Ram Chander

Vs

Union of India and Others

Civil Appeal No. 1621 of 1986

(B. C. Ray, A. P. Sen JJ)

02.05.1986

JUDGMENT

A. P. SEN, J. -

1. The central question in this appeal is whether the impugned order passed by the Railway Board dated March 11, 1972 dismissing the appeal preferred by the appellant, was not in conformity with the requirements of Rules 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968. At the hearing on February 13, 1986, learned counsel for the Union of India took time to enable the Railway Board to reconsider its decision as to the quantum of punishment. At the resumed hearing on March 13, 1986 we were informed by the learned counsel that there was no question of the Railway Board reconsidering its decision. Arguments were accordingly heard on the question as to whether the impugned order of the Railway Board was sustainable in law. We heard the parties and allowed the appeal by order dated March 13, 1986 directing the railway Board to hear and decide the appeal afresh on merits in accordance with law in conformity with the requirements of Rule 22(2) of the Rules. We now proceed to give reasons therefor.

2. The Facts, The appellant Ram Chander, Shunter, Grade B at Loco Shed Ghaziabad was inflicted the penalty of removal from service under Rule 6(viii) of the Railway Servants (Discipline and Appeal) Rules, 1968 by the order of the General Manager, Northern Railway dated August 24, 1971. The gravamen of the charge was that the appellant was guilty of misconduct in that he had on October 1, 1969 at 7.30 p.m. assaulted his immediate superior Banarsi Das, Assistant Loco Foreman while he was returning after performing his duties. The immediate cause of the assault was that the appellant had on September 30, 1969 applied for medical leave for one day i.e. for October 1, 1969. On that day, there was a shortage of Shunters, he accordingly asked Banarsi Das to resume his duties but Banarsi Das refused to cancel the leave already granted and therefore the appellant nursed a grouse against him because he was already deprived of the benefit of the one days' additional wages for October 2, 1969 which was a national holiday. Apparently Banarsi Das lodged a report with the police but no action was taken thereon. More than a month later i.e. on November 17, 1969 Banarsi Das made a complaint against the appellant to his superior officers and this gave rise to a departmental proceeding. The Enquiry Officer fixed the date of enquiry on May 11, 1970 at Ghaziabad. The enquiry could not be held on that date due to some administrative reasons and was then fixed for July 11, 1970. The appellant was duly informed of the date but he did not appear at the enquiry. The Enquiry Officer accordingly proceeded ex parte and examined witnesses. By his report dated May 26, 1971, the Enquiry Officer found the charge proved. The General Manager, Northern Railway agreed with the report of the Enquiry Officer and came to the provisional conclusion that the penalty of removal from service should be inflicted and issued a show cause notice dated May 26, 1971. In compliance the appellant showed cause but his explanation was not

accepted by the General Manger who by his order dated August 24, 1971 imposed on the appellant the penalty of removal from service. The appellant preferred an appeal before the Railway Board under Rule 18(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 but the Railway Board by impugned order dated March 11, 1972 dismissed the appeal. Thereafter, the appellant moved the High Court by a petition under Article 226 of the Constitution. A learned Single Judge by his order dated August 16, 1983 dismissed the writ petition holding that since the Railway Board agreed with the findings of the General Manager there was no duty cast on the Railway Board to record reasons for its decision. The appellant therefore preferred a letters patent appeal, but a Division Bench by its order dated February 15, 1984 dismissed the appeal in limine.

3. Rule 22(2) of the Railway Servants Rules provided as follows :

> 22(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 of enhancing any penalty imposed under the said rule, the appellate authority shall consider -
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> (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
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> (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
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> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;
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> and pass orders -
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> (i) confirming, enhancing, reducing or setting aside the penalty; or
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> (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

4. The duty to give reasons is an incident of the judicial process. So, in R. P. Bhatt v. Union of India ((1986) 2 SCC 651), this Court, in somewhat similar circumstances, interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed : (SCC p. 654, para 4)

It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provision of the Constitution of India or in failure of justice : (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same.

It was held that the word 'consider' in Rule 27(2) of the Rules implied 'due application of mind'. The court emphasized that the Appellate Authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was in that case, as here, no indication

in the impugned order that the Director-General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. In the present case, the impugned order of the Railway Board is in this terms :

> (1) In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Railway Board have carefully considered your appeal against the order of the General Manager, Northern Railway, New Delhi imposing on you the penalty of removal from service and have observed as under :
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> (a) by the evidence on record, the findings of the disciplinary authority are warranted; and
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> (b) the penalty of removal from service imposed on you is merited.
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> (2) The Railway Board have therefore rejected the appeal preferred by you.

5. To say the least, this is just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of Rule 22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside.

6. It was not the requirement of Article 311(2) of the Constitution prior to the Constitution (Forty-Second Amendment) Act, 1976 or of the rules of natural justice, that in every case the appellate authority should in its order state its reasons except where the appellate authority disagreed with the findings of the disciplinary authority. In State of Madras v. A. R. Srinivasan (AIR 1966 SC 1827, 1831-32), a Constitution Bench of this Court while repelling the contention that the impugned order by the State Government accepting the findings being in the nature of quasi-judicial proceedings was bad as it did not give reasons for accepting the findings of the Tribunal, observed as follows :

> In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer being with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by report and the Public Service Commission is conducted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusion of the Tribunal, though even

> in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no doubt, quasi-judicial; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.

7. Again, in Som Datt Datta v. Union of India ((1969) 2 SCR 177 : AIR 1969 SC 414), a Constitution Bench of this Court rejected the contention that the order of the Chief of the Army Staff confirming the proceedings of the General Court Material under Section 164 of the Army Act, 1950 and the order of the Central Government dismissing the appeal of the delinquent officer under Section 165 of the Act were illegal ultra vires as they did not give reasons in support of the orders, and summed up the legal position in these words :

> Apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, there is no legal obligation that the statutory tribunal should give reasons for its decision. There is also no general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision.

8. So also in Tara Chand Khatri v. Municipal Corpn. of Delhi ((1977) 2 SCR 198 : (1977) 1 SCC 472 : 1977 SCC (L&S) 151 : AIR 1977 SC 567), this Court observed that there was a vital difference between an order of reversal by the appellate authority and an order of affirmance and the ommission to give reasons for the decision may not by itself be a sufficient ground for passing such order, relying on the test laid down by Subba Rao, J. in M.P. Industries Ltd. v. Union of India ((1966) 1 SCR 466 : AIR 1966 SC 671) :

> Ordinarily, the appellate or revisional authority shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons.

9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6 of enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matters indicated therein. The word 'consider' has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

10. After the amendment of clause (2) of Article 311 of the Constitution by the Constitution (Forty-Second Amendment) Act, 1976 and the consequential change brought about in Rule 10(5) of the Railway Servants (Discipline and Appeal) Rules, 1968, substituted by the Railway Servants

(Discipline and Appeal) (Third Amendment) Rules, 1978, it is no longer necessary to afford a second opportunity to the delinquent servant to show cause against the punishment. The Forty-Second Amendment has deleted from clause (2) of Article 311 the requirement of a reasonable opportunity of making representation on the proposed penalty and, further, it has been expressly provided inter alia in the first proviso to clause (2) that :

> Provided that where it is proposed after such inquiry, to impose him any such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.

11. After the amendment, the requirement of clause (2) will be satisfied by holding an inquiry in which the government servant has been informed of the charges against him and given a reasonable opportunity of being heard. But the essential safeguard of showing his innocence at the second stage i.e. after the disciplinary authority has come to a tentative conclusion of guilt upon a perusal of the findings reached by the Inquiry Officer on the basis of the evidence adduced, as also against the proposed punishment, has been removed to the detriment of the delinquent officer. In view of the said amendment of Article 311(2) of the Constitution, Rule 10(5) of the Railway Servants Rules has been substituted to bring it in conformity with clause (2), of Article 311, as amended. Rule 10(5), as substituted, provides as follows :

> 10(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 6 should be imposed on the railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the railway servant any opportunity of making representation on the penalty proposed to be imposed :
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> Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order any such penalty on the railway servant.

12. We may here mention that a corresponding change in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 has been brought by substituting Rule 15(4) taking away the procedural safeguard of making a representation at the second stage i.e. before imposing punishment on the basis of the evidence at the inquiry.

13. In Union of India v. Tulsiram Patel ((1985) 3 SCC 398 : 1985 SCC (L&S) 672), a five-Judge Bench by a majority of 4 : 1 held that where a departmental inquiry was wholly dispensed with in the three situation under the second provision to Article 311(2), the only right to make a representation on the proposed penalty which was to be found in clause (2) of Article 311 of the Constitution prior to its amendment having been taken away by the Constitution (Forty-Second Amendment) Act, 1976, there is no provision of law under which a government servant can claim this right. This Court last week in the Secretary, Central Board of Execise and Customs v. K. S. Mahalingam ((1986) 3 SCC 35) after referring to the constitutional changes brought about observed : (SCC p. 37, para 6)

After the amendment, the requirement of clause (2) will be satisfied by holding an inquiry in which

the government servant has been informed of the charges against him and given a reasonable opportunity of being heard.

14. After the majority decision in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672), it can no longer be disputed that the right to make a representation on the proposed penalty which was to be found in clause (2) of Article 311 of the Constitution having been taken away by the Forty-Second Amendment, there is no provision of law under which a government servant can claim this right.

15. It seems to be purely academic to refer to the vintage decisions of the Privy Council in High Commissioner for India v. I.M. Lal ((1947-48) 75 IA 225 : AIR 1948 PC 121) and that of this Court in Khem Chand v. Union of India (1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 Lab LJ 167) following it or the plethora of decisions thereafter which have now become otiose after the Forty-Second Amendment by which the words 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' were deleted at the end of clause (2) of Article 311 and provision to clause (2) substituted with the object of doing away with the second opportunity of making representation at the stage of imposing penalty i.e. at the conclusion of the inquiry. It is however necessary to refer to these two decisions briefly with the object of showing the prejudicial effect on such delinquent government servants. More so, because the majority decision in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672), seeks to justify the amendment effected by the Forty-Second Amendment of clause (2) of Article 311 by observing that "clause (2) of Article 311 of originally enacted and the legislative history of that clause wholly rule out the giving of any opportunity" (SCC p. 455, para 65). We have our own reservations about the correctness of this proposition. It is not quite accurate to suggest that the opportunity of showing cause before a government servant was dismissed, removed or reduced in rank was not contemplated by law nor justified by the legislative history.

16. In I. M. Lal case ((1947-48) 75 IA 225 : AIR 1948 PC 121), Lord Thankerton while interpreting the words 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' in sub-section (3) of Section 240 of the Government of India Act, 1935 speaking for the Judicial Committee of the privy Council, observed :

> In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Before that stage, the charges are unproved and the suggested punishments are merely hypothetical.

That very distinguished Judge went on to say :

> It is on that stage being reached that the statute gives the civil servant the opportunity for which sub-section (3) makes provision.

And then added :

> Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an enquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment

proposed as the result of the finding of the inquiry.

17. The phrase 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' appearing in sub-section (3) of Section 240 of the Government of India Act, 1935 was reproduced in clause (2) of Article 311 of the Constitution as originally enacted i.e. prior to its amendment by the Constitution (Fifteenth Amendment) Act, 1963. It would appear that in the original Article 311(2) as it stood before the Fifteenth Amendment, the obligation to afford an opportunity at two stages, namely, at the stage of inquiry into the charges and, again, at the stage of awarding punishment, was not explicitly stated in the article itself. It merely required that opportunity must be given to show cause against the 'action proposed'. As already stated, the obligation to offer such opportunity at two stages was however deducted judicially by the Privy Council in I. M. Lall case (1947-48) 75 IA 225 : AIR 1948 PC 121).

18. In Khem Chand case (1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 Lab LJ 167) the court following the judgement of the Privy Council in I. M. Lall case (1947-48) 75 IA 225 : AIR 1948 PC 121) came to the same conclusion from the word 'reasonable'. The government servant must not only be given an opportunity but such opportunity must be a reasonable one. In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite necessary that the government servant should have the opportunity, to say, if that be his case, that he has not been guilty of any misconduct to merit any punishment at all and also that the particular punishment proposed to be given is much more drastic and severe than he deserves. It referred to the above passages from the judgement of the Privy Council in I. M. Lall case (1947-48) 75 IA 225 : AIR 1948 PC 121), and observed :

> Further opportunity to be given to the government servant after the charges have been established against him and a particular punishment is proposed to be meted out to him.

In short, the substance of the protection provided by Rules, like Rule 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in Section 240(3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and had now been incorporated in Article 311(2) so as to convert the protection into a constitutional safeguard. The legal consequence therefore was that :

> At the second stage, the delinquent government servant was therefore entitled to contend -
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> (a) That the inquiry at which the findings were arrived at was vitiated by a breach of the principles of natural justice.
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> (b) That the findings were not supported by the evidence in the proceedings, or that the evidence against him was not worthy of credence or that he was not guilty of any misconduct to merit any punishment at all.
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> (c) That the punishment proposed could not be properly awarded on the findings arrived at, that is to say, the charges proved did not require the particular punishment proposed to be awarded.

19. After Parliament frustrated the attempt of the government to delete the constitutional safeguard as evolved by this Court in Khem Chand case (1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 Lab

LJ 167) following the principles laid down in the Privy Council decision in I. M. Lall case (1947-48) 75 IA 225 : AIR 1948 PC 121) by deletion of the words 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' by the Constitution (Fifteenth Amendment) Act, 1963, it seems somewhat strange that after more than a decade the government of the day thought it fit to remove this valuable safeguard by the Forty-Second Amendment. It is particularly important to notice how closely Members of Parliament scrutinised the motives of the government while discussing the Fifteenth Amendment Bill and it is profitable to read the debates leading to the passing of the Fifteenth Amendment. There could scarcely be a better example of the principle that the constituent powers to amend the Constitution, however permissible, must be used with scrupulous attention to their true purpose and for reasons that are relevant and proper. A determined attempt on the part of the government to unsettle the law as laid down by this Court was successfully frustrated on that occasion. Although the clause as originally drafted in the Amendment Bill was deficient insofar as it conferred no express protection as regards the second stage i.e. the stage of punishment, but the Fifteenth Amendment Act as passed, introduced the requirement of giving a reasonable opportunity on the penalty proposed, after the conclusion of the inquiry into the charges and after a penalty had been provisionally determined. After considerable debate in Parliament, Shri Asoke Sen, Law Minister, intervened, in deference the concern expressed by members representing all sections of the House over the Amendment Bill by which the government was seeking to remove the opportunity at the second stage, and gave an assurance that he would move an amendment, making it clear that the second opportunity in regard to the punishment proposed would be retained, but such opportunity shall be only on the basis of the evidence adduced during the inquiry. The government accordingly moved the following amendment :

> And where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.

20. We may recall the words of the Law Minister on that occasion while intervening in the debate on the original draft :

> Now, Sir, as I explained, when the motion was first before the House and before it went to the Joint Committee it was never the intention of the government to vary Rule 25 of the civil service rules which provided for representation by the civil servant against the penalty proposed. The point taken was that in future some irresponsible government might do away with Rule 25 ignoring the assurance given to Parliament. Well, then, I told the representatives of the civil servants and other representatives of the INTUC who had come to see me to give me a draft which would make it quite clear that the representation against the penalty proposed would not include any right to insist on further hearing and further evidence being given. They gave me that draft which I have accepted with a slight modification.

I, therefore, dispel any idea, if there is any, that there has been any deviation from the ideals of democracy and preservation of the vital rights not only of civil servants but of the citizens. I hope we shall never deviate from that course because it is our great strength and it is through the processes of democracy that we are functioning, not through the process of fear or force. (Lok Sabha Debates, 3rd Series, Vol. XVIII, 1963, 4th Session, pp. 13152-54).

21. The Fifteenth Amendment, in fact, clarified the legal position under the existing law by requiring that opportunity must be given to the delinquent government servant not only at the first

stage to be heard in respect of the charges but also at the second stage i.e. after the disciplinary authority had come to a tentative conclusion of guilt at the conclusion of the inquiry and had decided upon the punishment proposed to be inflicted. It was a necessary and sufficient safeguard against arbitrary and excessive executive action written into the Constitution. Unfortunately, now the Forty-Second Amendment has achieved what the Fifteenth Amendment could not. By the constitutional amendment, the government has taken away the essential constitutional safeguard.

22. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. Both the Privy Council as well as this Court have in a series of cases required strict adherence to the rules of natural justice where a public authority or body has to deal with rights. Unfortunately the first proviso to clause (2) of Article 311 has eliminated the rule audi alteram partem at the second stage i.e. observance of the rules of natural justice and the requirement of a reasonable opportunity of making representation on the proposed action. The question still remains as to the stage when the delinquent government servant would get the opportunity of showing cause against the action taken against him. Where does he get an opportunity to exonerate himself from the charge unless he is allowed to show that the evidence adduced at the inquiry is not worthy of credence or consideration ? Does he ever get a right to show that he has not been guilty of any misconduct so as to deserve any punishment, or that the charges proved against him are not such a character as to merit the extreme penalty of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case ? But we are bound by the majority decision in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672).

23. After the constitutional change brought about it seems that the only stage at which now a civil servant can exercise this valuable right is by enforcing his remedy by way of a departmental appeal or revision, or by way of judicial review. In Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672), the majority decision has pointed out that even after the Forty-Second Amendment, the inquiry required by clause (2) of Article 311 would be the name except that it would not be necessary to give to a civil servant an opportunity to make representation with respect to the penalty proposed to be imposed on him. In such a case, a civil servant who has been dismissed, removed or reduced in rank by applying to his case one of the clauses of the second proviso to Article 311(2) or the analogous service rule has two remedies available to him. These remedies are : (i) the appropriate departmental appeal provided for in the relevant Service Rules, and (ii) if still dissatisfied, invoking the court's power of judicial review. In Satyavir Singh v. Union of India ((1985) 4 SCC 252 : 1986 SCC (L&S) 1), there is an attempt made to analyse the rationes decidendi of the majority decision in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672), and the nature of the remedies left to the civil servant at pp. 276-281 of the report. If that be so, in a case governed by one of the clauses of the second proviso to Article 311(2) or an analogous service rule, there is still all the more reason that in cases not governed by the second proviso, a civil servant subjected to disciplinary punishment of dismissal, removal or reduction in rank under clause (2) of Article 311 would have these remedies left to him. Virtually this is tantamount to a post-decisional hearing.

24. There has been considerable fluctuation of judicial opinion in England as to whether a right of appeal is really a substitute for the insistence upon the requirement of a fair hearing or the observance of natural justice which implies 'the duty to act judicially'. Natural justice does not require that there should be a right of appeal from any decision. This is an inevitable corollary of the fact that there is no right of appeal against a statutory authority unless the statute so provides. Professor H.W.R. Wade in his Administrative Law, 5th edn., at p. 487 observes :

> Whether a hearing given on appeal is an acceptable substitute for a hearing not given, or not properly given, before the initial decision is in some cases an arguable question. In principle there ought to be an observance of natural justice equally at both stages.... If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing : instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial.

After referring to Meggary, J.'s dictum in a trade union expulsion case holding that, as a general rule, a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in the appellate body, the learned author observes :

> Nevertheless it is always possible that some statutory scheme may imply that the 'appeal' is to be the only hearing necessary.

25. Professor de Smith at pp. 242-43 refers to the recent greater readiness of the courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal. In Swadeshi Cotton Mills v. Union of India ((1981) 2 SCR 533 : (1981) 1 SCC 664 : AIR 1981 SC 818) although the majority held that the expression 'that immediate action is necessary' in Section 18-AA(1)(a) of the Industrial Undertakings (Development and Regulation) Act, 1951, does not exclude absolutely, by necessary implication, the application of the audi alteram partem rule, Chinnappa Reddy, J. dissented with the view and expressed that the expression 'immediate action' may in certain situations mean exclusion of the application of the rules of natural justice and a post-decisional hearing provided by the statute itself may be a sufficient substitute. It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) unequivocally lays down that the only stage at which a government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e. an opportunity to exonerate himself from the charges by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that may of the lesser punishment ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) that the Appellate Authority use not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given.

26. In the result, the appeal must succeed and is allowed. The judgement and order of a learned Single Judge of the Delhi High Court dated August 16, 1983 and that of the Divisional Bench dismissing the letters patent appeal filed by the appellant in limine by its order dated February 15, 1984 are both set aside, so also the impugned order of the Railway Board dated March 11, 1972. We direct the Railway Board to hear and dispose of the appeal after affording a personal hearing to the appellant on merits by a reasoned order in conformity with the requirements of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, as expeditiously as possible, and in any

event, not later than four months from today.

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