A YOGINATH D. BAGDE

v.

STATE OF MAHARASHTRA AND ANR.

SEPTEMBER 16, 1999

B [S. SAGHIR AHMAD AND K. VENKATASWAMI, JJ.]

Service Law :

Maharashtra Civil Service (Discipline & Appeal) Rules, 1979—Rule C *9(2)*

Dismissal—Judicial Officer—Charged for indulging in corrupt practices—Departmental enquiry—Enquiry Officer's finding that charges were not established—Disciplinary Committee of High Court disagreeing with the D *findings of Enquiry Officer, recommending punishment of dismissal—Show cause notice to delinquent officer—No opportunity of hearing provided before final decision—Validity of—Held, it is obligatory on the Disciplinary Committee to afford opportunity of hearing before reversing the finding of Enquiry Officer—Requirement of hearing in consonance with the principles of natural justice has to be read into the Rule, which does not specifically* E *provide for such opportunity—Principles of natural justice—Violation of—Order of dismissal quashed—Constitution of India, 1950, Article 311(2).*

Departmental Enquiry—Pendency and conclusion of—Submission of enquiry report—Effect of—Held, mere submission of findings to the Disciplinary Authority does not bring about the closure of enquiry proceedings—Enquiry F *proceedings would be pending till the findings were considered and final decision is taken in the matter.*

Constitution of India

Article 235—Control of High Court over subordinate courts—Vesting G *of—Whether to be exercised by Full Court consisting of all the sitting Judges or through a Committee consisting of some Judges? Judicial Officer—Disciplinary Committee of High Court recommending dismissal—Validity of—Held, in view of Constitution Bench's decision in Batuk Deo's case, Disciplinary Committee competent to recommend dismissal of an officer—* H *Suggestion to Chief Justice of the High Court to adopt a Resolution for wider*

consultation, with other Judges regarding imposition of major penalties like dismissal or removal of Judicial Officers.

Article 235—Control of High Court over subordinate courts—Duty to protect the officer of subordinate court—Held, it is imperative for the High Court to protect its honest Judicial Officers from unscrupulous litigants and lawyers.

Articles 226 and 32—Judicial review—Reappraisal of the findings of Enquiry Officer or Disciplinary Authority—Scope and extent of.

Appellant, an officer of subordinate judiciary, was charged for indulging in corrupt practices. The charges were framed on the basis of a complaint made by an accused whose trial was pending before the appellant. Departmental Enquiry was initiated against the appellant. Enquiry Officer held that the charges against the appellant were not established and, therefore, recommended his reinstatement. However, the Disciplinary Committee of the High Court, disagreeing with findings of Enquiry Officer, issued show cause notice to the appellant for imposing the punishment of dismissal. The Disciplinary Committee without giving opportunity of hearing to the appellant, recommended his dismissal from service. Appellant unsuccessfully challenged his dismissal before the High Court. Hence the present appeal.

On behalf of appellant it was contended that before recording its reasons for disagreeing with the 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 an opportunity of hearing and since this was not done, the principles of natural justice were violated with the result that the decision of the Disciplinary Committee of the High Court stood vitiated; the decision to impose the punishment of dismissal could not have been taken by Disciplinary 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; that there was no evidence in support of the charges that the appellant had demanded money from the accused and that the Enquiry Officer was justified in recording the finding that the charges were not established.

Allowing the appeal and setting aside the order of High Court, the Court

A **Held: 1.1. The action of Disciplinary Committee in not giving an opportunity of hearing to the appellant before taking a final decision that the charges levelled against him were proved amounts to violation of principles of natural justice. The order of dismissal is quashed and appellant reinstated in service with all consequential benefits. [520-B-E]**

B *Punjab National Bank & Ors.* **v.** *Kunj Behari Mishra,* **[1998] 7 SCC 84 = AIR (1998) SC 2713, relied on.**

State of Assam **v.** *Bimal Kumar Pandit,* **[1964] 2 SCR 1 = AIR (1963) SC 1612;** *Institute of Chartered Accountants of India* **v.** *L.K. Ratna & Ors.,* **[1986] 4 SCC 537;** *Managing Director, ECIL, Hyderabad & Ors.* **v.** C *B.Karunakar & Ors.,* **[1993] 4 SCC 727 and** *Ram Kishan* **v.** *Union of India,* **[1995] 6 SCC 157, referred to.**

State Bank of India **v.** *S.S. Koshal,* **[1994] Supp. 2 SCC 468 and** *State of Rajasthan* **v.** *M.C. Saxena,* **[1998]3 SCC 385, held inapplicable.**

D **1.2. Rule 9(2) of the Maharashtra Civil Service (Discipline & Appeal) Rules, 1979 enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The said Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the** E **requirement of "hearing" in consonance with the principles of natural justice provided in Article 311(2) of the Constitution has to be read into Rule 9(2) and it has to be held that before the Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer. The Disciplinary Authority also has to communicate to the delinquent officer the "tentative" reasons for** F **disagreeing with the finding of the Inquiring Authority. Thus, 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** G **opinion that it does not agree with the findings recorded by the Enquiry Officer. 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.** H **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. A

[509-F-G-H; 510-A; 511-E-H; 512-A]

1.3. In the instant case, the Enquiry Officer had recorded the findings that the charges were not proved. These findings were submitted to the Disciplinary Committee which disagreed with those findings and issued a notice to the appellant requiring him to show cause why he should not be dismissed from service. The Disciplinary Committee, in fact, had acted in accordance with the statutory provisions contained in Rule 9(4)(i)(a)&(b), and called upon to show cause against the proposed punishment of dismissal. But he was requiring to show cause only against the punishment proposed by the Disciplinary Committee which had already taken a final 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 favour with the Disciplinary Committee. [512-C-D; 513-H; 514-A] B C D

2. The Disciplinary Committee was not justified in disagreeing with the findings recorded by the Enquiry Officer that the charges levelled against the appellant were not established. There is inconsistency in the complainant's story with regard to the place at which the demand was allegedly made by the appellant. Further, the trap laid by Anti-Corruption Bureau at the behest of the complainant also failed. The statements of defence witnesses were not considered by the Disciplinary Committee and instead relied upon the statement of the complainant alone. This factor in itself was sufficient to vitiate the findings recorded by the Disciplinary Committee contrary to the findings of the Enquiry Officer. The Disciplinary Committee was not justified in going by surmises and conjectures rather than by the evidence on record. E F

[519-C; 516-D-E-F-H]

3. Under Article 235 of the Constitution, the High Court has a duty to protect the officers of the Subordinate Judiciary from unscrupulous litigants and lawyers. In the instant case, the accused had taken the Court, where the two Sessions Trials were pending against him, for a ride. He had adopted similar tactics in the Court of Sessions Judge and again in the Court of Addl. Distt. and Sessions Judge, where these two cases were transferred and yet again in the court of the appellant where these Sessions Trials came to be ultimately transferred. The presiding officer of the Court cannot act as G H

A 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. [518-G-C-D; F]

Ishwar Chand Jain v. High Court of Punjab & Haryana & Anr., AIR B (1988) SC 1395, relied on.

4. If the findings are perverse and are not supported by evidence on record or the findings recorded at the 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. Thus, it cannot be accepted C that the High Court or this Court cannot, in exercise of its jurisdiction under Article 226 or 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. [519-E-D]

Kuldeep Singh v. The Commissioner of Police & Ors., JT (1998) 8 SC D 603 = [1999] 2 SCC 10; *Nand Kishore* v. *State of Bihar*, AIR (1978) SC 1277 = [1978] 3 SCC 366 = [1978] 3 SCR 708; *State of Andhra Pradesh* v. *Sree Rama Rao*, AIR (1963) SC 1723 = [1964] 3 SCR 25; *Central Bank of India* v. *Prakesh Chand Jain*, AIR (1969) SC 983; *Bharat Iron Works* v. *Bhagubhai Balubhai Patel & Ors.*, AIR (1976)SC 98 = [1976] 2 SCR 280 = [1976]1 SCC 518 and *Rajinder Kumar Kindra* v. *Delhi Admn. thro Secretary, (Labour)* E *& Ors.*, AIR (1984) SC 1805 = [1985] 1 SCR 866 = [1984] 4 SCC 635, relied on.

5. The recommendation to dismiss the appellant made by the High Court cannot be challenged on the ground that such recommendation was made by the Disciplinary Committee and not by the Full Court comprising F of all the sitting Judges. However, constitution of Disciplinary Committee with few Senior Judges permanently excludes other Judges, which is against the concept of wider consulation which is inherent in the words "High Court". Thus, it is suggested that the Chief Justice of High Court may adopt a resolution permitting other Judges also to participate in the decision G making process at least, the imposition of major penalties like dismissal or removal of the judicial officers. [505-F-G; 506-B-C]

State of U.P. v. *Batuk Deo Pati Tripathi & Anr.*, [1988] 2 SCC 102, followed.

Registrar, High Court of Madras, v. *R. Rajiah*, AIR (1998) SC 1388; H *High Court of Punjab & Haryana* v. *State of Haryana*, [1975] 3 SCR 365;

Samsher Singh **v.** *State of Punjab,* **[1975] 1 SCR 814;** *State of Haryana* **v.** *Inder Prakash Anand,* **AIR (1976) SC 1841 and** *B. Mishra* **v.** *Orissa High Court,* **[1976] 3 SCC 327, relied on.** A

Batuk Deo Pati Tripathi **v.** *State of U.P. & Ors.,* **(Civil Misc. Writ No. 3561 decided on 18.4.1977), disapproved.** B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15479 of 1996

From the Judgment and Order dated 21.6.96 of the Bombay High Court in W.P. No. 3434 of 1993. C

V.N. Ganpule, Vijay Thakre and R.S. Lambat for the Appellant.

Harish N. Salve and D.M. Nargolkar for the Respondents.

The Judgment of the Court was delivered by D

S. SAGHIR AHMAD, J. The appellant has approached this Court against the judgment and order dated 21.6.1996 passed by the Bombay High Court which had dismissed the Writ Petition by which the 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 E of the charges framed against him.

The appellant was appointed as Civil Judge, Jr. Division, on 18.2.1974 and was thereafter promoted as Civil Judge, Senior Division in August, 1983. He was further promoted as Addl. District and Sessions Judge in September, 1987. F

In June, 1990, while the appellant was posted at Amravati, two Sessions Trials No. 28 of 1982 and 37 of 1987, in which one Deepak Trimbakrao Deshmukh, on whose complaint appellant was ultimately dismissed from service, was involved as an accused. Both the cases related to a murder in G 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, was very close to the appellant and, therefore, Deepak H

A 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 10th of August, 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 of 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 B the proceedings in the Sessions Trial were stayed. On 18th September, 1990, however, Deepak Trimbakrao Deshmukh withdrew both the Transfer Petitions.

Thereafter, Deepak Trimbakrao Deshmukh made a complaint against the appellant to the High Court as a result of which the appellant was placed C under suspension by order dated 22nd April, 1992 which was served upon the appellant on 27th April, 1992. Thereafter, through letter dated 22nd May, 1992, a chargesheet 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 chargesheet:

D

"1. That while you were working as 2nd Additional Sessions Judge, Wardha, Sessions trial No.28/82 and 37/87 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 23.11.90 when you E 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 F demand of Rs.10,000 from Shri Deepak Trimbakrao Deshmukh, resident of Wardha, Taluka Arvi, District Wardha, as consideration for his acquittal in Sessions Trial No.37/87 under Section 302 etc. I.P.C. and that you thereby indulged in corrupt practice amounting to gross misconduct."

G

The appellant filed his reply on 18th June, 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 H to hold a departmental enquiry against the appellant and, therefore, by its

order dated 3rd August, 1992 appointed Mr. G.B. Asma, Joint District Judge, Akola, as the Enquiry Officer. A

After completion of enquiry, the Enquiry Officer submitted his report dated 21st December, 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 were 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 recommendation, the Government of Maharashtra, by order dated 8.11.1993, dismissed the appellant from service. B C D

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The order of dismissal was challenged by the appellant by means of a Writ Petition, filed under Article 226 of the Constitution, which was opposed by the High Court on whose behalf Nilkanth Vishwanath Dabholkar, I/C, Additional Registrar, High Cout, (Legal) Appellate Side, filed an affidavit dated 7.6.1996 in opposition. The High Court, by the impugned judgment dated 21st of June, 1996, dismissed the Writ Petition and it is in these circumstances that the present appeal has been filed in this Court by Special Leave. F

Learned counsel appearing on behalf of the appellant has raised several contentions including that there was 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 G H

A 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 Trials to the appellant by Deepak Trimbakrao Deshmukh, was established. It is also contended that before recording its reasons for disagreeing with the findings of the Enquiry Officer and issuing a show-cause notice in which the punishment of dismissal
B was proposed, the appellant should have been given an opportunity of hearing and since this was not done, the principles of natural justice were violated with the result that the decision of the Disciplinary Committee of the High Court stood vitiated and on the basis of that decision, no recommendation could have been made to the State Government for dismissing the appellant
C from service nor could the State Government, acting on that recommendation, legally pass the order of dismissal. The learned counsel also contended that the decision 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 though the
D decision to hold the disciplinary enquiry could have been taken by the Disciplinary Committee constituted by the High Court in pursuance of a 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
E 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.

It is contended that since the Enquiry Report was considered only by the Disciplinary Committee which disagreed with the findings of the Enquiry
F 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.

G 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.

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

"Equally there is no merit in the submission made by the Petitioner that the decision of the Disciplinary Committee to impose major penalty of dismissal from service upon the Petitioner on the charges levelled against the Petitioner being held proved was required to be rectified by the 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 judgment delivered on 23rd June, 1992 by the Division Bench of this Court in Writ Petition No.5847 of 1991 as also by the judgment delivered on 15th March, 1996 by another Division Bench of this Court in Writ Petition No.649 of 1996 (R.W.Khan v. State of Maharashtra), similar challenge as made in the present petition has been negatived. 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 2nd May, 1981 passed by the Full Court which lay down the manner and regulates the procedure for administrative decisions on several subjects and matters enumerated therein. Based upon this Resolution of Full Court, the practice evolved in this court is 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. Accordingly, the decision taken by the Disciplinary Committee of this Court to dismiss the Petitioner from service is nothing but the decision of the High Court itself. Hence, it was not necessary to place the said decision for approval or rectification before the meeting of all the Judges or Full Court."

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 authorising 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.

We may consider the respective contentions on merits.

Article 235 of the Constitution provides as under:

A "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 construed as taking away from any such person any right of appeal which he may 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."

C 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 D 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 is 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 E 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.

F

A controversy had erupted at one time whether the words "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 G 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. & Ors.*, (Civil Misc. Writ No. 3561 decided on 18.4.1977) took the view that the words "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 H Bench of this Court in *State of Uttar Pradesh* v. *Batuk Deo Pati Tripathi &*

Anr. [1978] 2 SCC 102. This Court observed as under : A

"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. B 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 1952 Rules 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 C 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 West Bengal v. Nripendra Nath Baghchi has highlighted the meaning and purpose of Article 235, as construed by this Court in various decisions, requires that all matters relating to D 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 promtions should be dealt with and decided upon by the High Courts in the exercise of the control vested in them. A proper understanding E 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 that independence of an important wing of the judiciary, the inquiry 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 F 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 *Shamsher Singh* v. *State of Punjab* (supra) the action of the High Court in asking G the State Government to depute the Director of Vigilance to hold an inquiry against a judicial officer was deprecated by this Court as an act of self-abnegation. The High Court abdicated its control over the subordinate judiciary, which includes the power to hold a disciplinary inquiry against a defaulting Judge, by surrendering that power to the executive. That, truly, was an act of self-abnegation. There is no H

A parallel between what the High Court did in Shamsher Singh and what has been done in the instant case. Here, the decision to compulsorily retire the respondent was taken by the Judges of the High Court itself, though not by 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 subrodinate 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 the 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 Constitution."

It was also argued in that case that since the words "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 Judges and that the High Court cannot delegate that power or functions 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 under the Rules made by the High Court in exercise of its power under Article 225 of the Constitution and that the 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 if 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.

The Constitution Bench decision still holds the field.

In another decision, namely, *Registrar, High Court of Madras* v. *R.Rajiah,* 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] 3 SCR 365; *Shamsher Singh* v. *State*

of Punjab, [1975] 1 SCR 814; *State of Haryana* v. *Inder Prakash Anand,* AIR (1976) SC 1841 and *B.Mishra* v. *Orissa High Court,* [1976] 3 SCC 327. The Court, however, while considering the facts of the case, observed as under: A

"22. In *Rajiah's* case, a Review Committee consisting of the three judges was appointed by a resolution of the High Court. In the meeting of the Review Committee held on June 25, 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 April 2, 1980. The Division Bench found that the third Judge had no notice of the meeting held on June 25, 1979, but he agreed with the view expressed by the two Judges with a slight modification that the respondent would retire with effect from March 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 had 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 compulsorily retired with effect from March 3, 1980, the impugned order of compulsory retirement of the respondent Rajiah was vitiated. It is true that the members of the Review Committee should sit 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 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. B C D E F

23. 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, Rajeswaran, the decision and* G H

A *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)

B 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 C 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's* cases (supra), cannot be accpeted as in a latter decision in *High Court of Judicature at Bombay* v. *Shirishkumar Rangarao Patil & Anr.*, [1997] 6 SCC 339, 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 D 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 paragraphs 10 and 11 of the report observed as under :

E "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 F 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 G 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 subordinate 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 District or Additional District Judge etc. and to H 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 which acts through the Committee of the Judges authorised by the Full 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 authorising 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 exception 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 contention 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."

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.

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 seniormost Judges,

A 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 judicial service who usually have a short tenure, would superannuate without even reaching the "Collegium" of five seniormost 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 B 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 C to participate in the decision-making process concerning, at least, the imposition of major penalties like dismissal or removal, on members of the subordinate judiciary, as these punishments finally close their service chapter.

It was next contended by learned counsel for the appellant that the Disciplinary Committee, which had disagreed with the findings recorded by D the Enquiry Officer and had held that the charges against the appellant were proved, had acted in violation of the 'principles of natural justice' inasmuch as it did not give an opportunity of hearing at the stage when it developed the inclination that the findings recorded by the Enquiry Officer were not acceptable and were liable to be reversed. It was further contended that the E 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 without any notice to him and the Disciplinary Authority on a re-appraisal of the evidence came to the conclusion that the charges against the appellant were established. The Disciplinary Committee thus having taken a decision, proceeded thereafter to issue a notice to the F 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 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 G adequate opportunity of hearing which should have been afforded to him before taking a decision that he was guilty of the charges levelled against him.

Before entering into the merits of this question, we may point out that the action against the appellant was taken under the provisions of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Part III of the Rules deals H 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. A

Part IV of the Rules deals with procedure for imposing penalties. Rule 8 prescribes the procedure for imposing major penalties. The Inquiring Authority, after completing the inquiry, is required to prepare a report as provided by Clause 25 of Rule 8 which provides as under : B

> "(25) After the conclusion of the inquiry, a report shall be prepared by the inquiring authority. Such report shall contain —
>
> (a) the articles of the charge and the statement of the imputation of misconduct or misbehaviour; C
>
> (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
>
> (d) the findings on each article of charge and the reasons therefor;
>
> (e) recommendation regarding the quantum of punishment."

The Inquiring 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 inquiry; written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry and the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry, to the Disciplinary Authority. E F

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 : G

> "9. *Action on the inquiry report*— (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 of these rules as far as may be. H

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

(3) .....

B

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

C (a) furnish to the Government servant, a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring 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 inquiry authority, together with brief reasons D for its disagreement, if any, with the findings of the inquiring 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 further time not exceeding E fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 8 of these rules.

(ii) (a) .....

F (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, G should be imposed on him on the basis of the evidence adduced during the inquiry held under rule 8 and make such order as it may deem fit."

In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the H findings recorded by the Inquiring Authority or disagree with those findings.

If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring 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 Inquiring 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 Inquiring Authority has recorded a positive finding that 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 by the Rules made under Article 309 of the Constitution or the Disciplinary 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 Inquiring 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 Inquiring 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 Inquiring 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.

We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring 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 give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring 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 Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The

A Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "Tentative" reasons for disagreeing with the findings of the Inquiring 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 Inquiring Authority are not germane and B the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with.

Recently, a three-Judge Bench of this Court in *Punjab National Bank & Ors.* v. *Kunj Behari Mishra,* [1998] 7 SCC 84 = AIR (1998) SC 2713, relying upon the earlier decisions of this Court in *State of Assam* v. *Bimal Kumar* C *Pandit,* [1964] 2 SCR 1 = AIR (1963) SC 1612; Institute of *Chartered Acountants of India* v. *L.K. Ratna & Ors.,* [1986] 4 SCC 537 as also the Constitution Bench decision in *Managing Director, ECIL, Hyderabad & Ors.* v. *B. Karunakar & Ors.,* [1993] 4 SCC 727 and the decision in *Ram Kishan* v. *Union of India,* [1995] 6 SCC 157, has held that :

D

> "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 recorded its findings. The principles of natural justice would demand that the E 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 F 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 G disciplinary authority."

The Court further observed as under :

> "When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand H concluded. The disciplinary proceedings stand concluded with the

decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an 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 a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and inequitous 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 view expressed by this Court in *State Bank of India* v. *S.S. Koshal,* [1994] Supp. 2 SCC 468 and *State of Rajasthan* v. *M.C. Saxena,* [1998] 3 SCC 385 was not correct.

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 it 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 the 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

A 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.

B

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 were submitted to the Disciplinary Committee which disagreed with those 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 21st June, 1993 which provide as under:-

C

D

E

"Decision : Discussed.

For the reasons recorded in Annexure 'A' hereto, the Committee disagrees with the finding of the Enquiry Officer and finds that the charges levelled against the delinquent Judicial Officer have been proved.

F

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

G

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.

H

Show cause notice will be accompanied by a copy of the Report of the Inquiring Authority and the reasons recorded by this Committee." A

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 reasons as under: B

"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 Officer who has failed to maintain the absolute integrity in discharge of his judicial duties." C

Pursuant to the above minutes, a notice dated 24.6.93 was issued to the appellant which after reproducing the minutes of the Meeting of the Disciplinary Committee proceeded to say as under: D

"As required by the 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. E

A copy of the report of the Enquiry Officer dated 21.12.92 and a copy of Annexure 'A' are enclosed herewith for ready reference. F

Yours faithfully,

Sd/-

Registrar" G

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 proposed by the Disciplinary Committee which had already taken a final H

A 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 favour with the Disciplinary Committee.

B Since the Disciplinary Committee did not give any opportunity of hearing to the appellant before taking a final decision in the matter relating to 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 & Ors.* v. *Kunj Behari Mishra,* [1998] 7 SCC 84 = AIR 1998 SC 2713, referred C to above, were violated.

Mr. Harish N. Salve, 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 charges being proved. Since in the instant case, the D 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 E 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 not 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 F circumstances of this case, it cannot be said that there was failure or denial of opportunity at any stage.

The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. G What is ignored by the learned counsel is that a final decision with regard to the charges levelled 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 H (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law

laid down by this Court in the case of *Punjab National Bank* (supra) 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 that 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.

The Disciplinary Committee consisted of five Seniormost 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.

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

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 at the residence of Dr. Naranje, at Rashtra Bhasha Prachar Samiti Road, Wardha 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 Krishnarao Pradhan (Panch witness of the trap) and Shri Anand Digambar Deshmukh, Deputy Superintendent of Police, A.C.B. 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, Bailiff, Arvi, District Wardha.

The complainant had also approached the Anti-Corruption Bureau and informed them of the demand made by the appellant whereupon the Anti-

A Corruption Bureau, acting through Shri Anand Digambar Deshmukh, Deputy Superintendent of Police, A.C.B. 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, A.C.B. Nagpur in connivance with the accused without obtaining the prior permission of the Chief Justice. Although the complaint made by B 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 Department led evidence in that regard and produced Shri Anand Digambar Deshmukh, Deputy Superintendent of Police, A.C.B. Nagpur and the Panch witness Mrs. Madhuri Krishnarao C Pradhan, besides complainant's wife, Mrs. Sudha Deepak Deshmukh who allegedly wanted to offer the money to the appellant.

The story of demand of Rs.10,000 in each Session Trial was denied by the appellant who, as pointed out earlier, examined himself as also Dr. Naranje at whose house the demand was allegedly made on both the occasions as D also Mr. Bapat, advocate who allegedly acted as the go-between. These witnesses denied the whole story. The trap laid by the Anti-Corruption Bureau had also failed.

Deepak Trimbakrao Deshmukh had specifically alleged that the demand E of Rs.10,000 in each of the two Sessions Trials was made by the appellant at the residence of Dr. Naranje. This was also set out in the Transfer Petition No.88 of 1991, filed in the *High Court, in which it was stated that the Meeting of 23rd November, 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 27th November, 1990, the complainant himself stated that F 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. 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 G 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.

We fail to appreciate the approach of the Disciplinary Committee which H 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 complainant alone to come to the conclusion that Mr. Bapat, advocate had assured acquittal provided the complainant withdrew his Transfer Petitions.

The High Court has overlooked another important aspect of the case which is to the effect that Sessions Trial Nos. 28 of 1982 and 37 of 1987 were pending in the court of Sessions Judge, Wardha (Mr. S.S.Nikhree), from where these were transferred to the court of Addl. Distt. and Sessions Judge (Mr. S.T. Kharche) who attempted to proceed substantially with those trials, but Deepak Trimbakrao Deshmukh created all sorts of hinderances and obstacles and ultimately filed 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 Sessions Judge. Thereafter, when those cases were taken up by Mr. Kharche, Deepak Trimbakrao Deshmukh filed 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. Kharche who, however, having regard to the quarrelsome nature of the accused, requested the Sessions Judge, Wardha, to transfer those cases to some other court and consequently both the Sessions Trials were transferred to the court of Second Addl. Distt. & Sessions Judge, Wardha, presided over by the appellant. In that court also, the accused (Deepak Trimbakrao Deshmukh) adopted dilatory tactics to prolong the trial and ultimately gave an application in which he stated that he was certain that "no clean and impartial justice" was going to be done to him in both the Sessions Trials. This was treated as a contumacious conduct and the appellant passed an order taking cognizance under Section 345 of the Criminal Procedure Code read with Section 228 of the 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.

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

A order convicting the accused under Section 345 Cr.P.C. 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 B Applications. When the appellant, as Presiding Officer of that court, proceeded to dispose of those cases, the accused made the allegations in question against him and reported the matter to 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.

C

These facts will indicate that the accused (Deepak Trimbakrao Deshmukh) had taken the court, where the two Sessions Trials were pending against him, for a ride. He had adopted similar tactics in the court of Sessions Judge, Wardha, and again in the court of Ist Addl. Distt. and Sessions Judge, Wardha, where these two cases were transferred, and yet again in the court D of the appellant where these Sessions Trials came to be ultimately transferred.

After withdrawal of Transfer Applications, when the appellant proceeded with the two Sessions Trials, the Disciplinary Committee inferred that the appellant was still pursuing his earlier demand of bribe as otherwise he E 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 F 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 G evil designs.

Under Article 235 of the Constitution, the High Court has a duty to protect the officers of the subordinate judiciary from unscrupulous litigants and lawyers. In *Ishwar Chand Jain* v. *High Court of Punjab & Haryana & Anr.*, AIR (1988) SC 1395, it was, *inter alia*, observed that the High Court H 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 mofussil courts; if trifling complaints relating to judicial orders which may have been upheld by the High Court on the judicial side 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.*

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 levelled against the appellant were not established.

It was lastly contended by Mr. Harish N. Salve 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 or this Court cannot, in exercise of its jurisdiction under Article 226 or 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. Salve is in very broad terms and cannot be accepted. The law is well-settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the 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. *The Commissioner of Police & Ors.*, JT (1998) 8 SC 603 = [1999] 2 SCC 10, this Court, relying upon the earlier decisions in *Nand Kishore* v. *State of Bihar,* AIR (1978) SC 1277 = [1978] 3 SCC 366 = [1978] 3 SCR 708; *State of Andhra Pradesh* v. *Sree Rama Rao,* AIR (1963) SC 1723 = [1964] 3 SCR 25; *Central Bank of India* v. *Prakash Chand Jain,* AIR (1969) SC 983; *Bharat Iron Works* v. *Bhagubhai Balubhai Patel & Ors.,* AIR (1976) SC 98 = [1976] 2 SCR 280 = [1976] 1 SCC 518 as also *Rajinder Kumar Kindra* v. *Delhi Administration through Secretary (Labour) & Ors.,* AIR (1984) SC 1805 = [1985] 1 SCR 866 = [1984] 4 SCC 635, 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

A can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse.

In the instant case, we have scrutinised the reasons of the Disciplinary Committee and have found that it had taken its final decision without giving B an opportunity of hearing to the appellant at the stage at which it proposed to differ with the findings of the Enquiry Officer. We have also found that the complainant's story with regard to the place at which the demand was allegedly made by the appellant was inconsistent. We have also noticed that the trap laid by the A.C.B., Nagpur against the appellant had failed and was held by C 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 was sufficient to vitiate the findings recorded by that Committee contrary to the findings of the Enquiry Officer.

D

For the reasons stated above, we allow the appeal and set aside the judgment 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 08.11.1993 passed by the State Government with the direction that the appellant shall be reinstated in service E forthwith 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.

S.V.K.I. Appeal allowed.