

Yoginath D. Bagde

Vs

State of Maharashtra and Another

Civil Appeal No. 15479 of 1996

(S. Saghir Ahmad, K. Venkataswami JJ)

16.09.1999

JUDGMENT

SAGHIR AHMAD, J.: -

1. The appellant has approached this Court against the judgement and order dated 21-6-1996 passed by the Bombay High Court which had dismissed the writ petition by which appellant had challenged the order dated 8-11-1993(20-11-1993) dismissing him from service after the disciplinary proceedings in which it was found that the appellant was guilty of the charges framed against him.

2. The appellant was appointed as Civil Judge, Junior Division, on 18-12-1974 and was thereafter promoted as Civil Judge, Senior Division in August 1983. He was further promoted as Additional District and Sessions Judge in September 1987.

3. In June 1990, while the appellant was posted at Amravati, two Sessions Trials Nos. 28 of 1982 and 37 of 1987, in which one Deepak Trimbakrao Deshmukh, on whose complaint the appellant was ultimately dismissed from service, was involved as an accused. Both the cases related to a murder in which the appellant had refused long adjournments on the ground that the matters were old. In July 1990, the accused Deepak Trimbakrao Deshmukh filed a transfer petition before the Nagpur Bench of the Bombay High Court for the transfer of the case from the appellant's court to some other court on the ground that one Shri Patil, Advocate, who was opposed to Deepak Trimbakrao Deshmukh apprehended that he would not get justice from the appellant's Court. This was registered as transfer Petition No. 701 of 1990. On 10-18-1990, the accused Deepak Trimbakrao Deshmukh filed another transfer petition (No. 812 of 1990) on the allegation that his advocate (Shri Bapat) had assured him to his acquittal in the case, provided he would pay Rs. 20,000 to him as his fee. An interim order was passed in this case, by which the proceedings in the sessions trial were stayed. On 18-9-1990, however, Deepak Trimbakrao Deshmukh withdrew both the transfer petitions.

4. Thereafter, Deepak Trimbakrao Deshmukh made a complaint against the appellant to the High Court as a result of which the appellant was placed under suspension by order dated 22-4-1992 which was served upon the appellant on 27-4-1992. Thereafter, through letter dated 22-5-1992, a charge sheet along with the statement of imputations, list of witnesses and list of documents, proposed to be relied upon against the appellant, were issued to the appellant. The following two charges were mentioned in the charge sheet:

"1. That while you were working as IInd Additional Session Judge, Wardha, Sessions Trials Nos. 28 of 1982 and 37 of 1987 were pending before you in which Deepak Trimbakrao Deshmukh was an accused. You had a meeting with said accused at the

residence of Dr Naranje Rashtrabhasha Prachar Samiti Road, Wardha on 23-11-1990 when you assured him of acquittal on payment of Rs. 10,000 in each case and that you thereby indulged in corrupt practice amounting to gross misconduct.

2. That on 18-12-1990 at about 8.00 p.m. at the residence of Dr. Naranje, Rashtrabhasha Prachar Samiti Road, Wardha, you made a demand of Rs 10,000 from Shri Deepak Trimbakrao Deshmukh, resident of Wardha, Taluka Arvi, District Wardha, as consideration for his acquittal in Session Trail No.37 of 1987 under Section 302 etc. IPC and that you thereby indulged in corrupt practice amounting to gross misconduct".

5. The appellant filed his reply on 18-6-1992 in which the charges were denied and it was stated by the appellant that Deepak Trimbakrao Deshmukh had made a false complaint against him so that his cases may not be tried by the appellant. On a consideration of the reply submitted by the appellant, the disciplinary authority, not being satisfied by the reply, decided to hold a departmental enquiry against the appellant and, therefore, by its order dated 3-8-1992 appointed Mr. G. B. Asma, Joint District Judge, Akola, as the enquiry officer.

6. After completion of enquiry, the enquiry officer submitted his report dated 12-12-1992 to the disciplinary authority. It was held by the enquiry officer that the charges against the appellant were not established and, therefore, he recommended the reinstatement of the appellant. The Disciplinary Committee of the High Court considered the report of the enquiry officer and disagreeing with the findings of the enquiry officer held that the charges against the appellant were proved. The Disciplinary Committee, therefore, tentatively decided to impose the penalty of dismissal from service upon the appellant. Accordingly, the appellant was called upon by a notice to show cause why the proposed penalty be not imposed upon him. A copy of the reasons recorded by the Disciplinary Committee for not agreeing with the findings submitted by the enquiry officer as also a copy of the enquiry officer's report was sent to the appellant who filed his reply to the show- cause notice. This reply was considered by the disciplinary authority, namely, the High Court which decided to impose the major penalty of dismissal from service and accordingly recommended to the Government of Maharashtra that the appellant be dismissed from service. Acting upon this recommendations, the Government of Maharashtra, by order dated 8-11-1993 dismissed the appellant from service.

7. The order of dismissal was challenged by the appellant by means of a writ petition, filed under Article 226 of Constitution, which was opposed by the High Court on whose behalf Nilkanth Vishwanath Dabholkar, I/C, Additional Registrar, High Court (Legal), Appellate Side, filed an affidavit dated 7-6-1996 in opposition. The High Court, by its impugned judgement dated 12-6-1996, dismissed the writ petition and it is in these circumstances that the present appeal has been filed in this Court by special leave.

8. Learned counsel appearing on behalf of the appellant has raised several contentions including that there were no evidence in support of the charges that the appellant had demanded Rs. 10,000 in each of the two sessions trials pending in his Court from the accused, namely, Deepak Trimbakrao Deshmukh, for his acquittal and that the enquiry officer was justified in recording the finding that the charges were not established. It was also contended that the reasons on the basis of which the Disciplinary Committee of the High Court disagreed with the findings recorded by the enquiry officer are wholly erroneous and conjectural. It is contended that on the basis of the evidence on record, no person could reasonably have come to the conclusion that the payment of Rs.

10,000 in each of the two sessions trails to the appellant by Deepak Trimbakrao Deshmukh, was established. It is also contended that before recording its reasons for disagreeing with findings of the enquiry officer and issuing a show cause notice in which the punishment of dismissal was proposed, the appellant should have been given a opportunity of hearing and since this was not done, the principles of natural justice were violated with then result that the decision of the Disciplinary Committee of the High Court stood vitiated and on the basic of that decision, no recommendations could have been made to the State Government for dismissing the appellant from service nor could that State Government, acting on that recommendation, legally pass the order of dismissal. The learned counsel also contended that the decisions of the Disciplinary Committee of the High Court was wholly contrary to the provisions contained in Article 235 of the Constitution under which the control and supervision over the subordinate officers of the subordinate judiciary vests in the High Court. It is contended that through the decision to hold the disciplinary enquiry could have been taken by the Disciplinary Committee constituted by the High Court in pursuance of the resolution of the Full Court, the decision to impose the punishment of dismissal could not have been taken by that Committee as the jurisdiction in that regard vested in the High Court which means the Full Court comprising of all the sitting judges and they alone could have deliberated upon the matter and taken a decision whether or not the appellant was liable to be dismissed from service.

9. It is contended that since the enquiry report was considered only by the Disciplinary Committee which disagreed with the findings of the enquiry officer and came to its own conclusion that the charges against the appellant were established and, therefore, he was liable to be dismissed from service and since the decision of the Government was based on the recommendation of the Disciplinary Committee, the order of dismissal ultimately passed by the State Government on that recommendation cannot be sustained.

10. We will first deal with the jurisdiction of the Disciplinary Committee, constituted by the High Court, to consider the report of the enquiry officer and take a decision to impose the punishment of dismissal from service upon the appellant.

11. This question has been disposed of by the High Court, before which it was raised, in the following words:

"Equally there is no merit in the submission made by petitioner that the decision of the Disciplinary Committee to impose major penalty of dismissal from service upon the petitioner on the charges leveled against the petitioner being held proved was required to be rectified by Full Court, i.e., all the judges of this Court. The challenge of the petitioner on this ground is no longer res integra. By the judgement delivered on 23-6-1992 by the Division bench of this Court in Writ Petition No. 5847 of 1991 as also by the judgement delivered on 15-3-1996 by another Division bench of this Court in Writ Petition No. 649 of 1996 (R.W. Khan v. State of Maharashtra [WP No. 649 of 1996 decided on 15-3-1996]) similar challenge as made in the present petition has been negative. While examining the question whether the decision taken is that of the High Court or not in view of Article 235 of the Constitution of India, the Division bench found that there is in the field resolution dated 2-5-1981 passed by the Full Court which lay down the manner and regulated the procedure for administrative decisions on several subjects and matters enumerated therein. Based on upon this resolution of Full Court, the practice that evolved in this courts that from time to time a Disciplinary Committee is appointed by the Chief Justice which normally consists of Senior Judges and the decisions and recommendations made by

such disciplinary Committee are considered as decisions and recommendations of Full Court, i.e., all the Judges of this court.

12. The above extract shows that the High Court was of the opinion that if in a meeting of the Full Court a resolution was adopted authorizing the Chief Justice to constitute a Disciplinary Committee and the Committee was authorised to take a decision with regard to the punishment which would be inflicted upon a delinquent officer of the subordinate judiciary, the decision of that Committee would be treated to be a decision of the Full Court and, therefore, there was no need to circulate the findings of the Disciplinary Committee to all the Judges of the High Court or to place the whole matter before the Full Court.

13. We many consider the respective contentions on merits.

14. Article 235 of the Constitution provides as under:

"235 Control over subordinate courts-The control over district courts and courts subordinate thereto including the posting and promotion of and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this article shall be constructed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal, with him otherwise than in accordance with the conditions of his service prescribed under such law".

15. This article contemplates control of the High Court over the subordinate courts. Read with Articles 233 and 234, the word "control" used in Article 235 would indicate that although the appointing authority of the District Judge and Officers other than District Judges is the Governor of the State, the words "Control over District Courts and courts subordinate thereto" which are words of wide connotation, vest in the High Court other facets of service of those officers, namely, their confirmation on completion of the period of probation, their postings, transfers and disciplinary matters including power to recommend major punishments. Thus, the "control" vested in the High Court complete control subject only to the powers of the Governor in the matter of appointment, initial posting and promotion to the posts of District Judges. For imposing major punishment, including the punishment of dismissal, removal or reduction in rank, the High Court can, in exercise of its powers under Article 235 of the Constitution, hold disciplinary proceedings and recommend the punishment to be imposed on the delinquent to the Governor who alone would be competent to impose such punishment having regard to the provisions of Articles 233 and 234.

16. A controversy had erupted at one time whether the word "High Court" used in Article 235 would mean all the Judges sitting together in a Full Court meeting or merely a Committee of Judges appointed by the Chief Justice; in other words, whether the Full Court comprising of all the sitting Judges of the Court can act through a Committee of Judges for purposes of recommending the major punishment. A Full Bench of the Allahabad High Court in *Batuk Deo Pati Tripathi V. State of U.P.*[CMW No. 3561 of 1975 decided on 18-4-1977] took the view that the word "High Court" used in Article 235 meant the Full court and not merely a Committee of Judges appointed by the Chief Justice. This decision was reversed by a Constitution Bench of this Court in *State of U.P v. Batuk Deo Pati Tripathi*. [(1978) 2 SCC 102 : 1978 SCC (L&S) 147] This Court observed as under: (SCC pp.112-13, para14)

"14. Having given our close and anxious consideration to that question, we regret that we are unable to share the view of the majority of the High Court Full bench that by leaving the decision of the question of the respondent's compulsory retirement to the Administrative Committee, the Court had abdicated its constitutional function. According to the view of the majority, the act of the Court in allowing the Administrative Committee to decide that question under Rule 1 of Chapter III of the 1952 Rule is an act of 'self- abnegation' and therefore void. This approach betrays, with respect, a misunderstanding of the object of Article 235. The ideal which inspired the provision that the control over District Courts and Courts subordinate thereto shall vest in the High Courts is that those wings of the judiciary should be independent of the executive. Tracing the history of that concept, Hidayatullah, J. in state of W.B. v. Nripendra Nath Bagchi [AIR 1966 SC 447 : (1968) 1 LLJ 270] has highlighted the meaning and purpose of Article 235. It is in order to effectuate that high purpose that Article 235, as construed by this Court in various decisions, requires that all matters relating to the subordinate judiciary including compulsory retirement and disciplinary proceedings but excluding the imposition of punishments falling within the scope of Article 311 and the first appointments and promotions should be dealt with and decided upon by High Courts in the exercise of the control vested in them. A proper understanding and appreciation of this position will be conducive to a correct assessment of the situation under examination in the instant case. For, knowing that the object of Article 235 is to ensure the independence of an important wing of the judiciary, the enquiry which assumes relevance is whether the procedure sanctified by the Rules of the High Court is in any manner calculated to interfere with or undermine that independence. Does that procedure involve 'self- abnegation' by conceding the right of control to any outside authority? It is pertinent, while we are on this question, to know the context in which the expression 'self- abnegation' was used by this Court. In Samsher Singh v. State of Punjab [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814] the action of the High Court in asking the State Government to depute the Director of Vigilance to hold an enquiry against a judicial officer was deprecated by this Court as an act of self abnegation. The High Court abdicated its Court as pan act of self-abnegation. The High Court abdicated its control over the subordinate judiciary, which includes the power to hold a disciplinary enquiry against a defaulting Judge, by surrendering that power to the executive. That, truly, was an act of self-abnegation. There is no parallel between what the High Court did in Samsher Singh and what has been done in the instant case. Here, the decision to compulsory retire the respondent was taken by the Judges of the High Court itself, though not but all. If some but not all Judges of the High Court participate in a decision relating to a matter which falls within the High Courts' controlling jurisdiction over subordinate courts, the High Court does not efface itself by surrendering its power to an extraneous authority. The procedure adopted by the High Court under its rules is not subversive of the independence of the subordinate judiciary, which is what Article 235 recognises and seeks to achieve. The true question then for decision is not the one by which majority of the Full Bench felt oppressed but simply, whether the procedure prescribed by the High Court Rules is in any other manner inconsistent with the terms of article 235 of the Constitutions".

17. It was also argued in that case that since the word "High Court" meant the entire body of Judges

appointed to the Court, the control over the subordinate judiciary which was vested by Article 235 in the High Court had to be exercised by the whole body of the Judges and that the High Court cannot delegate that power or function to a Judge or a smaller body of Judges of the Court. This argument was rejected by the Constitution Bench and it was held that there was no delegation involved in the process adopted by the High Court for appointing an Administrative Committee could recommend imposition of major penalty which could not be questioned on the ground that such recommendation was made not by the High Court but by the Committee of Judges to whom the power could not be delegated. It was further held that is a "Power" was given to the High court by the Constitution, the manner in which that power would be exercised, could also be laid down by the High Court.

18. The Constitution Bench decision still holds the field.

19. In another decision, namely Registrar, High Court of Madras v. R. Rajiah [(1988) 3SCC 211 : 1988 SCC (L&S) 743 : AIR 1988 SC 1388] the view of the Constitution bench was reiterated and it was held that recommendation for compulsorily retiring a member of the subordinate judicial service comes within the purview of the power of control of the High Court under Article 235 of the Constitution. In this connection, the Court also relied upon the decisions of this Court in High Court of Punjab & Haryana v. State of Haryana [(1975) 1 SCC 843 : 1975 SCC (L&S) 229 : (1975) 3 SCR 365], Samsher Singh v. State of Punjab, State of Haryana v. Inder Prakash Anand [(1976) 2 SCC 977 : 1976 SCC(L&S) 372 : AIR 1976 SC 1841] and Baradakanta Mishra v. High Court of Orissa [(1976) 3 SCC 327 : 1976 SCC (L&S) 429]. The Court, however, while considering the facts of the case, observed as under: (SCC pp.222-23, paras 23-24)

"23. In Rajiah case a Review Committee consisting of three Judges was appointed by a resolution of the High Court. In the meeting of the Review Committee held on 25-6-1979 to consider the case of the respondent Rajiah, only two Judges of the High Court were present. The two Judges came to the conclusion that the respondent, Rajiah, should be compulsorily retired with effect from 2-4-1980. The Division Bench found that the third Judge had no notice of the meeting held on 25-6-1979, but the agreed with the view expressed by the two Judges with a slight modification that the respondent would retire with effect from 3-3-1980 under Rule 56 (d) of the Fundamental Rules: The Division Bench of the High Court took the view that as all the three Judges has not sat together and considered the question of compulsory retirement of respondent Rajiah, and that, further, the third Judge having also modified the decision of the two Judges, namely, that the respondent would be compulsory retirement of the respondent, Rajiah, was vitiated. It is true that the members of the Review Committee should its together and consider the question of compulsory retirement, but simply because one of them did not participate in the meeting, and subsequently agreed with the view expressed by the other two Judges, it would not vitiate the decision of the Committee to compulsorily retire the respondent. The third Judge might (sic not) be justified in correcting the date with effect from which the respondent would compulsorily retire, but that is a very minor issue and would not, in our opinion, make the decision invalid.

24. In regard to the case of the other respondent, namely, K. Rajeswaran, the High Court took the view that the constitution of the Review committee by the Chief Justice and not by the Full Court was illegal. We are unable to accept the view of the High Court. We fail to understand why the Chief Justice cannot appoint a Review

Committee or an Administrative Committee. *But in one respect the High Court is, in our opinion, correct namely, that the decision of the Review Committee should have been placed before a meeting of the Judges. In the case of the respondent, K. Rajeswaran, the decision and recommendation of the Review Committee was not placed before the Full Court meeting. Nor is there any material to show that the same was circulated to the judges. In that sense, the recommendation of the review committee was not strictly legal"*

(emphasis supplied)

20. Relying upon the extracts underlined above, learned counsel for the appellant contended that since in the instant case the matter was not circulated to all the individual Judges of the High Court nor was their opinion sought whether the appellant was liable to be dismissed from service, the recommendation of the High Court as also the ultimate order of the Governor of Maharashtra are bad in law and are liable to be quashed. This contention, though apparently supported by the observations of this Court in Rajiah case cannot be accepted as in a latter decision in High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil [(1997) 6 SCC 339 : 1997 SCC (L&S) 1486] a similar plea was rejected as it was found on a consideration of various resolutions adopted by the Bombay High Court that the Full Court having itself authorised the Chief Justice to constitute a Committee of Judges for disciplinary matters, whatever decision was taken by the Committee was treated to be a decision of the Full Court. This Court in paras 10 to 11 of the Report observed as under: (SCC pp. 352-53, paras 10-11)

" 10. It would thus be settled law that the control of the subordinate judiciary under Article 235 is vested in the High Court. After the appointment of the judicial officers by the Governor, the power to transfer, maintain discipline and keep control over them vests in the High Court. The Chief Justice of the High Court is first among the Judges of the High Court. The action taken is by the High Court and not by the Chief Justice in his individual capacity, nor by the Committee of Judges. For the convenient transaction of administrative business in the Court, the Full Court of the Judges of the High Court generally passes a resolution authorising the Chief justice to constitute various committees including the Committee to deal with disciplinary matters pertaining to the subordinate judiciary or the ministerial staff working therein. Article 235, therefore, relates to the power of taking a decision by the High Court against a member of the subordinated judiciary. Such a decision either to hold an enquiry into the conduct of a judicial officer, subordinate or higher judiciary, or to have the enquiry conducted through a Distinct or Additional District Judge etc. and to consider the report of the enquiry officer for taking further action is of the High Court. Equally, the decision to consider the report of the enquiry officer and to take follow-up action and to make appropriate recommendation to the Disciplinary Committee or to the Governor is entirely of the High Court. Once a resolution is passed by the Full Court of the High Court, there is no further necessity to refer the matter again to the Full Court while taking such procedural steps relating to control of the subordinate judiciary.

11. It is true that a resolution came to be passed authorizing the Committee of five Judges to deal with imposition of punishment on judicial officers. The question, therefore, is whether it requires the Chief justice and the Committee to initiate disciplinary proceedings. The 'delegation of the function of the High Court in respect

of punishment of judicial officers' is an expression of width and of wide amplitude to cover within its ambit the power to take a decision by the Committee from the stage of initiation of disciplinary proceedings, if necessary, till its logical end, viz., recommendation to the Government to impose a penalty proposed by the Committee. The recommendation is by the High Court, the controlling authority under Article 235 of the Constitution. Therefore, it is difficult to accept the convention of Shri Batra that the delegation is only for imposition of punishment on judicial officers. In fact, the High Court has no power to impose any punishment by itself. The appointing authority, viz., the Governor is the competent authority under the Constitution to impose punishment in accordance with the rules framed for the purpose. Therefore, the entire gamut of procedural steps of disciplinary action is by the High Court which is the controlling authority through the Committee constituted in that behalf by the Chief Justice of the High Court".

21. The case before us is also that of an officer belonging to the subordinate judicial service of Maharashtra under the control of the Bombay High Court, and is, therefore, squarely covered by the above decisions. We need not look into this question any further. We, therefore, hold that the recommendation to dismiss the appellant made by the Bombay High Court to the Governor would not be open to challenge on the ground that such recommendation was made by the Disciplinary Committee and not by the Full Court comprising of all the sitting Judges.

22. Before leaving this question, we may however, observe that constitution of a small committee of few Senior Judges, as, for example, in the instant case in which the Disciplinary Committee consists of five senior most Judges, excludes permanently other Judges. This exclusion militates against the concept of "wider consultation" which is inherent in the words "High Court". Many of the Judges, specially those elevated from the Judicial service who usually have a short tenure, would superannuate without even reaching the "collegium" of five senior most Judges. Bound as we are by the decision of the Constitution Bench, we leave the matter here as it is with the hope that this Judge-made law would be reconsidered one day and if found to be retrograde and against the developing concepts would undergo an evolutionary change or the Bombay High Court itself, we may suggest, without intending to encroach upon the exclusive constitutional rights of the Chief Justice to run the High Court, would adopt a new resolution which would permit other Judges also to participate in the decision making process concerning at least, the imposition of major penalties like dismissal or removal, on members of the subordinates judiciary, as these punishments finally close their service chapter.

23. It was next contended by learned counsel for the appellant that the Disciplinary Committee, which had disagreed with the findings recorded by the enquiry officer and had held that the charges against the appellant were proved, had acted in violation of the "principles of natural justice" in as much as it did not give an opportunity of hearing at the stage when it developed the inclination that find is recorded by the enquiry officer were not acceptable and were liable to be reversed. It was further contended that the findings of the enquiry officer, which were based essentially on an appreciation of the evidence recorded by him were considered by the Disciplinary Committee in the absence of the appellant were established. The Disciplinary Committee thus having taken a decision, proceeded thereafter to issue a notice to the appellant to show cause why he should not be dismissed from service and a recommendation to that effect be not made to the Governor. It was also contended that the Disciplinary Committee had already made up its mind and it was only in respect of the proposed punishment that a notice was issued to the appellant. Consequently, the appellant, it is contended, was denied an adequate opportunity of hearing which should have been afforded to

him before taking a decision that he was guilty of the charges leveled against him.

24. Before entering into the merits of this question, we may point out that the action against the appellant was taken under the provisions of the Maharashtra Civil Services (Discipline and Appeal Rules), 1979. Part III of the rules deals with "penalties and disciplinary authorities". Penalties are mentioned in Rule 5. Dismissal from service is one of the major penalties mentioned in Rule 5(1)(ix). The disciplinary authorities are indicated in Rule 6. The authority which can institute disciplinary proceedings is indicated in Rule 7.

25. Part IV of the rules deals with the procedure for imposing penalties. Rule 8 prescribes the procedure for imposing major penalties. The enquiring authority, after completing the enquiry, is required to prepare a report as provided by clause (25) of Rule 8 which provides as under:

"(25) After the conclusion of the enquiry, a report shall be prepared by the enquiring authority. Such report shall contain-

- a. the articles of the charge and the statement of the imputation of misconduct or misbehavior;
- b. the defence of the government servant in respect of each article of charge;
- c. an assessment of the evidence in respect of each article of charge;
- d. the findings on each article of charge and the reasons therefore;
- e. recommendation regarding the quantum of punishment.

26. The enquiring authority is thereafter required to forward the report as also all other relevant records, including the report prepared by it under sub rule (25); the written statement of defence, if any, submitted by the government servant; the oral and documentary evidence produced in the course of the enquiry; written briefs, if any, filed by the presenting officer or the government servant or both during the course of the enquiry and the orders, if any, made by the disciplinary authority and the enquiring authority in regard to the enquiry, to the disciplinary authority.

27. What action would be taken on this report and in what manner will this report be dealt with is indicated in Rule 9. Relevant portions of this rule are quoted below:

"9 Action on the enquiry report- (1) The disciplinary authority, if it is not itself the enquiring authority may, for reason to be recorded by it in writing, remit the case to the enquiring authority for further enquiry and report, and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Rule 8 of these rules as far as may be.

(2) The disciplinary authority shall if it is not the enquiring authority, consider the record of the enquiry and record its findings on each charge. If it disagrees with the findings of the enquiring authority on any article of charge, it shall record its reasons for such disagreement.

(3) * * *

(4) (i) If the disciplinary authority, having regard to its findings on all or any of the articles of charges, is of the opinion that any of the major penalties should be imposed on the government servant, it shall-

(a) Furnish to the government servant a copy of the report of the enquiry held by it and its findings on each article of charge, or where the enquiry has been held by an enquiring authority appointed by it; a copy of the report of such authority and a statement of its findings on each article of charge expressly stating whether or not it agrees with the findings of the enquiry authority, together with brief reasons for its disagreement, if any with the findings of the enquiring authority; and

(b) Give to the government servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the enquiry held under Rule 8 of these rules.

(ii) (a)-(b) * * *

(iii) Where it is not necessary to consult the Commission, the disciplinary authority shall consider the representation, if any made by the government servant in pursuance of the notice given to him under clause (i) (b) of this sub-rule and determine what penalty, if any, should be imposed on him on the basis of the evidence adduced during the enquiry held under Rule 8 and make such order as it may deem fit".

28. In view of the provisions contained in the statutory rule extracted above, it is open to the disciplinary authority either to agree with the findings recorded by the enquiring authority or disagree with those findings. If it does not agree with the findings of the enquiring authority, it may record its own findings. Where the enquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority agrees with those findings, there would arise no difficulty. So also, if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the enquiring authority disagreed with those findings and recorded its own findings that the charges were established and the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically authority may, of its own, provide such an opportunity. Where the rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges were established, "an opportunity of hearing" may have to be read into the rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority; is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the disciplinary authority to disagree with the findings of the enquiring authority on any article of charge. The only requirement is that it shall record its reasoning for such

disagreement. The rule does not specifically provide that before recording its own findings, the disciplinary authority will be given an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the 'TENTATIVE' reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with.

30. Recently a three- Judge Bench of this Court in Punjab National Bank v. Kunj Behari Misra [(1998) 7 SCC 84 : 1998 SCC (L&S) 1783 : AIR 1998 SC 2713] relying upon the earlier decisions of this Court in State of Assam v. Bimal Kumar Pandit [AIR 1963 SC 1612 : (1964) 2 SCR 1] Institute of Chartered Accountants of India v. L.K. Ratna [(1986) 4 SCC 537 (1986) 1 ATC 714] as also the constitution Bench decision in Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993SCC (L&S) 1184 : (1993) 25 ATC 704] and the decision in Ram Kishan v. Union of India [(1995) 6 SCC 157 : 1995 SCC (L&S) 1357 : (1995) 31 ATC 475] has held that : (SCC p. 96, para 17)

" It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has records its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority".

The Court further observed as under: (SCC p. 96. Para18)

"When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is disciplinary authority which can impose the penalty and not the enquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to different conclusion, there is no reason to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while

recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed".

The court further held that the contrary expressed by this Court in *State Bank of India v. S. S. Koshal* [1994 Supp (2) SCC 468 : 1994 SCC (L&S) 1019 : (1994) 27 ATC 834] and *State of Rajasthan v. M.C. Saxena* [(1998) 3 SCC 385 : 1998 SCC (L&S) 875] was not correct.

31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution.

32. Applying the above principles to the facts of this case, it would be noticed that in the instant case the District Judge (enquiry officer) had recorded the findings that the charges were not proved. These findings and issued a notice to the appellant requiring him to show cause why he should not be dismissed from service. It is true that along with the show cause notice, the reasons on the basis of which the Disciplinary Committee had disagreed with the findings of the District Judge were communicated to the appellant but the Disciplinary Committee instead of forming a tentative opinion had come to a final conclusion that the charges against the appellant were established. The Disciplinary Committee, in fact, had acted in accordance with the statutory provisions contained in Rule 9(4) (i) (a) and (b).

He was called upon to show cause against the proposed punishment of dismissal as will be evident from the minutes of the Disciplinary Committee dated 21-6-1993 which proved as under:

"Decision

Discussed

For the reasons recorded in Annexure 'A' hereto, the Committee disagree with the finding of the enquiry officer and finds that the charges leveled against the delinquent judicial officer have been proved.

It was, therefore, tentatively decided to impose upon the judicial officer penalty of dismissal from service.

Let notice, therefore, issue to the delinquent judicial officer calling upon him to show cause why penalty of dismissal from service as prescribed in Rule 5(1) (ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules. 1979 should not be imposed upon him.

Show cause- notice will be accompanied by a company of the report of the enquiring authority and the reasons recorded by this Committee".

These minutes were recorded after the Disciplinary Committee had considered the enquiry report and differed with the findings and recorded its final opinion in para 10 of its reason as under:

"10. The Disciplinary Committee is of the opinion that the findings recorded by the enquiry officer on both the charges cannot be sustained. The Committee, after going through the oral and documentary evidence on record, is of the opinion that both the charges against the delinquent are proved. The delinquent is a judicial who has failed to maintain the absolute integrity in discharge of his judicial duties".

33. Pursuant to the above minutes, a notice dated 24-6-1993 was issued to the appellant which after reproducing the minutes of meeting of the Disciplinary Committee proceeded to say has under:

"As required by Disciplinary Committee I Issue this notice calling upon you to show cause why the penalty of dismissal from service should not be imposed upon you in view of the charges held established. Time of 15 days, from the date of receipt of this notice, is given to you for submitting your reply, failing which it shall be presumed that you do not wish to make any representation regarding the penalty

A copy of the report of the enquiry officer dated 21-12-1992 and a copy of Annexure 'A' are enclosed herewith for ready here with for ready reference.

Yours faithfully,

Sd/-

Registrar"

34. Along with the show- cause notice, a copy of the findings recorded by the enquiry officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant but it was immaterial as he was required to show cause only against the punishment decision that the charges against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a "tentative" decision and that he could show cause against that too. It was for this reason that the reply submitted by the appellant failed to find four with the Disciplinary Committee.

35. Since the Disciplinary Committee did not give any opportunity of hearing to the appellant before taking a final decision in the matter relating to the findings on the two charges framed against him, the principles of natural justice, as laid down by a three- Judge Bench of this Court in Punjab National Bank v. Kunj Behari Misra referred to above, were violated.

36. Mr. Harish N. Slave, learned Senior Counsel appearing on behalf of the respondent has contended that the disciplinary proceedings come to an end either when the delinquent is exonerated of the charges or when punishment is inflicted upon him on the charges being proved. Since in the instant case, the Disciplinary Committee had given an opportunity of hearing to the appellant before finally recommending to the State Government to dismiss him from service, the principles of natural justice were fully complied with and that too at a stage earlier than the stage when the curtain was finally brought down on the proceedings. He contended that not only the findings recorded by the enquiry officer but the reasons for which the Disciplinary Committee had not agreed with those findings, were communicated to the appellant to whom a notice was also issued to show cause why he be no dismissed from service. He further contended that the appellant submitted a reply in which he attacked the reasons for which the Disciplinary Committee had decided to disagree with the findings of the enquiry officer and, therefore, in the given circumstances of this case, it cannot be said that there was a failure or denial of opportunity at any stage.

37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges leveled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank in which it had been categorically provided, following earlier decisions, that if the disciplinary authority does not agree with the findings of the enquiry officer that the charges are not proved, it has to provide, at the stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the disciplinary authority that the findings already recorded by the enquiry officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.

38. The Disciplinary Committee consisted of five seniors most Judges of the High Court which also

included the Chief Justice. The Disciplinary Committee took a final decision that the charges against the appellant were established and recorded that decision in writing and then issued a notice requiring him to show cause against the proposed punishment of dismissal. The findings were final: what was tentative was the proposal to inflict upon the appellant the punishment of dismissal from service.

39. We may now examine the reasons on the basis of which the Disciplinary Committee has disagreed with the findings of exoneration recorded by enquiry officer.

40. There were two charges against the appellant which related to the demand of bribe for the acquittal of complainant Deepak Trimbakrao Deshmukh in two sessions trials in which the complainant was the accused facing charge, inter alia, under section 302 IPC. The appellant had allegedly demanded a sum of Rs. 10,000 in each case the residence of Dr. Naranje, at Rashtrabhasha Prachar Samiti Road, Wardhan on 23-1-1990, in the first case and again on 18-12-1990 at about 8.00 p.m. at Dr Naranje's residence in the second case. These charges were sought to be proved by producing the complainant Deepak Trimbakrao Deshmukh, his wife Mrs. Sudha Deepak Deshmukh, Mrs. Madhuri Kirshnarao Pradhan (panch witness of the trap) and Shri Anand Digambar Deshmukh, Deputy Superintendent of Police, ACB, Nagpur. The appellant in his defence examined himself and produced Shri Sunil Gopalrao Bapat, Advocate, Wardha, Shri Arjun Pancham Patil, Advocate, Wardha, Dr Sopan Chahadeo Naranje, Medical Practitioner, Wardha and Shri Manik Tulsiram Tamgadge, Bailif, Arvi, District Wardha.

41. The complainant had also approached the Anti- Corruption Bureau and informed them of the demand made by the appellant whereupon the Anti-corruption Bureau, acting through Shri Anand Digambar Deshmukh, Deputy Superintendent of Police, ACB, Nagpur, laid a trap against the appellant but the trap was unsuccessful and failed. The enquiry officer held that this was a false trap laid by Shri Anand Digambar Deshmukh, Deputy Superintendent of Police, ACB, Nagpur in connivance with the accused without obtaining the prior permission of the Chief Justice. Although the complaint made by Deepak Trimbakrao Deshmukh to the Anti-Corruption Bureau and the laying of trap against the appellant by them was not part of the charge nor involved as an issue before the enquiry officer, the Departmental led evidence in that regard and produced Shri Anand Digambar Deshmukh, Deputy Superintendent of Police, ACB, Nagpur and the panch witness Mrs. Madhuri Kirshnarao Pradhan, besides the complainant's wife, Mrs. Sudha Deepak Deshmukh who allegedly wanted to offer the money to the appellant.

42. The Story of demand of Rs 10,000 in each sessions trail was denied by the appellant who, as pointed out earlier, examined himself as also Dr. Naranje at whose house the demand was allegedly acted as the go between. These witnesses denied the whole story. The trap laid by the Anti-Corruption Bureau had also failed.

43. Deepak Trimbakrao Deshmukh had specifically alleged that the demand of Rs. 10,000 in each of the two session trails was made by the appellant at the residence of Dr. Naranje. This was also set out in Transfer Petition No. 88 of 1991, filed in the High Court, in which it was stated that the meeting of 23-11-1990 in which the amount in question was demanded, had taken place in the house of Dr. Naranje. But in his complaint to the High Court on 27-11-1990, the complainant himself stated that this meeting took place at the house of the appellant. This was enough to falsify the whole story and the enquiry officer was justified in rejecting the story of demand in the background of other facts set out above. The complainant's wife Mrs. Sudha Deepak Deshmukh who was allegedly present at the house of Dr. Naranje was found by the enquiry officer to be unsuccessful in

describing the position of the main entrance of Dr. Naranje's house apart from other discrepancies but the Disciplinary Committee rejected the infirmity found by the enquiry officer on the ground that the enquiry officer had applied the standard of proof of a criminal case to the disciplinary proceedings.

44. We fail to appreciate the approach of the Disciplinary Committee, which has gone by surmises and conjectures rather than by the evidence – on record. The statements of Dr. Naranje and that of Mr. Bapat, Advocate have not been taken into consideration by the Disciplinary Committee and it has relied upon the statement of the complainant alone to come to the conclusion that Mr. Bapat, Advocate had assured acquittal provided the complainant withdrew his transfer petitions.

45. The High Court has overlooked another important aspect of the case which is to the effect that Sessions Trails Nos. 28 of 1982 and 37 of 1987 were pending the Court of Session Judge, Wardha (Mr. S. S. Nikhree), from where these were transferred to the Court of Additional District and Session Judge (Mr. S.T. Kharche) who attempted to proceed substantially with those trails but Deepak Trimbakrao Deshmukh created all sorts of hindrances and obstacles and ultimately field a transfer petition (No. 387 of 1988) under Section 409 of the Criminal Procedure Code in the Sessions Court, Wardha, in which various allegations were made against the Presiding Officer, namely, Mr. S.T. Kharche, but the transfer application was rejected on 5-11-1988 by the Session Judge. Thereafter, when those cases were taken up by Mr. Kharche, Deepak Trimbakrao Deshmukh field an application on 8-5-1990 for adjournment to enable him to file vakalatnama of his counsel. On this application, an elaborate order was passed by Mr. S.T. Karche who, however, having regard to the quarrelsome nature of the accused, requested the Session Judge, Wardha, to transfer those cases to some other court and consequently both the session rails were transferred to the Court of Ist Additional District and Session Judge, Wardha, presided over by the appellant. In that Court also, the accused (Deepak Trimbakrao Deshmukh) adopted dilatory tactics to prolong the trail and ultimately gave an application in which he stated that "no clean and impartial justice" was going to be done to him in both the sessions trails. This was treated as a contumacious conduct and the appellant passed on order taking cognizance under Section 345 of the Criminal Procedure Code read with Section 228 IPC and detained the accused in custody. He was also issued a notice requiring him to show cause why he should not be punished under Section 345 of the Criminal Procedure Code. The accused did not submit any reply and he was consequently convicted and sentenced to pay a fine of Rs. 200 or in default to suffer simple imprisonment for 15 days. The accused, however, deposited the fine in the Court on the same day.

46. This order was challenged by the accused (Deepak Trimbakrao Deshmukh) in Criminal Appeal No. 108 of 1991 before the Nagpur Bench of the Bombay High Court, but the appeal was dismissed on 9-3-1992 and the order convicting the accused under Section 345 Cr PC was upheld. The accused continued, even thereafter, to make frivolous applications for adjournments and ultimately approached the High Court for transfer of both the cases to some other court. The High Court stayed the proceedings and called for the explanation of the appellant. The explanation was submitted by the appellant, but thereafter the accused withdrew both the transfer applications. When the appellant, as Presiding Officer of that Court, proceeded to dispose of those cases, the accused made the Chief Justice of the Bombay High Court and, as stated earlier, disciplinary proceedings were started against the appellant which ultimately resulted in his dismissal.

47. These facts will indicate that the accused (Deepak Trimbakrao Deshmukh) had taken the Court, where the two sessions trails were pending against him, for a ride. He had adopted similar tactics in the Court of Session Judge, Wardha, and Again in the Court of Ist Additional District and Session

Judge, Wardha, where these two cases were transferred, and yet again in the Court of the appellant where these session trails came to be ultimately transferred.

48. After withdrawal of the transfer applications, when the appellant proceeded with the two session trails, the Disciplinary Committee inferred that the appellant was still pursuing his earlier demand of bribe as otherwise he himself would have written that he would not do these cases. This, we feel, is wholly fallacious. After the transfer petitions were withdrawn and the stay order passed, therein was vacated, the appellant as Presiding Officer of the Court, had to proceed with those cases as he had, so long as those cases were on his file, no other choice. If the appellant had written to the Sessions Judge to transfer those cases to some other court, the accused (Deepak Trimbakrao Deshmukh) would have succeeded in his designs in avoiding the Court of the appellant. The Presiding Officers of the Court cannot act as fugitives. They have also to face sometimes quarrelsome, unscrupulous and cantankerous litigants but they have to face them boldly without deviating from the right path. They are not expected to be overawed by such litigants or fall to their evil designs.

49. Under Article 235 of Constitution, the High Court has a duty to protect the officers of the subordinate judiciary from unscrupulous litigants and lawyers. In *Ishwar Chand Jai v. High Court of Punjab & Haryana* [(1988) 3SCC 370 : 1988 SCC (L&S) 797 : AIR 1988 SC 1395] it was, inter alia, observed that the High Court while exercising its power of control over the subordinate judiciary is under a constitutional obligation to guide and protect judicial officers. It was further observed that an honest and strict judicial officer is likely to have adversaries in the moffussil courts; if trifling complaints relating to judicial orders which may have been upheld by the High Court on the judicial aide are entertained, no judicial officer would feel protected; and it would be difficult for him to discharge his duties honestly and independently. It is, therefore, imperative for the High Court to protect its honest judicial officers by ignoring ill conceived or motivated complaints made by the unscrupulous lawyers and litigants.

50. Having regard to the circumstances of this case, we are of the view that the Disciplinary Committee was wholly in error in disagreeing with the findings recorded by the enquiry officer and the charges levied against the appellant were not established.

51. It was lastly contended by Mr. Harish N. Slave that this Court cannot reappraise the evidence which has already been scrutinised by the enquiry officer as also by the Disciplinary Committee. It is contended that the High Court of this Court cannot, in exercise of its jurisdiction under Article 226 or Article 32 of the Constitution, act as the appellate authority in the domestic enquiry or trial and it is not open to this court to reappraise the evidence. The proposition as put forward by Mr. Slave is in very broad terms and cannot be accepted. The law is well settled that if the findings are perverse domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In *Kuldeep Singh v. Commerce of Police* [(1999) 2SCC 10 : 1999 SCC (L&S) 429 : JT (1998) 8 SC 603] this court, relying upon the earlier decisions in *Nand Kishore Prasad v. State of Bihar* [(1978) 3 SCC 366 : 1978 SCC (L&S) 458 : AIR 1978 SC 1277 : (1978) 3 SCR 708] *State of Andhra Pradesh v. Rama Rao* [AIR 1963 SC 1723 : (1964) 3 SCR 25] *Central Bank of India Ltd. v. Prakash Chand Jain* [AIR 1969 SC 983 : (1969) 2 LLJ 377]. *Bharat Iron Works v. Bhagubhai Balubhai Patel* [(1976) 1 SCC 518 : 1976 SCC (L&S) 92 : AIR 1976 SC 98 : (1976) 2SCR 280] are also *Rajinder Kumar Kindra v. Delhi Admn* [(1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805 : (1985) 1 SCR 866] laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a

High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were as could not have been reached by an ordinary prudent man or the findings were perverse.

52. In the instant case, we have scrutinized the reasons of the Disciplinary Committee and have found that it had taken its final decision without giving an opportunity of hearing to the appellant at the stage at which is proposed to differ with the findings of the enquiry officer. We have also found that the complainant's story with regard to the pace at which the demand was allegedly made by the appellant was inconsistent. We have also noticed that the trap laid by ACB, Nagpur against the appellant had failed and was held by the enquiry officer to be a farce and not having been laid with the permission of the Chief Justice. We have also noticed that there was absolute non-consideration of the statements of defence witnesses, namely, Dr. Naranje and Mr. Bapat, Advocate, by the Disciplinary Committee. This factor in itself is sufficient to vitiate the findings recorded by that committee contrary to the findings of the enquiry officer.

53. For the reasons stated above, we allow the appeal and set aside the judgement dated 21-6-1996 passed by the Bombay High Court by which the appellant's writ petition was dismissed. We hereby allow the writ petition and quash the order of dismissal dated 8-11-1993 passed by the State Government with the direction that the appellant shall be reinstated in service forth with all consequential benefits, including all arrears of pay which shall be paid to him within three months. There will be no order as to costs.