IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

The Hon'ble **JUSTICE SANJIB BANERJEE**

And

The Hon'ble **JUSTICE SUVRA GHOSH**

FMA 26 of 2019

MINTU MALLICK

-VERSUS-

THE HON'BLE HIGH COURT AT CALCUTTA AND OTHERS

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| For the Appellant: | Mr Mintu Mallick (In person). |
| For the State: | Mr Tapan Kumar Mukherjee, Sr Adv.,<br>Mr Somnath Naskar, Adv. |
| For the High Court: | Ms Sumita Shaw, Adv. |
| Amicus Curiae: | Mr Kishore Datta, Advocate-General. |

Hearing concluded on: June 28, 2019.

Date: July 4, 2019.

**SANJIB BANERJEE, J. : –**

When Mintu Mallick stepped out of his home and hopped across to the Lake Gardens railway station on the morning of May 5, 2007 to take a train to workplace Sealdah station, little did he know that he had embarked on an ordeal that would last a decade and more and would haunt him for the rest of his life. Mallick was then enjoying the dual charge of Judicial Magistrate, 4th Court and Railway Magistrate, Sealdah. The Railways Magistrate's court in Sealdah is within the precincts of the station. According to Mallick, the particular Up Budge Budge-Sealdah local that he intended to take was late and, upon speaking to the locals who regularly availed of the suburban rail services on the route, he discovered that the train was invariably late. Mallick claims that he was also informed that the usual late running of such train was due to it stopping illegally somewhere after the New Alipore station when contraband material would be off-loaded from the train and the drivers and guards played ball with smugglers to facilitate the spurious trade.

2. Mallick felt that as the Railway Magistrate posted at Sealdah, which housed the headquarters of the relevant suburban division, he had the authority to inquire into the matter and set the perceived wrong right. When the relevant train arrived at the Lake Gardens station at about 10.16 am, Mallick thought it fit to enquire of the driver as to the reasons for the delay and get to the bottom of what he perceived to be a malaise. He knocked on the door of the driver's cabin, was allowed entry therein upon disclosing his identity and travelled in the

driver's cabin to Sealdah station. In course of the journey, Mallick apparently quizzed the driver as to the delay on that day and whether such delay was usual and the reasons therefor. Mallick claims that he did not get any satisfactory answer to his questions, whereupon he instructed the driver to contact the guard of the train and for both the driver and guard to report to the Railway Magistrate's court in Sealdah so that the matter could be appropriately addressed.

3. According to Mallick, the driver of the train was angry that he had to attend the Railway Magistrate's court or report on a matter that the driver thought was routine and not unusual. At the insistence of Mallick, the driver contacted the guard, but the driver made his feelings clear that he did not appreciate Mallick's intervention and Mallick got the impression that the driver would not pay heed to Mallick's request to report to the Railway Magistrate's court. It was in such circumstances, according to Mallick, that he directed the railway police immediately upon disembarking at Sealdah station to ensure that the driver and the guard of the train were presented before the Railway Magistrate's court. Mallick maintains that he did not instruct the railway police personnel to either arrest the guard or the driver or to take them to the police station within the Sealdah station, but the railway police personnel present informed him that the driver and the guard would be taken to the Railway Magistrate's court after certain formalities were completed by the police personnel. Mallick also asserts that the common room for guards and drivers at the Sealdah station was then adjacent to the railway police station, both being on

the way to the Railway Magistrate's court from the platform at which the relevant train had terminated.

4. The guard and the driver were accompanied to the Railway Magistrate's court, whereupon they sought some time for submitting their reports. The relevant reports were submitted within half an hour, by which time Misc. Case No. 5 of 2007 had been *suo motu* instituted and registered by the Railway Magistrate in respect of the late running of the relevant train. According to the Railway Magistrate, at or about the time that the driver and the guard submitted their reports and left the Railway Magistrate's court, some railway employees, particularly sky-blue-shirt-clad railway drivers, gathered in and around the Railway Magistrate's court, shouted slogans, used abusive language against the Railway Magistrate and disrupted work in the court. These drivers, according to Mallick, were led by a person later identified as P. K. Singh.

5. In view of what the Railway Magistrate perceived to be unruly and unacceptable behaviour in his court and in his presence by railway personnel, a second set of proceedings was initiated under Section 345 of the Code of Criminal Procedure, 1973 which deals with the procedure in certain cases of contempt when an act of contempt is committed in the view or in the presence of any civil, criminal or revenue court. Such second case was initiated for an offence felt to have been committed under Section 228 of the Penal Code, 1860 for intentional insult or interruption to public servant sitting in judicial proceedings.

6. It has been the consistent case (both of the appellant and as evident from the preliminary report of the High Court) that upon P. K. Singh being taken into custody following the case instituted against him under Section 228 of the Penal Code, violence erupted around the Railway Magistrate's court. The agitating railway personnel, mostly motormen and drivers, railed and ranted, brought down the court's nameplate, disconnected the electricity and water connection to the Railway Magistrate's court and his adjoining chambers and prevented the staff at the Railway Magistrate's court from even bringing in water in the hot summer afternoon.

7. It also appears that the agitation led to the disruption of local train services at the Sealdah station for a considerable period of time before normalcy was restored late in the afternoon, some four or five hours after the delayed train from Budge Budge arrived at the Sealdah station.

8. Following the incident and the High Court being informed of it, a discreet inquiry was directed to the conducted which culminated in a preliminary report being filed. On the basis of such preliminary report, Mallick was first suspended and memorandum of charges were later issued on December 3, 2007 to the concerned judicial officer. The articles of charge as framed must be seen in the entirety, if only to assess the reasonableness of the steps and the action that followed:

> "Statement of Articles of Charge framed against Shri Mintu Mallick, Judicial Magistrate, 4th Court-cum-Railway

Magistrate, Sealdah, South 24-Parganas (now under suspension).

ARTICLE OF CHARGE NO. 1

That you, Shri Mintu Mallick, while functioning as Judicial Magistrate, 4th Court-cum-Railway Magistrate, Sealdah, South 24-Paraganas, unauthorisedly travelled in the Motor Man's Cabin in a Budge Budge–Sealdah Local Train from the Lake Gardens Station to the Sealdah Railway Station on May 5, 2007 and prima facie it appears that you as the as Judicial Magistrate, 4h Court-cum-Railway Magistrate, Sealdah, South 24-Parganas used to travel in the similar fashion in the past without having any valid pass to enter Motor Man's Cabin having full knowledge that such unauthorized travelling is unbecoming of a public servant and also amounts to gross misconduct.

The allegation shows that you made improper and illegal exercise of administrative powers so vested upon you as the Judicial Magistrate, 4th Court-cum-Railway Magistrate, Sealdah, South 24-Parganas and such allegations, if proved, would amount to gross misconduct and such behavior on your part as a public Servant is unbecoming of a Judicial Officer.

ARTICLE OF CHARGE NO. II

That you, Shri Mintu Mallick, unauthorisedly travelled in the Motor Man's Cabin in a Budge Budge –Sealdah Local Train from the Lake Gardens Station to the Sealdah Railway Station on May 5, 2007 and during the course of journey you enquired about the reasons of the late running exceeding your jurisdiction as a Railway Magistrate.

That you, obtained a report on late running of the trains from both Sri Dipak Sanyal, the Motor Man and Sri Monoj Kumar Mondal, the Guard of the said local train after the arrival of the said Sealdah bound local train at Sealdah Station at 10-45 a.m. The Railway employees started demonstration as soon as the driver and the guard of that particular local train were taken first to the Thana and thereafter to the Court pursuant to your verbal order and it prima facie appears that because of the aforementioned unauthorized activities on your part, there was violent demonstration by the railway employees resulting in total disruption of train services within Sealdah Division from 11.15 a.m. to 3.45 p.m. on that day.

> The allegation shows that you made improper and illegal exercise of administrative as well as Judicial powers so vested upon you as the Judicial Magistrate, 4th Court-cum-Railway Magistrate, Sealdah, South 24-Parganas and such allegations, if proved, would amount to gross misconduct and such behavior on your part as a public Servant is unbecoming of a Judicial Officer."

9. In the statement of imputation of improper and unbecoming conduct forwarded to the judicial officer in connection with the articles of charge, the charges were, in effect, repeated. The first charge made out was that the judicial officer had travelled in the motorman's cabin in an unauthorised manner after making forcible entry therein despite the objection of the concerned motorman; that the judicial officer was in the habit of regularly travelling in the motorman's cabin despite being aware that it was illegal so to do. The second charge was that the judicial officer had exceeded his jurisdiction in enquiring of the driver as to the reasons for the late running of the train; that the judicial officer had compelled the motorman and the guard to submit a report on the late running of the train; and, that because of the unauthorised verbal direction of the judicial officer that the driver and the guard of the relevant train be taken to the railway police station and, thereafter, to the Railway Magistrate's court, there was a violent demonstration by the railway employees resulting in total disruption of train services within the Sealdah division from 11.45 am to 3.45 pm on the particular day. The statement of imputation informed the judicial officer in either case that the relevant charge, if proved, "would show that you made improper

and illegal exercise of administrative powers … and such conduct on your part is unbecoming of a Judicial Officer."

10. The officer responded to the memorandum of charges by his detailed reply of January 16, 2008. The substance of his reply has been referred to earlier in this judgment. The officer claimed that it was his belief that he had the appropriate authority as a Judicial Magistrate and as the Railway Magistrate under both the Criminal Procedure Code and the Railways Act, 1989 read with the rules framed thereunder to address a matter of public importance as the regular delay in the running of a particular train that caused inconvenience to members of the public. In his reply, the officer referred to the records of the two sets of proceedings initiated by him: the first for the late running of the relevant train; and, the other for the violent demonstration on the particular day in the Railway Magistrate's court and the contemptuous act of intimidation indulged in by the railway employees led by a particular person.

11. The inquiry officer appointed by the High Court first examined the then Registrar (Vigilance and Protocol) of the High Court who had conducted the discreet inquiry and submitted the preliminary report following which the charges were brought against Mallick. Such Registrar proved his report and maintained in his deposition that the delinquent should not have questioned the driver or guard regarding the delayed running of the train and the judicial officer should not have required the railway police to take the guard or the driver to the railway police station before causing them to attend the Railway Magistrate's

court. It was such Registrar's opinion that the Railway Magistrate should only have asked the railway authorities to look into the matter regarding the late running of the relevant train, if it was necessary at all; but the Railway Magistrate had erred in proceeding with the matter himself which resulted in the disruption of the train services at the Sealdah division on the particular day. The Registrar emphasised that the Railway Magistrate's entry and travel in the motorman's cabin was unauthorised. Though the Registrar accepted that he had not imputed any malicious intention on the part of the delinquent officer as to the manner in which he conducted himself on the particular day but it was his opinion, upon his interaction with several personnel in course of the discreet inquiry conducted by him, that the judicial officer was in the wrong and liable to be proceeded against.

12. The inquiry officer examined several railway personnel including P. K. Singh who suffered detention for a short while in the railway police station lock-up and Dulal Chandra Sarkar, the driver of the relevant train on which the Railway Magistrate travelled on May 5, 2007. The driver admitted that on the relevant day the train reached the Lake Gardens station at 10.16 am instead of the scheduled time of 10.01 am. He accepted that he opened the door of the motorman's cabin and gave access thereto to the Railway Magistrate upon discovering his identity but he also maintained that he called upon the Railway Magistrate to demonstrate his authority to be in the motorman's cabin, which the Railway Magistrate failed to produce. He also accepted that he "could not offer

any explanation about the late running of train by 15 minutes to the Railway Magistrate."

13. The delinquent officer was also grilled in course of the inquiry. Such officer substantially repeated what was contained in his detailed reply of January 16, 2008. The judicial officer referred to various provisions of the Criminal Procedure Code, the Railways Act and the rules framed thereunder to substantiate his perception that he had due authority to inquire into the matter of the delayed running of a train and take remedial measures in such regard for the larger public good.

14. The inquiry officer submitted his report on January 7, 2013. The inquiry officer concluded, on the first charge, that the delinquent judicial officer had travelled in the motorman's cabin on the particular day in an unauthorised manner since Rule 30608 of the AC Traction Manual framed under the Railways Act precluded entry into the motorman's cabin without due authority and without a valid cab-pass. The inquiry officer, however, also held that there was no evidence to establish that the delinquent officer indulged in such unauthorised travel on a regular basis. Thus, qua the first charge brought against the judicial officer, it was held that his entry in the motorman's cabin on the relevant train was unauthorised.

15. As to the second charge, the inquiry officer found that the same stood substantiated as the Railway Magistrate had no legal sanction under the

Criminal Procedure Code or the Railways Act to take *suo motu* steps for the delayed running of any train.

16. By a letter dated March 7, 2013 the inquiry report of January 7, 2013 was forwarded to the delinquent. The relevant letter informed the delinquent that such report was being furnished to him in terms of Rule 11(19) of the West Bengal Judicial Service (Classification, Control and Appeal) Rules, 2007 (hereinafter referred to as "the said Rules of 2007") and as per a resolution of the Administrative Committee of the High Court dated February 20, 2013. The letter required the delinquent to forward his representation, if any, within 30 days of the receipt of the report and called upon the delinquent to indicate "why the Report shall not be accepted and you should not be suitably punished." Such show-cause notice resulted in a 94-page written representation being furnished by the delinquent on April 6, 2013 in which the judicial officer questioned the basis of the inquiry report upon detailed reference to such report, the observations therein and the conclusions drawn by the inquiry officer on the material gathered in course of the inquiry. Specific observations in the inquiry report were quoted in the representation and dealt with by the delinquent in his attempt to demonstrate that the conclusions ultimately drawn by the inquiry officer were either not based on the material garnered during the inquiry or on extraneous matters that had no nexus with the articles of charge brought against the delinquent.

17. By a letter dated August 8, 2013 addressed by the High Court to the State Government, which was also forwarded to the delinquent, the State Government was informed that upon the High Court having considered the charge-sheet, the inquiry report and the written representation submitted by the delinquent, the High Court had been pleased to resolve as follows:

> "Considering the impact of the activity of the delinquent officer on the society and misconduct which is totally unbecoming of a Judicial officer, resulting in disruption of train services due to demonstration made by the railway employees, thereby tarnishing the image of the judiciary in the estimation of the members of public, in the facts and circumstances of the case, it is consider *(sic, considered)* appropriate to inflict upon him punishment of compulsory retirement from Judicial Service."

The State Government was advised to issue an appropriate Government Order in terms of Rule 10(b)(iii) read with Rule 20(b) of the said Rules of 2007.

18. The deposed judicial officer preferred an appeal before the Governor against the decision of the disciplinary authority communicated to him by the letter of August 8, 2013. Such appeal was filed on or about September 4, 2013. The appeal papers were apparently forwarded by the Governor to the High Court in terms of Rule 16(3) of the said Rules of 2007. The opinion of the High Court appears to have been received by the Governor on January 15, 2014 to the following effect:

> "The decision of compulsory retirement as inflicted by the Hon'ble Court upon the delinquent officer is an outcome of the majority rule countermeasuring with the quantum of guilt, hence stands unaltered and irrecoverable *(Sic, irrevocable?)* whatsoever *(sic)*."

The Governor's order of January 22, 2014 indicated that the Governor agreed with the opinion and the appeal petition of the delinquent was disallowed. The Governor's order was communicated to the delinquent by a letter of February 3, 2014.

19. The ousted judicial officer instituted a petition under Article 226 of the Constitution of India before this court on or about April 21, 2014. It is the rejection of such petition by the judgment and order of July 14, 2017 that has been assailed in the present appeal. The appeal was assigned to the bench presided over by the senior Judge on this bench on October 5, 2018, just before the Puja Vacation. The matter was substantially heard by the middle of April, 2019 before the lawyers' cease-work, which continued till the summer vacation, intervened. The hearing was, thereafter, resumed and concluded on June 28, 2019.

20. The writ petitioner-appellant conducted his matter in person in the court of the first instance; just as he does here, too. In the impugned judgment and order of July 14, 2017, running into 20 pages, the incident of May 5, 2007 is described over the first three pages before the two articles of charge are quoted till nearly the end of the fifth page. The next two pages in the judgment impugned refer to the notices being served on the appellant, his replies, the inquiry report and the subsequent notice before quoting the entirety of the letter dated August 8, 2013. The filing of the appeal and the dismissal thereof are recorded before quoting the reliefs claimed in the petition under Article 226 of the Constitution. The next

three pages in the judgment impugned allude to the primary contentions in the writ petition, the affidavit filed by the High Court in opposition to the petition and the stand taken by the High Court in accordance with the said Rules of 2007. About six pages in the judgment impugned have been expended on the legal precedents cited by the appellant herein and the High Court administration. The adjudication is reflected over three pages. The writ court observed that the appellant's actions complained of were "well beyond the scope of the Code of Criminal Procedure, 1973"; that the "instance of detention/arrest ordered by the petitioner is improper, both in form and in substance"; and, that the petitioner was not acting judicially when the petitioner entered the motorman's cabin to enquire of the driver as to the reasons for the delayed running of the train. As to the punishment of compulsory retirement, the court observed that since the petitioner's entry into the motorman's cabin was unauthorised, "interrogating the motorman in the name of a judicial enquiry and subsequently ordering his detention/arrest, independently and collectively amount to offences which are patently illegal in nature." In the relevant paragraph dealing with the reasonableness of the punishment inflicted on the petitioner, the court observed, at least at two places, that the petitioner had travelled in the motorman's cabin on previous occasions. The punishment was held to be justified since the "petitioner was engaged in several offensive acts and one among them was his previous conduct of having regularly travelled in such unauthorised manner …". The court did not find the punishment of compulsory retirement to be arbitrary or unreasonable, far less perverse.

21. Of the several relevant and irrelevant grounds canvassed by the appellant in person, the one that stands out is that the appellant was never conveyed any reasons why the disciplinary authority perceived that the charges levelled against the appellant stood substantiated or the appellant's contentions as to the inquiry report were unfounded. The appellant appears to be equally bemused by the abrupt order in the appeal without any reflection of his contentions having been looked into or addressed.

22. It is elementary that in this jurisdiction under Article 226 of the Constitution, the court scarcely sits in appeal over the impugned decision. The writ court looks into the decision-making process rather than the decision: as long as the decision is not utterly perverse such that no reasonable person in the position of the decision-maker could have reasonably made such decision; or, in the more modern assessment on the basis of proportionality in preference to the Wednesbury rules of reasonableness, the ultimate decision is not grossly disproportionate to the conduct complained against. It may do well to keep in mind that in matters of the present kind, what the writ court looks into is whether there was due notice to the writ petitioner, whether he was afforded a fair hearing – where the hearing implies a consideration of the objections or grounds raised by him – and a reasoned order was rendered on the matter. To emphasise on the limited scope of judicial review available in this jurisdiction, it is the authority of the decision-making body to make the decision which is assessed in addition to ascertaining whether a reasonable procedure was

followed and the matter culminated in a cogent decision. It is on such tests that the present appeal and the grievance of the writ petitioner need to be addressed.

23. The first aspect that has to be seen pertains to the scope of the proceedings and, as a consequence, the scope of the inquiry conducted in course thereof and the nexus of the ultimate decision with the scope of the departmental proceedings. The parameters in such regard were outlined in the articles of charges and the statement of imputation of conduct appended to the articles in the High Court's letter of December 3, 2007.

24. The first article contained two paragraphs. The first paragraph charged the judicial officer with travelling in an unauthorised manner in the motorman's cabin on the relevant train on May 5, 2007. The second part of such first charge complained of the judicial officer resorting to such unauthorised travel in similar fashion in the past or on regular basis. The second paragraph of the first charge was that either action complained of in the first paragraph amounted to improper and illegal exercise of administrative power by the judicial officer and, if proved, would amount to gross misconduct as a public servant and unbecoming of a judicial officer. The second article of charge was covered three paragraphs. The first paragraph charged the Railway Magistrate of exceeding his jurisdiction by enquiring of the driver the reasons for the delayed running of the train in course of the journey. The second paragraph also referred to the reports obtained by the judicial officer from the motorman and the guard of the relevant train. Such paragraph also referred to the driver and the guard being taken to the railway

police station and to the Railway Magistrate's court pursuant to the verbal direction of the Railway Magistrate. Both the obtaining of the reports and the verbal directions were said to be unauthorised activities that resulted in a violent demonstration by railway employees and the total disruption of train services for a specified time in the Sealdah division. The third paragraph under the second article of charge was on the same lines as the second paragraph under the first article: that the acts complained of were improper and illegal exercise of administrative power by Railway Magistrate, and, if proved, would amount to gross misconduct as a public servant and unbecoming of a judicial officer.

25. It is fundamental that in departmental proceedings which are initiated by the issuance of a show-cause notice or a charge-sheet, the ultimate order or the order of punishment has to be in consonance with the show-cause notice or charge-sheet. In other words, the scope of the entire proceedings is defined by the show-cause notice or the charge-sheet. The same is true for decisions of any State or other authority within the meaning Article 12 of the Constitution arising out of a show-cause notice. When a process is triggered off by a show-cause notice or a charge-sheet, the reasonableness of what follows, including the quality of the opportunity afforded to the person proceeded against and the propriety of the ultimate decision, are pegged to and rooted in the show-cause notice. The proceedings can, ordinarily, not be expanded beyond what is conceived of and outlined by the show-cause notice and any transgression, almost invariably, would not pass the scrutiny under judicial review.

26. In the context of the charges levelled against the appellant in this case it was possible, at the highest, for the appellant to have been found guilty on both counts in respect of the matters referred to in the first article of charge and also for the appellant to have been found to have acted in an unauthorised manner in enquiring of the motorman as to the reasons for the delay in running of the train and further in obtaining the reports from the driver and the guard of the relevant train and requiring such railway personnel to be detained or produced in his court. Even on the most charitable reading of the second article of charge, the violent demonstration and the disruption of the train services could not be directly attributed to the appellant even if the underlying suggestion in the article was that the appellant's actions had triggered off the violent demonstration or the disruption of the train services.

27. As it transpires from the inquiry officer's report, there was no doubt that the appellant entered into the motorman's cabin on the relevant train and travelled therein from Lake Gardens to Sealdah. On the basis of the material presented before the inquiry officer, such officer perceived the appellant's entry into the motorman's cabin to be unauthorised and, to such extent, the first article of charge was found to be established for action to be taken in such regard. However, the inquiry report unambiguously found, as a matter of fact, that there was no evidence of any previous instance of the appellant having travelled in the motorman's cabin. It was, thus, a single occasion of unauthorised travel in the motorman's cabin that could be said to have been established against the appellant herein, if it was unauthorised at all. In the light of such

clear and categorical finding in the inquiry report that it was a solitary instance of the appellant travelling in the motorman's cabin, the judgment impugned is clearly flawed in its reference to the appellant travelling in the motorman's cabin on previous occasions ("he had done the same on previous occasions"). As a consequence, the consideration as to the propriety of the punishment by the court of the first instance is tainted by extraneous or erroneous considerations, particularly in the court referring to "his previous conduct of having regularly travelled in such unauthorized manner …".

28. Similarly, the writ court was clearly wrong in justifying the finding of guilt against the appellant and the consequential order of punishment sandwiched in the extremely short order of the disciplinary authority evident from the letter of August 8, 2013 on the ground that the appellant had ordered the motorman's "detention/arrest". The order of punishment did not spell out such reason; the preliminary report expressly found there was no order of detention; and, there was no finding as to any order of detention in the inquiry report.

29. The more alarming feature is that the court of the first instance may have missed the wood for the trees in its narration of the sequence of events without noticing that the detailed representation of the appellant against the inquiry report had neither been alluded to by the disciplinary authority nor even considered in imposing the punishment on the appellant. Equally, the court of the first instance failed to notice that even the consideration of the appeal – whether it was an appeal or a reconsideration in the nature of review – was just

as fallacious as being uninformed by reasons and no reasons being forwarded to the person who suffered prejudice thereby.

30. Indeed, though the said Rules of 2007 have been referred to in the impugned judgment and the pedantic reference to some its provisions in the letters issued by the High Court has also been noticed, the scope of such rules or the procedure envisaged thereunder did not engage the attention of the court of the first instance. It is in the said Rules of 2007 that the key to the matter may lie.

31. The said Rules of 2007, published on July 12, 2007, apply to members of the West Bengal Judicial Service, including erstwhile members of the West Bengal Civil Service (Judicial) and the West Bengal Higher Judicial Service. Rule 2(1)(c) of the said Rules of 2007 defines "Disciplinary authority" to mean "the authority competent under these rules to impose penalty on a Judicial Officer." The appellate authority, under Rule 2(1)(a) of the said Rules of 2007 is shown to be the Governor of the State. Rule 10 of the said Rules of 2007 deals with penalties which are classified as minor and major penalties. The three last categories of punishment, in the ascending order of harshness are compulsory retirement, removal from service and dismissal from service. The distinction between removal from service and dismissal from service, neither case being relevant for the present purpose, is that in case of the former there would be no disqualification from future employment, but in case of the latter, such disqualification would operate**.** Rule 11 of the said Rules lays down the procedure

for imposing major penalties. The procedure envisaged in Rule 11 of the said Rules of 2007 was followed in this case till the filing of the inquiry report and the forwarding of such report by the disciplinary authority to the appellant and calling upon the appellant to make a representation on the findings of the inquiry report. However, Rule 11(19) of the said Rules of 2007 in its use of the expression, "intimating the punishment proposed", mandates that the nature of the punishment that could be meted out to the delinquent is required to be indicated. This was not done by the notice of March 7, 2013 which merely demanded of the delinquent to furnish his representation "as to why the Report shall not be accepted and you should not be suitably punished." The said rules were framed in 2007 and long after the Forty-second Amendment to the Constitution of 1976 in respect of Article 311 of the Constitution, if such provision is at all relevant for the present purpose.

32. Even if such discrepancy were to be disregarded in the light of the delinquent having sufficient notice that it was a major punishment that could be imposed on the delinquent for the perceived acts of delinquency, what cannot be glossed over is the subsequent subjective satisfaction of the disciplinary authority that the charges against the delinquent had been proved without any reasons being furnished in support thereof or any objective consideration of the representation of the delinquent being reflected in the decision. The records were called for from the High Court administration in course of the present appeal and there is nothing more evident from the records as to how the representation of the appellant against the inquiry report was considered than what is evident from

the terse decision itself. Even if reasons were found to exist in the file it would not have sufficed for such reasons would not have been worth the paper they were printed on if they had not been furnished to the delinquent. Astonishingly, it is discovered that no reasons actually exist.

33. It is a cardinal principle in a system governed by the rule of law that a decision has to be founded on reasons that reflect the application of the mind to the matters in issue; for, it is the reasons that are to be considered in assessing the decision and the decision falls if the reasons in support thereof are found lacking. In the present case there are no reasons at all for the decision to stand. After all, it is the "why" of the reasons that props up the "what" of a decision; and when no reasons are found, the decision hangs in thin air.

34. It is true that the decision in this case is the collective and unanimous decision of the full complement of the then judges in this court – of persons who are professional judges and tasked by the Constitution to judge. But the same Constitution and the morality that it expresses through its provisions pertaining to the equality and fairness, makes no exception for dispensing with reasons in an administrative matter pronounced upon by judges appointed under the Constitution. Where the authority in such regard is not mandated by the *lex suprema*, constitutional functionaries cannot arrogate the power unto themselves. On the contrary, constitutional authorities need to adhere more to the constitutional requirements.

35. Article 235 of the Constitution gives every High Court the control over the subordinate courts in the State or States governed by the relevant High Court. In accordance with such provision, it is the High Court which is the disciplinary authority in matters pertaining to judicial officers in the State and the High Court in such a situation means the full complement of the judges in the High Court. On the administrative side, the High Court, as the collective, functions either on the basis of the decisions of a group of judges constituting the Administrative Committee or in its full complement. Every decision on matters, which under the Rules of this High Court on its Appellate Side, are delegated for the consideration by the Administrative Committee, needs to be ratified by the Full Court. The expression Full Court is a euphemism implying all the judges of the High Court. Ordinarily, a Full Court meeting is where all the judges attend or a meeting where all the judges are called upon to attend and a requisite quorum is achieved. In matters pertaining to resolutions of the Administrative Committee, usually, such resolutions would be circulated to all the judges in the High Court and, if there is no objection, by virtue of the principles governing the passing of resolutions in circular, such resolutions are deemed to have been carried and become the decisions of the High Court. If there is even a solitary objection from the junior-most judge, the matter has to go to a Full Court meeting where all judges are called upon to attend. Decisions are carried as per the majority opinion of the house at Full Court meetings, subject to the requisite quorum being achieved.

36. The procedure of functioning on the basis of the recommendations of the Administrative Committee has been devised as a matter of convenience. The Administrative Committee is manned by senior judges as may be inducted by the Chief Justice and everyday matters pertaining to the administration of the District Judiciary go first to the Administrative Committee. In the usual course, the decisions of the Administrative Committee are circulated, almost invariably without the papers in support of the decision being circulated simultaneously. It is, however, open to any judge to call for the papers relating to any resolution for the judge to look into the same in course of deciding whether to accept or disagree with the resolution of the matter as proposed by the Administrative Committee. Experience shows that such resolutions by circulation, when they deal with routine matters – disciplinary proceedings have now become regular and, as such, routine – other judges tend to go by the wisdom of the Administrative Committee, considering the seniority and experience of the persons constituting such committee; and only the odd decision of the committee is objected to for the matter to go to a Full Court meeting. In a sense, most decisions passed by circulation are the majority decisions of the Administrative Committee that are, more often than not, passively endorsed by the remaining judges of the High Court.

37. The procedure would also have sufficed in this case if the decision of the disciplinary authority (that is, of the full complement of the judges of the High Court), had been founded on the reasons indicated in any decision of the Administrative Committee. The overall decision of the remaining judges then

would have endorsed the reasons furnished by the Administrative Committee and such reasons would have been the reasons of the entire collective. But reasons cannot be substituted by the *ipse dixit* of the decision-making body, however mighty and wise the decision-making body may be and even it is the full complement of judges in a High Court. Rule 11(20) of the said Rules of 2007 in its opening limb contains the words, "Upon consideration of the representation". Any consideration of a representation would imply the assessment of the grounds urged in the representation and the rejection thereof on cogent basis if a punishment were to be imposed on a perceived delinquent despite his representation to the contrary. Further, the consideration must also reflect why one form of punishment was preferred to the other; at least why a harsher form of punishment was found to be more suitable in the circumstances than the less harsh forms. Rule 10(b) of the said Rules of 2007 lays down five forms of punishment: compulsory retirement being the third of the five. Even if the procedure under Rule 11 pertaining to major penalties were to be followed, the consideration of the representation of a perceived delinquent by the disciplinary authority ought to reflect, apart from the finding of guilt against the delinquent, why a particular mode of punishment was found suitable than the others.

38. The order of punishment in this case is singularly lacking on both counts: it does not indicate how the guilt of the appellant herein was established and how the punishment of compulsory retirement was called for in the circumstances.

39. The appellant was dissatisfied with the order of the disciplinary authority, including the order of punishment handed down to him. The appellant carried an appeal from the relevant order. As it turns out, the appeal under the said Rules of 2007 is not even from Caesar to Caesar's wife; it is from Caesar and back to Caesar himself. The said Rules of 2007, in its appellate provision, begs the question as to why the Governor is made the authority for a purely decorative purpose.

40. The appellate provision in Rule 19 of the said Rules of 2007 permits a judicial officer aggrieved by any order made by the disciplinary authority to prefer an appeal to the Governor. Rule 16(3) of the said Rules of 2007 obliges the Governor to forward the memorandum of appeal to the High Court and the resulting opinion of the High Court is binding on the Governor. The relevant sub-rule provides thus:

> "16. Appeal. – 1. …
>
> 2. …
>
> 3. The Governor on receipt of the memorandum of appeal from the aggrieved Judicial Officer, shall forward the same to the High Court for its opinion and on receipt of the opinion from the High Court, the Governor shall decide the appeal in accordance with the opinion duly forwarded by the High Court.
>
> …"

41. To begin with, there is an anomaly in Rule 16 and the dissimilar treatment of appeals from major penalties and appeals from minor penalties as evident therefrom. Even though on a reading of the entirety of Rule 16, the intention therein appears to be that the Governor would be the appellate authority only in

respect of orders imposing major penalties, the wording of Rule 16(1) appears to be somewhat wanting in such regard, particularly in its use of the expression "any order" and the subsequent use of the words "including". Be that as it may.

42. Returning to Rule 16(3) of the said Rules of 2007, the appellate provision really amounts to a provision for review or reconsideration. This may be in keeping with a judgment of the Supreme Court that is noticed later, but it defies logic to have an appeal provision that is really one for review. The provision could have been more forthright and fashioned as a review. The considerations, as every judge should know, are entirely different in an appeal than in a review. If the reconsideration of the decision as an appeal has to be undertaken by the High Court under the appeal provision, it cannot be regarded as a review.

43. There is no doubt that under the scheme of Article 235 of the Constitution it is the High Court, and the High Court alone, that exercises administrative control over the subordinate courts in the District Judiciary and the judicial officers manning the same. Equally, it is axiomatic that the opinion or the decision of the High Court in matters pertaining to the administration of justice, including decisions on judicial officers in the District Judiciary, is binding on the State Government. Thus, when the High Court recommends the promotion of a judicial officer or the dismissal from service or other punishment regarding any judicial officer, the executive branch of the Government has no say in the matter and the Governor as the titular appointing authority has to abide by such decision or advice of the High Court. But it is one thing to say that the Governor

is bound by the decision of the High Court and quite another for the Governor to exercise due authority if the Governor is the named appellate authority in the rules. The functioning of the Governor as the appointing authority may be quite distinct from the functioning of the Governor as the appellate authority. If any rules confer authority on the Governor as the appellate authority over a decision of the High Court, the decision of the Governor in his capacity as appellate authority may not be in conflict with his limited authority available in view of Article 235 of the Constitution. However, Rule 16(3) of the said Rules of 2007 does not confer any independent authority that is usually vested in a named appellate authority but merely makes the Governor's office a route for the passage of the appeal through such office to the High Court and the communication of the High Court's opinion upon reconsideration to the appellant through such office. But that cannot detract from the quality of the reassessment which must be seen to be in excess of what is permissible under a review since the authority is expressed in the rules as appellate authority.

44. In the High Court, as the disciplinary authority in this case, having failed to furnish any reasons in support of its decision in the order of punishment and, again, in the High Court not indicating any or any further reasons while reconsidering the matter upon the appeal being forwarded by the Governor, the order of punishment cannot be sustained. Indeed, it is not even evident from the records produced by the High Court whether the decision in the appeal is a decision of the collective or the full complement of the judges of this court.

45. The necessary corollary to this is whether, after 12 years of the incident, the matter must now be remanded to the disciplinary authority for it to consider it afresh. In between, the appellant had suffered an order of suspension which was revoked as a reason of the delay in the completion of the proceedings; but the appellant has suffered severance following the decision of the disciplinary authority which has remained undisturbed till date.

46. It is here that the judgments cited by the parties and by Learned Advocate-General, who was requested to assist the court in this matter, need to be noticed and understood so that they may be a guide to the ultimate decision that is taken here. The submissions of the parties are reflected in the reports and have been appropriately recorded in the judgment under appeal and there is no need for any repetition.

47. Apart from the several provisions of the Criminal Procedure Code and the Railways Act that the appellant has placed to demonstrate that the appellant, as a Magistrate, had due authority to conduct an inquiry and take appropriate steps for the larger good, the appellant has referred to a judgment reported at (1981) 2 SCC 577 (*Rachapudi Subba Rao v. The Advocate-General, AP*) to suggest that a judicial officer, acting in discharge of his official duty in good faith and believing to be possessed with the requisite authority, is protected under Section 1 of the Judicial Officers' Protection Act, 1850 and cannot be hauled up on such ground.

48. The appellant also places a judgment reported at (2012) 5 SCC 242 (*Vijay Singh v. State of UP*). In that case, a ground urged by the delinquent was not

considered by the revisional authority. Such non-consideration prompted the Supreme court to observe as follows at paragraph 17 of the report:

> "17. ... Undoubtedly, the statutory authorities are under the legal obligation to decide the appeal and revision dealing with the grounds taken in the appeal/revision etc., otherwise it would be a case of non-application of mind."

The appellant submits that both the disciplinary authority and the appellate authority do not appear to have dealt with the grounds urged by the appellant in his defence and such decisions would amount to non-application of mind.

49. A further judgment, reported at (2010) 11 SCC 278 (*Indu Bhushan Dwivedi v. State of Jharkhand*), is cited by the appellant to emphasise on the scope of the consideration by the disciplinary authority being confined to the charges brought against the delinquent. In that case certain charges were levelled against the delinquent judicial officer. The inquiry report indicated some of the charges to have been proved. The High Court accepted the inquiry report and a show-cause notice was issued to the delinquent for imposition of a major penalty. After considering the delinquent's reply, the High Court recommended his dismissal from service. The concerned judicial officer challenged the order by contending that the same was vitiated due to violation of the principles of natural justice since the High Court, while recommending his dismissal, had considered un-communicated adverse remarks recorded in some annual confidential reports without informing the delinquent that such material was being relied upon. While dealing with the issue as to whether the consideration of the past adverse records of the judicial officer had the effect of vitiating the order, the Supreme Court

found that the exact question was considered and answered in the affirmative by a Constitution Bench in the judgment reported at AIR 1964 SC 506 (*State of Mysore v. K. Manche Gowda*). The court then went on to hold as follows, at paragraph 23 of the report:

> "23. When it comes to taking of disciplinary action against a delinquent employee, the employer is not only required to make the employee aware of the specific imputations of misconduct but also disclose the material sought to be used against him and give him a reasonable opportunity of explaining his position or defending himself. If the employer uses some material adverse to the employee about which the latter is not given notice, the final decision gets vitiated on the ground of the violation of the rule of audi alteram partem. …"

50. The High Court refers to a judgment reported at (1995) 6 SCC 749 (*B. C. Chaturvedi v. Union of India*) and places paragraphs 12 and 13 from the report to emphasise on the limited scope of judicial review available in this jurisdiction. The judgment instructs that when the disciplinary authority accepts the evidence gathered by the inquiry officer and concludes that the guilt of the delinquent receives support therefrom, the court in its power of judicial review will not act as an appellate authority to re-appreciate the evidence or arrive at its own independent findings on the evidence. The room for interference would be where the authority held the proceedings against the delinquent in a manner inconsistent with any rule of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the conclusion or findings reached by the disciplinary authority are based on no evidence.

51. Another judgment, reported at (2007) 4 SCC 627 (*UP SRTC v. Ram Kishan Arora*), has been carried by the High Court to demonstrate that it is not the decision but the decision-making process that is scrutinised in this jurisdiction under Article 226 of the Constitution. This was a case of the High Court reducing the punishment without assigning any reasons and the Supreme Court observed that the High Court could not have substituted its opinion for that of the disciplinary authority.

52. The High Court submits that when there is a grave charge as in the present case which is brought against a delinquent officer, even the non-furnishing of the inquiry report to the delinquent officer is glossed over unless it is perceived to have resulted in grievous prejudice or serious miscarriage of justice. For such purpose, the judgment reported at (2001) 6 SCC 392 (*State of UP v. Harendra Arora*) has been placed. Another judgment, reported at (1993) 4 SCC 727 (*Managing Director, ECIL, Hyderabad v. B. Karunakar*), has been cited by the High Court for the proposition that if a key function has been missed out by the disciplinary authority or if there is a grave error at any stage, the court may remand the matter to the disciplinary authority to rectify the mistake and complete the proceedings from such stage.

53. Learned Advocate-General, who has assisted the court upon invitation, has confined his submission to the broad parameters that govern the assessment of a challenge to an order of punishment in disciplinary proceedings in the jurisdiction exercised under Article 226 of the Constitution. The veritable

textbook in this jurisdiction has been relied upon by referring to the celebrated judgment reported at AIR 1956 Cal 662 (*A.R.S. Choudhury v. The Union of India*). Several paragraphs from the report have been placed to demonstrate what the procedure ought to be and what would amount to reasonableness or adherence to the rules of natural justice by referring to the four main stages of charge, investigation of the charge, finding and punishment. The judgment explains the activity that is undertaken at each stage and, except for a minor part which has been rendered inconsistent upon the Forty-second Amendment to the Constitution being effected, how the matter ought to progress through the various stages as recognised in the judgment still remains the ultimate guide.

54. As to the provision of appeal in the said Rules of 2007, learned Advocate-General has referred to a judgment reported at (1996) 5 SCC 90 (*T. Lakshmi Narasimha Chari v. High Court of Andhra Pradesh*) where the provision in the corresponding rules of Andhra Pradesh provided for an appeal to the Governor without such provision expressly specifying the scope of the authority of the Governor in course of such appeal. The relevant provision was interpreted by the Supreme Court to imply "that the appeal to the Governor against the order of the High Court provides for reconsideration of the High Court's order by the Governor, but in keeping with the requirement of Article 235 that the power of control over persons belonging to the judicial service of a State vests in the High Court, and that the appeal must be decided by the Governor only in accordance with the opinion of the High Court." It appears that Rule 16(3) of the said Rules of 2007 applicable to judicial officers in this State is inspired by such judgment

of the Supreme Court and expressly provides for the Governor to forward the appeal to the High Court and be guided by the opinion of the High Court thereon.

55. Learned Advocate-General has also referred to judgments of the Supreme Court that instruct that the High Court on its judicial side must exercise extreme care and caution before upsetting a collective decision of the judges of the same High Court on the administrative side. For such purpose, a judgment reported at (1999) 4 SCC 579 (*High Court of Punjab and Haryana v. Ishwar Chand Jain*) has been first placed. That case pertained to a judicial officer being compulsorily retired on the basis of his performance record. The Supreme Court observed that "where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great circumspection in setting aside the order". However, the court also went on to add that in a case of perceived doubtful integrity of a judicial officer, evidence may not be forthcoming "and at times the Full Court has to act on the collective wisdom of all the Judges."

56. In similar vein, in the judgment reported at (2003) 9 SCC 592 (*Syed T.A. Naqshbandi v. State of Jammu and Kashmir*), the Supreme Court held that "Neither the High Court nor this Court … could or would at any rate substitute themselves in the place of the Committee/Full Court of the High Court concerned, to make an independent reassessment of the same, as if sitting on an appeal". Again, that was a case of a promotion or a higher grade being awarded to a judicial officer which was under challenge. In another case, reported at

(2012) 6 SCC 357 (*Registrar General, High Court of Patna v. Pandey Gajendra Prasad*), the Supreme Court observed that for a decision of the Full Court to be reversed by the High Court on the judicial side, the decision has to be "so arbitrary, capricious or so irrational so as to shock the conscience of the Division Bench to justify its interference." That was a case of removal from service of a Railway Judicial Magistrate upon finding gross misconduct on his part in certain judicial orders.

57. Learned Advocate-General has also referred to a judgment reported at (2011) 10 SCC 1 [*Rajendra Singh Verma v. Lieutenant Governor (NCT of Delhi*)] wherein similar observations were made by the Supreme Court in a matter where several judicial officers who had been compulsory retired on the basis of their performance records had challenged the relevant order. In a further judgment, reported at (2000) 1 SCC 416 (*High Court of Judicature at Bombay v. Shashikant S. Patil*), where the compulsory retirement of a judicial officer was challenged, the Supreme Court frowned on the Division Bench of the Bombay High Court interfering with the decision of a committee of five judges as endorsed by the Full Court. The matter pertained to an innocent litigant being wrongfully arrested, handcuffed and paraded in public. The inquiry report exonerated the judicial officer of the charges. However, the disciplinary committee of the Bombay High Court (consisting of five judges of that court) disagreed with the inquiry report and caused a notice to be issued to the judicial officer calling upon him to show cause why the findings of the inquiry officer should not be repudiated and a

major penalty of dismissal from service imposed on him. Upon the decision of the disciplinary committee to compulsorily retire the judicial officer being challenged, a Division Bench of the Bombay High Court set aside the same on the ground that "when the disciplinary authority differs from the findings of the enquiry officer, it has to discuss the entire case threadbare and establish that each finding of the enquiry officer was totally improbable …". The Supreme Court disagreed. It held that the findings of an inquiry officer are not binding on the disciplinary authority and the disciplinary authority could disagree with such findings, hold that the charges framed were prima facie proved and issue a notice to the delinquent in that regard for the matter to be considered on the delinquent's response.

58. Learned Advocate-General has placed a judgment reported at (1988) 3 SCC 211 (*Registrar, High Court of Madras v. R. Rajiah*) to indicate the circumstances when interference is warranted in service law in course of judicial review. Paragraphs 21 and 22 of the report have been placed where the Supreme Court held that the adequacy or sufficiency of the material on which a decision is founded cannot be questioned in judicial review, unless the material is absolutely irrelevant. However, the court went on to add as follows at paragraph 22 of the report:

> "22. … If there be no material to justify the conclusion, in that case, it will be an arbitrary exercise of power by the High Court. Indeed, Article 235 of the Constitution does not contemplate the exercise by the High Court of the power of control over subordinate courts arbitrarily, but on the basis of some materials. As there is absence of any material to justify

> the impugned orders of compulsory retirement, those must be held to be illegal and invalid."

59. What must be kept in mind is that the disciplinary proceedings initiated against the appellant herein pertained to a particular incident. The charges against the appellant did not involve any matter of moral turpitude or even the performance of the appellant as a judicial officer. In most of the cases referred to above, when charges of moral turpitude or poor performance of a judicial officer have been levelled, the Supreme Court has observed that the collective wisdom of the High Court should not be tinkered with since judges would be aware of such aspects of the concerned judicial officer and overwhelming material in such regard may be difficult to obtain. In the same breath, however, the Supreme Court has instructed that when a decision is based on no material at all or no reasons are furnished, it can be said to be arbitrary or capricious.

60. It is here that the considerations that weighed with the High Court as the disciplinary authority in finding the appellant guilty and inflicting the punishment of compulsory retirement must be scrutinised. For such purpose, the only material available is what is contained in the letter dated August 8, 2013. It is such finding that has to be linked to the charges brought against the appellant, if the decision embodied in the letter of August 8, 2013 has to stand.

61. There is no doubt that the appellant entered the motorman's cabin on the relevant date for a purpose. That is evident from the several statements of the appellant. He apparently intended to redress what he perceived was wrong.

Whether it was the youthful exuberance of a fledgling judicial officer or the innocence of his age that prompted him to imagine that he could rid the system of the malaise, the appellant appears to have thought that it was within the bounds of his judicial authority as a Railway Magistrate to address the issue. This defence was not taken by the appellant as an after-thought to camouflage the arrogance of authority that he was seen to have flaunted, but is substantiated by the initiation of two sets of proceedings almost immediately upon the appellant reaching Sealdah Station on the relevant day. Even if what the appellant set about to do may be regarded as completely flawed, it must be seen that his action may not have been guided by any personal motive. In his book, the appellant was trying to correct the malady that regularly brought grief to the public, particularly the persons availing of the relevant train at a busy time of the day. The appellant did not stand to gain anything if, as a result of his action, the regular delay in the running of the relevant train was corrected.

62. In course of the inquiry and in his response to the notice issued by the disciplinary authority, the appellant referred to several provisions, including from the Criminal Procedure Code, that the appellant perceived gave the appellant due authority to address the issue. At the highest, the appellant may have been wrong in his perception and may have erroneously assumed jurisdiction in respect of a matter that did not fall within his judicial domain. But the incident had nothing to do with the sense of morality or integrity of the appellant nor could he have been seen to have embarked on the exercise for personal aggrandisement or like motive. There was no evidence or finding that he had ever

entered the motorman's cabin on any other occasion. He did not force his entry into the cabin. He thought he had due authority to call for reports from the motorman and the guard as to the regular delay in the running of the relevant train and it appears that he directed the railway police to ensure the presence of the motorman and the guard in his court so that the appropriate reports could be filed by them.

63. It may have been wrong on the appellant's part to try to use his judicial office to right what he perceived was a public wrong. Indeed, most Indians look the other way even when a crime is committed in their presence or a grievous wrong is done, lest they be dragged into any avoidable court proceedings. This judicial officer foolishly thought that he could single-handedly take on the smuggler mafia.

64. As regards the second charge, the first part pertained to the appellant asking the driver of the train about the reasons for the late running of the train the thereby exceeding his jurisdiction. The second part of the charge was that he obtained reports on the late running of the train from the driver and the guard and that the driver and the guard were taken to the railway police station and to the Railway Magistrate's court pursuant to the appellant's illegal verbal order. All the three acts of the appellant complained against in the two articles of charge, and which stood proved in the opinion of the inquiry officer and are deemed to have been endorsed by the disciplinary authority, pertained to the same matter of the appellant seeking to redress a perceived wrong for public good. That there

was a violent demonstration at the Sealdah station or that the train services were disrupted for some time on the relevant day in the Sealdah division, were not the handiwork of the appellant; nor could the appellant have reasonably apprehended the same. If the appellant had acted illegally or in an unauthorised manner, the appellant's initiation of the relevant proceedings could have been challenged in accordance with law. But once it was evident that the appellant had assumed authority in his judicial capacity – however erroneous he may have been – the punishment of compulsory retirement appears to be grossly disproportionate and shocking. Indeed, as would be evident from the disciplinary authority's order communicated to the appellant on August 8, 2013, it is the disruption of train services which seems to have weighed with the disciplinary authority. For good measure, the disciplinary authority's order also referred to the conduct of the appellant "tarnishing the image of the judiciary in the estimation of the member of public". This was not something that the judicial officer had been charged with.

65. The decision of the High Court upon reconsidering the matter is equally confusing, particularly in its reference to "outcome of the majority rule countermeasuring with the quantum of guilt". From the records of the High Court as produced in course of this appeal, it does not even appear that the opinion of the High Court communicated to the Governor was circulated to or had the approval of the judges of the High Court. Most importantly, on neither occasion did the High Court indicate the slightest of reasons or any application of mind as to why it endorsed the findings of the inquiry officer or rejected the

contentions of the appellant or even why such a harsh of punishment was called for in the circumstances. After all, it was also the finding of the inquiry officer that there was no evidence of the appellant having entered the motorman's cabin on any other occasion.

66. The disciplinary authority erred in not communicating the proposed punishment to the appellant in accordance with the said Rules of 2007. The disciplinary committee appears not to have applied its mind at all to the detailed representation of the appellant against the inquiry report where the appellant quoted from the inquiry report to indicate how some of the findings were not based on the material gathered in course of the inquiry or were based on erroneous or extraneous material. Further, the terse order of punishment of the disciplinary authority did not dwell on any of the four acts contained in the two articles of charge that were found to have been established in course of the inquiry. The four acts found to have been established in course of the inquiry were: the unauthorised entry of the appellant in the motorman's cabin; the unauthorised questioning of the driver regarding the late running of the train; the unauthorised obtaining of the reports from the motorman and guard of the relevant train; and, the unauthorised direction to the railway police to produce the motorman and the guard before the Railway Magistrate's court and the taking of the motorman and the guard to the railway police station following the appellant's direction. The violent demonstration at the Sealdah station and the disruption of train services in the Sealdah division were indicated in the charge-

sheet or show-cause notice to be consequences of the appellant's conduct and were not cited as the grounds of misconduct by the appellant.

67. In the cryptic order of punishment passed by the disciplinary authority, there was no reference to any of the perceived unauthorised action of the appellant as found to have been established in the inquiry report. There was only a reference to the violent demonstration and a further reference to the disruption of the train services with the additional reference to the image of the judiciary being tarnished in the estimation of the members of public. This additional part did not form a part of the charges levelled against the appellant, nor was the appellant called upon or given any opportunity to address such matter. Tarnishing the image of the judiciary is a serious charge and the disciplinary authority could not have jumped to the conclusion or founded its decision on such ground when no charge on such count was presented against the appellant.

68. Indeed, the handling of the matter by the High Court may have left the appellant both bemused and betrayed. A possible union leader, P. K. Singh, led a group of indisciplined railway employees to chant slogans against the Railway Magistrate for the Railway Magistrate's grievous fault of trying to correct what he perceived was a wrong to the public. The disruption of train services appears to have been after P. K. Singh was detained. P. K. Singh had been detained for his unruly behaviour in the Railway Magistrate's court for which separate proceedings were instituted and neither charge brought against the appellant referred to such matter. Rather than the judicial officer being protected by the

High Court against the act of insult and intimidation faced by him in the Railway Magistrate's court by unruly railway employees, it was the Railway Magistrate who was pushed to the dock to suffer for wanting to remedy a public wrong. At any rate, the appellant may have acted in error or in excess of the authority that he perceived to possess but even the preliminary report said that it did not find that the appellant acted in bad faith or with any malicious intention. The preliminary report expressly said so. The inquiry report endorsed the preliminary report. Even the disciplinary authority did not expressly find the appellant to have acted in bad faith or with any malice.

69. In the light of the above, the order of the disciplinary committee finding the appellant guilty of the charges brought against him cannot be sustained. As a consequence, the punishment inflicted on the appellant, which is otherwise found to be disproportionate and shocking even if the guilt was established, is set aside. The decision of the appellate authority is quashed. The judgment and order impugned dated July 14, 2017 is set aside and the writ petition is allowed to such extent.

70. The appellant is to be reinstated in service immediately and the appellant should be considered to have been in continuous service without any break. The appellant will be entitled to all benefits and promotion as if no disciplinary proceedings had been initiated against the appellant, save the full complement of his salary. The appellant will be paid 75 per cent of the salary that he would have earned had he remained in service, since it does not appear that the appellant

had taken up any alternative work in the interregnum. Though the appellant did not render any service, his punishment was unjustified and, at any rate, grossly disproportionate to the conduct complained of. The appellant appears to have used some of the time to obtain a Master's degree.

71. The court appreciates the erudite and impartial assistance rendered by learned Advocate-General in the matter.

72. FMA 26 of 2019 is allowed as above with costs assessed at Rs.1 lakh to be paid by the High Court to the appellant.

73. Certified website copies of this judgment, if applied for, be urgently made available to the parties upon compliance with the requisite formalities.

**(Sanjib Banerjee, J.)**

I agree.

**(Suvra Ghosh, J.)**

**Later:**

A stay of the operation of the order is prayed for by the High Court, which is considered and declined.

**(Sanjib Banerjee, J.)**

I agree.

**(Suvra Ghosh, J.)**