve to be set aside."

55. What transpires from the Appellate Court's order is that though admittedly there was a quarrel between two parties, between the petitioner and his family and the victim's family, both the sides suffered injuries, the prosecution could not establish the case against the petitioner and other appellants beyond all reasonable doubts for being responsible for the death of the deceased. The Appellate Court arrived at such a conclusion as it was not convinced by the testimony of PW 1, PW 2 and PW 3 because the improvement made in the testimony over the previous statement recorded under Sec.161 CrPC/complaint. The Appellate Court also appears to have been swayed by the fact that no independent witnesses were examined by the prosecution.

In the opinion of this Court, though the Appellate Court was within its wisdom to arrive at such a conclusion by setting aside the conviction of the petitioner, it, however, cannot be said that there was absolutely no evidence at all to point the finger of suspicion at the petitioner. It is a different matter that the allegation against the petitioner that he hit the deceased with an axe resulting in his death was not proved beyond all reasonable doubt, yet the factum of death soon after the admitted quarrel between the petitioner and his party and the victim's family has been established and recorded by the Appellate Court. That there was a violent clash between the two parties is clearly established by the fact that both the parties received injuries which needed them to be taken to the hospital. The Appellate Court also records finding of such a clash. The Appellate Court, however, did not believe the testimony of PW 1, PW 2 and PW 3 to hold the petitioner liable for the death of the deceased on the ground that it has not been corroborated by independent witnesses and there were certain improvements in their testimony.

56. It is now well settled in criminal jurisprudence that if the accused also receives certain injuries in course of a clash relating to the same incident, the accused had also a duty to explain how he received injuries which however was not explained in the present case as the accused declined to examine any witness in their defence.

It is unfortunate that the prosecution did not examine any independent witnesses which could have corroborated the evidence of PW 1, PW 2 and PW 3. Nevertheless, there are evidences on the basis it can be said that the needle of suspicion unmistakably points towards the petitioner. It is a different aspect that these evidences may not be able to pass

the test of proof beyond all reasonable doubt as held by the Appellate Court. But it cannot be said with certainty also that the petitioner was totally blameless. The involvement of the petitioner in the death of the deceased was not totally ruled out, though the Appellate Court has held it could not be established beyond reasonable doubt that the petitioner was responsible for the same. The involvement of the petitioner in an incident in which the deceased died a violent death has been established, though the Appellate Court did not believe that the petitioner had hit the deceased with an axe, because of lack of corroboration by independent witnesses, inspite of the testimony of PW 1, PW 2 and PW 2. The petitioner was very much present in the place of occurrence. It is not case of anyone that he was never present at the place of occurrence, in which case, it could be a case of complete exoneration.

57. It may be also noted that it is not a case that Appellate Court held that the testimony of the PW 1, PW 2 and PW 3 was totally untrustworthy and that they could not identify the main culprit. The Appellate Court merely held their testimony not reliable and worthy of inspiring of confidence, which is different from saying that their testimony was utterly unbelievable and their testimony was false. The unreliability and lack of confidence on the testimony of the PW 1, PW 2 and PW 3 by the Appellate court was because of the alleged discrepancies pointed out during the cross examination and lack of corroboration by independent witness account.

It is not a case where it can be said that there was absolutely no evidence against the petitioner. It can be said without any doubt that there were evidences implicating the petitioner, but the Appellate Court felt that these were not sufficient to establish the charge against the petitioner beyond all reasonable doubt.

Further, it can be also said that the prosecution was sloppy in that it could have examined independent witnesses but did not do so.

58. This Court, however, like to observe that given the evidences on record, had there been a departmental enquiry against the petitioner concerning the death of the deceased, there is a distinct possibility that the petitioner could have been held guilty on the standard of preponderance of probability.

As already discussed above, such acquittal in criminal case on the ground that the prosecution could not prove the charge beyond all reasonable doubt cannot be said to be an honourable acquittal. As such, the petitioner cannot be given a clean chit to wipe out any liability as far as departmental action is concerned.

59. For the reasons discussed above, this Court would hold that the acquittal of the petitioner by the Appellate Court vide order dated 04.01.2018 cannot be said to be an honourable acquittal, in which event, the disciplinary action taken by the High Court by dismissing him from service cannot be said to suffer from any illegality as an act of overreach.

60. There is yet an important issue raised by the Ld. Counsel for the petitioner about the description of the act of the petitioner as a case involving moral turpitude by the Administrative Committee and also the Committee's observation that the petitioner had used axe to commit the crime, as perverse and uncalled for, as the petitioner had been already acquitted of the charged of committing the offence.

61. To consider this aspect it would be necessary understand what is meant by "moral turpitude". As to what is meant by "moral turpitude" was considered by the Apex Court in ***Sushil Kumar Singhal v. Punjab National Bank*, (2010) 8 SCC 573,** wherein it was held that,

> "**23.** "*Moral turpitude*" means per *Black's Law Dictionary* (8th Edn., 2004):
>
> "Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude—such as fraud or breach of trust. … Also termed *moral depravity*. …
>
> 'Moral turpitude means, in general, shameful wickedness—so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.' "
>
> (emphasis in original)
>
> **24.** In *Pawan Kumar* v. *State of Haryana* [(1996) 4 SCC 17 : 1996 SCC (Cri) 583 : AIR 1996 SC 3300] this Court has observed as under: (SCC p. 21, para 12)

> "*12*. 'Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."

The aforesaid judgment in *Pawan Kumar* [(1996) 4 SCC 17 : 1996 SCC (Cri) 583 : AIR 1996 SC 3300] has been considered by this Court again in *Allahabad Bank* v. *Deepak Kumar Bhola* [(1997) 4 SCC 1 : 1997 SCC (L&S) 897] and placed reliance on *Baleshwar Singh* v. *District Magistrate and Collector* [AIR 1959 All 71] wherein it has been held as under:

> "The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

25. In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty, or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities."

62. Keeping the aforesaid meaning of "moral turpitude" in mind, this Court will examine the use of the aforesaid expression by the Administrative Committee in their meeting held on 29.01.2018. The Administrative Committee made the observation that there is no doubt that the offences involved moral turpitude and the petitioner was the main accused in the said case and he allegedly used axe while committing the offence and the petitioner was acquitted by the Appellate Court by giving the benefit of doubt.

The Ld. Counsel for the petitioner had strongly objected to describing the act of the petitioner as involving moral turpitude, when according to him the petitioner had been already acquitted of the charge under Section 304 Part I IPC. According to Ld. Counsel for the petitioner since the Appellate Court had acquitted the petitioner and has not believed the evidence of the PW 1, PW 2 and PW 3 that they saw the petitioner hitting the deceased with an axe, it would be legally impermissible for the Administrative Committee to say so, as the same would amount to reversing or tinkering with the judicial finding of the Appellate

Court as regards this material fact. It has been submitted by the Ld. Counsel for the petitioner that there is no finding recorded by the Appellate Court that petitioner had hit the deceased with an axe. In other words, such an observation by the Administrative Committee is perverse and on that ground alone the decision of the Administrative Committee can be said to be vitiated and will be liable to be interfered with.

63. It has been also submitted that, what is on record is that there was a dispute relating to property and if there had been some clash in that regard, which occurred on the spur of the moment, it cannot be said to be premeditated and involving moral turpitude. There was no element of dishonesty or moral depravity. It was not pre-planned. There is no such finding by the Appellate Court.

64. The aforesaid submission of the Ld. Counsel for the petitioner appears to be quite attractive eat the first blush, yet on a closer scrutiny of the judgement of the Appellate Court, the observation made by the Administrative Committee cannot be said to be unwarranted in the facts and circumstances of the case.

65. All the witnesses, PW 1, PW 2 and PW 3 testified before the trial court that the accused persons were armed. The accused Manoj, the petitioner, was allegedly armed with an axe and other accused with dao, "chiprang", stick and they came towards their house and after being rebuked they started to hit the wall of the shop. In the statement recorded under Section 161 CrPC, the PW 1 did not state which the accused was armed with which weapon and who had assaulted whom by using which weapon, as mentioned in para 13 of the judgement. What the evidence indicates is that, the accused were armed, though it was not specified as to who was armed with which weapon. Thus, the doubt which arose in the mind of the Appellate Court was about the use of specific weapon by a particular person for the purpose of fastening the criminal lability. It may be also noted that there is no finding recorded by the Appellate Court that no weapon was used at all, as otherwise, there cannot be any reason for the injuries received by both the parties which have been recorded in the judgement.

As regards PW 2 as mentioned above, though the witness testified before the trial court that the petitioner had inflicted the injuries on the head of his father who died, the

Appellate Court disbelieved him on the ground that in the initial altercation between PW 2 and the petitioner, PW 2 had stated that the petitioner did not have any weapon in his hand. However, there is evidence to the effect that certain clash took place between the two parties and there is also evidence that the accused caused damage to the shop of the victim. There is also evidence to the effect that after the initial confrontation between PW 2 and the petitioner, subsequently, there was another confrontation or quarrel. This is clearly evident from the finding of the Appellate Court in para 18 of the judgment that, "*…… which clearly demonstrates that initially quarrel took place between the Monoj and Aswini and subsequently, the incident of assault took place by participation of the persons from both the sides. No evidence has been brought on record to show, as to who was the aggressor, though evidently quarrel took place for the dispute relating to land, which was admittedly claimed by both the parties*".

The fact that weapons were used is also evident from the fact that the parties to the clash received injuries and one fatally injured.

66. Thus, though the Appellate Court gave benefit of doubt to the petitioner about the charge of assaulting the victim with an axe which resulted in his death, the use of weapon has not been ruled out, though, according to the Appellate Court, the actual aggressor could not be pinpointed and the use of the axe could not be also ascribed specifically to the petitioner. The damage caused to the shop of the victim has been clearly recorded in the judgement and in the context of the allegation made by the complainant and testimony before the Court of the aforesaid witnesses, use of axe by the petitioner has been clearly indicated, though in view of the decision of the Appellate Court, the use of axe could not be specifically ascribed to the petitioner for causing the death of the deceased.

67. Since, apparently, the petitioner was the main player from his side as far as the dispute regarding the property was concerned, if anyone from his party had used any dangerous weapon, it was incumbent upon him to restrain any member of his party from using any such weapon. The fact that the Appellate Court also recorded the nature of injuries received by the victim's party clearly indicates the use of certain kinds of dangerous weapon. To that extent, even if the contention of the petitioner is correct that the petitioner cannot be said to have used an axe while committing the offence, this will not make any

material difference as far as the decision of the Administrative Committee is concerned for it is established that certain kinds of weapons were used in the said dispute between the petitioner's family and the victim's family.

68. The fact remains, which are also not controverted by the petitioner, that there was a clash between the petitioner's party and the victim's family. There is evidence to show that the petitioner's party had caused damage to the shop in course of the dispute relating to the property. It is also on record that in course of the dispute both the parties suffered injuries and one of them died due to grievous injuries received on the head and other parts of the body. The fact that grievous injuries was inflicted on the head of the deceased by sharp heavy weapon indicates the use of such weapon and as such, even if the petitioner had been given benefit of doubt in the case, he cannot be totally absolved of taking part in a violent clash where one of the persons died after receiving serious grievous injuries. In fact, in the FIR lodged, as reflected in the judgement of the trial court, it has been mentioned that the PW 1 lodged an Ejahar on 25.06.1996 that at 4 PM at Amiya Nagar in front of their house, the accused persons namely, (1) Sri Manoj Kalita, (2) Sri Naba Kalita, (3) Sri Apurba Kalita, (4) Sri Neuton Kalita along with their mother, (5) Smt. Purnima Kalita, armed with weapons like dao, axe etc. assaulted them causing grievous injuries on their persons and as a result of the said incident, the husband of the informant succumbed to his injuries in Guwahati Medical College on 25.06.1996 at about 11:45 a.m.

69. Ld. Counsel for the petitioner also has referred to certain cross case filed by the petitioner and his party against other (informant) party, of which reference also has been made in para 17 of the order dated 04.01.2018 of the Appellate Court, which would substantiate the injuries received by the accused persons. As regards the cross case, the trial court recorded that, "*It may pertinently be mentioned here that a cross case being Sessions Case No. 142(K)/08 arising out of the same occurrence, based on F.I.R dated 25.06.96 lodged by the informant Sri Apurba Kalita who is accused against the informant and others of this case has been tried and disposed of holding the accused persons, named herein, not guilty of the charges under Sections 341/323/34 IPC vide judgement and order dated 29.9.12. The institution of this case certainly indicates the involvement of the accused persons and occurrence beyond doubt.*"

70. The Appellate Court referred to the said case only for the purpose of pointing out the injuries received by the petitioner and his party.

In fact, the aforesaid cross case filed and dismissal of the said cross case does indicate that the petitioner and his party had a lot of explanation to offer about the death caused to the deceased. However, they chose not to adduce any evidence and merely relied upon of the prosecution to prove its case beyond reasonable doubt. The aforesaid cross case, however, proves the violent clash between the petitioner's party and the victim's family and use of certain dangerous weapon.

71. Under the circumstances, though the Appellate Court had given benefit of doubt to the petitioner, it cannot be said that the Administrative Committee was totally wrong in making such an observation based on the materials on record of the aforesaid criminal case.

72. It may be also noticed that the observation made by the Administrative Committee that the petitioner allegedly used axe while committing the offence has to be understood, not as an established fact the petitioner had hit the deceased with an axe, but referring to the allegation that he had used axe in committing the offence. Use of axe, a sharp and heavy weapon in the dispute has been established as evident from the post-mortem report. It was nobody's case that the deceased died of self inflicted wounds. Then who had caused the fatal injury? The Appellate Court gave benefit of doubt to the petitioner. But the lingering doubts that it was the petitioner who was responsible for the death remain in the light of the FIR and the depositions of the PW 1, PW 2 and PW 3 before the trial court. It was that doubt that the Administrative Committee was referring to when it made the observation that, "*He was the main accused in the said case and he allegedly used axe while committing the offence*" . It is clear from the sentence which follows it, that is, "*The delinquent was acquitted by the appellate court giving benefit of doubt.*" Thus, the aforesaid observation has to be understood in the aforesaid context. Accordingly, it cannot be said that the aforesaid observation made by the Administrative Committee was totally unwarranted or illegal and thus would vitiate its recommendation.

73. It is also to be remembered that, the petitioner has been penalised primarily for not disclosing the criminal case pending against him and concealing it from the authorities of the

High Court, thus the fact of involvement in a very serious crime, even if the petitioner was ultimately acquitted from the charge by giving the benefit of doubt, remains unchanged.

74. It is in this context that the observation of the Administrative Committee that the offences involve moral turpitude needs to be understood. As to what is meant by "moral turpitude" has been explained by the Apex Court in ***Sushil Kumar Singhal v. Punjab National Bank*, (2010) 8 SCC 573** as follows:

> "**23.** "*Moral turpitude*" means per *Black's Law Dictionary* (8th Edn., 2004):
>
> > "Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude—such as fraud or breach of trust. … Also termed *moral depravity*. …
> >
> > 'Moral turpitude means, in general, shameful wickedness—so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.' "
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> **24.** In *Pawan Kumar* v. *State of Haryana* [(1996) 4 SCC 17 : 1996 SCC (Cri) 583 : AIR 1996 SC 3300] this Court has observed as under: (SCC p. 21, para 12)
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> > "*12*. 'Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."
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> The aforesaid judgment in *Pawan Kumar* [(1996) 4 SCC 17 : 1996 SCC (Cri) 583 : AIR 1996 SC 3300] has been considered by this Court again in *Allahabad Bank* v. *Deepak Kumar Bhola* [(1997) 4 SCC 1 : 1997 SCC (L&S) 897] and placed reliance on *Baleshwar Singh* v. *District Magistrate and Collector* [AIR 1959 All 71] wherein it has been held as under:
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> > "The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

> **25.** In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities."

75. It is to be remembered that the Administrative Committee must have gone through the records while making the observation that there is no doubt that the offences involved moral turpitude. Moral turpitude is not be understood only as an act involving fraud or breach of trust, but all such acts which are depraved and against good moral conduct. If the Administrative Committee felt that the offence alleged against the petitioner that, an elderly person who lives in neighbourhood was killed by using sharp heavy weapon by striking on head and causing grievous injuries, merely because of some property dispute, can be considered to be vile and depraved, thus involves moral turpitude, such description cannot be said to be absolutely unwarranted.

76. Under the circumstances, this Court is of the opinion that the Administrative Committee was within its power and jurisdiction to recommend imposition of such penalty as the Committee deemed fit and appropriate against the petitioner for concealing his involvement in a serious criminal case and about his conduct which the Administrative Committee deprecated, of which, this Court does not find any irregularity or illegality.

Resultantly, this Court is of the view that the consequential issuance of the impugned order of dismissal dated 05.02.2018 does not suffer from any illegality warranting interference from this Court.

77. As regards the contention of the petitioner that he was not afforded alternative remedy for appealing against the dismissal order, this Court at the time of hearing of this petition suggested to the Ld. Counsel for the petitioner that the matter can be remanded to the Appellate Authority before deciding the case on merit , but the Ld. Counsel for the petitioner submitted that the matter may be heard by this Court on merit as the dismissal order deserves to be set aside and the petitioner be reinstated in service. In that view of the matter, the aforesaid contention of the petitioner need not be dealt with any further.

78. The petitioner also contended that in any event, considering the fact that the petitioner had been ultimately acquitted from the charge which arose out of a land dispute, and the unfortunate incident occurred without any premeditation and happened on a spur of

the moment and, considering his family condition and his personal health issues and since he otherwise does not have any adverse report in his service career, a lenient view may be taken by imposing a lesser penalty and reinstate him in service.

79. Under certain circumstances, this Court in exercise of jurisdiction under Article 226, have interfered with the quantum of punishment imposed on a delinquent if it is found to be too shocking or disproportionate to the charge proved. However, any modification of the quantum of punishment generally should be left to the wisdom and discretion of the disciplinary authority after taking to consideration various factors and considerations, all of which the Court may not be aware of. As such, this Court is of the view that it would be more appropriate to leave it to the competent authority of the High Court to consider such plea for modification to a lesser punishment and or reinstatement in service, if the petitioner so approaches the competent authority in this regard.

80. Accordingly, for the reasons discussed above, this petition is dismissed as devoid of merit. However, inspite of dismissal of this petition on merit, liberty is granted to the petitioner to approach the competent authority of the High Court for modification of the penalty of dismissal, for awarding a lesser penalty including reinstatement in service by taking into consideration all the relevant factors and dismissal of this petition should not come in the way of such exercise. Accordingly, if the petitioner does so approach, the competent authority shall consider the same and pass a speaking order with intimation to the petitioner in accordance with law as expeditiously as possible.

JUDGE

Comparing Assistant