

Raj Singh Gehlot V. The Anti-Corruption Bureau

- ❖ **TOPIC :** J & K Prevention of Corruption Act | Mere Misuse of Position by Public Servant without dishonest Intent Not 'Abuse' U/S 5(1)(d) : HC
- ❖ **BENCH:** Justice Javed Iqbal Wani
- ❖ **FORUM:** Jammu & Kashmir and Ladakh High court
- ❖ **MAIN ISSUE**
 - Regarding mere misuse of position by a public servant
- ❖ **OBSERVATIONS**
 - The High Court of Jammu & Kashmir and Ladakh has held that mere misuse of position by a public servant, without dishonest intent, does not constitute abuse under Section 5(1)(d) of the J&K Prevention of Corruption Act. The court clarified that dishonest intent, aimed at securing a pecuniary advantage for oneself or others, is essential to attract the provision's mischief.
 - “.. The use of words by "corrupt or illegal means" or by "otherwise abusing his position as public servant appearing in the Section (Supra) suggests dishonest elements on the part of the public servant himself or while obtaining a valuable thing or pecuniary advantage for a third person... the court explained while adding, “.. words “otherwise abusing his position as public servant also suggests that it does not confine merely to misuse of his position as a public servant, but such misuse has to be with a dishonest mind.
 - The abuse of position by a public servant, thus, in order to come within the mischief of Section 5(1)(d) must necessarily be dishonest for obtaining a valuable thing or pecuniary advantage for himself or for any other person”
 - Justice Javed Iqbal Wani made these observations as the court quashed an FIR filed by the Anti-Corruption Bureau (ACB) against one Raj Singh Gehlot, a chartered accountant and promoter of Ambience Towers Private Limited (ATPL), over allegations of corruption in securing a ₹300 crore loan for his company.
 - The controversy arose from a term loan of ₹258 crore sanctioned to ATPL by J&K Bank in 2015, later increased to ₹300 crore. The ACB alleged that the loan was sanctioned based on unregistered lease deeds, violating bank norms, and causing undue pecuniary benefit to ATPL. It further

- claimed that the bank's failure to obtain registered lease agreements before disbursement of the loan, coupled with discrepancies in lease terms, reduced the loan's eligibility to ₹195.89 crore.
- The petitioner argued that the loan, sanctioned for a shopping-cum-office complex in Rohini, Delhi, followed all regulatory norms and that no financial loss was caused to J&K Bank. He further argued that the forensic audit commissioned by the bank supported this claim, finding no evidence of fund diversion or fraudulent practices. Despite this, the ACB registered an FIR alleging criminal conspiracy and abuse of power which was being assailed by the petitioner through the instant petition.
- In order to address the critical question of whether the allegations in the FIR disclosed any offense under the relevant provisions of law the court made extensive observations on the scope of abuse under Section 5(1)(d) and the ingredients required to establish criminal conspiracy under Section 120-B of the RPC.
- The court emphasized that for a public servant's actions to fall under the mischief of Section 5(1)(d), there must be a dishonest element aimed at securing a valuable thing or pecuniary advantage and reasoned that dishonest intention can be inferred from the facts and circumstances of each case, but mere procedural lapses or deviations, absent evidence of dishonesty, cannot attract criminal liability.
- “.. perusal of the impugned FIR inasmuch as the incriminating material collected by the investigating agency during the course of investigation so far manifestly tend to show that the offences alleged to have been committed by the petitioner herein are not made out on a plain reading, in that, it is evident that the allegations levelled in the complaint instead seemingly are constituting at the most a procedural lapse committed by the bank officers/officials in discharge of their duties”, the court said.
- Justice Wani clarified that actions reflecting business judgment or administrative decisions, even if flawed, could not be equated with abuse unless accompanied by a dishonest motive.
- Addressing the allegations of conspiracy under Section 120-B RPC, the court reiterated that an agreement to commit an illegal act or to achieve a lawful object through illegal means is essential.
- Merely leveling allegations without specifics regarding the who, what, and how of the conspiracy is insufficient, the court said and added

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that conspiracy must be supported by tangible evidence, not assumptions or conjectures.

- Referring to the principles laid down in State of Haryana v. Bhajan Lal and subsequent judgments to highlight the limited scope for interference in criminal proceedings the court emphasized that courts must carefully examine whether the allegations disclose a cognizable offense and whether the proceedings are justified or malicious.
- Based on these considerations the court deemed it proper to exercise its inherent power and hence quashed the FIR in so far as the petitioner was concerned.

Chandra Prakash v. Rajasthan Financial Corporation

- ❖ **TOPIC :** Employee Entitled To Annual Grade Increment, Arrears of Last Drawn Salary During Suspension Period : Rajasthan High court
- ❖ **BENCH :** Justice Sudesh Bansal
- ❖ **FORUM:** Rajasthan High Court
- ❖ **MAIN ISSUE**
 - Regarding whether the employee is entitled or not to the payment of annual grade increments
- ❖ **OBSERVATIONS**
 - A single judge bench of the Rajasthan High Court comprising Justice Sudesh Bansal held that the employee is entitled to the payment of annual grade increments as well as arrears of last drawn salary during the suspension period.
 - The petitioner was holding the post of Stenographer Grade-I in the Rajasthan Financial Corporation (RFC).
 - He was arrested and criminal prosecuted in a criminal case registered by the SOG, Jaipur for offences under Sections 420, 406, 120-B IPC and Section 10/24 of the Immigration Act, 1983 and Section 12-B of the Indian Passport Act, 1967. Due to which the petitioner was placed under suspension by RFC w.e.f. 22.08.2011. But neither any charge-sheet was issued to the petitioner nor any departmental inquiry was proceeded against the petitioner by the RFC.
 - Later on, petitioner was acquitted in criminal proceedings vide judgment dated 12.03.2015 passed by the Court of Additional Chief Judicial Magistrate, Metropolitan Magistrate, Jaipur Metropolitan. Hence, the suspension of petitioner was revoked by the RFC vide order dated 15.06.2015.

- As per the order of revocation of suspension, petitioner was held entitled for the last salary drawn by him for the suspension period.
- But later on RFC issued a separate order dated 28.08.2015 denying the payment of annual grade increments as well as arrears of last drawn salary during suspension period to the petitioner.
- Aggrieved by the same, the petitioner filed the writ petition.
- It was contended by the petitioner that his annual grade increments and arrears of last drawn salary were wrongfully denied by the respondents even when the petitioner was acquitted in the criminal case by the Additional Chief Judicial Magistrate. It was further contended that earlier similarly placed employee were granted the entire monetary benefits and difference of pay during the period of suspension.
- On the other hand it was contended by the respondent that since the criminal case was not related to the RFC therefore, no charge-sheet was issued by the RFC to the petitioner nor any departmental inquiry was initiated. Further it was contended that the petitioner was not entitled for payment of annual grade increments as well as arrears of last drawn salary during suspension period.
- It was observed by the court that as per the order of revocation of suspension dated 15.06.2015, petitioner has been held entitled for the last salary drawn during the suspension period but the other monetary benefits like grant of annual grade increments have been withheld. It was observed that the petitioner has retired from service after attaining the age of superannuation and drawing pension.
- The case of Rajendra Singh Gehlot Vs. Rajasthan Financial Corporation was relied upon by the court wherein the Coordinate Bench of the Rajasthan High Court held that the petitioner was entitled to the entire monetary benefits and difference of pay during the period of suspension. Further the order has been affirmed by the Division Bench in D.B. Special Appeal Writ No. 626/2018 vide order dated 16.07.2018.
- The case of Prem Shankar Verma Vs. Rajasthan Finance Corporation was also relied upon by the court wherein the Rajasthan High Court granted the due financial benefits to the petitioner during the suspension period.
- It was found by the court that the provision of Rule 37-A of the Rajasthan Service Rules and Rajasthan Financial Corporation (Staff Regulations), 1958 deals with the issue of suspension but does not

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suggest withholding of annual grade increments of the employee during his suspension period.

- It was held by the court that the order issued by the RFC, withholding of the annual grade increments of the petitioner during suspension period, was not supported by any rule or regulations of RFC. Therefore the order dated 28.08.2015 was quashed by the court.
- It was directed by the court to respondent, to pay the arrears of last drawn salary to the petitioner during suspension period from 22.08.2011 to 15.06.2015, for which the petitioner was held entitled under the revocation of suspension order dated 15.06.2015, within a period of six weeks along with interest @ 6% per annum.
- It was further directed by the court that the petitioner shall be given notional benefits of annual grade increments during the period of suspension i.e. from 22.08.2011 to 15.06.2015 but his pension shall be revised accordingly with payment of actual benefits.
- With the aforesaid observations, the writ petition was partly allowed.

Arunchalam P. v. Director General CISF

- ❖ **TOPIC** : Doctrine of Equality Applies to Punishments Across Different Forces Under same Administrative Framework : Delhi High Court
- ❖ **BENCH** : Justices Navin Chawla and Shalinder Kaur
- ❖ **FORUM**: Delhi High Court
- ❖ **MAIN ISSUE**
 - Regarding the removal from service of two CISF constables
- ❖ **OBSERVATIONS**
 - A Division Bench of Justices Navin Chawla and Shalinder Kaur set aside the removal from service of two CISF constables. The court found their punishment to be disproportionate compared to an ITBP officer who was involved in the same incident. It held that the doctrine of equality applies to punishments across different forces under the Ministry of Home Affairs. It clarified that forces operating under the same administrative framework must receive similar treatment.
 - Vikesh Kumar Singh and Arunchalam P. were CISF constables working at the Indian High Commission in Dhaka. While Republic Day celebrations were on, a woman got unauthorized entry into the Chancery. It was alleged that the constables failed to report this breach to their seniors. After an inquiry by the High Commission

in Dhaka, they were sent back to India but no action was recommended against them.

- Despite this, the CISF started a disciplinary inquiry under Rule 36 of the CISF Rules, 2001, and accused the two of misconduct and negligence. The inquiry recommended their removal from service. However, the constables argued that an ITBP officer Mahesh Makhwana had a bigger role in the incident, but was only given a "severe reprimand." They filed a writ petition, arguing that this constituted discriminatory treatment.
- Firstly, the court noted that both CISF and ITBP staff were involved in the same incident. ITBP officer Mahesh Makhwana, who had the main role, was let off with a reprimand while the petitioners lost their jobs. It held that this constituted unequal treatment, as lesser offences cannot receive more stringent punishment. The court also held that the punishment did not match the seriousness of the constables' actions.
- Citing *Rajendra Yadav v. State of Madhya Pradesh* ((2013) 3 SCC 73), the court held that a disciplinary authority cannot impose disproportionate punishment. It explained that the doctrine of equality also applies to those who are found guilty.
- Further, the court rejected the respondents' argument that ITBP and CISF follow different rules and thus cannot be compared. It noted that both forces operate under the Ministry of Home Affairs and are governed by similar regulations.
- It held that the rules of parity dictate that forces under the same administrative framework must be given similar treatment.
- Lastly, the court questioned whether it was appropriate for CISF to conduct its own inquiry and impose penalties, when the High Commission (being directly involved in the matter) did not recommend any action. It clarified that the purpose of the High Commission inquiry was only to find out if the petitioners should be repatriated.
- It held that while CISF could conduct its own inquiry, the punishment could not be disproportionate. Thus, the court ordered the petitioners' reinstatement and allowed the writ petition. However, it denied any back wages or benefits.

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Dr. Nirmal Kanti Chakraborti vs. X & Ors.

- ❖ **TOPIC** : Calcutta High Court Grants Relief To NUJS VC, Upholds Dismissal Of Sexual Harassment complaint
- ❖ **BENCH** : Justices Harish Tandon and Prasenjit Biswas
- ❖ **FORUM**: Calcutta High Court
- ❖ **MAIN ISSUE**
 - Regarding a case of sexual harassment filed by a faculty member
- ❖ **OBSERVATIONS**
 - The Calcutta High Court has granted relief to Prof. (Dr.) Nirmal Kanti Chakraborti, the Vice-Chancellor of the National University of Juridical Sciences (NUJS), Kolkata, in a case of sexual harassment filed by a faculty member.
 - A division bench of Justices Harish Tandon and Prasenjit Biswas found no credible evidence to support the claims and upheld the Local Complaint Committee's (LCC) decision to dismiss the complaint, Citing the time limitations outlined in the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. It said: "The plea taken by the respondent would have been accepted provided the circumstances contemplated under Section 3 of the POSH Act is related to or connected with the sexual harassment defined under Section 2 (n) of the said Act.
 - As we do not find those circumstances relatable to the sexual harassment but unconnected with it for the reason that such decision were taken by an executive council collectively and not by the appellant alone; even if the appellant being one of the constituent of the executive council but the decisions are taken by the majority and looking upon the constitution of the executive council consisting of notable academicians and the jurists including the judges of the Supreme Court and the High Court, It is improbable that the appellant would exert his position and would manipulate the decision taken by the executive council."
 - "Since the last incident of the sexual harassment is alleged in the complaint to have taken place in the Month of April, 2023 and admittedly the complaint was filed on 26th December, 2023 much beyond the normal period of limitation or for argument sake if the period is extended. Therefore there is no infirmity in the decision of the LCC in dismissing the said complaint.
 - The Single Bench has committed error in setting aside the order of the LCC without advertent to the

- proposition of law as discussed above," it added.
- The complaint was filed on December 26, 2023, by a faculty member, who accused Prof. Chakrabarti of making inappropriate advances between 2019 and April 2023, allegedly linking professional benefits to personal interactions. The complaint was filed only after the enquiry was initiated by the Executive Council into her on December 21, 2023.
 - Under the POSH Act, complaints must be filed within three months of the last alleged incident, with a possible three-month extension in exceptional cases. The complainant, however, failed to justify the substantial delay in bringing forward the case.
 - The court highlighted that the sexual harassment complaint was filed much later than the statutory deadline. The delay, coupled with the absence of credible evidence, led the LCC to dismiss the case.
 - Further, it was stated that the complainant's own communications with the university's Chancellor did not mention any claims of sexual harassment, casting doubt on the veracity of the allegations. The complainant also failed to present convincing evidence to substantiate the claims.
 - It was argued that prior to the harassment allegations, the complainant had faced administrative scrutiny for professional lapses, including failure to complete a university project and not submitting necessary financial documentation.
 - Additionally, it was argued that the complainant had undisclosed business ties, being a partner in Effulgent Educators LLP, which raised concerns over a potential conflict of interest when managing a university course.
 - The court pointed out that key decisions, like withholding promotions, were made by the university's Executive Council—a panel of senior academics and jurists—not by Prof. Chakrabarti acted alone.
 - Accordingly, the order of the single judge was set aside and the order of the LCC dismissing the complaint was restored.

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Tanusree Das alias Tanushree Das Vs The State of West Bengal and another

- ❖ **TOPIC :** Calcutta High Court Quashes Cruelty Case Filed by wife Against Brother – In – Law After 18 Years of Marriage
- ❖ **BENCH :** Justice Shampa (Dutt) Paul
- ❖ **FORUM:** Calcutta High Court
- ❖ **MAIN ISSUE**
 - Regarding a case against a man accused by his sister-in-law of cruelty.
- ❖ **OBSERVATIONS**
 - The Calcutta High Court has quashed a case against a man accused by his sister-in-law of cruelty. Justice Shampa (Dutt) Paul noted that the allegations in the FIR were vague and did not directly point at the petitioner. She said:
 - "As seen from the allegations as made in the written complaint by the opposite party no. 2, it appears that there is no specific allegation against the present petitioner, who is the married sister-in-law (nanad) of the defacto complainant. The allegations are general in nature and the petitioner herein has been named only in the cause title of the petition under Section 156(3) of Cr. P.C. There does not appear to be any specific allegations against her in the contents of the said application under Section 156(3) Cr. P.C."
 - "The materials in the case diary also show that the allegations are general in nature and the written complaint in the case has been filed after almost 18 years of marriage and permitting the case to be proved against the petitioner herein, will clearly be an abuse of the process of law," she added.
 - The revisional application was filed to quash the impugned proceedings under Sections 498A/323/325/34 of the Indian Penal Code.
 - The petitioner submitted that he is an Assistant Teacher in a Government School and the de facto complaint has been married to the petitioner's brother since 2006.
 - It was stated that the de facto complainant is a permanent resident of Krishnanagar, Nadia and the petitioner is a permanent resident of Chakdaha, Nadia being married at Chakdaha. The distance between the two places is about 50 kms. The court noted that as seen from the allegations made in the written complaint by the opposite party no. 2, it appears that there is no specific allegation against the present petitioner, who is the married sister-in-law (nanad) of the de facto complainant.

- The allegations were general in nature and the petitioner had been named only in the cause title of the petition under Section 156(3) of Cr. P.C. There do not appear to be any specific allegations against her in the contents of the application under Section 156(3) Cr. P.C.
- It was held that the materials in the case diary also showed that the allegations are general in nature and the written complaint in the case has been filed after almost 18 years of marriage and permitting the case to be proved against the petitioner herein, will clearly be an abuse of the process of law.
- Accordingly, the plea was allowed and the proceedings were quashed.

X v. Y

- ❖ **TOPIC :** Delhi HC Directs Family Courts To complete Witness Cross Examinations Expeditiously without Embarrassment To Parties
- ❖ **BENCH :** Justice Rekha Palli and Justice Saurabh Banerjee
- ❖ **FORUM:** Delhi High Court
- ❖ **MAIN ISSUE**
 - Regarding cross-examinations of witnesses
- ❖ **OBSERVATIONS**
 - The Delhi High Court has recently directed all the Family Courts in the national capital to ensure that the cross-examinations of witnesses are completed as expeditiously as possible, without causing any undue harassment or embarrassment to the parties.
 - A division bench comprising Justice Rekha Palli and Justice Saurabh Banerjee observed that the Family Courts should ensure that the counsels for the parties are not permitted to ask irrelevant questions during cross-examination going on for days at a time.
 - "The nature of disputes before the Family Courts are generally pertaining to either seeking divorce on the grounds of cruelty, desertion, etc., Or seeking custody of the minor children and it is therefore necessary that disputes raised in these petitions are decided expeditiously as envisaged under the Act," the Court said "...we also expect co-operation in this regard from all the counsel(s) appearing before the learned Family Courts as unnecessary dragging of cross-examination is against the interest of both sides and the very spirit of the Family Courts," it added.
 - The bench was dealing with an appeal filed by a wife challenging a family court order rejecting her

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request for deciding her application for maintenance before proceeding with the merits of the divorce. petition.

- Her right to examine was also rejected on account of her inability to appear for cross examination.
- The Court noted that the Family Court, in its anxiety to complete the trial in an old matter, overlooked the fact that in family matters, a little more sensitivity was required to be shown. “In our considered view, in the present factual matrix when it was not a case where the appellant was not appearing for cross-examination, the learned Family Court ought not to have closed the right of the appellant to examine herself in such a hasty manner,” the Court said.

- It added that the Family Court overlooked the fact that the appellant wife was working in a private concern and therefore could not be expected to get leave as and when she applied.
- “In light of the aforesaid, we are constrained to allow the appeal partly by setting aside the impugned order to the extent that it closes the right of the appellant to examine herself by directing that the final arguments in the petition will not be heard till the cross-examination of the appellant is completed, for which purpose the learned Family Court, will be free to fix a date, with the consent of the parties, in January itself,” the Court said.



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