* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: March 10, 2023***
Pronounced on: March 23, 2023

\+ **W.P.(C) 7391/2022**

N**AVEEN ARORA** **..... Petitioner**
Through: Mr. Mukul Talwar, Sr. Advocate with Mr. Ankur Chhibber, Mr. Rajesh Sachdeva, Ms.Shobha Gupta, Mr. Vineet Budhiraja, Mr. Vivek Singh and Mr. Apurva, Advocates.

Versus

HIGH COURT OF DELHI AND ANR **..... Respondents**
Through: Mr. Rajat Aneja and Ms. Aditi Shastri, Advocates

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SAURABH BANERJEE, J.

1. The petitioner, a Judicial Officer with the Delhi Higher Judiciary Service, pursuant to imposition of the major penalty of dismissal from service with immediate effect in view of the Inquiry Report dated 28.06.2021 and the decision of the Full Court of the Delhi High Court[1] dated 26.10.2021 dismissing him from service and the subsequent Order dated 23.11.2021 issued by the Office of the Principal District & Sessions

[1] Henceforth referred to as "**High Court**"

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Judge (S-W), Dwarka, New Delhi, seeks their quashing and setting aside and thence reinstatement with complete exoneration, arrears along with other consequential benefits of continuity of service.

2. As per brief facts, the petitioner clearing the Delhi Judicial Service joined in 2003 and thereafter while serving as a Judicial Officer, in February 2016, after applying and getting the requisite permission for travelling abroad along with his family members comprising his own self, his wife and their minor child and his younger brother, his wife and their two minor children, proceeded thereto. Upon return in June 2016, he submitted documents to the High Court. Noticing few discrepancies qua the Hotel bookings abroad made by an unknown person, the High Court called for explanation from the petitioner, which led to exchange of letters inter-se them. Being unsatisfied, the High Court issued a Memorandum containing the '*Statement of Article of Charge*' dated 15.05.2018, later modifying it on 13.11.2018, to the petitioner as under:

"***Article I***

That Shri Naveen Arora, a member of Delhi Higher Judicial Service (hereinafter called as the Charged Officer), during his visit to Switzerland and other neighbouring countries like Germany and France in the month of June from 03.06.2016 to 28.06.2016 with his family, accepted a favour in the form of sponsoring his stay at Radison Blu Hotel, Disneyland, Paris and Best Western Plus Hotel, Milton Roma, Rome respectively from ~~Mr. Parvesh Jain who is stated to be the client of Mr. Manish Arora, brother of the Charged Officer and Ms. Ashu Arora, the wife of the Charged Officer who are associated with the law firm Lex Alliance. The aforesaid sponsorship was got done by Mr. Parvesh Jain through one~~ Mr. Shyam Sunder Bajaj who made payments of $2368.00 and $1814.44 towards booking of Radison Blu Hotel at Disneyland, Paris and Best Western Plus Hotel, Milton Roma, Rome respectively during his aforesaid visit.[2]

[2] The strikeout part, in the earlier Memorandum dated 15.05.2018, was removed in the subsequent Memorandum dated 13.11.2018.

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> *The Charged Officer, by his aforesaid act committed gross misconduct and an act unbecoming of a judicial officer in contravention of the Rule 3(1) of All India Services (Conduct) Rules, 1968 rendering himself liable for disciplinary action in accordance with Rule 8 of All India Services (Discipline and Appeals) Rules, 1969 which apply by virtue of Rule 27 of Delhi Higher Judicial Service Rules, 1970 by which the Officer is governed."*

3. This led to the appointment of the learned Inquiry Officer[3] and the proceedings before it. Initially, both petitioner and High Court gave their respective list of witnesses comprising *four* names each before the Officer, however, the petitioner declined to cross-examine the witnesses produced on behalf of the High Court. Instead, the petitioner later filed an application midway, after the examination-in-chief of *two* witnesses (including that of his own) already stood recorded and the proceedings were fixed at the stage of cross-examination, for producing *two* additional witnesses. As names of the said *two* witnesses, found no mention in the Statement of Defence filed by the petitioner *twice*, and as he could not be permitted to improve his defence, only *one* name was allowed to be included in the list of witnesses as according to the petitioner, the said witness had made the payments for Hotel bookings abroad.

4. The aforesaid then led to the passing of the Inquiry Report dated 28.06.2021 by the Officer and thence the decision of the Full Court of the High Court dated 26.10.2021 dismissing petitioner from service, subsequent whereto order dated 23.11.2021 was issued by the Office of the Principal District & Sessions Judge (S-W), Dwarka, New Delhi to the said effect.

5. This Court has heard the learned Senior counsel for the petitioner at

[3] Hereinafter referred as "**Officer**"

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length and given him sufficient time, who while advancing arguments has taken this Court through almost all the documents on record, however, mainly through the various letters exchanged inter-se the High Court and the petitioner and the testimonies of the main *four* witnesses who deposed on behalf of the petitioner before the Officer. Besides addressing arguments on various issues, it was primarily contended that there was 'confirmation bias' against the petitioner since though the earlier unamended *Article of Charge* noted that though the Hotel bookings abroad were made by a friend/ client of the younger brother of the petitioner and paid for by a 'stranger', however, the said name of the friend/ client was removed in the amended *Article of Charge* as if to mean that the payment was directly made by a 'stranger' instead. It was then contended that there was no *malafide* on the part of petitioner as he did not withhold information about the said payments being made by a 'stranger' and further that the petitioner had also informed that he owed monies to the friend/ client of his younger brother on account of the Hotel bookings abroad and that the 'stranger' was a friend of the friend/ client of his younger brother. It was also contended that the petitioner had offered money in lieu of the said Hotel bookings abroad before leaving for the trip abroad to the friend/ client of his younger brother, who in turn assured him that he would accept the money only upon return. Pertinently, learned Senior counsel, in the midst of arguments, admitted that though the bookings abroad were to be made for a 'guest house', they were instead made for a Hotel, however, the same was strangely not questioned as no objection was raised by the petitioner or anyone on his behalf.

6. According to learned Senior counsel, the friend/ client of his younger brother refused to accept any money for the Hotel bookings despite repeated

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requests, even after returning from the trip abroad as it was a friendly gesture from his side in view of the long-lasting relationships, more so, as the wife and younger brother of the petitioner were 'connected' with a legal firm run by a collegemate of the petitioner, who were doing his cases *pro bono* for the past few years.

7. It was also contended that case of the petitioner was not covered in paragraph 10 of the "*Restatement of values of Judicial Life*" as the money was paid by a friend who was a friend/ client of his younger brother and thence relying upon the "*Bangalore Principles of Judicial Conduct, 2002*" it was contended that as the petitioner had not accepted a favour for discharge of his duties and it was not a case of *quid-pro-quo* and even otherwise the 'stranger' was residing in Singapore and there was no situation in which the petitioner could oblige him. Also, in any event the petitioner had paid his proportion of share of the trip abroad.

8. Thence, relying upon ***S.R. Tiwari vs Union of India***[4], the learned senior counsel also contended that considering the past service records of the petitioner the punishment imposed was not commensurate to the gravity of charge of which the petitioner was found guilty. As per learned Senior Counsel the present petition should be allowed and the petitioner should be relegated to the position before passing of the impugned Order(s). Though the learned Senior counsel also relied upon ***M.V. Bijlani vs Union of India & Ors***[5] *to* contend that the charge was vague and therefore it should be vitiated and also upon ***Sadhna Chaudhary vs State of U.P. & Ors.***[6] to

[4] (2013) 6 SCC 602
[5] (2006) 5 SCC 88
[6] (2020) 11 SCC 760

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contend that mere suspicion cannot act as proof, however, they being irrelevant for the purpose of present petition are not being considered.

9. On the other hand, learned counsel for High Court also argued at length and took this Court through various documents along with the testimonies of the main *four* witnesses once again and it was mainly contended that the petitioner never disclosed the name of the 'stranger' in any of his letters and never gave any explanation qua him and that his name was only visible in the documents annexed along with the letter dated 02.08.2016 submitted by him, though the text of the letter never mentioned his name. It was then contended that the above was despite the fact that the petitioner was well aware of the name/ details of the 'stranger' who made the payments of the Hotel bookings abroad beforehand itself.

10. It was also contended that the relationship of the petitioner, his younger brother and wife, both of whom were working with the law firm of his collegemate, and the friend/ client of his younger brother and the 'stranger' casts a shadow of doubt and they are all connected. It was also contended that things do not add up and there are too many unsolved riddles as neither the friend/ client of the younger brother of the petitioner nor the 'stranger' were in any manner connected with the tourism industry and further as the same bookings could have been made by anyone, including the petitioner himself, online. In any event, as per the own admission of petitioner, the payment for the Hotel bookings abroad were made by a 'stranger' who, at best, was connected with a friend of his younger brother and who in turn was a friend/ client with his collegemate with whom his wife and younger brother were connected. Thus, according to learned counsel the said web itself is sufficient for the petitioner to be held guilty.

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11. Lastly, relying upon ***Ram Kishan vs Government of NCT & Ors.***[7] ***; Roop Singh Negi vs Punjab National Bank & Ors.***[8] and ***The State Bank of Bihar & Ors. vs Phulpari Kumari***[9], learned counsel contended that the present petition should not be entertained as the same does not call for any interference by this Court.

12. This Court has indeed expended sufficient time to go through each and every document on record and has heard both the learned (Senior) counsels involved at enormous length and has also thence carefully perused the various case laws cited by them at bar.

13. Pausing here and before entering the domain of the factual matrix and the legal issues involved, based upon what is to follow hereinafter, this Court is for the time being refraining from dwelling into the factual matrix/ aspects involved, however, the same is subject to what transpires hereinafter and if there is an existing need, this Court would dwell upon the same.

14. In the opinion of this Court, since the petitioner is calling for quashing and setting aside of the Inquiry Report dated 28.06.2021, the decision of the Full Court of this Court dated 26.10.2021 dismissing petitioner from service and the subsequent Order dated 23.11.2021 issued by the Office of the Principal District & Sessions Judge (S-W), Dwarka, New Delhi and seeking reinstatement along with other consequential benefits, the petitioner is essentially seeking a judicial review of all the aforesaid impugned Orders.

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[7] WP(C) 6822/2011; dated 05.08.2022 DHC [DB]
[8] (2009) 2 SCC 570
[9] (2020) 2 SCC 130

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15. Thus, to our mind this Court at the threshold, before proceeding to entertain the present petition and based on what is on record, is to initially determine as to whether the petitioner has questioned or raised any doubts qua the [i] appointment/ constitution of the Officer and/ or qua the [ii] manner of the proceedings conducted by the Officer and/ or qua the [iii] decision making process followed by the Officer. Meaning thereby, this Court is to see whether the enshrined *principles of natural justice* have been followed by the Officer and/ or has there been any violation of the procedure or conduct followed by the Officer and/ or has the evidence on record been gone/ looked into by the Officer. This is to check if the sufficiency is such that the vital/ material facts have not escaped the notice and attention of the Officer. In effect, this Court is to conclude whether the report and finding(s) therein by the Officer are based on preponderance of probabilities, for which, needless to mention, no actual instance is required for holding anyone guilty.

16. From the records before us and based on the arguments addressed by the learned Senior counsel for the petitioner, in the opinion of this Court, the answer to each of the above is negative. This Court, upon a perusal of the records coupled with the arguments addressed qua them by the learned Senior counsel, finds that the petitioner has neither challenged the appointment/ constitution of the Officer nor questioned the manner of the proceedings conducted by the Officer nor raised any doubts about the decision making process followed by the Officer. As such, based on what the records reveal, this Court infers that the Officer has all throughout followed the enshrined *principles of natural justice* at all stages and has

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noted and considered all materials/ documents including the deposition of all the witnesses. Actually, the facts reveal there was a preponderance of probabilities which led the Officer to hold the petitioner guilty of the *Articles of Charge* and grant him punishment commensurate thereto. This Court, hereinafter, now ponders over few such glaring accounts, amongst others, to reach a conclusion thereafter.

17. A perusal of the record reveals that the petitioner was found lacking in giving the material response to the repeated queries put by the High Court since the very inception. There are too many negatives which, *unfortunately*, do not add up to make a positive. *Firstly*, the petitioner, *admittedly*, asked for bookings abroad for a '*guest house*' and instead the bookings were done in '*four/ five-star hotels*'. Strangely, despite him being aware of the same before the trip abroad, *admittedly*, it was never questioned by the petitioner. *Secondly*, although it was the case of petitioner that his younger brother had arranged for the Hotel bookings abroad through his friend/ client but in the letter dated 02.08.2016 given by the petitioner to High Court in lieu of the procedure of proving details to High Court regarding the expenditure of the trip abroad, *admittedly*, the petitioner did not disclose the name of the 'stranger' or the details of exact amount owed to him, albeit only filed an annexure which contained his name and the amount. *Thirdly*, though the petitioner filed Statement of Defence *twice* before the Officer, but on neither occasion did the name of the 'stranger' crop up. Not only that, the said name of the 'stranger' was also not included in the list of witnesses filed by the petitioner before the Officer initially, however, his name was included later only after the examination-in-chief of *two* witnesses (including that of the petitioner himself) had already stood

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recorded and it was at the cross-examination stage. *Fourthly*, despite the petitioner being well aware before departure for the abroad trip that a rank outsider, who was a complete stranger, had made payments for the Hotel bookings of the petitioner and his family members, strangely he kept sitting on the fence and did nothing. *Fifthly*, the friend/ client of the younger brother of petitioner actually happened to be a client of an old collegemate of the petitioner himself, who was running a law firm, dealing with the cases of the friend/ client and with whom both the wife of petitioner and the younger brother of petitioner were working, or we would say, loosely associated with (as the position is not clear despite our repeated queries). Interestingly, the wife of the petitioner was not in active litigation till a few years back as she was working in different companies/ firms and had joined only after delivering a child and similarly the younger brother of the petitioner was only enrolled as an Advocate after a few months of his return with the petitioner from abroad in June 2016. *Sixthly*, although the petitioner had all throughout maintained that he was unable to make the payment to the friend/ client of his younger brother as he refused to accept the same, who very well knew the consequences thereof and also the 'stranger' as he was unaware of his whereabouts or his banking details, he has eventually, as we are told during the course of arguments, paid the sum after passing of the impugned orders.

18. There is a chain reaction qua the payment and thus, as per learned Senior counsel for petitioner, though the petitioner was aware of the source but he was helpless to repay the same as he was unaware to whom it was to be paid to. Irrespective of the above, *admittedly*, the payment for the Hotel bookings were made by a 'stranger' whose name/ details could have been

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made available by the petitioner even before advancing for the trip abroad is not in doubt. There were no compelling circumstances of not doing so. It is only now that the petitioner has since made the payment. Further, the relationship of the petitioner, his wife and his younger brother and friend/ client and the 'stranger' is unclear. Also, strangely no online Hotel bookings were done by the petitioner or anyone from his side, even though his younger brother all throughout belonged to the IT industry.

19. Needless to say, and without going into the merits of the dispute any further, which this Court is not to go into (as it later unfurls), the moot facts before us reveal the acceptance of payment was indeed from a 'stranger', and the same is, without fail, unbecoming of a Judicial Officer, especially whence he is officiating as such. The post of a Judicial Officer is a coveted one with responsibilities attached to it. A Judicial Officer is expected to be unceremonious and not take things in an easy manner. A Judicial Officer is expected to be more prudent. At the end of the day "*A Judge is a Judge who is always open to be judged*". In the present case, the petitioner has failed to establish his case/ defence either before the Inquiry Officer or before this Court. That there was an acceptance from a 'stranger' is admitted and that it is not reasonably explained, is sufficient for the petitioner to be held guilty. Such acceptance can be in any form and need not always be *quid pro quo* and/or direct. Unfortunately, the present petition neither inspires confidence nor appeals to reason. Paragraph 10 of the "*Restatement of values of Judicial Life*" has been rightly applied by the Officer and reliance upon the "*Bangalore Principles of Judicial Conduct, 2002*" by the learned Senior counsel for petitioner cannot come to the aid of the petitioner.

20. Judicial review under *Article 226* of The Constitution of India is not

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an appeal from a decision by the Disciplinary Authority, the Officer herein, but is to ensure that the delinquent officer/ petitioner received fair treatment and to see that the *principles of natural justice* have been followed and lastly that the findings arrived by the Officer are supported by cogent evidence. A Court under *Article 226* of The Constitution of India does not sit as a Court of appeal or to reappreciate or to interfere with the findings arrived at by the Officer as long as they do not shock the conscience of the Court and certainly not just because it can reach a different conclusion from that of the Officer merely because it is a plausible view. Moreover, a Court under *Article 226* of The Constitution of India is not siting as a fact-finding enquiry. In view of the aforesaid, this Court cannot act as one.

21. The present is not a case of no evidence or perverse findings or that the findings arrived at by the Officer shock the conscience of the Court or such where there have been any procedural irregularities. On the contrary, the conclusion arrived by the Officer is well-reasoned and well-supported and plausible in the eyes of the law. There is no fault therein. Since the contentions raised by the learned Senior counsel are only hinging on the evidence recorded and the manner the alleged defence(s) raised by the petitioner has escaped the attention of the Officer, what is to be considered is the maintainability of the present petition based on the factual matrix and the arguments addressed thereupon, we are afraid there are more than one reason tilting the balance against the petitioner leaving this Court with little to be pondered over. Also there are too many unanswered questions with hardly few answers.

22. In wake of all the above, in our view, the present petition does not call for any kind of interference by this Court under *Article 226* of The

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Constitution of India as the scope of interference itself in a petition challenging/ questioning/ raising doubt over the order(s) passed by the Officer and the other impugned order(s) is extremely limited and is only permissible in rare cases which show/ call for any rectification as mentioned hereinbefore. According to us, the facts being irreconcilable, no such case for interference is made out in the present petition. There is, thus, no need to deal with all the contentions raised by the learned Senior counsel for petitioner. In view of the settled position of law, this Court finds no reason to interfere with the impugned Order(s) in matters of judicial review, more so, whence no such case is made out. This Court finds support in ***Roop Singh Negi (Supra)*** wherein the Hon'ble Supreme Court has held as under:

> *"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. ...*
>
> *xxxx*
>
> *16. In Union of India v. H.C. Goel [AIR 1964 SC 364 : (1964) 4 SCR 718] it was held: (AIR pp. 369-70, paras 22-23)*
>
> *xxx….xxx*
>
> *"….That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made*

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against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence."

17. In Moni Shankar v. Union of India [(2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court held: (SCC p. 492, para 17)

"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

xxxx

23…. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge

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> *passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."*

23. Furthermore, and in fact, as is the settled position of law, this Court ought not to reappreciate the evidence in coming to a conclusion from the one what has already been arrived at by the disciplinary forums. This Court, finds support in ***The State Bank of Bihar & Ors. vs Phulpari Kumari (supra)*** wherein, the Hon'ble Supreme Court has held :

> *"6. The criminal trial against the respondent is still pending consideration by a competent criminal court. The order of dismissal from service of the respondent was pursuant to a departmental inquiry held against her. The inquiry officer examined the evidence and concluded that the charge of demand and acceptance of illegal gratification by the respondent was proved. The learned Single Judge and the Division Bench of the High Court committed an error in reappreciating the evidence and coming to a conclusion that the evidence on record was not sufficient to point to the guilt of the respondent:*
>
> *6.1 It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of "no evidence". Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.*
>
> *6.2 The High Court ought not to have interfered with the order of dismissal of the respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the inquiry officer."*

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24. Therefore, deviating from the existing position and settled norms, is prone to setting up a new trend contrary thereto, which, we are afraid, this Court would not do.

25. Lastly, as regards the contention of the learned Senior counsel for the petitioner that the punishment awarded is disproportionate to the misconduct considering the past service record of the petitioner, in the opinion of this Court, considering the post of a Judicial Officer held by the petitioner, the charge of accepting money in the nature of a favour from a 'stranger' is in itself serious and thus the penalty imposed is commensurate to the charge. We are afraid, no case of leniency calling for reduction of penalty imposed is made out.

26. Having held that there is hardly any scope of interference by this Court, the present petition is not maintainable either in law and/ or facts. Accordingly, finding no need to traverse upon the factual matrix/ aspects, involved any further and finding no merit in the present writ petition, the same is thus dismissed, albeit without costs, leaving the parties to bear their own respective costs.

SAURABH BANERJEE, J.

MANMOHAN, J.

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