
(1995) 05 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 5484 of 1995

Vijay Kumar Mahendra

APPELLANT

Vs

Registrar, High Court, Alld. and Others

RESPONDENT

Date of Decision : 09-05-1995

Acts Referred:

Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 — Rule 2(n), 40, 45, 6
Constitution of India, 1950 — Article 229

Citation : (1995) 05 AHC CK 0091

Hon'ble Judges : S.P.Srivastava, J

Final Decision : Dismissed

Judgement

S. P. Srivastava, J.—Heard the counsel for the petitioner and the learned Standing Counsel representing the respondents No. 1 and 2.

2. Learned Standing counsel has produced the original record culminating in the impugned order dated 721995 passed by Hon"ble the Chief Justice and the consequential order dated 821995 passed by the Registrar. Perused the record.

3. The petitioner who held the post of a Personal Assistant which is a ClaseIII post as envisaged under the Allahabad High Court Officers and Staff (Conditions of Service and Conduct), Rules, 1976 was subjected to disciplinary proceedings during the period when he was attached with an Administrative Judge of this Court which culminated in an order dated 721995 passed by the Hon"ble the Chief Justice of this Court whereunder a punishment of dismissal from service was awarded to him, feels aggrieved by the said order communicated by the Registry vide the order, dated 821995 and has approached this Court seeking redress praying for quashing of both the aforesaid orders including the enquiry report dated 1681993 and the order of his suspension pending disciplinary proceedings and other consequential reliefs.

4. In appears from the record that on certain facts having been noticed from the materials on the record the Hon"ble Administrative Justice with whom the

petitioner stood attached prima facie, being of the view that the petitioner had breached, disrespected and violated the faith, trust and confidence reposed by the Hon"ble Judge in him reported the matter to the Hon"ble the Chief Justice vide his endorsement dated 21/7/1992 whereafter, on perusing the record the Hon"ble Chief Justice while placing the petitioner under suspension vide the order dated 22/7/1992 started disciplinary action against him nominating Sri O. P. Srivastava, Joint Registrar (Computer) for the purposes of submitting the enquiry report which was communicated to the petitioner vide the consequential order passed by the Registrar dated 29/7/92. Sri O. P. Srivastava, Joint Registrar (Computer) who had been nominated by the Hon"ble the Chief Justice submitted his enquiry report dated 16/8/1993 holding the charges leveled against the petitioner to have been proved and recommended the awarding of the punishment of dismissal from the service.

5. The petitioner was thereafter issued a show cause notice dated 24/12/1993 calling upon him to submit his explanation and show cause in, response where to the petitioner submitted his explanation/reply dated 24/1/1994 praying that the show cause notice be withdrawn and the suspension order passed against him be revoked with all consequential benefits. This reply, contained in about 49 pages running into 84 paragraphs challenging and criticising the findings returned by the Enquiry Officer both on fact and law based on various assertions including those which were argumentative in nature, appears to have been placed along with the record of the proceedings together with the enquiry report for consideration before Hon"ble the Chief Justice who by a detailed order clearly indicating that he had considered the report of the Enquiry Officer including the facts on the record and charges framed against the petitioner as well as the reply given by him to the show cause notice, agreed with the conclusions arrived at by the Enquiry Officer which were supported by the evidence on the record and came to the conclusion that the charges framed and proved against the petitioner were of a very grave and serious nature and nothing having been indicated which could reveal anything to minimise the gravity of the charges proved and established against the petitioner accepting the findings given by the Enquiry Officer awarded the punishment of dismissal from service to him.

6. The Hon"ble the Chief Justice in his order dated 7/2/1995 has observed that the finding recorded against the petitioner to the effect that he visited a foreign country without the permission of the Court and had exercised undue influence on the judicial officers and availed of undue facilities from them exploiting his position of being Personal Assistant to Hon"ble Administrative Judge and that he leaked the confidential information pertaining to administrative matters of Bareilly Zone which were supposed to be kept as secret had committed breach of confidentiality, faith and trust reposed in his office and further that he also exercised undue influence on the District Judge, Pilibhit recommending the names of persons for doing certain favour and that he has interfered with local administration were based on the evidence on the record.

7. The learned counsel for the petitioner has urged that the impugned order passed by the Hon''ble the Chief Justice stands vitiated in law being discriminatory as although Hon''ble the Chief Justice was an appellate authority he had acted as a disciplinary authority which has resulted in the denial of the right of an appeal and also the right of a review. The contention is that under the rules governing the conditions of service of the petitioner, the status of Hon''ble the Chief Justice has to be treated as that of an appellate authority and since the rules secured a right of appeal in favour of a delinquent on whom a major punishment is imposed, the mere fact that the appellate authority has acted as a disciplinary authority and has imposed, a major penalty, is more than sufficient to prove that the petitioner stands deprived of the remedy of appeal which is a substantive right given to him under the rules with the consequence that it has resulted in discrimination inasmuch as when there is a provisions of appeal against the order of the disciplinary authority and when the appellate or higher authority against whose order there is no appeal exercised the powers of disciplinary authority it results in discrimination against the employee concerned. The learned counsel for the petitioner in support of the aforesaid submission has heavily relied upon the decision of the Apex Court in the case of Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank and others, 1995 (2) SCC 474 :1995 (1) LBESR 513 (SC).

8. Learned Standing Counsel, however, has urged that the ratio of the aforesaid decision has no application to the facts and circumstances of the present cases specially in view of the implications arising under the provisions contained in Allahabad High Court Officers and Staff (Conditions of the Service and conduct), Rules, 1976 and the provision contained in Article 229 of the Constitution.

9. In the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 the appointing authority has been defined under Rule 2 (n) to be the Chief Justice of the Court or such other Judge or officer as ho may direct, Rule 6 of the aforesaid rules provides that if the appointing authority is other than the Chief Justice the exercise of his power shall always be subject to any general or special order of the Chief Justice.

Rule 40 of the aforesaid Rules is as follows :

"Regulation of other matters.(1) All officers and servants of the Court shall be subject to the superintendence and control of the Chief Justice.

(2) In respect of all matters (not provided for in these rules.) regarding the conditions of service of officers and servants of the Court including matters relating to their conduct, control and discipline, the rules and orders for the time being in force and applicable to Government servants holding corresponding posts in the Government of Uttar Pradesh shall apply to the officers and servants of the Court subject to such modifications, variations, the exceptions, if any, as the Chief Justice may, from time to time, specify :

Provided that no order containing modifications, variations or exceptions in rules

or orders relating to salaries, allowances, leave or pensions shall be made by the Chief Justice except with the approval of the Governor :

Provided further that the said powers exercisable under rules and orders of Government of Uttar Pradesh by the Governor shall be exercised by the Chief Justice or by such officer as he may, by general or special order, direct.

(3) If any doubt arises in regard to a particular post in the establishment being corresponding to a post in the State Government the matter will be decided by the Chief Justice. It may further be noticed that Rule 45 of the aforesaid rules is to the following effect:

"General rules. Notwithstanding anything contained in these rules, the Chief Justice shall have the power to make such orders, as he may consider fit in respect of recruitment, promotion, confirmation or any other matter."

10. It may further be noticed that in exercise of the powers conferred by clause (1) of Article 229 of the Constitution of India read with Rule 2(n) or" the aforesaid rules and subject to Rule 6 thereof the Chief Justice had issued a direction on 23/8/1976 to the effect that the Registrar of the Court was to be the appointing authority in respect of all matters of appointment, promotion etc., to Class HI and Class IV post referred to in Rules 3 to 15 of the aforesaid rules.

11. The submission of the learned Counsel for the petitioner is that when the Chief Justice in exercise of the powers conferred by Article 229 of the Constitution has framed the statutory rules governing the conditions of service of the employees of the High Court then all the benefits granted by the rules specially Rule 40, would automatically flow to the benefit of the employees.

12. In the aforesaid connection, the learned counsel for the petitioner referred to U.P. Civil Service (Classification, control and Appeal), Rules, 1930, the provision contained in Rule 56 whereof provides that every person included in one of the clauses (1) to (5) specified in Rule 14 shall be entitled to appeal as provided thereunder from an order passed by a competent authority imposing upon him any of the penalties specified in Rule 49 which includes the penalty of dismissal from service. However, the clauses (1) to (5) referred to in the aforesaid provision as specified in Rule 14 do not cover the subordinate service which stands specified as Clause (6) in the Rule 14 aforesaid. It is, therefore, obvious that no statutory right of appeal can be claimed by virtue of Rule 56 of the aforesaid rules.

12. However, Rule 44 of the aforesaid rules stipulates that the power to make rules providing for the making of first appointment, the methods of recruitment, the number and character of posts and conditions of service pay and allowances and pensions relating to subordinate service referred to in clause (6) of Rule 44 indicated above under the administrative control of a government stood delegated to such Government. In exercise of the aforesaid jurisdiction, notification dated August 3, 1932 was published by the government of United

Provinces whereunder every member of a subordinate service against whom an order inflicting the penalty of dismissal from service is imposed was secured with a right to appeal to the next higher authority,

13. The contention of the learned counsel for the petitioner is that by virtue of the aforesaid provision read with Rule 40 of the Rules of 1976 a right of a statutory appeal stood secured in favour of the petitioner against the order imposing the penalty of dismissal which had been passed by the Registrar which appeal could be heard and disposed of by the Hon''ble the Chief Justice acting as an appellate authority being the next higher authority as contemplated under the aforesaid rule which opportunity stood denied to the petitioner resulting in the discrimination vitiating the impugned order.

14. I have given my anxious consideration to the aforesaid submission. Though the aforesaid submission appears to be attractive but on a close scrutiny it does not appear to be of any merit. In this connection it may be noticed that under the provisions contained in Article 229 of the Constitution of India a clear cut provision has been made securing the Chief Justice of the High Court with an exclusive jurisdiction in regard to the appointment of officers and servants of the High Court, providing further that such appointments could be made by any such other Judge or Officer of the Court as the Hon''ble Chief Justice may direct. The power given to the Chief Justice in the matter of appointment under Article 229 of the Constitution is unfettered and is the sole preserve of the Chief Justice which could be interfered with only to a very limited extent indicated in the proviso. The Constitutional Bench of the Apex Court in its decision in the case of Chief Justice of Andhra Pradesh and another v. L.V.A. Dhikshitulu, AIR 1979 SC 193 had observed that in conferring such exclusive and supreme powers on the Chief Justice the object which the founding fathers had in view was to ensure the independence of the High Court. Rule 45 of the Allahabad High Court Officers and Staff (Conditions of Service and Conduct), Rules, 1976 clearly indicates that the Chief Justice shall have power to make such orders as he may consider fit in respect of recruitment, promotion, confirmation or any other matter. These residuary powers have to be exercised subject to the restriction provided under Article 229 of the Constitution which is that an order relating to salaries, allowances leave or pension has to be made with the approval of the Governor.

15. It may further be noticed that the word "appointment" in Article 229(1) of the Constitution is to be construed according to the Maxim that the greater includes the less. The power of appointment conferred by Article 229(1), therefore, has to be taken as including the power to suspend, dismiss, remove or compulsorily retire from service any officer or servant of the High Court. This was so clarified by the Apex Court in its decision in the case of Chief Justice of Andhra Pradesh and another v. L.V.A. Dhikshitulu (supra). This power to appoint or dismiss an officer or servant of the High Court is not a judicial power but is an administrative power.

16. As observed by the Apex Court in its decision in the case of Pradyat Kumar

Bose v. The Hon^{ble} the Chief Justice of Calcutta High Court, AIR 1956 SC 285 at p. 291, so far as the power of dismissal is concerned the position under the constitution is not open to any argument or doubt. Article 229(1) of the Constitution which in terms vests the power of appointment in the Chief Justice is equally, effective to vest in him the power of dismissal. It was observed that the power of appointment includes the power to suspend or dismiss.

17. However, it may be noticed that Article 229(1) of the Constitution itself provides that the power of appointment vesting in the Chief Justice of High Court may be exercised by the Chief Justice himself or such other Judge or Officer of the Court as he may direct. The aforesaid stipulation clearly indicates that a nominee of the Chief Justice or his delegate also stands authorised to exercise the aforesaid jurisdiction.

18. As a general rule, whatever a person has power to do himself he may do by means of an agent. This broad rule is limited by the operation of the principle that a delegated authority cannot be redelegated. The word "delegation" in its general sense and as generally used does not imply or point to a giving up of an authority but rather the conferring of an authority upon some one else. The delegation, unless it is controlled by statute, of any power by one person to another does not contemplate the entire abandonment of the power. The delegation of a power in no sense negatives the exercise of the power which may always be resumed.

19. Where an authority delegates its power to another it does not follow that the authority thereby divests itself of such authority altogether. In other words when the delegator delegates its authority to the delegatee, its authority by itself does not cease, for it may choose to revoke such authority which it could not do if it did not retain the authority itself. However, in case the administrative authority named in the statute has and retains in it its bands, general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of a substantial degree there is in the eye of law no delegation at all. If the statutory authority empowers a delegate to initiate preparatory work and to take an initial decision in the matters entrusted to it put retains in its own bands the power to approve or disapprove the decision after it has been taken the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority of own decision. It is further well recognised principle that a statutory functionary exercising administrative power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report i. e. the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law so specifically provides is the ultimate responsibility of such power.

20. In the facts and circumstances of the present case what is apparent is that it was the Hon^{ble} Chief Justice who had nominated Sri O. P. Srivastava, Joint

Registrar (C) to hold disciplinary enquiry against the petitioner. It was again the Hon"ble the Chief Justice himself who had taken the decision to suspend the petitioner. The enquiry report had been submitted by the enquiry officer for consideration to the Hon"ble the Chief Justice and it was Hon"ble the Chief Justice himself who had taken the ultimate decision to dismiss the petitioner from service. In this entire process, the Registrar did not come in the picture except as the communicating officer and does not appear to have exercised at any stage as a delegate, any jurisdiction vesting in Hon"ble the Chief Justice. Further even if it be assumed that under the notification the Registrar had been nominated by the Hon"ble the Chief Justice to be the appointing authority, that could only mean that the administrative power vesting exclusively in the Chief Justice of the High Court was delegated in favour of the Registrar. This delegation, however, could not be deemed to affect the jurisdiction of the Chief Justice to deal with matter relating to appointment or dismissal of an officer or servant of the High Court which jurisdiction stood amply secured under Rule 45 of the Allahabad High Court Officers and Staff (Conditions of Service and Conduct), Rules, 1976 which begins with a nonobstinate clause.

21. In the circumstances indicated hereinabove there can be no escape from the conclusion that the effect of the notification relied upon by the petitioner is only that of securing a delegation of power by the Chief Justice in favour of the Registrar which power could be resumed by the Chief Justice at any time and in any case the decision of the delegate had to be taken as the decision of the delegator authority itself with the result that in either case the decision had to be treated under the law to be a decision by Hon"ble the Chief Justice himself. The rule relied upon by the learned counsel for the petitioner which according to him secured in his favour a right of appeal cannot, therefore, be deemed to have been attracted in the present case inasmuch as even according to that rule the remedy of appeal stood provided only to the next higher authority but in the present case since the order of dismissal has been passed by the highest authority as envisaged under the Constitution of India and there does not exist any next higher authority as contemplated in the aforesaid rule, the conclusion is inescapable that the said rule cannot come to the rescue of the petitioner by any stretch of imagination and it has to be held that it is a case where no statutory right of appeal stands provided either under Allahabad High Court Officers and Staff (Conditions of Service and Conduct), Rules, 1976 or the rules relating to subordinate service which is sought to be relied upon by the learned counsel for the petitioner.

22. In the circumstances indicated hereinabove taking into consideration the implications arising under the decision of the Apex Court in the case of Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank (supra), to the effect that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided against such authority, the conclusion is inescapable that since there is no next higher authority than the Chief Justice, in the present case,

no statutory right of appeal can be deemed to have been secured in favour of the petitioner which could if at all invalidate the impugned order of dismissal on the basis that it stands vitiated on account of the vice of discrimination as claimed. This conclusion is further strengthened in view of the fact that the status of the Registrar even under the notification relied upon by the petitioner cannot place him higher than that of a delegate and the decision of the delegatee has to be treated under the law to be that of the delegator himself. The submission of the counsel for the petitioner noticed herein above is, therefore, totally misconceived and is not at all acceptable.

23. It has next been contended that the petitioner, had not been afforded any opportunity of being heard in person by Hon"ble the Chief Justice before passing the order imposing major penalty upon him. In its decision in the case of Madhya Pradesh Industries Limited V. Union of India, AIR 1966 SC 671, the Apex Court had observed that "it is no doubt that principle of natural justice that a quasi judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. However, it was further observed that such an opportunity need not necessarily be by personal hearing. It can be by written representation. It was further observed that whether the said opportunity should be by a written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the tribunal. It seems to me that the aforesaid principle can be safely applied in the cases relating to the disciplinary proceedings wherein the appointing authority has to take a decision in exercise of the administrative power vesting in him. In the present case the petitioner had been afforded an opportunity to submit his representation and show cause against the recommendations of the enquiry officer before the decision in question had been taken by the Hon"ble the Chief Justice. It is, therefore, obvious that Hon"ble the Chief Justice considering the facts and circumstances of the case and the material evidence brought on record was of the view that such an opportunity would sufficiently meet the requirement of observance of the principles of natural justice and the opportunity to show cause by a representation would be an elective opportunity of meeting any relevant allegation against the delinquent. In fact this opportunity was availed by the petitioner and he submitted a detailed representation to which a reference has already been made above, I am of the clear opinion that duty to hear does not necessarily mean personal hearing and a delinquent may be heard orally or through a medium of written representation. Considering the facts and circumstances of the present case, I am clearly of the view that the impugned order cannot be held to be vitiated in law on account of its having been passed in violation of principles of natural justice as claimed and further that an effective opportunity had been afforded to the petitioner to meet the allegations levelled against him. The submission of the learned counsel for the petitioner indicated hereinabove, therefore, is totally without any merit and is not acceptable.

24. It has next been contended that the entire disciplinary proceedings stand

vitiated in law as the Enquiry Officer had acted as a prosecutor, presenting officer and a Judge. In this connection, it is further urged that the enquiry officer had of his own summoned and examined three witnesses, whose names had not been disclosed in the list of witnesses who were initially proposed to be examined. It is also urged that the Enquiry Officer himself had put various question to the witness which indicated that he had assumed the role of a presenting officer. The contention is that the aforesaid action indicated bias and the enquiry officer appeared to have acted like a Judge in his own cause which vitiated the entire report submitted by him.

25. An administrative authority who is to take a decision such as the dismissal of an officer or servant of the staff can legitimately obtain the on which he has to act in such manner as may be feasible and convenient ; provided that the affected party has a fair opportunity to correct or contradict any relevant and prejudicial material. The Enquiry Officer appointed by the administrative authority does not stand vested with the power of imposing punishment. He is only a fact finding authority and, therefore, the question of his arriving at an independent conclusion does not arise. There can be no manner of doubt that the competent authority can delegate function of holding enquiry to some other person and the jurisdiction to initiate enquiry and frame the charge can also be delegated. What cannot be delegated, however, is the ultimate responsibility imposing punishment which include dismissing or removing the officer or the servant. It is an elementary rule of natural justice that a person who tries a case should be able to deal with the matter before him objectively fairly and impartially. "Biased man does not hold his opinion as it is his opinion that holds him and, therefore, he cannot have an impartial mind. In the disciplinary proceedings where an Enquiry Officer is appointed, a situation which will make a state of affairs unworkable has to be avoided. The rule that prosecutor should not be Judge is not strictly applicable in those cases where the appointing authority delegates to its nominee the function of making a fact finding enquiry. In such circumstances the rules of natural justice cannot be deemed to have been violated on the footing that the prosecutor is the Judge unless it is shown that the punishing authority is personally interested in the matter, or the enquiry officer was proceeding with any pecuniary personal or official bias which has to be established on cogent material leading to an irresistible conclusion in this regard. Mere apprehension of bias is not enough. It must be real. As has already been indicated above the principle that prosecutor should not be Judge normally should not be extended to the enquiry officers in the departmental proceedings, so long as the initiative is only for the vindication of justice as in such cases no bias can be assumed but there may be a case where initiative is to find the employee guilty in that event the person may be held to be biased as he is inescapable of arriving at a free and objective decision. But this has to be established. Further the fact that the enquiring officer examines the witnesses without any assistance from the department cannot be an action which by itself be taken to show that enquiring officer had himself become a prosecutor in the

casa. Further merely because an Enquiry Officer crossexamines the witnesses he cannot be said to have become biased as a parson while crossexamining only attempts to find out the truth and has the liberty to pursue a witness in a scrutinising sprit. In such cases it has to be remembered that natural justice is not merely a matter of form but one of substances and the governing test is whether putting of such questions indicate that the Enquiry Officer was not fair or that he was biased. It may further be noticed that it is permissible for the appointing authority to utilise the agency of an enquiry officer for collecting facts and materials on which ultimately the conclusions are to be based. The Enquiry Officer is engaged in a fact finding mission but he does not hold any trial. He need not follow the rules of procedure of a court or apply the provisions of the Evidence Act and his report is also not binding on the punishing authority. The only purpose for which the Enquiry Officer is appointed and his service utilised is for the purpose of holding a fact finding enquiryfor helping the appointing or punishing authority to come to,a definite conclusion regarding the guilt of the delinquent official. It seems to me that an Enquiry Officer can obtain all information and material for the enquiry from any where but before acting on it these materials have to be put to the party against when it is sought to be used affording him a fair opportunity to explain.

26. In the aforesaid connection it may be usefully noticed that the Constitution Bench of the Apex. Court in its decision in the case of State of Mysore and others v. Shivabasppa Shivappa Makapur, A. I. R. 1963 SC 375, had observed that Tribunals exercising quasijudicial functions are not courts and that, therefore, they are not bonus to follow the procedure .prescribed ton trial of actions in Courts nor they are bound by strict rules of evidence. They can, unlike courts, obtain all informations, material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedures, which govern proceedings in Court. The only obligation which the law casts on them is that they should not action any information which they may receive unless they put it to party against whom it is the party against whom it is to be used and give him fair opportunity to explain it. The Apex Court had further observed that what is a fair opportunity must depend upon the facts and circumstances of each case but where such an opportunity had been given, the proceedings, are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts.

27. The Apex court had further observed in its decision in the case of Collector of Central Excise and Land Customs v. Sanawarmal Purohit, 1969 Assam L. R. 11 SC, that a quasijudicial authority would be acting contrary to the rules of natural justice, if it acts upon information collected by it which has not been disclosed to the party concerned and in respect of which full opportunity of meeting the inference which arises out of it has not been given. The Apex Court after noticing the aforesaid decision emphasised that the rules of natural justice can be considered to have been violated only of the authority concerned acts upon information collected by it and the said information has not been disclosed to the

party against whom the material has been used. See *State of Assam and another v. Mahendra Kumar Das*, AIR 1970 SC 1255.

28. The aforesaid principles stand fully attracted to the disciplinary proceedings where an enquiry officer has been appointed by the appointing authority to hold the fact finding enquiry and it is permissible for the Enquiry Officer to collect materials on which the appointing authority may base its conclusions subject, however, to the procedural safeguard that such materials must be brought to the notice of the delinquent official providing him a fair opportunity to lead evidence in rebuttal or to explain his case with reference to the material brought on the record by the enquiry officer. In the circumstances of the present case, considering the nature of the charges and the exigencies of the situation the action of the enquiry officer in bringing on record the statements of three witnesses viz. Sri P. K. Gaur, Sri P. Pascal and Sri R. C. Upadhyay or putting question to the witnesses to elicit the truth in the absence of any presenting officer, could not have the effect of vitiating the enquiry proceedings specially when full opportunity had been given to the petitioner to cross-examine the aforesaid witnesses and lead evidence in rebuttal which he did by bringing on record the opinion of a handwriting expert. The aforesaid actions of the Enquiry Officer could not lead to any inference in the facts and circumstances of the present case to the effect that the Enquiry Officer had any personal, pecuniary or official bias against the petitioner.

29. Further considering the nature of the charges and the questions put by the enquiry officer no such inference can be made out that the enquiry officer had become biased or was acting as a prosecutor or as a Judge as claimed by the petitioner. The enquiry officer as a nominee of the Hon^{ble} the Chief Justice was to hold a fact finding enquiry and had to collect the facts on which the appointing authority could base its conclusions. The ultimate decision had to be taken by the appointing authority. It was open to the appointing authority either to reject the recommendations of the enquiry officer or to accept the same after considering the entire material objectively on an independent application of mind. In the circumstances of the case, therefore, I am not inclined to accept the submission of the learned counsel for the petitioner that the fact finding enquiry stood vitiated on any such ground as claimed.

30. It has next been contended that the petitioner was seriously prejudiced as the enquiry officer had not allowed him to be represented by a lawyer and further that in spite of requests for supplying the copies of various documents the enquiry officer did not supply the same to him.

31. The learned counsel for the petitioner has strenuously urged that the petitioner was a nonlegal person and the witnesses which had been examined in the case were mostly judicial officers. It is, in these circumstances that he had moved an application on 30/11/1992 bringing to the notice of the enquiry officer that since he had summoned witnesses for giving evidence who were mostly the senior judicial officers and were fully conversant with the law, he may be

permitted to take the assistance of an Advocate to defend himself and engage a counsel for the purpose. The petitioner himself has admitted that in the enquiry proceedings no presenting officer had been appointed for representing the department. It was, therefore, not a case where the petitioner could be taken to have been pitted against a presenting officer being a person of legal mind and experience. Learned counsel for the petitioner heavily relied upon the observations made in the decision of the Apex Court in the case of *J. K. Aggarwal v. Haryana Seeds Development Corporation Ltd.*, 1991 (2) SCC 283, wherein the Apex Court had reiterated its earlier decision in the case of *Board of Trustees of the Port of Bombay v. Dilip Kumar*, reported in 1983 (1) SCC 124, holding that fair play in action required that wherein an enquiry before a domestic Tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. In the aforesaid case of *J. K. Aggarwal v. Haryana Seeds Development Corporation Ltd.* (supra), 13 witnesses had been examined which had been cross-examined by the delinquent official himself. However considering the circumstance that the presenting officer there was a person with legal attainments and experience and the delinquent who was a senior executive had no legal background the delinquent was permitted to get some of the witnesses further cross-examined by a lawyer engaged by him.

32. In the present case what I find is that seven witnesses had been examined in all during the enquiry proceedings apart from the petitioner. They were Sri R. N. Sircar, the then District Judge. Bareilly, Sri Naseem Uddin, the District Judge, Pilibhit, Sri J. C. Misra, Chief Judicial Magistrate, Bareilly, Sri S. P. Singh, the then Additional Chief Judicial Magistrate, Bareilly, Smt. Kalpana Misra, the then Additional Munsif, Bareilly, Sri Yogendra Singh, the Chief Judicial Magistrate, Budaun and Sri K. P. Singh, the then Additional Sessions Judge, Bareilly besides Sri P. Pascal, the Private Secretary to Hon"ble Mr. Justice R. S. Dhavan, Sri R. C. Upadhyaya, (dead) Private Secretary, High Court, Allahabad and Sri V. K. Gaur, Cashier, Allahabad High Court. Further the petitioner had been provided access to all the relevant documents.

33. The Enquiry Officer has noticed in his report that he had observed that the Judicial Officers who had been examined as witnesses had maintained restraint in giving evidence. The Enquiry Officer appears to have disbelieved the statement of Smt. Kalpana Misra and part of the statement of K. P. Singh. He has believed the statement of the high ranking judicial officer in support of his findings in regard to the proof of documentary evidence brought on record and the visits of the petitioner to Bareilly and his activities indicating abuse of his official position. From the documentary evidence and the statements of the judicial officers, the enquiry officer appears to have reached a conclusion that the petitioner had expressed his authority over Judicial Officers that he could get the things done in the matter where he took interest and had in tact been contacting the judicial

officers on telephone. The Enquiry Officer from the materials on the record has also come to the conclusion that the petitioner had tampered his signatures over the letters containing his admissions within the twinkling of eyes indicating that he was most untrustworthy person. He also came to the conclusion that the petitioner had interfered with the local administration of District Judge, Bareilly and leaked confidential information which he was supposed to keep secret and that he had been abusing his official position of confidence. He has also found that the petitioner had forged letters. The enquiry officer has also taken into account the observations of Hon'ble Mr. Justice Ravi S. Dhavan the then Administrative Judge with whom the petitioner stood attached who reposed confidence in the petitioner indicating that the petitioner had betrayed his confidence and indulged in activities which deserved utmost condemnation. The petitioner had cross-examined the witnesses examined during the disciplinary proceedings at great length. In the facts and circumstances of the case specially taking into consideration the evidence of the Judicial Officers on the facts which have been relied upon in support of the findings returned by the enquiry officer which facts also got support from the documentary evidence on the record I do not think that any material prejudice was caused to the petitioner by not permitting him to engage a lawyer to cross-examine the Judicial Officers. Moreover, since it cannot be said that the petitioner was pitted against any presenting officer who was a person of legal mind and experience and further the rules did not stipulate providing of any such legal assistance and that too only for the purposes of cross-examination I do not think that the discretion exercised by the authority concerned for not acceding to the request for permitting cross-examination by a lawyer or providing copies of irrelevant documents can have the effect of vitiating the proceedings in question.

34. It has next been contended that the findings recorded by the enquiry officer which stand upheld by the appointing authority are perverse and there was no evidence to support them. In this connection it may be noticed that in its decision in the case of *State of Haryana v. Rattan Singh*, reported in AIR 1977 SC 1512, the Apex Court had observed that a disciplinary proceedings cannot be quashed merely because the enquiry officer had relied upon hearsay evidence provided such evidence had a reasonable nexus to the charge and further in its decision in the case of *Union of India v. H. C. Goyal*, reported in AIR 1964 SC 364 the Apex Court had observed that if there is some evidence to support the finding the court cannot scrutinise the sufficiency of the evidence making it clear that it can interfere when there is no evidence to support the finding. In the present case what I find is that the present one does not appear to be a case where it can be said that there was no evidence to support the findings. The charge of misconduct of a grave nature stood supported by such evidence which did constitute sufficient evidence on which the findings returned by the enquiry officer could be sustained.

35. The learned counsel for the petitioner has next contended that the order passed by the appointing authority stands vitiated in law as it contains only

conclusions and does not consider the charges item wise and threadbare. The contention is that the order discloses total nonapplication of mind, in fact, in the present case the appointing authority has expressly stated what it agreed with the findings of the enquiry officer. In the case of Pradyat Kumar Bose v. The Hon''ble Chief Justice of Calcutta High Court (supra), the Apex Court had indicated that an order passed by the administrative authority as in the present case could not be assailed on the ground that it does not disclose the reasons in detail for making it. If the punishing authority agrees with the findings of the enquiry officer then it would be an empty formality for the appointing authority to repeat the reasons given by the enquiry officer. It seems to me that when the appointing authority affirms the finding of the enquiry officer it is not necessary for him to reconsider the evidence threadbars, in case the enquiry officer has considered the entire evidence and materials on record in detail and further that the order passed by the appointing authority discloses that he was in fact live to the controversy. However, in a case where the appointing authority disagrees with the findings returned by the enquiry officer he is expected to meet the reasonings of the enquiry officer pointing out the defects which justify rejection of the said findings.

36. A perusal of the order passed by the Hon''ble the Chief Justice, dated 721995 indicates that he was in agreement with the conclusions arrived at by the enquiry officer which were found to be on the evidence led in regard to the charges leveled against the petitioner. The Hon''ble Chief Justice has specifically mentioned that he had considered the facts borne out from the record as well as the charges framed against the petitioner and had also considered his reply submitted to the show cause notice. The Hon''ble Chief Justice has recorded a finding that the charges framed and proved against the petitioner were of a very grave and serious nature. It has also been observed that by his conduct the petitioner had lowered the image of the Hon''ble Administrative Judge as well as the High Court while acting as Personal Assistant. It has also been noticed that reply to the show cause notice did not reveal anything to minimise the gravity of the charges which stood proved and established against the petitioner. With the above observations the Hon''ble Chief Justice accepting the findings of the enquiry officer to be correct and borne out from the evidence on the materials on the record had awarded the punishment in question dismissing the petitioner from service.

37. In the aforesaid circumstances the contention of the learned counsel for the petitioner referred to above is not acceptable.

38. Learned counsel for the petitioner has vehemently urged that the first charge leveled against the petitioner to the effect that the petitioner was guilty of misconduct for having visited a foreign country without the permission of the court in contravention of the rules regulating the conduct of the Government servant was baseless. The contention raised is that no permission was required for visiting a foreign country under the rules regulating the conduct of the

Government servants. The enquiry officer has recorded a finding that the petitioner had visited Mahendra Nagar (Nepal). The claim of the petitioner that he had not visited Nepal which falls outside India was disbelieved. From a perusal of the reply filed by the petitioner it is apparent that the fact that he had not taken any permission to visit any country outside India was not disputed. The rules regulating the conduct of the Government servants are contained in U. P. Government Servants Conduct Rules, 1956. These rules read with Rule 40 of the Allahabad High Court Officers and Staff (Conditions of Service and Conduct), Rules, 1976 are to be deemed to be applicable to the petitioner also. Rule 3 of the aforesaid rules provides as follows:

"General.(I) Every Government servant shall at all times maintain absolute integrity and devotion to duty;

(2) Every Government servant shall at all times conduct himself in accordance with the specific or implied orders of Government relating to behaviour and conduct which may be in force."

39. The State Government had issued a Government Order, dated 481980 in regard to the visits to foreign countries by the Government servants whereunder the earlier Government Order, dated 361980 had been partially modified. This Government Order being Government Order No. 1611/ Ka3/198019/25/80, dated 481980 clearly stipulates that the permission for visits to foreign countries for which the Government servant himself bears the expense should be obtained from the Head of the Department concerned. The aforesaid Government Order also clarifies that whatever be the purpose for a visit to a foreign country since the prestige of the country and the State is implicit therein, before granting the permission the competent authority should take into account various factors indicated in the aforesaid Government Order. The aforesaid order read with Rule 3 indicated above clearly negatives the contention of the petitioner.

40. However, it may further be noticed that Fundamental Rule 107 contained in Financial Handbook Volume 2, Chapter 9 stipulates that every Government servant proceeding on leave out of India should procure from the Accountant General and take with him a copy of the memorandum of information issued for the guidance of Government servants proceeding on leave out of India. Fundamental Rule 108 of the aforesaid Rules requires that a Government servant taking leave out of India must report his embarkation to the Accountant General. The leave rules applicable to Government servants clearly stipulate the obtaining of prior sanction for leaving the station. If a person has gone out of India in the countries referred in Rule 21 (which includes Nepal also) in case he seeks extension of leave must make application for such extension. The leave rules clearly indicate and imply the obtaining of prior sanction for any visit to any foreign country. The emphasis in the rules is that the person who visits any foreign country must take with him a copy of the information issued for the guidance of Government servant proceeding on leave out of India. It is, therefore, obvious that in case the petitioner wanted to visit a foreign country he

ought to have taken the memorandum of information issued for the guidance of Government servant proceeding on leave out of India. This could have been supplied to him on the grant of the leave for the purpose. In the present case on the own showing of the petitioner he never asked for any such leave. The contention of the learned counsel for the petitioner that there is no provision under the conduct rules requiring the obtaining of leave for visiting a country outside India appears to be totally misconceived and baseless.

41. However, it may be noticed that while imposing the punishment in question the appointing authority has taken into account the cumulative effect of the activities of the delinquent official, In the present proceedings this Court ought not to sit over as a court of appeal to assess the value of evidence led in the disciplinary proceedings in question and appraise or reappraise the said evidence and substitute the findings returned against the petitioner with its own findings. I am not at all convinced that the impugned findings are based on mere lurking suspicion or based on no evidence as claimed. The findings returned by the enquiry officer which have been affirmed by the Hon''ble Chief Justice appear to have been reached after consideration of the relevant evidence and surrounding circumstances. It can also not be said that wrong inferences have been drawn from the evidence as the evidence had to be considered as a whole. It most not be lost sight of in this connection that so long as there is some evidence, however, meager it may be, to support the findings of the enquiry, it will not be proper for this Court to set aside those findings on the ground that best evidence was not produced.

42. Considering the facts and circumstances of the case brought on record in their totality and the cumulative effect of the findings returned by the enquiry officer which findings as upheld by the Hon''ble Chief Justice do not appear to suffer from any such legal infirmity which may justify any interference therein while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India no ground for the intervention of enquiry has been made out.

43. In view of the conclusions indicated hereinbefore, this writ petition is clearly devoid of merit and deserves to be and is: hereby, dismissed.