

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

Reserved on: 23.05.2013
Pronounced on: 28.11.2013

+ **LPA 82/2004**

PROF. K.P. GUPTA Appellant
Through: Ms. Shantha Devi Raman and Sh.
Sanjeet Raman, Advocates with the
appellant in person.

versus

UNIVERSITY OF DELHI Respondent
Through: Sh. Anurag Mathur, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

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1. This is an unsuccessful writ petitioner's appeal, questioning the decision of a learned Single Judge. The impugned judgment dismissed the appellant's writ petition, whereby he had challenged the action of the Delhi University ("*the University*") in issuing him a show cause notice pursuant to an Enquiry Report submitted in respect of allegations of his misconduct.
2. The facts, briefly, are that the Petitioner was at the relevant time a Professor in the Department of Chinese and Japanese Studies of the University. He had also held the position of Head of

Department. The University alleged that complaints were received by its Vice Chancellor in respect of irregularities by the petitioner in the purchase of a computer. An enquiry was ordered to be conducted by the Internal Audit Officer to ascertain the veracity of these allegations. The appellant was requested by the Internal Audit Officer to cooperate in the enquiry. Allegedly, the appellant did not cooperate with the Internal Audit Officer and the said Audit Officer had to personally visit the appellant's office on October 26, 1993. It was stated that during that visit, he could not locate the computer in the departmental office, Laboratory, Library or Teachers Room. This led to appointment of a Committee headed by Professor Namwar Singh (“*the Namwar Committee*”) to examine whether there was a *prima facie* case for a full fledged investigation and departmental enquiry. The appellant took part in the proceedings of the Namwar Committee’s inquiry. That committee was of the opinion that a *prima facie* case for departmental enquiry existed, on the basis of the materials it considered.

3. The University placed the recommendations of the Namwar Committee before the Executive Council in its meeting of 07.04.1995. The Namwar Committee report led to the petitioner being asked to step down as the head of the Department of Chinese and Japanese Studies. As the appellant did not comply, Mrs. Savitri Vishwanathan was asked to perform the duties of the Head of the department until further orders.

4. The University decided to hold a departmental enquiry against the Appellant. This was followed with the drawing-up of Articles of

Charges against the appellant listing three charges and a Statement of Imputation of misconduct in support of the said charges. These were sent to the appellant. The Articles of Charges and Statement of Imputations enclosed a list of documents relied on. The appellant was told that Dr. C.B. Gupta, former Principal of Shri Ram College of Commerce, would act as the Enquiry Officer. Dr. C.B. Gupta Committee, the enquiry authority, called on the appellant to participate in the committee and issued letters to him to attend the proceedings held on August 31, 1995, October 27, 1995, November 3, 1995 and November 10, 1995. He, however, did not submit any written statement of defence, and also did not participate in the said enquiry. This was in spite of receipt of communication issued by the enquiry authority to him.

5. The enquiry authority proceeded in the matter in the appellant's absence, examined the witnesses and also scrutinised the documents placed and later submitted its report finding the appellant guilty of the charges. The findings of Enquiry Committee were placed before the Executive Council which accepted them. In terms of the decision of the Executive Council, a show cause notice was issued to the appellant on 21.03.1996. He submitted a reply on April 11, 1996 asking to be given certain documents and information. The University wrote to him on April 12, 1996 stating that his reply would be placed before the Executive Council on April 23, 1996 and that further he should make himself available for personal hearing in case the Executive Council so agreed. Before that date, the appellant preferred the writ petition, questioning the report submitted of the Enquiry

Officer and the resolution of the Executive Council asking him to show cause as to why his services should not be terminated, were illegal and void and are in violation of the principles of natural justice. At the preliminary hearing, while notice was issued, on 19.04.1996, an interim order was made by the Court permitting the Executive Council to consider the matter but directing that in case its decision were adverse to the appellant, no further action would be taken thereon. In terms of the interim order of the Court, the Executive Council proceeded with the matter and on 23.04.1996 and granted a personal hearing to the appellant. After considering his reply and submission, the Executive Council resolved to confirm the earlier decision to terminate the appellant's services. The University, however, did not implement the decision, in compliance of the interim order passed by the Court on April 19, 1996.

6. The appellant in his submissions before the learned Single Judge argued that the Vice-Chancellor could not have, in the circumstances of the case, invoked the emergency clause, as no emergent situation had arisen justifying the said authority's unilateral decision, side-stepping the normal channel of decision-making by the Executive Council. It was, therefore, argued that the decision taken and the further steps, i.e. enquiry, findings rendered against the appellant, the show cause notice and the dismissal order passed after the Court permitted that to be issued, in 2003, were contrary to Statute 11G, which was mandatory and binding.

7. The appellant had also argued before the learned Single Judge that the enquiry was vitiated for non-compliance with principles of

natural justice since he had not been given the documents entered in the list along with the Articles of Charges and the Statement of Imputations. It was submitted that this was a deliberate omission, because the Enquiry Officer had been asked to furnish copies, by three separate letters, to which there was no response. Under the circumstances, the findings rendered *ex-parte* were arbitrary.

8. It was further urged that the findings of the enquiry officer were perverse and unreasonable, not based on any objective evidence and entirely premised on speculations and assumptions, which had no factual foundation. It was also highlighted that the Enquiry Officer persuaded himself to say that the appellant had practiced fraud, and even implicated third parties in this regard, without recording any deposition or statement. It was submitted that the procedure adopted to conduct the proceedings was also arbitrary and irregular.

9. The impugned judgment rejected all of the appellant's pleas. It was held that there was no illegality in the invocation of the emergency clause, by the Vice-Chancellor of the University. The learned Single Judge next dealt with the two other submissions, viz. violation of principles of natural justice in that the appellant was not given the documents and also about the findings being perverse:

“11. It was also submitted by the learned counsel appearing for the petitioner that during the enquiry proceedings the petitioner was not furnished with the documents which he had asked for and, therefore, the petitioner did not participate in the enquiry proceedings conducted by Dr. C.B. Gupta. Since the aforesaid plea relates to the domain of the principles of natural justice I have considered the said submissions giving my utmost

attention to the same. It is the case of the petitioner that the following documents were not supplied to him in spite of his request to the enquiry officer to furnish the same :-

(1) Computer Purchase File containing correspondence between the Department, Astra and Data Point [the computer firms], including acknowledgements made by Mr. J.B. Khanna, senior employee at Delhi University library, whose residence at Darya Ganj and phone were reportedly used by Astra;

(2) Lab Attendant File including papers relating to the employment record of Amitabh Saxena, beneficiary of the crossed cheque issued in the name of the computer firm, memos issued to him and his written apologies, and preliminary report on "Ravim Prakashan" run by his father, Mr. R.B. Saxena, section officer in the university's Finance Branch;

(3) National Seminar File containing original vouchers and bills of expenditure, including fake bills submitted by "Office Facilitation Center" run by Amitabh Saxena that finally led to the termination of his ad hoc services in the Department;

(4) File containing correspondence on the computer controversy between the Department and the university authorities;

(5) 2 Stock Registers [one each for office and lab] containing record of all items bought by the Department or received from Japan Foundation including details of what was kept where; and

(6) Dispatch Register containing brief descriptive summaries of every single letter sent from the Department;

(7) *List of stocks and materials taken over from the petitioner's charge on 8-3-94, and list of materials removed from the petitioner's room on 23-3-94;*

(8) *Record of conversations between the enquiry authority and representative of the computer firm dated 21-11-95.*

I have considered the said list. In the said list the petitioner has listed about eight types of documents. So far Serial numbers (1) to (6) are concerned, it is the case of the petitioner himself that those six files/registers were reported to be missing since March 23, 1994. In his letter dated April 11, 1996, which is annexed as Annexure 33 to the writ petition, the petitioner has categorically stated in paragraph 4 that the aforesaid six files/registers were missing since March 23, 1994. So far the document listed at Serial No. 7 is concerned, the same was furnished to the petitioner whereas the document listed at Serial No. 8 is concerned there is no record of any conversation recorded between the enquiry authority and the representative of the computer firm M/s. Astra Computer Services. It is also clear from the report of the Enquiry Officer that the representative of Data Point Computers met the Enquiry Officer on November 21, 1995 and he did not give any other information except for the letter in writing to Mrs. Chakravarty, a faculty member, that they had sold a computer to the Department in December 1993. It is specifically stated in the counter-affidavit filed by the respondents that the documents listed in the list of documents were furnished to the petitioner. It is also stated that copies of 23 documents were supplied to the petitioner. It is also apparent from the records that the petitioner was also given inspection of all documents relating to the charges, available either in the Department concerned or in other branches of the University on October 27, 1999 pursuant to the order of this Court. The petitioner sent a letter to the Vice Chancellor praying for supply of some documents listed

with the said letter for presenting his case before the Executive Council. Even thereafter the petitioner appeared before the Executive Council in its meeting held on April 23, 1996, when he was personally heard and he was given reasonable opportunity to state his case. The Supreme Court in State of Tamil Nadu v. Thiru K.V. Perumal and others, 1996 (5) SCC 474, in a case dealing with similar objection regarding non-furnishing of documents asked for by the employee held that the enquiry officer/disciplinary authority is not bound to supply each and every document that might be asked for by the delinquent officer/employee and their duty is only to supply relevant documents and not each and every document asked for by the delinquent officer/employee. In the said decision it was held that unless and until the document is relevant and its non-supply prejudices the case of the respondent it is not necessary that such document is to be supplied. It is held that it must be shown by the employee that non-supply of some specific document has prejudiced the case of the employee. In the present case also the petitioner has not been able to show as to how non-availability of any of the aforesaid documents has in any manner prejudiced the case of the petitioner. The aforesaid ground, Therefore, is also without any merit.

12. The stand of the petitioner is that he did not participate in the enquiry proceeding because of non-furnishing of the aforesaid documents. Such a stand of the petitioner cannot be appreciated. The petitioner holds a very responsible position in the University as he was the Head of the Department. There is an allegation of misconduct against him relating to purchase of a computer in the department. It was necessary for him to cooperate in the enquiry proceedings conducted against him and to prove his innocence in the said enquiry proceedings. Instead the petitioner avoided the request of the enquiry authority to appear before it time and again.

The consequences thereof were known to the petitioner when he decided not to appear in the said proceedings at all. If the petitioner would have appeared before the Enquiry Officer even for a day, he could have inspected all the records of the Enquiry Officer which were available with him and relied upon. The petitioner chose not to appear before the Enquiry Officer of his own and therefore, he cannot make a grievance of non-supply of documents and that also without specifying the said document(s). A list of the documents recovered from his room was also given to the petitioner, which is also an admitted position as is established from the contents of Annexure A-8 to the counter-affidavit. The said documents including Bill forms of M/s. Astra Computer Services and the Bill dated February 13, 1993 of M/s. Gaba Printing Press were recovered from his room by Prof. Adhikary on the direction of the Vice Chancellor as the petitioner did not come to the Department for several days in spite of request from the University asking him to give inspection of his room. The aforesaid few documents recovered from his room sufficiently prove the charges against the petitioner as would be seen from the discussion hereinafter made.

13. The records including the report of the enquiry officer also disclose and indicate that there are certain manipulations in the official records. It is clearly established that the letter sent by the enquiry authority to M/s. Astra Computer Services, from whom the aforesaid computer was shown to have been purchased by the petitioner for the department, was returned back with a statement that there was no firm by the name of M/s. Astra Computer Services in the Laxmibai Street, Darya Ganj. Being posted with the aforesaid information the enquiry authority tried to contact the said firm on the basis of the telephone number printed on the bill of the said firm to the petitioner which is available on record whereupon it was found that the said telephone was installed at somebody's residence and that no telephone

was allotted to M/s. Astra Computer Services. Bill No. 80 dated February 16, 1993 for Rs.39,600/- was to be submitted by the firm to the petitioner as the price of the computer supplied to the department and the payment of the said bill was made by the University by cheque No. 958414 dated March 22, 1993. The entire payment was received on the basis of the aforesaid bill. The enquiry officer also examined the pre-receipted bill received from M/s. Astra Computer Services and he compared the same with bill forms contained in the cash memo/bills which were recovered/collected from the office of the petitioner by Prof. Adhikary and others at the direction of the Vice Chancellor since the petitioner failed to hand over the documents in his chamber. The cash memo book is also placed for my perusal. The said cash memo/bill forms part together in the form of a book and are identical in all respects with bill No. 80 received from M/s. Astra Computer Services. The said bill book does not contain bill No. 80 and 81, and bill No. 79 is in a mutilated condition. All other bill forms from 1 to 100 except those were intact. Having compared the same, the enquiry authority came to the conclusion that Bill Form Nos. 80 and 81 were taken out from this cover and used to prepare pre-receipted bills, i.e., Bill No. 80 for Rs.39,600/- as the price of the computer sold to the Head of the Department of Chinese and Japanese Studies, and Bill No. 81 for Rs.9,450/- as cost of the printer. It is also interesting to note as to how the bill forms of M/s. Astra Computer Services could be recovered from the custody and possession of the petitioner. Another interesting feature is to be mentioned at this stage. The records which were placed before me also include a bill dated February 13, 1993 from M/s. Gaba Printing Press, 27, Main Market, Kingsway Camp, Delhi, for printing 100 bill forms for M/s. Astra Computer Services which were recovered from the room of the petitioner by Prof. Adhikary and his associates. The said bill was also recovered from the room of the petitioner. This proves

and establishes that the order for printing bill forms of M/s. Astra Computer Services which were also recovered from the room of the petitioner was also given by the Head of the Department of Chinese and Japanese Studies, namely, by the petitioner.

14. There appears to be another manipulation in the records. The petitioner failed to produce the old stock registers in spite of repeated requests from the university authorities. It is proved on the basis of record that transaction relating to the purchase of the computer was kept a closely guarded secret up to October 1993 although according to the petitioner he purchased the same in the month of February 1993. The stock register which was available in the office did not record any entry with regard to the aforesaid purchase made in the month of February and may be because of the said position the stock register of the office was shown to be not available and a new stock register was made out wherein the transaction relating to the aforesaid purchase of the computer was recorded. But there also the purchase made on February 17, 1993 was recorded on page 9 and that of February 16 on page 10. In order to cover up the said position a device was followed by changing the Serial number of pages. Page 10 was changed to page 9 and vice versa. The aforesaid manipulation of the records by changing the Serial number of pages proves misconduct on the part of the petitioner by falsifying and manipulating the records.

15. The charges that have been drawn up against the petitioner all relate to the purchase of the aforesaid computer by the petitioner as the Head of the Department of Chinese and Japanese Studies. M/s. Data Point Computers in their letter dated April 20, 1994 confirmed that no computer was sold to the Department of Chinese and Japanese Studies in December 1993. The said firm had confirmed that only the computer which was sold to the Department was in the month of April

1993 by M/s. Astra Computer Services with whom the said firm had a business tie up and that the responsibility was limited to installation and maintenance. It is, therefore, established from the said letter dated April 20, 1994, on which the petitioner himself relied upon, that no computer was purchased by the petitioner who was the Head of the Department of Chinese and Japanese Studies in the month of February 1993 and this letter itself proves the entire allegations made against the petitioner in the charge memo dated February 23, 1995. It is also to be noted that by now it is a settled position of law that this Court exercising jurisdiction under Article 226 of the Constitution of India cannot consider the sufficiency of the evidence in the case of a departmental proceeding. It is also to be noted that disciplinary proceeding is not a criminal trial and the standard of proof required is preponderance of probability and not proof beyond reasonable doubt as is required to be proved in a criminal trial. This is so stated in the decisions of the Supreme Court in Union of India v. Parma Nand, 1989 (2) SCC 177 and Union of India v. Sardar Bahadur, (1992) 4 S.C.C. 618”.

10. Based on the above findings, the learned Single Judge held that there was no infirmity with the procedure adopted during the enquiry and dismissed the writ petition.

Appellant's arguments

11. The appellant argues that the findings of the learned Single Judge are erroneous. It is submitted that the Single Judge failed to consider the fact that the appellant had repeatedly sought, through letters to the Enquiry Officers, clarification with respect to the status of the enquiry and more importantly, the copies of documents which were relied upon. It was submitted that the learned Single Judge

overlooked the significance of the documents, and preferred to adopt a selective reading of the list of documents given by the University. Counsel elaborated the point by stating that the University's case was that the computer had been bought in an irregular manner, and that the vendor was a fictitious entity. To substantiate these, certain documents and files are said to have been recovered from various places (Room No. 238, Arts Faculty Extension and the appellant's room). The appellant was not present during the time. Counsel submitted that the learned Single Judge failed to take due note of the appellant's plea that the so-called seizure memo prepared in respect of the articles removed from his room was not even signed on the day concerned, i.e. 23.03.1994. Neither did it bear signatures of anyone from the raiding party. Counsel contrasted this omission with the handwritten memo, containing the signatures of all those present. It was submitted that the list of seven articles seized from the appellant's office was typewritten. This clearly meant that that it had been prepared beforehand. The signatures on it were of the appellant, on 14.04.1994. He clearly stated not having any knowledge whether the articles were taken from his room. Even the note of Prof. Adhikary, at the margin of the document, only stated that the articles had been "*received*" from the room of the appellant. Counsel submitted that the proceedings of the Namwar Committee on 06.04.1994 clearly established that these documents were shown to it from an "*open packet*". It was submitted that the original file clearly established the manipulation, since the memo did not contain the appellant's signatures, or of those officers who allegedly entered his

room and took into custody the files, documents and articles. Thus, the learned Single Judge fell into error overlooking the fact that such suspect documents were the primary basis of holding the appellant responsible. The University could not, therefore, be said to have established the charges through such dubious methods.

12. It was argued that the omission of the learned Single Judge to notice this very material aspect has resulted in grave miscarriage of justice. Learned counsel stressed upon the fact that on 23.03.1994, when two places were allegedly searched, the seizure memo in respect of one place, Room No. 238, was an elaborate one that contained the signatures of the officials who were present. The list appeared to be spontaneous and handwritten. On the other hand, the other list was utterly contrived as apart from the fact that it was typewritten and did not contain signatures of anyone, the first signatures were those of the petitioner's affixed on 14.04.1994 when he stated that the articles and documents were shown to him, and that he had no knowledge of them. The signatures likewise of Professor Adhikary of the same day mentioned that the articles and documents had been taken on 23.03.1994. Curiously, between these dates, i.e. 23.03.1994 and 14.04.1994, a proceeding before Namwar Committee had taken place in which an open packet was presented to the members of the Committee. Its counsel submitted that it is, therefore, evident that the basis for the Enquiry Officer concluding that the manipulation in the books and documents was because of the appellant was entirely unfounded. It was argued in this context that the deposition of none of the officers who are said to have seized the articles in the presence of

the appellant were recorded. Likewise, the introduction of such documents in a suspect manner and later reliance upon them by the Enquiry Officer to hold that the petitioner was responsible, ought not to have been given credence. Learned counsel submitted that such material being suspect ought to have been excluded altogether.

13. It was next argued on behalf of the appellant that the EO appears to have made private enquiries and investigations and based his conclusions upon such irregularities. In this context, it was submitted that the reference to some individual or officers of the University who were sent to enquire at the address of the computer firm and the further inference drawn by the EO that the money was appropriated from the account of another individual, i.e. Shri Amitabh Saxena was not based on any material on record. Learned counsel highlighted the fact that the bank concerned was individually approached. There was no statement in respect of the amount which is said to have been credited with the amounts leading to their alleged appropriation by the appellant. Even a letter from the bank to that effect was not brought on the record. Learned counsel submitted that all these conclusions were, therefore, merely surmises and not based upon any facts brought on record much less proved. The case, therefore, fell within the category of findings based on no evidence and the EO's report as well as the disciplinary order ought to have been set aside.

14. Learned counsel highlighted the fact that the appellant had written not less than three times to the EO and the University, demanding that documents or copies thereof should be furnished to

him; those letters were on the record. Yet, the University chose not to respond. The University at least could have replied and stated that if it was unwilling to give copies, at least the inspection would be permitted. The benefit of even such basic minimum access to material documents amounted to violation of principles of natural justice. The learned Single Judge, submitted learned counsel, fell into error in holding otherwise.

University's arguments

15. Learned senior counsel on behalf of the University addressed the plea of the appellant that no ground/reason was stated by the Vice-Chancellor for exercising his Emergency Powers and that in the absence of the same the decision to appoint Dr. C.B. Gupta as Enquiry Officer was invalid. It was argued that it is a settled proposition in law that any action which is subsequently ratified by the Competent Authority becomes valid and proper. In the present case, the action of the Vice-Chancellor was duly considered by the Executive Council and that the same was duly ratified. In view of the same, the action taken by the Vice-Chancellor was valid and the same cannot be faulted with. In support of this submission, he relies upon the decision of the Supreme Court reported as *Maharashtra State Mining Corporation v. Sunil S/o Pundikaro Pathak*, 2006 (5) SCC 96 and *Shri Parmeshwari Prasad Gupta v. The Union of India*, 1973 (2) SCC 543.

16. It was submitted that the appellant's grievance with respect to non-furnishing of certain documents is also not valid. It is stated that in fact the appellant had himself informed the Vice-Chancellor of the

University of Delhi vide communication dated 11.04.1996 that certain files relating to computer purchase were missing since 23.03.1994 from the Department of Chinese and Japanese Studies where he was himself working.

17. In this regard, learned counsel relied upon the letter dated 11.04.1996 said to have been written which *inter alia* stated as follows:

“4. I am listing herewith the following six files/registers that are reported to be missing since 23.03.1994: (1) Computer purchase file containing correspondence between the Department, Astra and Data Point, including acknowledgements made by Mr. J.B. Khanna (Senior employee at Delhi University Library) whose residence at Darya Ganj and Phone were reportedly unused by Astra, (2) Lab Attendant File including papers relating to the employment record of Amitabh Saxena (beneficiary of Astra Cheque), memos issued to him and his written apologies, and preliminary report on “Ravim Prakashan” run by his father, Mr. R.B. Saxena (Section Officer in the University’s Finance Branch), (3) national Seminar File containing original Bills/Vouchers of expenditure, including fake bills submitted by “Office Facilitation Centre” run by Amitabh Saxena that finally led to the termination of his ad-hoc services in the Department (4) File containing correspondence on the computer controversy between the Department and the University authorities. (5) 2 Stock Registers (one each for office and lab) containing record of all items brought by the Department or received from Japan Foundation including details of what was kept where, and (6) Despatch Register containing brief descriptive summaries of every single letter sent from the Department.”

In view of the above mentioned communication, the plea of the

appellant of non-furnishing of documents is not valid.

18. Learned senior counsel next argued that the appellant's submission that the enquiry was conducted improperly and that the EO did not appreciate the material correctly is an aspect which cannot be gone into in exercise of writ jurisdiction. He placed reliance upon the decision of the Supreme Court in *Government of Tamil Nadu and Anr. v. A. Rajapandian*, 1995 (1) SCC 216; *Union of India v. Parma Nand*, 1989 (2) SCC 177 and *K.L. Tripathi v. State Bank of India and Ors.*, 1984 (1) SCC 43.

Analysis and conclusions

19. The articles of charges and imputations served upon the appellant pertained to the irregularity in the purchase of computers. The alleged issuance of invoice was by M/s. Astra Computers, a fictitious firm, which resulted in loss to the University in excess of ₹39,000/-. It was also alleged that the invoice (No. 80) was missing from the invoice or bill book, and that a receipt book was procured by the appellant, who got it printed it and paid for it.

20. After the Namwar Committee submitted its report, and the appellant was issued with Articles of Charges and the Statement of Imputations, he wrote letters, seeking copies of the documents listed along with the charge sheet. In these, he clearly stated that documents had not been furnished. Extracts of the said two letters are as below:

(1) Letter dated 31.08.1995 by the appellant to the inquiry authority:

“XXXXXX XXXXXX XXXXXX

Once again, I would appreciate if a copy of the notification by which the Vice Chancellor constituted the present committee is given to me together with exact statutory provisions under which this committee has been constituted. Annexures I to IV in the Registrar's letter mention the existence of a separate disciplinary committee which is said to have prepared statement listing articles of charges and imputations of misconduct. I would like to get a copy of the notification by which the said disciplinary committee was constituted, details on its composition, and the statutory provisions under which it was constituted. Finally, I would like to know whether the constitution of the present committees, the disciplinary committee and the enquiry committee, has been duly notified to the Executive Council.

Apart from the details on statutory requirements, I would like to know the university conventions and precedents on relinquishing Headship during the stage of fact-finding when the enquiry had not even started. I would also like to know the views of the present enquiry committee on this issue.

Another serious problem which is central for the conduct of this enquiry and on which the university is evading a categorical reply is the reported destruction of scores of extremely important files and registers of the Department, crucial for the present case, which were rudely removed in the course of a totally unwarranted raid on my office. It was in the course of this raid that certain incriminating materials were planted in my room and the university has not so far considered it necessary to ask for my formal response on those materials. Three different lists of these materials are in existence. In fact, I have not yet been given, despite my repeated requests, a detailed list of materials removed from my room, including sets of my own floppies containing extremely

valuable databases. As usual, my letters on this have elicited no reply.

I have no definite information but rumours are afloat that practically every single file needed for my defense in the present case has been concealed and/or destroyed by certain criminal elements in the Department. These criminal elements have a history: they had earlier stolen and destroyed scores of files under another Head of the Department and they had stolen my MPS option form, my application for Professorship, and my entire personal file right from the Registrar's office. I have been told that my personal file is still missing from the establishment records.

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(2) Extract of letter dated 30.10.1995:

“Dear Prof. Gupta:

Please refer to your letter dated 27 October 95, I am slightly hurt by the third paragraph of your letter in which you have linked, I think completely needlessly, my Professorship and Headship and the presumptive familiarity with the rules and conventions regarding enquiries in the university system.

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In its meeting held on 23 April 94, the EC had, during the zero hour, a fairly extended discussion on the constitution of Prof. Namvar Singh Enquiry Committee which preceded the committee that you are presently heading. Prof. Upendra Buxi, the then Vice Chancellor, categorically promised to have it recorded that the Namvar Singh Committee was merely the fact-finding committee. Despite the promise, this was not done then and the university has so far refused to share with me the

nature of that committee. In my letter of 31 August 95 addressed to you, I have already indicated in some detail my apprehensions on how the university is functioning in the instant case.

I must however confess that I still do not fully understand how the university functions. Something which should have been objective, transparent and equitable has been rendered what I think is totally arbitrary, mysterious and biased. This is the reason why I have been asking specific questions on the nature, status and procedure of the present and earlier enquiries and would request for specific answers. In particular, I would request you, Sir, to ask the Registrar to respond to my letters of 25 April and 6 May 1994 and of 2 March and 31 August 1995.

In these letters, I have inter alia explained how a written statement cannot be submitted unless I am given access to relevant files. These files were prepared under my own Headship and contain valuable material on the present case. You can see, Sir, that without access to these materials, it would be less than fair to insist on submission of a written statement.

With regards,

*Sincerely yours
Sd/-
Prof. K.P. Gupta*

*PROF. C.B. GUPTA
Director, BIM-TECH
B-25, Ashok Vihar, Phase-I,
DELHI-110 052”*

21. The learned Single Judge held that the appellant could not allege that the documents were not made available to him, in view of the letters written to him, since he had taken the position that such letters and documents were lost. This Court is of the opinion that such

a finding, in the circumstances of this case, was not warranted. It is interesting to notice that the seven items or articles which were alleged to have been “seized” or “recovered” from the appellant’s room were precisely the list which was appreciated by the Single Judge. The said list is a typewritten one (rather than a printout), which reads as follows:

“UNIVERSITY OF DELHI

The following items which were recovered from my room by the Proctor on 23-3-94 were shown to me:

- 1. One Stock Register (No.2)*
- 2. Bill/Cash Memo Book (001-100)*
- 3. Cash/Credit Memo
Office Facilitation Centre (201-300)*
- 4. Introductory letter dated 10th March, 1993 from M/s. Ampersand Enterprises, C-7, Friends Colony.*
- 5. Proposal from M/s. Sunray dated 8.02.93 for purchase of PC-AT 80286/386.*
- 6. Bill dated 13.2.93 for Rs.295 from M/s. Gaba Printing Press, 27, Main Market, Kingsway Camp, Delhi.*
- 7. Company Profile from M/s. Sunray Computers Pvt. Ltd.*

E-261, Amar Colony, New Delhi along with list of customers.

I have no knowledge whether the items were received from my room because this was not done in my presence. I know Item 1 was in my room. I confirm that all the items were shown to me.

Sd/-

K.P. Gupta

14.04.94

It is verified that (xxxx not legible) were recovered from the room of Prof. K.P. Gupta on 23.3.94 and were shown to him in my presence after the sealed (xxxxxx no legible) opened in the presence of the Committee.

Sd/-

14.04.94”

22. The proceedings of the Namwar Committee – which are part of the official file produced before this Court – reveal that some documents in an open packet were produced before it on 06.04.1994. They included the documents listed above. Curiously, the above “recovery” or “seizure” list does not bear the signatures of the officers who visited the premises, broke open the lock, and took away the files and articles. The only two signatures are of the appellant on 14.04.1994, stating that he had no knowledge of those articles because they were not recovered from his presence. Even the endorsement after the appellant’s observations, of Prof. Adhikary, is only that the articles were recovered on 23.03.1994; he only stated that they (the articles) were shown to him. Importantly, the signatures of Prof. Adhikary are also of 14.04.1994, and crucially, he does not state that he was present at the time of recovery of the articles, files and documents, on 23.03.1994. That these were produced earlier, on 06.04.1994, before the Namwar Committee, is apparent from the Minutes of that Committee’s proceeding of that day, i.e. 06.04.1994:

“The Committee also received an open packet given by the Proctor and took on record that the contents of that packet were one cash credit memo book of Office Facilitation centre (Blank) bearing Sl. No. 201 to 300

and one bill cash memo book of Astra Computer Services bearing Sl. No. 001 to 100 (Blank) and one hand written draft letter. Another sealed envelope from the Proctor was also opened which contained a list of Files recovered from room No. 238 of Arts Faculty as per Annexure A.

The Committee also opened an envelope received from Prof. S Vishwanathan, Head of the Department of Chinese and Japanese studies which contained a letter indicating the contents of other sealed envelope sent by Prof. Savitri Vishwanathan, Head of the Department of Chinese and Japanese studies and the same sealed envelope was also opened and the Committee found the following items:

- 1. Stock Register No. 2- 1992-993 (page 1-201);*
- 2. Bill of Gaba Printing Press dated 13.02.1993;*
- 3. Letters from Sunray Computers and Ampersand Enterprises dated 08.02.93 and 10th March, 1993.”*

23. It is thus apparent that three separate envelopes were furnished to the Committee. It was never indicated in the proceedings of 06.04.1994 that the appellant was present when the seven items were seized on 23.03.1994. Some of those documents were delivered in an open packet, and some in an envelope sent by Prof. Savitri Vishwanathan. In contrast to this, significantly, the seizure memo in respect of several articles recovered from Room No. 238 was hand written, and bore the signature of three officials.

24. The significance of the above developments is that the University appears to have relied on lists of documents and articles as well as documents which were ultimately found to be incriminating against the appellant. Their recovery is shrouded in suspicion. This

aspect gains importance, because no statement of any witness was recorded during the course of the C.B. Gupta enquiry proceeding, which led to the appellant's dismissal. The appellant's request for the record of conversation or statement reported to have been recorded by the enquiry authority on 25.11.1995, therefore, has to be viewed in this specific context.

25. The enquiry report, to the extent it is relevant, is reproduced below:

***“REPORT OF THE ENQUIRY AUTHORITY
REGARDING ARTICLES OF CHARGES AGAINST
PROFESSOR K.P. GUPTA OF THE DEPARTMENT
OF CHINESE AND JAPANESE STUDIES,
UNIVERSITY OF DELHI*”**

1. I was appointed as the Enquiry Authority by the Vice-Chancellor of Delhi University to enquire into the articles of charges levelled against Dr. K.P. Gupta, Department of Chinese and Japanese Studies, University of Delhi (vide letter no. SPA/R/95/15 of February 23, 1995 from the Registrar of the University). I was informed that Shri R.N. Iyer, Deputy Registrar will act as the Presiding Officer.

2. The Registrar sent to me on May 17, 1995 the following documents:

- (a) A copy of the letter dated 20/23 February 1995 addressed to Professor K.P. Gupta.*
- (b) A copy of the statement of Articles of Charges.*
- (c) A copy of the statement of imputations of misconduct.*
- (d) List of documents, and list of witnesses by whom the Articles of charges were proposed to be sustained.*

3. I went to the Registrar's office on 24 August 1995

and examined some documents. I learnt from the records that Professor K.P. Gupta has not given any written statement in his defence as requested by the Registrar in his letter sent to him on 23rd February 1995, to do so within ten days from the date of this letter.

4. As such I thought that a meeting with Professor K.P. Gupta was necessary to know his views as regards the Articles of charges and the statement of imputation of misconduct in support thereof.

Accordingly Professor K.P. Gupta was requested to meet me on 31st August in the Vice-Chancellor's Committee room. On his not coming on the aforesaid date he was invited to meet me on 27th October 1995 which again was ignored by him.

In spite of his absence on both the above-mentioned dates for the meeting, Professor Gupta was given another date viz. 3rd November 1995 when he could come and clarify his position. But by the same letter he was also informed that in case he does not come the Enquiry Authority shall be constrained to proceed further with the enquiry.

He did not come for the meeting. And I decided to give him one more chance to let me know if he has anything to say in his defence and invited him to meet me on 10 November 1995, and again informed him that in case you do not respond favourably the Enquiry shall proceed to examine witnesses and the relevant documents. I also invited M/s. Astra Computers to meet me in this connection.

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5. When Professor Gupta did not come on 10th November also it became obvious that he is avoiding

these meetings. As such the Enquiry Authority in accordance with the information regarding its procedure given to Professor Gupta examined all the documents as given in the list attached to articles of charges and the following persons/firms were invited for a meeting with me on Tuesday 21st November, 1995.

- (1) Professor Savitri Vishwanathan.*
- (2) Dr. S. Chakravarty, Reader.*
- (3) M/s. Sun Ray Computers.*
- (4) M/s. Facilitation Centre.*
- (5) M/s. Data Point Computers.*

6. Meanwhile the letter sent to M/s. Astra Computer Services, Laxmibai Street, 46, Daryaganj was returned to us by the University man who had been sent to deliver the letter personally. He informed us that there is no firm by the name of Astra Computer Services in Laxmibai Street.

On receipt of this information I requested the University officer who has been associated with me in this enquiry to go to Laxmibai Street at 46 Daryaganj to see for himself if a firm by the name of Astra Computer Services did exist there, and advised him that in case he could not locate it, to seek the help of persons living there to let him know if a firm of this name was ever there during the last five years. He went there on 19th November, 1995, and when he did not find any place where Astra Computers were house, he talked to a number of residents of that area and every one told him that there has been no firm of that name working at that place for a long time past.

This was a revealing information and I thought of checking it again on the basis of the telephone number 3274318 printed on the bill submitted by the firm to Prof. K.P. Gupta. It was found that this telephone was

installed at somewhere else's residence, and that no telephone was allotted to Astra Computer Services.

7. *The finding that there was no firm by the name of Astra Computer Services at the location mentioned on its bill presented a riddle to me. It was so because I had before me a Bill No.80 dated 10.2.93 for Rs.39,600 submitted by this firm to the Head Department of Chinese and Japanese Studies as the price of the Computer supplied to the Department. The payment of this bill had been made by the University by Cheque No.958414 dated 22 March 1993.*

These two facts were wholly inconsistent. How could a non-existent firm draw a bill and collect payment? This riddle, however, appeared to be resolving when I compared the pre-receipted bill received from Astra Computer Services with bills forms contained in the 'Cash Memo Book' which had been collected from the office of Professor K.P. Gupta by Prof. Adhikary and others at the direction of the V.C.. This Cash Memo Book had been kept in a sealed cover with the Registrar. I got the sealed cover opened in my presence and found that the 'Cash Memos/Bills forms put together in the form of book were identical in all respects with Bill No.80 received from Astra Computers. It was thought that the book of 'Cash Memos' contained bills beginning with No.1 upto 100.

I turned over the leaves of this bill book to find if bill no. 80 was in it. As I expected bill no. 80 and 81 were not in this book and bill no. 79 was in mutilated condition. All others from 1 to 100 were intact. It became obvious that bill form no. 80 and 81 were taken out from this cover and used to prepare two pre-receipted bills. Form No. 80 for Rs. 39,600 as the price of the computer sold to the Head Deptt. Of Chinese and Japanese Studies and Bill No.81 for Rs.9,950 as cost of printer. This could

be done even without the existence of Astra Computer Services.

It was interesting to find a bill dated 13.2.93 from Gaba Printing Press, 27, Main Market, Kingsway Camp, for printing 100 bill forms of M/s. Astra Computer Services, along with the bound covers, that had been recovered from the room of Prof. K.P. Gupta by Prof. Adhikary and his associates and kept in sealed covers with Registrar. This gave an indication that the order for printing bills forms of Astra Computers was given by the office of the Head of the Chinese and Japanese Studies.

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11. Data Point Computers representative came to meet me on 21st November as requested by us. This firm had given in writing to Mrs. Chakraborty that they have sold a computer to the Deptt. of Chinese and Japanese Studies in December, 1993. Besides this no other information was given by him.

12. As stated earlier the transaction relating to the purchase of the computer was kept a closely guarded secret upto mid-October 1993, and as such this transaction could not have found a place in the Stock Register of the Department. But when Professor K.P. Gupta made it known that a computer has been purchased which is lying at his residence it became necessary to record this transaction in the stock register. But the purchase made in mid February could not be recorded in the stock register in mid October for the simple reason that the record is in a chronological order. The only way out was to say that since the department's stock register was not available he had to have a New stock register. The transaction relating the purchase was recorded therein. But here also a purchase of 17th February was recorded on page 9 and that of 16th

February on page 10. How it happened is not explained in the Stock Register, but a crude device was followed by changing the serial number of pages. Page 10 was changed to page 9 and vice versa. Such alteration in the serial numbers of pages vitiates the authenticity of such records and is considered fraudulent.

13. The factual information that has been given in the preceding pages has been collected while conducting this enquiry. The information is supported by documents made available to me by the university and by witnesses who accepted my request and came to help me in this assignment. Professor K.P. Gupta couldn't find the time to meet me and did not avail of the opportunity to reject or admit observations given in the documents or the statements of the witnesses.

14. On this basis of this information my conclusions are:

(I). The transaction relating to the purchase of the computer for which pre-receipted bill no. 80 dated 16th Feb, 1993 was said to have been submitted, is FAKE. A non-existent firm cannot be a party to a business transaction.

(II). All work relating to this fake transaction such as getting the bill forms printed, preparing the bill was done at the office of the Head of the Department. No dealer in computers was associated with this work in any capacity whatsoever.

(III). As such no computer was supplied by any to the Head of the Deptt. of Chinese and Japanese Studies either at his office or at his residence. Prof. K.P. Gupta did not have any computer belonging to the Deptt. at his residence.

(IV) Professor K.P. Gupta managed to get Cheque No.958414 dated 22.3.93 for Rs.39,600 from the University in the name of Astra Computer Services on the basis of this fake transaction. The proceeds of this cheque were collected from SBI Daryaganj by Shri Amitabh Saxena who was working as Lab. Attendant during this period at Professor K.P. Gupta's Department.

(V). Thus the University was defrauded of Rs.39,600 on 14.4.93 (the date when this cheque was cleared by SBI Delhi University) by using the fake bill.

(VI). As a consequence of the representations of the Faculty members of the Deptt. of Chinese and Japanese to the Vice Chancellor, Professor K.P. Gupta agreed to send the computer to the Deptt. on December 9, 1993. He, however, did not tell the whole truth. He did not tell (1) that no computer was received by the Deptt. against the payment of Rs.39,600 by the University on 22nd March 1993 (ii) that a computer obtained by him from Data Point Computers is being sent to the Department.

(VII). Thus a part of the amount of Rs.39,600 or the whole of it (depending upon the price of the computer obtained from Data Point Computers by Professor K.P. Gupta) may be regarded as the return to the University on 10 December 1993 of the money of which it was defrauded in April 1993.

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26. What can be gathered or inferred from the above extracts are that:

(1) No statement of any individual or witness was recorded formally orally or in writing.

(2) The basis of the enquiry officer's finding that Astra Computers was a fictitious firm was that the concern was not found at the given address and the telephone number did not tally with the one given on the letter of the concern.

(3) The finding of misappropriation of money with the connivance of, or at the behest of the appellant, by Amitabh Saxena is not backed by any documentary or oral evidence. No bank statement or particulars of how the University's money was withdrawn, where it was credited, or into whose account, are clearly and indisputably linked to incriminate the appellant of wrongdoing or defrauding the University.

(4) The finding that the appellant must have been responsible for the generation of bills, including the one which was paid for (Sl. No 80) is again based on the recovery or seizure of the documents which allegedly took place on 23.03.1994.

27. This Court is of the opinion that the above infirmities are grave, and to a great degree undermine the findings of the Enquiry Officer. Even though the appellant did not participate in the enquiry proceedings, for the reason that he had not been supplied with documents, the obligation on the part of the University to prove fundamentally all the allegations levelled against him, survived. However, the Enquiry Officer approached his task as if he were merely a fact gathering officer, involved in a preliminary enquiry. In a departmental proceeding, irrespective of whether the defence disproves the allegations, the employer is under the primary onus to prove the allegations levelled against the employee. This can be done

by producing documentary and oral evidence. In this case, some of the most crucial and determinative pieces of evidence were contested, because their recovery or seizure, on 23.03.1994 was in question. The least that the Enquiry Officer could have done was to record the statement of the officers who actually conducted the seizure. He did not do so. Even the receipt book and stock register, as well as the bill of the printer, held to be incriminating, were not proved, or spoken about before the inquiry officer. In the absence of these vital elements, it cannot be said that the University proved its allegation that the appellant was instrumental in procuring a computer from a non-existent firm and had misappropriated the amounts, through the bank accounts of Mr. Amitabh Saxena.

28. It would be in this context appropriate to notice the decision of the Supreme Court in *Sher Bahadur v. Union of India (UOI) and Others*. (AIR 2002 SC 3030) where the need to conduct a proper inquiry was underlined:

“6. A perusal of the judgment and order under challenge shows that the High Court having referred to the enquiry report found that there was oral and documentary evidence (Ex.P-1) to hold him guilty and that sufficiency of the evidence would not be a ground to challenge the order of the disciplinary authority by invoking the writ jurisdiction.

7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the

charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Sh.R.A. Vashist, Ex. CVI/N.Rly., New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ex.P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside."

The proceedings before the inquiry officer, Shri C.B. Gupta, were conducted along lines similar to those in *Sher Bahadur (supra)*. Further, there is authority for the proposition that looking into and taking into consideration materials that could not have been part of the record (for instance, the allegedly recovered documents and

materials in the form of knowledge of the inquiry officer, pursuant to interactions with individuals that were not formally recorded) would lead to prejudice that cannot be overlooked. It was thus held, in *State Bank of India and Ors. Vs. D.C. Aggarwal and Anr* 1993 (1) SCC 13 that:

“6. XXXXXX XXXXXX XXXXXX

The order is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation...”

In view of the above discussion, it is held that the findings of the enquiry officer with regard to Charge Nos. I and III cannot be sustained.

29. However, so far as Charge No. II, i.e. procurement of a computer in February 1993, for a cost of ₹ 39,600/- and failure to reflect it in the records and books of the University is concerned, there are some materials which could be said to substantiate the charge. The appellant has himself placed on record the Invoice of M/s. Astra Computers of 16.02.1993, for the computer supplied to the Department, and at the reverse of the invoice, the appellant had signed, stating that the computer had been received and was in order. The copies of documents filed by him (i.e. the appellant) on 01.04.2013 – after allegedly securing them under the Right to Information Act (though there was nothing on record to substantiate such contention) –include the extract of list of consumables. This

included a mention of Bill No. 80, i.e. in respect of the computer in question. The last column in this contains a remark that on the advice of some departmental employees, who felt that the equipment could not be kept in the premises, the computer was reportedly kept in the appellant's premises. If this was the case, he could have easily explained the position. However, the official file and the letters written by him are replete with references to alleged highhandedness of University officials, and allusions to political machinations. The issue gets shrouded with more questions because another computer was supplied by M/s. Data Point, in December, 1993. In these circumstances, the absence of explanation by the appellant as to why he did not report the purchase of the computer is not only questionable, but it shifted the onus upon him to prove its need.

30. During the preliminary enquiry, the appellant had participated in the proceedings. He denied that there was any necessity of putting the issue of deciding whether to have a computer for the department or not to the Departmental Council. He consistently maintained that the Department needed the computer, and that he acted within authority to order it. The appellant has again placed on record copies of several quotations said to have been issued to him at the relevant time, before he chose M/s. Astra Computers as the appropriate vendor. However, there is nothing forthcoming as to what was the basis of such offers, and it certainly was not preceded by any formal public notice or advertisement. If indeed there was such a pressing need for a computer, common sense would dictate that the appellant ensured that it was installed in the department without delay. Not only

did he not do so, but failed to give any explanation why he could not do so, particularly in the context of another procurement in December, 1993. These irregularities are writ large on the face of the record, and the appellant cannot escape responsibility by stating that he was not supplied with documents. Such a plea is, in the opinion of the court, available in respect of some of the documents seized and not shown to him; in the absence of any statement by those who are said to have seized it, the documents became questionable. However, on the basis of his answers in the Namwar Committee, the record of which cannot be disputed by him, since he had access to them, and has even produced them in this Court, it can be safely inferred that the University was successful in proving Charge No. II, i.e. that he purchased a computer on 16.02.1993 with its money, but which was delivered to the University only on 09.12.1993, and that he had kept it with him without any authorization.

31. In view of the above discussion, it is held that the findings of the enquiry authority on Charges I and III cannot be sustained. However, the allegations under Charge No. II are held to have been proved. The petitioner was directed to be dismissed from service in 2003. In view of the findings recorded above, it is held that the said penalty cannot be sustained, and is hereby set aside. However, the Petitioner shall not be entitled to full consequential benefits – his salary and increments shall be at the stage and rate, when the Show cause notice was issued. Consequently, his pension and terminal benefits shall be worked out on the basis of the pay drawn by him, as on 21.03.1996. The appeal is allowed in part, to the above extent.

There shall be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

NOVEMBER 28, 2013