

# THE HIGH COURT OF TRIPURA

## A\_G\_A\_R\_T\_A\_L\_A

WP(C) No.564 of 2010

Smt. Shampa Nath,  
W/o Lt. Somnath Gangopadhyay,  
C/o Shri Manmatha Nath (Sr. Adv.),  
Resident of Kamarpukur Par,  
P.O. - Agartala College, Distt. - West Tripura,  
Agartala - 4,(L. R of Late Somnath Gangopadhyay).

..... *Petitioner-in-person.*

- Vs -

1. **The Hon'ble Gauhati High Court, Guwahati.**  
Represested by : The Registrar General,  
Hon'ble Gauhati High Court,  
Guwahati - 1.
2. **The State of Tripura,**  
Represented by :  
The Chief Secretary to the  
Government of Tripura  
Mahakaran (Secretariat)  
West Tripura District,  
Agartala -1.
3. **The Department of Law,**  
Government of Tripura  
Represented by :  
The Secretary to the Government of Tripura,  
The Department of Law,  
Mahakaran (Secretariat)  
West Tripura District,  
Agartala -1.
4. **Shri Subrata Pal,**  
T.J.S Grade -1.  
C/o The Registrar,  
The Hon'ble Gauhati High Court,  
Agartala Bench, Agartala.  
West Tripura District,  
Agartala -1.
5. **Shri Manik Chakraborty,**  
T.J.S. Grade -I  
C/o The Registrar,

The Hon'ble Gauhati High Court,  
Agartala Bench, Agartala.  
West Tripura District, Agartala -1.

6. **Shri Shyamal Saha,**  
T.J.S Grde -II,  
C/o The Registrar,  
The Hon'ble Gauhati High Court,  
Agartala Bench, Agartala.  
West Tripura District, Agartala -1.
7. **Shri T C Roy Bhoumik,**  
T.J.S Grde -II,  
C/o The Registrar,  
The Hon'ble Gauhati High Court,  
Agartala Bench, Agartala.  
West Tripura District, Agartala -1.
8. **Shri S R Deb,**  
T.J.S Grde -II,  
C/o The Registrar,  
The Hon'ble Gauhati High Court,  
Agartala Bench, Agartala.  
West Tripura District, Agartala -1.
9. **Shri Ajoy Kr. Sharma,**  
L.D. Clerk,  
C/o. The Learned District & Sessions Judge,  
West Tripura District, Tripura, Agartala -1.
10. **Smt. Mamata Sarkar,**  
L.D. Clerk,  
C/o. The Learned District & Sessions Judge,  
West Tripura District, Tripura, Agartala -1.
11. **Shri Shilabhadra Sinha,**  
The Nazir,  
Establishment of the Ld. C.J.M.,  
West Tripura District, Agartala.,  
C/o. The Learned District & Sessions Judge,  
West Tripura District, Tripura, Agartala -1.
12. **The Tripura Judicial Officers' Association (T.J.O.A), Agartala,**  
District : West Tripura,  
P.S. West Agartala, Tripura, Agartala - 1.
13. **Hon'ble High Court of Tripura, Agartala**  
(represented by the Registrar General, High Court of Tripura,  
Agartala - 799010.

..... *Respondents.*

B\_E\_F\_O\_R\_E\_  
**HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**  
**HON'BLE JUSTICE MR. S TALAPATRA**

For the petitioner : In-person.  
For the respondents : Mr. S M Chakraborty, Sr. Advocate,  
Mr. S Chakraborty, Addl. Govt. Advt.,  
Ms. P Dhar, Advocate,  
Ms. D Das, Advocate.  
Mr. B N Majumder, Advocate.

Date of hearing : 19.9.2014.  
Date of judgment : 26.9.2014.  
Whether fit for reporting : Yes.

**JUDGMENT & ORDER**

*(Deepak Gupta, CJ)*

The original writ petitioner late Sri Somnath Gangopadhyay was selected to the Tripura Judicial Service Grade III (TJS) in December 2003. He was appointed on probation for a period of two years on 24.5.2004. After completion of his training, he was initially posted at Udaipur as Civil Judge (Jr. Div.) cum Judicial Magistrate, 2<sup>nd</sup> Class. On 20<sup>th</sup> August, 2007 the State of Tripura issued a notification discharging the services of the petitioner treating him as a probationer with immediate effect. That order was challenged by the petitioner by means of this writ petition.

2. Unfortunately, the original writ petitioner committed suicide on 25.12.2012. Thereafter his widow Ms. Shampa Nath applied for being brought on record and vide order dated 20<sup>th</sup> June, 2013 she was permitted to represent the estate of the

original petitioner. Ms. Shampa Nath appeared in person and has argued the matter and also submitted her detailed written submissions running into 97 pages. However, if we go through the detailed submissions, there are only few grounds of challenge. The first ground is that the petitioner had completed his period of probation and was deemed to be a confirmed employee and therefore, his services could not have been discharged by treating him to be a probationer. The second ground is that even if he was discharged during probation, the grounds for discharge should have been indicated in the order of discharge in terms of sub-rule (6) of Rule 15 of the Tripura Judicial Service Rules, 2003. The third ground is that the order of discharge is illegal because it is based on unfounded and unverified allegations which were not inquired into and all of which allegations are in the nature of misconduct and that in view of such allegations, an inquiry was necessary. Lastly it is contended that the entire action against the petitioner was *malafide* and allegations of *malafide* had been levelled against respondent no.4, the then Registrar of the Agartala Bench of the Gauhati High Court, respondent no.5 who was the then District and Sessions Judge, Agartala, respondent no.6, the then Chief Judicial Magistrate, Agartala and allegations of *malafide* had also been levelled against various other officers of the Tripura Judicial Service and ministerial staff of the Court as well as the Tripura Judicial Officers Association.

3. Before dealing with the factual aspects of the matter it would be relevant to quote Rule 15 of the Tripura Judicial Service Rules, 2003 which deals with probation, officiation, confirmation and increment and reads as follows :

***"15. PROBATION, OFFICIATION, CONFIRMATION AND INCREMENT:-***

***(1) All appointments to the service by direct recruitment shall be on probation for a period of two years.***

***(2) All appointments by promotion shall be on officiating basis of a period of two years.***

***(3) The period of probation or officiation, as the case may be, of an officer may, for reasons to be recorded in writing, be extended by such period not exceeding the period of probation or officiation, specified in sub-rules (1) or (2).***

***(4) At the end of the period of probation or officiation or the extended period of probation or officiation, as the case may be the High Court shall consider the suitability of the person to hold the post/grade to which he is appointed or promoted, and-***

***(i) if he is found suitable to hold the post/grade and has passed the special examinations or tests, if any, required to be passed during the period of probation or officiation, as the case may be, the High Court shall, as soon as possible, issue an order declaring him to have satisfactorily completed the period of probation or officiation, as the case may be; and such an order shall have effect from the date of expiry of the period of probation or officiation, including the extended period, if any, as the case may be.***

***(ii) if the officer is not found suitable to hold the post/grade to which he is appointed or promoted, as the case may be, the Governor on the recommendation of the High Court or, as the case may be, the High Court, being the appointing authority, shall***

***If he is a promote, revert him to the post/grade which he held prior to his promotion;***

*If he is a probationer, discharge him from service.*

*(5) A person shall not be considered to have satisfactorily completed the period of probation or officiation, as the case may be, unless a specific order to that effect is passed. Any delay in passing such an order shall not entitle the person to be deemed to have satisfactorily completed the period of officiation or probation.*

*6(i) Notwithstanding anything hereinabove, the appointing authority as aforesaid may, at any time during the period of probation, discharge from service, a probationer on account of his unsuitability for the service.*

*(ii) An order under sub-rule (1) shall indicate the grounds for the discharge but no disciplinary enquiry shall be necessary.*

*(7) No appeal shall lie against an order discharging a probationer or an order reverting a promote to the post held by him prior to his promotion.*

*(8) An officer who has been declared to have satisfactorily completed his period of probation or officiation shall be confirmed in the service in the category of post/grade to which he was appointed or promoted, as the case may be, at the earliest opportunity against substantive vacancy.*

*(9)(a) A probationer or promote may draw the increments that fall due during the period of probation or officiation. He shall not, however, draw any increment after the expiry of the period of probation or officiation unless and until he is declared to have satisfactorily completed his probation or officiation, as the case may be.*

*(b) When a probationer or promote is declared to have satisfactorily completed his probation or officiation, as the case may be, he shall draw, as from the date such order takes effect, the pay he would have drawn had he been allowed the increments for the whole of his service from the date of his appointment on probation or officiation as the case may be.*

***(10) Notwithstanding anything contained in sub-rules (1) and (2) where validity of the appointment of an officer-***

***(a) on probation is questioned in any legal proceedings before any Court of law, the period of probation of such person shall continue till the final disposal of such proceedings;***

***(b) on officiating promotion is questioned in any legal proceeding, before any Court of Law, the period of officiation of such promote shall continue till the final disposal of such proceedings."***

4. The petitioner was appointed on 24.5.2004 and as per sub-rule (2) of Rule 15 he was to be on a probation for a period of 2(two) years. Admittedly, after completion of 2(two) years no order of confirmation was passed. No order of extension of his period of probation was passed. Therefore, it is contended on behalf of the petitioner that Sri Somnath Gangopadhyay having completed his period of probation of 2 years is deemed to be a confirmed officer. We are not in agreement with this submission. Sub-rule (3) of Rule 15 permits the extension of period of probation for a further period not exceeding the original period of probation i.e. 2 years. Therefore, it is envisaged that the total period of probation can be four years. However, sub-rule (5) clearly lays down that a person shall not be considered to have satisfactorily completed the period of probation, unless a specific order to that effect is passed. This sub-rule also provides that any delay in passing such an order will not give right to the person to claim that he is deemed to have satisfactorily completed the

period of probation. Therefore, we have no hesitation in holding that the original writ petitioner had not completed his period of probation and was therefore still on probation.

5. The next issue which arises is as to whether the order has been passed in terms of sub-rule (4) or sub-rule(6). Ms. Paramita Dhar, appearing on behalf of the High Court, submits that this is an order passed under sub-rule(4) of Rule 15. We are unable to agree with this contention. An order under sub-rule (4) is an order which is passed either at the end of a period of 2 years or at the end of the period of the extended period of probation wherein the High Court considers the suitability of the person to hold the post/grade to which he or she has been appointed. On the other hand, sub-rule (6) empowers the appointing authority at any time during the period of probation to discharge the probationer from service on account of his unsuitability for service. The difference between sub-rule (4) and sub-rule (6) is that under sub-rule (4) on the completion of the period of probation or the extended period of probation the High Court will assess the suitability of the probationer and decide whether he should be confirmed or whether the probation should be extended or whether he is to be discharged from service. Sub-rule (6) deals with another situation where during the period of probation if some materials come before the High Court and it feels that the officer is unsuitable to be retained in service, the High Court may

discharge the probationer from service. If the order in question was an order under sub-rule (4) then the case of the petitioner would have to be considered along with all other persons who were appointed along with him at the time of selection. The order against the petitioner is an individual separate order and is definitely passed under sub-rule (6). We agree with the petitioner to this extent.

6. Sub-rule (6) empowers the appointing authority to discharge the probationer from service during his period of probation if it finds that such probationer is unsuitable for being retained in service. Ms. Nath submits that in terms of clause (ii) of sub-rule (6), such an order must indicate the grounds for discharge. Admittedly, the grounds for discharge have not been disclosed in the present case. Ms. Nath has referred to the judgment of the Apex Court in *State of Uttar Pradesh vs. Singhara Singh and others, AIR 1964 SC 358* wherein the Apex Court held as follows :

*"That if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted."*

She has also placed reliance on the judgment of the Apex Court in *Hukum Chand Shyam Lal vs Union of India and others, AIR 1976 SC 789* wherein the Apex Court held as follows :

*"It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performances are necessarily forbidden."*

Reliance has also been placed on the judgment of the Privy Council in *Edward Ramia, Ltd. v. African Woods, Ltd.* wherein the Privy Council held as follows :

*"It is true that there are no negative words in the sections referred to but the affirmative words are absolute, explicit and peremptory and when you find in an Ordinance only one particular mode of effecting the object, one train of formalities to be observed, the regulative provisions which the section prescribes are essential and imperative."*

Reference has also been made to the various judgments of the Apex Court in *Labour Commissioner, Madhya Pradesh vs. Burhanpur Tapti Mills and others, AIR 1964 SC 1687*; *Jamatraj Kewalji Govani vs. The State of Maharashtra, AIR 1968 SC 178*; *Chairman, T.R. Sgharma vs. Prithvi Singh & Anr. Etc, AIR 1976 SC 367* and *Canara Bank, Bangalore vs. M.S. Jasra and Ors, AIR 1992 SC 1100* to urge that the language of sub-rule (6)(ii) is mandatory and therefore, any breach of the requirements of sub-rule (6) would render the order bad in law.

7. The language of sub-rule 6(ii), in our opinion, on first blush supports the allegations of the petitioner that the order of discharge must state the grounds. However, we must also remember that the general rule is that an order of discharge simplicitor will be termed to be a punitive or stigmatic order if the grounds are mentioned in the order of discharge. The whole idea of discharging an employee during the period of probation, without holding any inquiry against him, is that he should not be debarred from further service. The reason behind is that the order casts no stigma on the employee and it is not punitive or stigmatic in nature. We are of the view that clause (ii) of sub-rule (6) will have to be read down to mean that there must be some materials available with the Appointing Authority before the order of discharge was passed. Those materials must be available in case judicial scrutiny is to be done.

8. Ms. P Dhar has placed reliance on the judgment of a Division Bench of the Gauhati High Court in *Deba Kumar Das vs. Gauhati High Court & Ors., 2007(4) GLT 591*. In the case before the Gauhati High Court, the petitioner had, in fact, completed more than 4 years as a judicial employee without any order of confirmation having been passed. After dealing with Rule 15 and various judgments of the Apex Court the Division Bench of the Gauhati High Court held as follows :

**"47. Neither the instant provision is silent of the steps to be taken after the completion of the probationary period nor is it ambiguous about the consequence of delay or omission to pass any order contemplated in Rule 15(4). The statutory design decipherable in Rule 15(1), 15(3), 15(4), 15(5) and 15(8) cumulatively read denies a deduction of cessation of the period of probation on the expiry of the ceiling laid in Rule 15(4). Any other construction would dislodge the alignment of the provision and in particular render Rule 15(5) otiose.**

**48. Rule 15(9) and 15(10) evidently constitute integral parts of the parent provision and being assimilated in the same framework cannot be extended an exposition incompatible with the other segments thereof. Though sub-clause (10) specifies the eventualities in which a period of probation would continue, this in our opinion does not mutilate against the interpretation as above. As a corollary, receipt of increments by the petitioner beyond the maximum period of probation does not connote the end of his probationary period to ripen into confirmation. The plea that in the teeth of the ceiling on the period of probation at the end thereof, in absence of any declaration of satisfactory completion thereof, the petitioner ought to be construed as a temporary government employee does not appeal for acceptance. We, therefore, unhesitatingly hold that on the date of the resolution of the Administrative Committee and the impugned decision, the petitioner had been continuing as a probationer under the Rules."**

**9. Dealing with the words 'unsuitable for service' the Gauhati High Court held as follows :**

**64. The words 'unsuitable for service' employed in Rule 15(6) convey a compendious connotation and comprehend unacceptability of an officer vis-à-vis his office and the duties attached thereto. Having regard to the pristine majesty, probity and credibility of a judicial office, the holder thereof is expected to**

*be an epitome of honesty, integrity, erudition and fairness commanding unreserved esteem and confidence of the public and the society at large. His conduct inside and outside the Court is under constant vigil and his office does not admit of misgivings. Public opinion recognizes character and conduct of a judicial officer to be the indices of his reliability and trustworthiness as the arbiter of its causes. He is expected to impeccably non-controversial to be confided for impartial justice. The unrelenting demand is for an unblemished personal life and conduct as an ensign of rectitude – his verdict to be venerable and binding. In the changed social milieu where the teeming masses seek refuge in the judiciary against perceived injustice from other quarters and the rising expectation of the sanctity of the justice dispensation regime, a judicial institution can ill afford to cast aside lightly situation as the type as in hand, lest public confidence in the system get irreversibly eroded leading to its collapse.”*

10. In case the Administrative Committee of the High Court or the Full Court or the State Government in the final order of discharge indicates the grounds for discharge then the order would *per se* be stigmatic or punitive and would not withstand legal scrutiny as an order of discharge simplicitor. No appeal lies against such an order and it is obvious that in the order of discharge, no grounds should be mentioned. Therefore, the only ground, in our opinion, which can be indicated in the order, is that the petitioner has been found unsuitable for service. No other ground can be reflected in the order of discharge and if we give any other interpretation, then there can be no discharge of a probationer without holding an inquiry.

11. It is well settled law of interpretation of statutes that all the provisions of the '*Rules*' must be harmoniously construed. Each portion of the Rule must be interpreted in such a manner so as not to make another part or portion of the Rule(s) otiose. The principle of reading down the '*Rule*' is also now an established principle of statutory provisions. Rule 15 contemplates discharge of a probationer both under sub-rule (4) and sub-rule (6). Clause (ii) of sub-rule (6) of Rule 15 itself contemplates that no disciplinary inquiry is necessary before passing an order under Clause(i). If grounds which are stigmatic or punitive are mentioned in the order passed under clause (i) of sub-rule (6) then the order would be against all principles of natural justice and a stigmatic or punitive order without giving the affected party an opportunity of being heard. In the present case, the order of the Administrative Committee, the order of the Full Court as well as the order passed by the Disciplinary Authority are all orders of discharge simplicitor and do not cast any aspersion or stigma on the original writ petitioner. We are of the considered view that sub-rule (ii) of Rule 6 will have to be read down to mean that the only ground is required to be mentioned is unsuitability of probationer to continue in service and no other ground can be mentioned.

12. Having held so we are also of the considered view that probably the intention of the Legislature was that the materials on which the order of discharge is passed must have been considered

by the authority. In the present case, after the writ petition was filed, the High Court filed its reply and in the reply, reference was made to certain materials which had been considered by the Administrative Committee of the High Court as well as the Full Court of the High Court before passing the orders discharging the petitioner from service.

13. When the matter came up before a Division Bench of the Gauhati High Court, vide order dated 26.4.2010, it was ordered that the documents referred to in the reply should be placed on record. Thereafter, all the materials which were considered by the Administrative Committee and later by the Full Court were placed on record of the case. The Administrative Committee comprised of the then Hon'ble Chief Justice and four senior Judges of the High Court of Gauhati.

14. The additional materials which have been placed on record show that initially there was a complaint against the petitioner that on 3.8.2006 he had left his place of posting for Kolkata after submitting an application seeking permission to leave the station. Leave was granted to him up to 22.8.2006. However, the petitioner did not rejoin service even thereafter and a communication in this regard was sent by the District Judge & Sessions Judge, South Tripura to the Registrar of the Agartala Bench of the Gauhati High Court who then referred it to the

Registrar(Vigilance) of the Gauhati High Court. Thereafter, the Gauhati High Court asked for certain information and the District Judge & Sessions Judge, South Tripura sent detailed information on 5.9.2006 informing the High Court that the original writ petitioner Late Sri Somnath Gangopadhyay had not applied for the extension of leave. On 6.9.2006, the Administrative Committee of the High Court resolved to initiate disciplinary proceedings against the original writ petitioner and he was placed under suspension on 28.6.2007. Accordingly, memo was served upon the writ petitioner wherein it was proposed to hold disciplinary proceedings against him and he was asked to file his reply to the proposed Article of charges.

15. In reply, the original writ petitioner stated that he was allowed leave up to 22.8.2006. According to him, he became seriously ill on reaching Kolkata and was advised rest for 6 weeks on 13.8.2006. He also stated that his widowed mother who had been ailing for a long time was admitted in the nursing home at Kolkata on 24.8.2006. According to him, he had thereafter applied for leave on 2.9.2006 and such application was received in the office of the learned District & Sessions Judge concerned on 6.9.2006. He submitted that from 6.8.2006 to 22.11.2006 he was seriously ill. He admitted his lapse that he had not applied for leave in proper form but denied the charges. Therefore one of the allegations against the petitioner was that he had overstayed his

leave and not cared to seek permission. No doubt, the disciplinary proceedings were later dropped.

16. At this stage, it may be mentioned that the original writ petitioner was married to some other lady at that time and the relationship between the petitioner and his wife had soured. Various complaints were made by the wife against the petitioner making serious allegations against the original writ petitioner. With regard to these allegations, the Administrative Committee in its resolution dated 14.8.2006 asked the Registrar(vigilance) to make a preliminary inquiry into the matter. The Registrar (Vigilance) submitted a detailed report in this regard. We are not going into the allegations since the original writ petitioner is dead and we have been told that he had been acquitted of the charges levelled against him.

17. The report indicates that a fight or quarrel had taken place between the original writ petitioner and his wife. It had also come on record that the original writ petitioner had thereafter called the police and the wife of the original writ petitioner had stated that she had been beaten up by her husband. The relevant portion with which we are concerned is that according to the Registrar(Vigilance) it was found that the original writ petitioner had asked the police to arrest his wife and to seize some material. The Registrar(Vigilance) relied upon the statement of Sri Data

Mohan Jamatia, the then Family Judge of Udaipur, who also stated that the original writ petitioner was pressurizing the police to arrest his wife. However, after some persuasion, the wife took shelter in the house of some lawyer. We are not going into the other allegations but what is the crux is that there was a fight between the husband and wife and the original writ petitioner being a judicial officer tried to use his power to get his wife arrested. The original writ petitioner also sent a communication dated 14.3.2007 to the District & sessions Judge, South Tripura making serious allegations against Sri Data Mohan Jamatia, the then presiding officer of the Family Court. He alleged that he was threatened by Sri Jamatia. It would be pertinent to mention that though the original writ petitioner arrayed many other officers as respondent in the writ petition in their private capacity he did not array Sri Data Mohan Jamatia as a respondent in the petition.

18. Sri S C Saha, the then in-charge District & Sessions, Judge sent a letter to the Registrar of the Gauhati High Court. It was reported to the High Court that a case under Section 498A had been registered against the original writ petitioner at the instance of his wife. On 5.6.2007, Sri S Saha, the then Chief Judicial Magistrate, West Tripura sent a communication to the Registrar stating that on 4.6.2007, the original writ petitioner who was much junior to him had acted in an insubordinate manner and thereafter, on 5.6.2007, he had again appeared before his senior

Sri S Saha and behaved in an unruly manner. On 15.6.2007, Sri Data Mohan Jamatia also sent a detailed complaint to the Registrar of the Gauhati High Court in which serious allegations of misbehavior by the original writ petitioner against his senior officers were levelled.

19. On 5<sup>th</sup> June 2007, the Officer-in-Charge of west Agartala Police Station forwarded a written complaint lodged by the original writ petitioner, Somnath Gangopadhyay, who was then working as a Judicial Magistrate, 1<sup>st</sup> Class, Agartala against both Sri Data Mohan Jamatia, Judge, Family Court, Udaipur and Sri S C Saha, Additional District & Sessions Judge, South Tripura. This complaint had been lodged straightway with the police without having filed any complaint to the High Court in this regard. If we go through the complaint filed by Sri Gangopadhyay, there is no specific allegation against Sri Data Mohan Jamatia or Sri S C Saha other than the allegation that they had helped his wife. We may again point out that Late Sri Gangopadhyay did not even deem it fit to complain about any such allegation to the Sessions Judge or the Registrar of the High Court but straightway filed a complaint with the police. Many other complaints were made against the original writ petitioner by Sri S C Saha and Sri Data Mohan Jamatia. All these factors were taken into consideration by the Administrative Committee in its meeting held on 27.6.2007 and it was decided to discharge the petitioner from service.

20. Ms. Shampa Nath got married to the petitioner much later on 11.9.2009. The materials were filed by the High Court pursuant to the orders dated 26.4.2010 and 16.6.2010. The original petitioner expired on 25.12.2012. He did not file any counter-affidavit to the materials filed against him. It has been urged by Ms. Shampa Nath that the petitioner was leading a disturbed life and therefore, he could not file an affidavit. We are unable to accept this submission. Late Sri Somnath Gangopadhyay after discharge from service got married to Ms. Shampa Nath and though this affidavit was filed on 16.6.2010 with advance copy to him he did not care to file reply to the allegations levelled against him. Therefore, from the materials considered by the Administrative Committee, it is apparent that late Sri Gangopadhyay, the original writ petitioner, had fought with his senior officials. He had fought with his wife. He had extended his leave unilaterally without taking permission of the senior authorities and his behavior was unbecoming of a judicial officer. Not only that from the record we find that he had also filed criminal cases against his senior officials without even care to inform the High Court about this fact. This behavior, in our opinion, was totally unbecoming of a judicial officer.

21. In *K P Singh v. High Court of Himachal Pradesh and others, LPA No.163 of 2009* the Himachal Pradesh High Court

dealing with the issue of ‘dignity’ required to be maintained by a judicial officer held as follows :

*“A judicial officer is required to maintain the dignity of his office at all times. Integrity is moral uprightness; honesty. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, cleanliness, decency, honour, reputation, nobility, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values. The need of integrity in the judiciary is much higher than any other institutions. The judiciary is an institution whose foundations are based on honesty and integrity. It is, therefore, necessary that Judicial Officers should possess the sterling quality of integrity. The Apex Court in Tarak Singh Vrs. Jyoti Basu, (2005) 1 SCC 201 held that integrity is the hallmark of judicial discipline.*

*To quote:*

*“Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside.”*

*A Judge is a privileged member of society. He is addressed as “Your Honour”. It is expected that a Judge should behave in a manner befitting his status as the Presiding Officer of a Court, a privileged member of society and a gentleman. A Judge must always bear in mind that what may be lawful and moral for a person who does not belong to the judiciary will be totally improper, immoral and unbefitting the status of a Judge. A Judge, both in Court and outside, must conduct himself in a manner befitting his high status. He must be courteous. A Judge may be firm, but is not required to be rude. His behaviour with the litigants, the members of the Bar, the members of the staff should be such that they draw inspiration from him. A Judge who*

*conducts himself in a domineering manner criticizing all and sundry does no credit to the institution of judiciary. Humility is one of the foremost attributes of a good Judge.*

22. The behaviour of a Judge has to be a very high standard, both inside and outside the Court. The Supreme Court in *Daya Shankar vs. High Court of Allahabad and others, (1987) 3 SCC 1* held thus: “ *Judicial Officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy.*”

In *High Court of Judicature at Bombay vrs. Shashikant S. Patil, (2000) 1 SCC 416* the Apex Court held that dishonesty is the opposite of judicial probity, and “ *A dishonest judicial personage is an oxymoron*” .....

23. In *R.C. Chandel vs. High Court of M.P. (2012) 8 SCC 58*, the Apex Court held that the standard of conduct expected of a Judge is much higher than that of an ordinary person. The following observations of the Apex Court are relevant :

*“37. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must*

*feel secure that Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity and intellectual honesty."*

Applying aforesaid decisions to the present case we are clearly of the view that the Administrative Committee as well as the Full Court were fully justified in taking a decision that the services of Sri Somnath Gangopadhyay, the original writ petitioner, who was on probation to be discharged.

**24.** At the end, we may note the submission of the petitioner that the entire action was taken against the original writ petitioner because of the fact that he had raised the issue of certain missing records. We are not at all in agreement with this submission. The allegation of the petitioner is that in the Court to which the original writ petitioner was posted, there were lot of records which were illegally destroyed, taken way or not entered properly in the Register and since the petitioner had raised these issues, all the officers had ganged up against the original writ petitioner. We find no merit whatsoever in this argument. The

petitioner was posted to the Court of the Judicial Magistrate, 1<sup>st</sup> Class, Agartala on 26<sup>th</sup> March, 2007. No doubt he has raised certain questions that entries with regard to the records are not there prior to his discharge from service on 25.6.2007 but what we find is that after the Administrative Committee passed a resolution directing that he be discharged from service, he started putting up a new case that four to five thousand files were illegally lying in the Court room and had been destroyed. All these allegations relate to the period after the Administrative Committee had recommended discharge of the original writ petitioner. Therefore, though detailed arguments have been led in this behalf we are clearly of the view that the material which was not considered by the Administrative Committee cannot be taken into consideration by this Court and cannot be relied upon by the petitioner to allege *malafidies*. All these allegations are after the Administrative Committee had taken a decision and therefore, we are unable to agree with the petitioner that these were the foundation of discharge of the petitioner.

25. It has also been contended by Ms. Shampa Nath that the discharge of the petitioner was based on serious allegations made against him and he was never given a chance to improve himself. We are unable to accept this contention. From the materials which we have discussed hereinabove it is apparent that the petitioner was interacting with all his senior officers. He had

been given a number of opportunities but he seemed to be a headstrong person who did not want to listen any advice. Reliance placed by Ms. Nath on the judgment of the Apex Court in *Dr. Mrs. Sumati P Shere v. Union of India and others, AIR 1989 SC 1431* is totally misplaced. That was not a case of probation but a case of an adhoc employee. Even otherwise, the records of this case indicate that the senior officials had been talking to Mr. Gangopadhyay, the original writ petitioner but he had not only not listened to them but had in fact filed complaints against some of the senior officials.

26. It is urged by Ms. Nath that it was the right of the original writ petitioner to file criminal complaints. As indicated by us above, even in the complaint filed with the police there is no specific allegation against any judicial officer and it is obvious that the complaint had been filed only with a view to harass them. This sort of conduct is not expected of a junior judicial officer. We are clearly of the view that if any judicial officer has any grievance against another judicial officer, whether senior or junior, first of all he must approach the District Judge of the District concerned and if his grievance is not redressed, then he should approach the Registrar General of the High Court, then the portfolio Judge, then the Chief Justice and thereafter if his grievance is not redressed, he may take appropriate action. We are clearly of the view that it would be a sad day for the judiciary if scurrilous allegations are

levelled by one judicial officer against the other, cases are filed in criminal courts and dirty linen is washed in public. The in-house procedure must be followed first and only if that achieves no proper results, should the aggrieved officer go public with regard to his allegations.

27. It has lastly been contended by Ms. Nath that the High Court could have only recommended the discharge of the services but in this case the High Court has ordered the discharge and, therefore, the order is bad in law. We see no merit in this petition. Under Article 235 of the Constitution, the decision of the High Court is binding on the State Government. It is the High Court which takes such a decision. In the present case, the High Court after taking a decision did not pass the order of discharge. Having decided that the original writ petitioner should be discharged from service the High Court did not itself pass the order of discharge but sent a communication to the State Government which treated that letter as a letter of recommendation and discharged the writ petitioner. Therefore, we reject this contention also.

In view of the above discussion, we find no merit in this petition which is, accordingly, dismissed.

JUDGE

CHIEF JUSTICE

*Sukhendu*