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earlier, that each High Court in the country should have disciplinary jurisdiction over the Advocates on its rolls. The provisions of the Adaptation order have maintained this position.

In our opinion, the High Court rightly rejected the appellant's application. The appeal is accordingly dismissed.

In the circumstances of the case we make no order as to costs. But the appellant who has filed the appeal as a pauper is directed to pay the court-fees which would have been paid by him if he had not been permitted to appeal as a pauper.

Appeal dismissed.

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December 6.

A. N. D' SILVA

v.

UNION OF INDIA

(K. N. WANCHOO and J. C. SHAH, JJ.)

Government Servant—Disciplinary proceedings—Punishment—Proposal by enquiry officer, if binding on the punishing authority—Powers of President—Union Public Service Commission—Whether an appellate authority over Enquiry Officer—Advice, if binding on President—Constitution of India, Arts. 311, 320:

D, a Divisional Engineer of Posts and Telegraphs was suspended from service for irregularities in the matter of allotment of telephones. The charges were firstly, that irregularities were committed by him with a view to secure illegal gratification for himself and others and secondly, that he was a party to the commission of irregularities having thereby facilitated acceptance of illegal gratification by his subordinates. The enquiry officer found him guilty of misdemeanour by disobeying orders expressly issued. The report of the Enquiry Officer was sent by the President to the Union Public Service Commission for their recommendations. In the meantime D was informed that the Government of India had decided to dismiss him subject to the advice of the Union

Public Service Commission, and that he should show cause why he should not be dismissed. The Public Service Commission agreed with the view of the Enquiry Officer that there was contravention of the specific orders issued by granting "casual connections" from time to time, but the Commission was of the opinion that this may amount to neglect to open defiance of the order of his superior and though there may be suspicion, there was nothing on the record to connect D with receiving illegal gratification, and advised that D 'be retired compulsorily'. The appellant was informed that the President had come to the conclusion that he was guilty of gross negligence and disobedience of orders, and though the Union Public Service Commission had advised that he be retired compulsorily as it was not a permissible punishment under the rules, the President had decided that D should be removed from service with immediate effect. The appellant's writ petition to the High Court of the Punjab for mandamus and certiorari was dismissed and thereafter he came up by special leave to this Court.

Held, that the Civil Service Rules merely prescribe diverse punishments which may be imposed upon a delinquent public servant ; the rules do not provide for specific punishments for different misdemeanours. The Rules leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misdemeanour. It is not for the enquiry authority to propose punishment.

The power of the President to impose punishment for misdemeanour found proved against a delinquent public servant, is unrestricted and is not circumscribed by the proposal about punishment by the enquiry officer which the latter was incompetent to make. It was for the President to arrive at a tentative conclusion as to the guilt of the delinquent public servant and to propose the appropriate punishment. The Constitution merely guarantees the protection of a reasonable opportunity of showing cause against the action proposed ; it does not guarantee that the punishment shall not be more severe than a prescribed punishment.

The President is by Art. 320 of the Constitution required to consult the Union Public Service Commission in disciplinary matters but the President is not bound by the advice of the Commission. The Union Public Service Commission is not an appellate authority over an Enquiry Officer.

In the present case, in imposing punishment of removal from service the President did not violate the guarantee of reasonable opportunity to show cause against the action proposed to be taken against the appellant.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 322 of 1959.

Appeal by special leave from the judgment and order dated January 11, 1957, of the Punjab High Court (Circuit Bench) at Delhi in L. P. A. No. 22-D of 1955.

B. C. Misra, for the appellant.

S. P. Varma, and *T. M. Sen,* for the respondent.

1961. December, 6. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—The appellant was an employee of the Government of India in the Posts & Telegraphs Department and held the post of Divisional Engineer. Telegraphs at Agra in 1947. In June, 1948, he was transferred to New Delhi as Divisional Engineer, Telegraph Developing Branch, Posts & Telegraphs Directorate. On September 18, 1948, the appellant was suspended from service and a charge-sheet containing the following two charges was delivered to him :—

> "(i) That he, with a view to secure illegal gratification for himself and/or for others, committed serious irregularities in the matter of allotment of Telephones in Agra during the period he was Divisional Engineer, Telegraphs, Agra, and
>
> (ii) That by being a party to commission of gross irregularities in the matter of allotment of telephones in Agra, he facilitated acceptance of illegal gratification by his subordinates."

An appendix setting out the allegations on the basis of which the charges had been framed was also enclosed, and the appellant was called upon to submit his defence to the charges to the Enquiry Officer named therein. The appellant was further

asked to show cause why, in the event of charge (i) being proved, he should not be dismissed from Government Service and, in the event of charge (ii) being proved, he should not be permanently degraded to the rank of the Electrical Supervisor or awarded any other lesser penality. The appendix consisted of three heads which are as follows :—

> "(1) Contrary to the order contained in letter No. Eng. P. 768 of 7th February, 1948 from the Post Master General, Lucknow, that no connection, not even a casual connection, should be given out of turn, the following casual connections were opened and in some cases extended and even made permanent :—
>
> (Then were set out 11 instances (a) to (k) of such casual connections given by the appellant.)
>
> (2) Transfers of telephones virtually amounted to allotment of telephones out of turn was allowed in the following cases :—
>
> (a) ... ...
>
> (b) ... ...
>
> (3) Statements given in writing by Khiali Ram and Shyam Lal relating to illegal gratification given to Mr. Ghambir and Kanaya Lal Sharma respectively."

The appellant submitted his explanation relating to these charges. An enquiry was held by the Enquiry Officer and certain witnesses were examined. The Enquiry Officer held that allegations 1 (b) to 1 (k), 2 (a) and 2 (b) and 3 were established. He observed that the proof in respect of allegation (3) was not such as would be acceptable in a court of law, but there was sufficient evidence to show that the appellant suddenly changed his attitude towards one Khiali Ram and went so far as to argue the case on his behalf and favoured him with a permanent connection and in the case of Shyam Lal he

sanctioned an out-of-turn extension. He accordingly made a report that charges (i) and (ii) in the charge-sheet were proved. The report together with the record of the Enquiry Officer was sent by the President of India to the Union Public Service Commission under Art. 320 (3) (c) of the Constitution for their recommendations. The Commission agreed with the view of the Enquiry Officer that the appellant had contravened specific orders issued by the Postmaster General by granting "casual connections" from time to time as shown in the report of the Enquiry Officer. But in the view of the Commission this was at the most either neglect on the part of the appellant in complying with the orders of his superiors, or open defiance as he was not prepared to accept the instructions issued by his superiors. The Commission, however, observed that "The crux of charges against Mr. D' Silva was, however, not that he allowed these connections in defiance of these orders but that he had a motive in doing so. The only evidence that has been given relates to connection No. 283 for Messrs. Khiali Ram Amolak Chand. There may be ground for suspicion but there is nothing on the record to connect Mr. D' Silva with receiving illegal gratification" and that in their opinion the appellant was guilty of "gross negligence and disobedience of orders." They accordingly advised that the appellant "be retired compulsorily."

Notice had already been issued to the appellant informing him that the Government of India had subject to the advice of the Union Public Service Commission provisionally come to the conclusion that the appropriate punishment on the charges is dismissal and that he was required to show cause within 15 days of the papers received by him as to why he should not be dismissed from Government service. The appellant submitted his explanation to the notice. By order dated January 25, 1951, the appellant was informed that :

".....after careful consideration of the record of the case the explanation submitted by Mr. D'Silva and the opinion of the Union Public Service Commission, the President has come to the conclusion that the officer is guilty of gross negligence and disobedience of orders. Although the Commission have advised that Mr. D'Silva should be retired compulsorily, it is not possible to do so as compulsory retirement is not a permissible punishment under the rules. The President has accordingly decided that Mr. D'Silva should be removed from service with immediate effect....."

The appellant then moved the High Court of Judicature for Punjab for a writ of *certiorari* or *mandamus* and directions, order or writs in the nature of *mandamus* and *certiorari* or other appropriate orders setting aside the order passed on November 18, 1948, suspending the appellant from service and the order passed on January 25, 1951, removing him from service and for an order directing the Union of India to reinstate him to the post which he was holding at the time of suspension, with all rights, privileges and emoluments pertaining to the said post. The application was dismissed by G. D. Khosla J., and the order was confirmed in appeal by a Division Bench. With special leave the appellant has appealed to this Court against the order of the High Court.

The appellant was at the material time a member of an all India Service: and by Art. 310 of the Constitution he held office during the pleasure of the President. But by Art. 311, the tenure of his office was protected by certain guarantees. By cl.(1) of Art. 311 the appellant was not liable to be dismissed or removed by an authority subordinate to that by which he was appointed, and by cl. (2) he could not be dismissed or removed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action

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proposed to be taken in regard to him. The appellant was removed from service by the President and no question of breach of the constitutional guarantee under cl.(1) of Art. 311 therefore arises. But counsel for the appellant contended that there was a breach of the guarantee under cl.(2) in that (1) the President had imposed punishment of removal for "gross negligence and disobedience of orders", when the appellant had not been charged in the enquiry held by the Enquiry Officer with misdemeanour of that character; (2) that the punishment proposed in the charge sheet was not removal for the charge for which he had in truth been found guilty and therefore the order of punishment amounted to imposing a punishment different from the one which it was originally contemplated to pass aganist him; and (3) that the statement of Mr. Bhashyam—Postmaster General, Lucknow Division —was recorded by the Union Public Service Commission in the absence of the appellant and without giving him an opportunity to cross-examine that witness and the President took that statement into consideration, in imposing the penalty of removal from service. By adopting this procedure the constitutional guarantee of affording a reasonable opportunity to the appellant of showing cause was violated.

In our view, there is no substance in any of the three contentions. The Civil Services Rules merely prescribe the diverse punishments which may be imposed upon delinquent public servants; the rules do not provide for specific punishments for different misdemeanours. The rules leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misdemeanour. The power of the President to impose any punishment for any misdemeanour found proved against a delinquent public servant is unrestricted. The Constitution merely guarantees the protection of a reasonable opportunity

of showing cause against the action proposed: it does not guarantee that the punishment shall not be more severe than a prescribed punishment. The charge against the appellant fell under two heads, but each head charged the appellant with irregularities in the matter of allotment of telephones. Under the first head the charge was that irregularities were committed by him with a view to secure illegal gratification for himself or for others. The second charge was in respect of a comparatively less serious misdemeanour, namely, that the appellant was a party to the commission of irregularities having thereby facilitated acceptance of illegal gratifications by his subordinates. Counsel for the appellant submitted that under the first head of the charge the appellant was, in substance, charged with having received illegal gratification for himself or for others, and invited our attention to the letter of the Enquiry Officer dated December 31, 1948, in which it was stated "that two specific allegations relating to illegal gratification given to your subordinates have already been mentioned in the annexure to the charge sheet. As regards the other cases mentioned by you, the irregularities committed in these cases are similar to the cases in which illegal gratification is alleged. It is for you to prove that though the irregularities are similar no illegal gratification has taken place in these cases." This letter expressly states that telephone connections were granted to Khiali Ram and Shyam Lal after receiving illegal gratification and that other instances referred to in the appendix were similar to those cases in which illegal gratification was alleged. This letter, in our judgment, does not justify the inference that the Enquiry Officer regarded the charges as primarily of illegal gratification or corruption: nor is it possible to accept the submission that the charges were so framed that the appellant was misled into believing that the charges primarily were of obtaining illegal gratification.

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As already observed, the charges were of irregularities committed by the appellant, the first being with the object of securing illegal gratification and the second substantially of negligence and thereby acting so as to enable his subordinates to receive illegal gratification. It is also clear from the Appendix which sets out the allegations and especially heads (1) and (2) that the charges against the appellant were that he had committed irregularities by granting, contrary to the orders passed by the Postmaster General, telephone connections out-of-turn to certain applicants. The Enquiry Officer found ten out of the eleven instances set out in head No. 1 and both the instances under head No. 2 proved. The Union Public Service Commission agreed with that view. The charge of irregularities was therefore established against the appellant. In the view of the Enquiry Officer the motive for granting irregular connections was also established, but the Union Public Service Commission expressed a different view. By Art. 320(3) of the Constitution it is provided that the Union Public Service Commission shall be consulted in all disciplinary matters affecting a person serving under the Government of India in a civil capacity, but the Union Public Service Commission is not an appellate authority over the Enquiry Officer. It is unnecessary for the purpose of this case to consider whether in making their recommendations or tendering their advice the Union Public Service Commission may express a conclusion on the merits of the case as to the misdemeanour alleged to have been committed by a public servant different from the conclusion of the Enquiry Officer.

The President had before him the Enquiry Officer's report, the record of the case, the explanation submitted by the appellant and the opinion of the Union Public Service Commission. On a consideration of all these materials the President came to the

conclusion that the appellant was guilty of gross negligence and disobedience of orders. It is true that there is no record of the President having come to a conclusion whether in committing irregularities the object of the appellant was to receive illegal gratification for himself or for others within the meaning of the first charge. It is also true that the President has, in recording his conclusion, used the same phraseology as was used by the Public Service Commission in making its recommendation but on that ground we are unable to hold that the President has accepted the conclusion of the Union Public Service Commission that the irregularities were not proved to have been committed with a view to secure illegal gratification for himself or for others. The President is by Art. 320 of the Constitution required to consult the Public Service Commission (except in certain cases, which are not material) but the President is not bound by the advice of the Commission. The President found the appellant guilty of disobedience of orders and also of gross negligence. The charge against the appellant was disobedience of orders and that is the charge of which the Enquiry Officer held him guilty. The Union Public Service Commission also agreed with this view. It cannot therefore be said that the misdemeanour of which the appellant was charged was different from the misdemeanour for commission of which he had been found guilty. The misdemeanour charged consisted of commission of irregularities by disobeying orders expressly issued and that is the misdemeanour of which the appellant has been found guilty.

In the communication addressed by the Enquiry Officer the punishment proposed to be imposed upon the appellant if he was found guilty of the charges could not properly be set out. The question of imposing punishment can only arise after enquiry is made and the report of the Enquiry Officer is received. It is for the punishing authority to

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propose the punishment and not for the enquiring authority. The latter has, when so required, to appraise the evidence, to record its conclusion and if it thinks proper to suggest the appropriate punishment. But neither the conclusion on the evidence nor the punishment which the enquiring authority may regard as appropriate is binding upon the punishing authority. In the present case after the report of the Enquiry Officer was received the appellant was called upon to show cause against his proposed dismissal from service. After considering the representation made by the appellant the President came to the conclusion that not dismissal but removal from service was the appropriate punishment. In imposing punishment of removal the President did not violate the guarantee of reasonable opportunity to show cause against the action proposed to be taken against the appellant. The appellant was told about the action proposed to be taken and he was afforded an opportunity to make his defence. Thereafter a lighter punishment was imposed. There is nothing on the record to show that the President found the appellant guilty of the second charge and imposed punishment proposed by the Enquiry Officer for the first charge.

The contention that the evidence of Mr. Bhashyam, Postmaster General Lucknow Range was recorded in the absence of the appellant and that the same was utilised by the President in coming to the conclusion that the appellant be removed from service has no warrant. It appears that the Postmaster General by his letter dated February 7, 1948, directed the appellant not to issue telephone connections out-of-turn even if the connection was casual. This letter was produced before the Enquiry Officer. The contention of the appellant before the Enquiry Officer was that he had made a representation to the Postmaster General that it was "impracticable to put persons

asking for 'casual connections' in the same list as those that were asking for permanent connections" and that thereafter he had received a telephonic message from Mr. Bhashyam asking him to proceed according to rules, and accordingly he continued to follow the prevailing practice of maintaining two separate lists, one of regular connections and the other for casual connections. In the view of the Enquiry Officer this defence was not established. It appears, however, that the Union Public Service Commission ascertained from Mr. Bhashyam his version in regard to the alleged instructions given by him to the appellant about restoring the original practice and the Postmaster General denied the telephonic conversation. The appellant submitted that Mr. Bhashyam was not examined in his presence and he was not permitted to cross-examine Mr. Bhashyam on the alleged denial of telephonic instructions. It is admitted that Mr. Bhashyam was not examined before the Enquiry Officer. The Commission, it appears, obtained information from Mr. Bhashyam. But as we may again observe the Union Public Service Commission is not constituted an appellate authority over an Enquiry Officer. The Commission is required to be consulted by the Constitution in disciplinary matters. The action of the Commission may be irregular but there is nothing to show that the President took into consideration the statement of Mr. Bhashyam which is referred to by the Commission in their report and relying upon that statement imposed the punishment upon the appellant which is impugned. The mere fact that the same phraseology has been used by the President in imposing the punishment does not justify the inference that the President took into consideration the alleged denial of Mr. Bhashyam. We are of the view, therefore, that there has been no breach of the constitutional guarantee under Art. 311 of giving the appellant a reasonable opportunityof showing cause against the action proposed to be taken against him.

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One more argument raised on behalf of the appellant may be referred to. It is urged that the President having accepted the advice of the Commission could not remove the appellant from service but could only impose the punishment which was proposed in the charge served by the Enquiry Officer in respect of the second head. There is nothing, however, in the impugned order to show that the President accepted the advice of the Commission in its entirety. As we have already observed the proposed punishment could not be properly incorporated in the charge served upon the appellant by the Enquiry Officer. The notice served by the Secretary to the Government of India on November 3, 1949, required the appellant to show cause why the punishment which the Government regarded as appropriate, namely, dismissal should not be imposed. Action proposed to be taken by President is clearly set out in that notice. There is no provision which compels the President to impose only the sentence proposed by the Enquiry Officer. It was for the President to arrive at a tentative conclusion as to the guilt of the appellant and to propose the appropriate punishment. This the President did; and in imposing the punishment having regard to the gravity of the misdemeanour found proved, the powers, of the President were not circumscribed by the proposal as to punishment by the Enquiry Officer which the latter was incompetent to make.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.