

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

% *Judgment Reserved On: 7th January, 2011*
Judgment Delivered On: 20th January, 2011

+ **W.P.(C) 11597/2009**

GULSHAN SATIJA Petitioner
Through: Mr.M.K.Bhardwaj, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.C.S.Chauhan and
Mr.Prasenjeet Mohapatra,
Advocates for Ms.Rajdipa Behura,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. In the year 2007 the petitioner was posted as Sub-Inspector in Railway Protection Force (hereinafter referred to as "RPF").

2. On 09.05.2007 a lady named Hina @ Sabiha (hereinafter referred to as the 'Complainant') made a complaint against the petitioner to the Station House Officer, PS Bhajanpura Delhi, inter-alia, stating that she was married to one Arif Khan and three sons were born to her out of the said wedlock. Her relations with her husband turned sour as he used to beat her after getting drunk. In March 1999 she came into contact with the petitioner who was her neighbour. Taking advantage of her

disturbed condition, the petitioner lured her into having a relationship with him and induced her to divorce her husband on the assurance that he would marry her and also adopt her children. The petitioner also used to pressurize and extend threats to her husband to divorce her, due to which her husband divorced her. Thereafter the petitioner started residing with her and her children. On several occasions the petitioner used to force her to have sexual intercourse with him against her will and consent. On 21.12.1999 she and the petitioner got married in a temple by exchanging garlands in the presence of her relatives and friends of the petitioner. After their marriage, she and the petitioner started residing as husband and wife and that the petitioner used to treat her children as his own children. On numerous occasions she and the petitioner had gone for holiday to various hill stations. After sometime she came to know that the petitioner was having illicit relations with number of women. When she objected to the same, the petitioner ill-treated and manhandled her. With passage of time the petitioner regularly used to harass her. In the first week of March 2007 she came to know that the petitioner had married one Simran and that the said lady had filed a divorce petition against the petitioner. When she confronted the petitioner with the said fact he got annoyed and beat her mercilessly. Between the period from March 2007 to middle of April 2007 the petitioner raped her on numerous occasions. During the said period, the petitioner also started demanding a sum of ₹10,00,000/- from her. When she expressed her inability to give the said amount, the petitioner beat her and had unnatural sexual intercourse with her.

3. Based on the aforesaid complaint, on 12.06.2007, FIR No.251/2007 under Sections 376/420 IPC were registered against the petitioner.

4. Fearing arrest, the petitioner filed an application before the Court of Additional Sessions Judge for grant of anticipatory bail. Vide order dated 29.06.2007 the Additional Sessions Judge granted anticipatory bail to the petitioner. Being relevant, the order granting anticipatory bail needs to be noted. It reads as under:-

“Heard. This is a 2nd application for bail by applicant/accused Gulshan Satija. Earlier was dismissed by this court on 27.6.07. It is submitted by Ld. APP as well as counsel appearing on behalf of complainant that there is no fresh ground for the release of applicant on bail.

On the other hand, as per Ld. counsel for applicant there was no bar for the court to entertain 2nd application. Ld. counsel referred a case titled as Sulakhan Singhayar Vs Smt. Kuldeep Kaur and Ors. 1996 JCC 107 on this point.

Ld. counsel pointed out that the complainant had given a statement before ACP concerned on 21.5.07 and same was not within his knowledge on said date i.e. 27.6.07. Now he has got a copy of said statement after applying under The Right to Information Act. Ld. counsel took me through said statement. The complainant has admitted to have married the applicant. Both of them resided together with for about 8 years as husband and wife. The complainant is stated to be a lady aged more than 30 years, having three children already from her earlier husband. In such a case, as per Ld. counsel, the applicant could not have been booked for an offence punishable u/s 376 IPC.

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In the facts discussed above, even if similar application was dismissed on 27.6.07, it is directed that in the event of his arrest in this case, the

applicant be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of IO/SHO of PS concerned." (*Emphasis Supplied*)

5. Relevant would it be to state that the petitioner obtained bail with reference to the statement of Hina @ Sabiha that she and the petitioner had got married and lived as husband and wife for about 8 years i.e. prima facie no case could be made out for the offence punishable under Section 376 IPC.

6. On 16.05.2008, the complainant made a complaint against the petitioner to the Director General, RPF inter-alia alleging that the petitioner is having illicit relations with number of women; that while residing with her as her husband the petitioner married another woman; that she had got registered afore-noted FIR No.251/2007 against the petitioner; that a departmental inquiry was earlier instituted against the petitioner for having illicit relations with number of women and committing rape but the same was dropped by the Inquiry Officer and that the petitioner is extending threats to her that he will eliminate her and her children in case she takes any action against him.

7. In view of the aforesaid complaint made by the complainant, Mr.Mantek Singh, Assistant Security Commissioner/NDLS, RPF was directed to conduct a preliminary enquiry into the matter. During the course of preliminary enquiry he recorded the statement of the petitioner who denied the allegations leveled by the complainant against him; the complainant reiterated her complaint. During the preliminary enquiry the complainant produced some photographs to show that she had intimate

relations with the petitioner and that she had accompanied him to various hill stations on number of occasions.

8. Vide report dated 06.07.2007 the Preliminary Inquiry Officer opined that the complainant has not established that she was the legally wedded wife of the petitioner but held that she has been successful in establishing that the petitioner was having illicit relations with her and some other women.

9. In view of the afore-noted preliminary enquiry report dated 09.07.2007, the Assistant Senior Divisional Security Commissioner, RPF issued a charge sheet to the petitioner under Rule 153 of Railway Protection Rules, 1987 as under:-

“1. S.I./RPF/NDLS Shri Gulshan Satija (under suspension) is hereby charged for serious act of misconduct and indiscipline in that he developed illicit relations with Ms.Sabiha @ Hina and thereby acted in a manner prejudicial to discipline and brought discredit to the reputation of the Force and violated Rule No.146.4 of RPF Rules 1987.

2. S.I./RPF/NDLS Shri Gulshan Satija (under suspension) during suspension he was directed to record his attendance at RPF Post, New Delhi but he failed to do so and remained absent from 15-6-2007 till date and thereby violated Rule 143.2 of RPF Rule 1987.”

10. An Inquiry Officer was appointed and appearing before him on 27.07.2007 the complainant reiterated the contents of her complaint against the petitioner to the police. Additionally she stated that after getting bail from the court in FIR No.251/2007 the petitioner was repeatedly threatening her to withdraw case(s) instituted by her against him.

11. The complainant was cross examined at length and being relevant to deal with the submissions urged it is relevant to

note following portion of the cross-examination of the complainant:-

“Question 11: You have stated in your deposition that between the period from the year 1999 to December 2006 we had visited number of hill stations. Do you have any evidence to establish the same?

Answer: I have number of photographs regarding our visits to the hill stations, which photographs I had produced during enquiry.....” (Translated Version)

12. It is further relevant to note following portion of examination of the complainant by the Inquiry Officer:-

“Question 1: During inquiry conducted by Mr.Mantek Singh/ASC/RPF you had produced photostat copies of 18 photographs. Is it correct that said photographs are not doctored?

Answer: It is correct. I have original of said photographs along with negatives.” (Translated Version)

13. Mr.Mantek Singh deposed that the preliminary enquiry report dated 06.07.2007 was prepared by him. It is relevant to note the following portion of the cross-examination of the witness by the petitioner:-

“Question 9: You have stated in your conclusion that documents produced during enquiry establish that I had illicit relations with a girl named Hina. What are those documents?

Answer: I have come to the said conclusion on the basis of photographs, details whereof are as under:-

I. Hina is sitting on a horse and Gulshan Satija is standing beside her with their heads touching each other. The hand of Hina is on the neck of Gulshan and the right hand of Gulshan crosses the chest of Hina and reaches the face of Hina. The photograph is produced before you.

2. Hina and Gulshan Satija are sitting on a boat in a lake. They are sitting very close to each other and hand of Gulshan Satija crosses the chest of Hina

3. Gulshan Satija and Hina are standing at some hill station. Hina is embracing Gulshan Satija and the hand of Gulshan Satija is on the right shoulder of Hina.

4. Gulshan Satija and Hina are sitting on the stairs of some hill station. Hina is sitting on the lap of Gulshan Satija and both hands of Gulshan Satija are on the neck of Hina.

5. Hina and Gulshan Satija are enjoying snow at some hill station. Hina is sitting on the lap of Gulshan and is held tightly by him.

6. Gulshan Satija and Hina are sitting very close to each other in a boat in a lake and right hand of Gulshan Satija is on the right shoulder of Gulshan Satija.

7. Hina is sitting in the lap of Gulshan Satija in a boat in a lake and is held tightly by him.

8. Hina and Satija are enjoying snowy slopes of some hill station.

In my opinion these photographs are sufficient to prove illicit relations, this is my thinking, original photographs are given to Inquiry Officer.

Question: Please tell whether you have seen negatives of said photographs and whether you have checked the genuineness of said photographs from a photograph expert?

Answer: I have seen negatives. They are with Hina and after seeing the photographs I do not think they are prepared after tampering inasmuch as Hina has about 300 more photographs with her. Tampering could be done with one or two photographs and not with so many photographs.

Question: Can you produce the negatives which you have seen during the enquiry?

Answer: The said negatives are with Hina. This question should be asked from Hina. Only she can produce them.” (Emphasis Supplied) (Translated Version)

14. On 04.05.2008 the complainant was re-examined by the Inquiry Officer, for reasons unknown and she stated as under:-

“I depose that no importance be given to the statement dated 27/07/07 given by me against Gulshan Satija. I do not want any disciplinary action against him. I want justice only from the court. I have heard and read my statement. After accepting the same as correct I am affixing my signatures.”

15. In defence, the petitioner examined three witnesses. We eschew reference to the evidence of the defence witnesses for the reason the same has no bearing on the controversy involved in the present case.

16. Vide report dated 20.05.2008 the Inquiry Officer opined that the department has only been able to prove the charge No.2 framed against the petitioner. The relevant portion of the report dated 20.05.2008 reads as under:-

“Discussion on the witnesses of the prosecution

Complainant Hina had stated that she got married to Arif Khan in 1993 and said marriage ended by way of divorce on 12 June 1999. Gulshan Satija had married me in Gauri Shankar temple and that there is no photo or witness to the said fact. Additionally, Hina had shown some photographs wherein she is accompanying Gulshan Satija in various hill stations. Thereafter she has stated that Gulshan Satija was first married to a girl named Simran and that she had got registered FIR No.251/07 dated 12/06/07 under Sections 376, 420 IPC PS Bhajanpuri after Gulshan Satija withdrew from her company. Smt Hina stated that Gulshan Satija visited her village on the occasion of marriage of her sister and that a photograph was also taken in said regard, which photograph was received by Inquiry Officer

during departmental enquiry. The genuineness of said photograph was got checked by Anil Digital Studio. **Respected Sir Inquiry Officer is unable to understand that as to why did the complainant withdrew from her previous statements when she had so many proofs in her favour. This is a mystery and when the misdeeds committed by charged officer are forgiven because when complainant does not consider charged officer guilty and retracts from her previous statements then the complaint of the complainant does not remain important. Had the complainant not retracted from her statements the charge No.1 framed against the petitioner would have been well established.**

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Conclusion:-

Charge No.1:- In view of the complainant withdrawing from her complaint charge framed against charged officer Shri Gulshan Satija SI/RPF/NDLS under Rule 146.4 for Discreditable Conduct has not been established.

Charge No.2:- Charge framed against charged officer Shri Gulshan Satija under Rule No.143.2 has been well established."
(Translated Version) (Emphasis Supplied)

17. On 23.06.2008 the Senior Divisional Security Commissioner, RPF issued a dissent note where he tentatively disagreed with the findings of the Inquiry Officer with respect to charge No.1 framed against the petitioner, relevant portion of which note reads as under:-

"I have gone through the findings submitted by the enquiry officer and evidence on record in the DAR case file minutely and after due application of mind and as per provisions of Rule 154.5 of RPF Rules 1987, I do not agree with the findings of the Enquiry Officer to the extent of disproving charge No.1. The enquiry officer has no proved charge no.1 based on

the statement of Ms.Hina dated 4.5.2008 wherein she has stated that importance may not be given to her statement dated 27.7.2008 and that she don't want any departmental action against the SI but want justice from the court. She has nowhere denied the intimate relations with the charged SI. The charge No.1 is that the SI developed illicit relations with Ms.Sabiha @ Hina and thereby acted in a manner prejudicial to the discipline and brought discredit to the reputation of the Force which has been proved from the photographs placed on record which is further corroborated from the statements of PWDs. i.e. Shri Mantek Singh ASC/RPF/RPF, Shri R.S. Singh IPF and Ms.Hina. The complainant Ms.Hina has not denied the facts deposed in her statement dated 27.7.2007. The Enquiry Officer has erred in concluding that the complainant has retracted from her statement dated 27.7.2007.

As discussed above charge No.1 is also proved against the charged SI as the evidence against the SI is sufficient on the record.....”

18. In response to the tentative note of disagreement dated 23.06.2008 the petitioner submitted his representation to the Senior Divisional Security Commissioner, RPF.

19. On 25.07.2008 the Divisional Security Commissioner, RPF forwarded the case of the petitioner to the Additional Chief Security Commissioner, RPF for taking the necessary decision.

20. After considering the Inquiry Report dated 20.05.2008, the tentative note of disagreement dated 23.06.2008 and the representation of the petitioner in respect of the tentative note of disagreement as also the part of the enquiry report where he was indicted and additionally considering the evidence led during the enquiry, vide order dated 27.10.2008 the Additional Chief Security Commissioner held the petitioner guilty of charge No.1 framed against him and exonerated him of charge No.2 and inflicted the punishment of reduction of pay of the

petitioner to the minimum of the scale of pay prescribed for the post of Sub-Inspector for a period of two years. The relevant portion of the order dated 27.10.2008 passed by the Disciplinary Authority reads as under:-

“Regarding the statement of Ms.Sabiha on 04-05-08, the EO has vested undue importance as the charge was focused on bringing discredit to the image of the Force and not on the opinion of Ms.Sabiha as to whether departmental action is desired or not desired by her. The same person has submitted a contrary petition to the DG/RPF claiming that the department was conniving with the partycharged and had dropped the charges against SIPF/Gulshan Satija after her statement on 04-05-08.

The plea of partycharged that the photographs could have been doctored is not acceptable since he has not in anyway cast any grounds to indicate that the photographs were doctored. On the record I also find two documents issued by a studio that the photographs are not tampered. The Court order on the bail application of the partycharged also gives credence to the claim of long relationship between the partycharged and Ms.Sabiha.....I find that the actions of partycharged have been contrary to the image of discipline in the Force and have brought discredit to the reputation of the Force....” (Emphasis Supplied)

21. Aggrieved by the order dated 27.10.2008 passed by the Disciplinary Authority, the petitioner filed an appeal under Rule 212 of Railway Protection Rules, 1987 before the Appellate Authority, which appeal was dismissed vide order dated 10.02.2009. The relevant portion of the order dated 10.02.2009 passed by the Appellate Authority reads as under:-

“I have gone through the appeal dated 14-11-2008 submitted by Sh.Gulshan Satija as well as the documents available on DAR file very carefully. My view of the points raised by the petitioner are as under:-

The main charge against the appellant is that he developed illicit relations with Ms.Sabiha @ Hina and thereby acted in a manner pre judicial to the discipline and brought discredit to the reputation of the force and violated Rule 146.4 of RPF Rules, 1987. During the inquiry Ms.Sabiha @ Hina did not deny intimate relations with the appellant i.e. Gulshan Satija. She has also not denied the facts deposed in her statement dated 27-7-2007. In fact in her statement dated 27-7-2007 MsSabiha @ Hina has clearly stated that departmental inquiry against Shri Gulshan Satija should be conducted.

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There is sufficient evidence on record that he developed illicit relation with Ms Sabiha @ Hina and thereby acted in a manner pre judicial to the discipline and brought discredit to the reputation of the force and violated Rule 146.4 of Rules, 1987 which has been proved from the photographs placed on record and corroborated from the statements of Sh.Mantek Singh ASC/RPF, Sh.R.S. Singh IPF and Ms Sabiha @ Hina....”

22. Aggrieved by the order dated 10.02.2009 passed by the Appellate Authority, the petitioner filed a revision petition under Rule 219 of Railway Protection Force Rules, 1987 before the Revisional Authority, which revision was dismissed vide order dated 02.07.2009. The relevant portion of the order dated 02.07.2009 passed by the Revisional Authority reads as under:-

“Having heard his pleadings and seen in the DE file, it is observed that the Disciplinary Authority and subsequently the Appellate Authority have recorded their findings giving cogent reasons for dissenting with the findings of the IO regarding charge I. There is sufficient evidence to reflect on the immoral activities of the charged officer and he cannot be absolved of the charge of moral turpitude on account of retraction of statement given in course of conduction of DE. In fact, the observation made by Addl. Sessions Judge in the criminal case and the

exhibits available on record leaves no doubt about flirtatious escapades of the CO..."

23. Aggrieved by the orders dated 27.10.2008, 10.02.2009 and 02.07.2009 passed by the Disciplinary, Appellate and Revisional Authorities respectively, the petitioner has filed the present petition under Articles 226 and 227 of Constitution of India.

24. In support of the present petition, the learned counsel for the petitioner advanced following two submissions:-

A That the main plank of the case of the department with respect to the charge No.1 framed against the petitioner was the statement dated 27.07.2007 of the complainant. The case of the department fell like a pack of cards when the complainant retracted from her statement dated 27.07.2007. The factum of retraction of the complainant from her previous statement was duly appreciated by Inquiry Officer, who discarded the statement dated 27.07.2007 of the complainant after her retraction from the said statement and exonerated the petitioner from charge No.1 framed against him. However, the authorities below did not attach due importance to the factum of retraction of the complainant from her previous statement and went on to rely upon the statement dated 27.07.2007 of the complainant notwithstanding the fact that the complainant had retracted from the said statement. In such circumstances, the authorities below completely erred in disagreeing with the findings of the Inquiry Officer with respect to the charge No.1 framed against the petitioner.

B That a perusal of the impugned orders passed by the authorities below goes to show that said authorities have returned a finding of guilt against the petitioner mainly on the

basis of the photographs produced by the complainant during the enquiry. Counsel argued that the authorities committed a grave error in lightly brushing aside the plea of the petitioner that the said photographs were doctored particularly when the petitioner was able to cast a serious doubt on the genuineness of the said photographs. Counsel argued that the failure of the complainant and Ms.Mantek Singh, the officer who conducted preliminary enquiry into the matter to produce negatives of the said photographs during enquiry casts serious doubt on the genuineness of the said photographs.

25. Before proceeding to deal with the submissions advanced by the learned counsel for the petitioner, we deem it useful to note the parameters of judicial review, applicability of rules of evidence and standard of proof required in case of disciplinary proceedings.

I While exercising power of judicial review under Article 226 of the Constitution the High Court does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural law, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority.

II Judicial review is not an appeal from the decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the delinquent officer receives fair treatment and not to ensure that the conclusion, which the authority reaches, is necessarily correct in the eyes of the court.

III Courts can interfere where the disciplinary authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the findings or conclusions reached by the disciplinary authority are based on no evidence or perverse or such which no prudent person would have ever reached.

IV Neither technical rules of evidence or procedure adopted by the civil courts nor rules of proof of fact contained in the Evidence Act apply to the disciplinary proceedings.

V The standard of proof which is required in the disciplinary proceedings is preponderance of probabilities and not proof beyond reasonable doubt.

26. In order to deal with the first submission advanced by the learned counsel for the petitioner, it is first necessary to determine whether the complainant retracted from her statement dated 27.07.2007.

27. The answer to the above question is an emphatic NO. In her statement dated 04.05.2008 the complainant merely stated that no importance be given to her statement dated 27.07.2007, that she does not want any departmental action against the petitioner and that she wants justice only from the court. The complainant has nowhere denied the correctness of the contents of her statement dated 27.07.2007. It is not for a witness to say whether importance be given to his testimony or not. The same is within the domain of the authority/court. We fail to understand as to how the Inquiry Officer came to the conclusion that on 04.05.2008 the complainant retracted from her previous statement dated 27.07.2007.

28. Having perused the record of the disciplinary proceedings, we express anguish at the manner in which the Inquiry Officer has conducted the enquiry. In her complaint made to Director General, RPF as also in her statement dated 27.07.2007 recorded during the enquiry, the complainant categorically stated that the petitioner is extending threats to her. The possibility that the complainant gave the statement dated 04.05.2008 on account of the fear or pressure of the petitioner cannot be ruled out. In such circumstances, the Inquiry Officer should not have accepted the statement dated 04.05.2008 of the complainant at its face value but should have prodded from the complainant the reasons for making the said statement. While conducting enquiry, the Inquiry Officer should not act as a silent spectator but should actively participate in the quest for finding the truth.

29. As regards the second submission advanced by the learned counsel for the petitioner, we note that in her statement dated 27.07.2007 the complainant stated that she has the negatives of the photographs submitted by her during the enquiry. The Inquiry Officer did not ask the complainant to produce the negatives of the said photographs. The petitioner could have also requested the Inquiry Officer to direct the complainant to produce the negatives but he did not do so. Thus there was no occasion for the complainant to produce the negatives of the said photographs during the enquiry. Mantek Singh, the officer who conducted preliminary enquiry into the matter, stated that the negatives of the said photographs are with the complainant and that he has seen them. There is no reason to disbelieve the aforesaid statement of Mantek Singh. Even otherwise, the complainant and Mr. Mantek Singh were cross-examined at length by the petitioner but nothing could

be elicited therefrom which could cast even an iota of doubt upon the genuineness of the said photographs. Furthermore, the order dated 27.10.2008 passed by the Disciplinary Authority records that two documents issued by a studio certifying that the said photographs were genuine are available on the record of the present case. In view of aforesaid circumstances, we find no merit in the submission of the learned counsel for the petitioner that the photographs produced by the complainant during the enquiry were doctored.

30. Having repelled the submissions advanced by the learned counsel for the petitioner, we proceed to determine whether the orders passed by the authorities below are legal and correct.

31. As already noted herein above, the standard of proof required in disciplinary proceedings is preponderance of probabilities. The complainant was cross-examined at length by the petitioner but nothing could be elicited therefrom which could cast a doubt on the statement of the complainant that she was having intimate relations with the petitioner. The photographs produced by the complainant during the enquiry, description whereof have been contained in the statement of Mr. Mantek Singh, noted in paragraph 29.06.2007 above, lends full credence to the statement of the complainant that she was having intimate relations with the petitioner. A perusal of the order dated 29.6.2007 passed by the Additional Sessions Judge granting anticipatory bail to the petitioner shows that the fulcrum of the defence of the petitioner before the criminal court was that he and the complainant were residing as husband and wife for a period of about 8 years and thus there

is no truth in the allegations of rape leveled by the complainant against the petitioner.

32. From the evidence on record it is apparent that the petitioner made the complainant to believe that they were living as husband and wife and the complainant who was troubled by her husband probably believed that the so-called ritual of exchanging garlands in a temple was accepted by law as resulting in a legally recognized matrimonial bond between the petitioner and the complainant and thereafter she submitted her body to the petitioner, who all throughout was aware that he was actually indulging in a promiscuous relationship; the petitioner took advantage of a woman in distress and the testimony of the complainant further establishes petitioners promiscuous relationship with other women. Being a member of an Armed Force such conduct is abhorable and has rightly invited the penalty.

33. We find no merit in the writ petition which is dismissed.

34. We refrain from imposing cost.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

JANUARY 20, 2011
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