

ALLAHABAD HIGH COURT

Sri J. P. Agarwal, Regional Transport Officer

Vs.

State of U. P

Civil Misc. Writ No. 3241 of 1972

(G.C. Mathur, J.)

27.09.1972

JUDGMENT

G. C. Mathur, J.

1. The petitioner is a Regional Transport Officer in the Transport Department of the Government of Uttar Pradesh. He was posted as Regional Transport Officer at Allahabad from July 7, 1961 to July 4, 1964. From July 7, 1964 to May 16, 1967, he was posted as Regional Transport Officer, Agra. From May 17, 1967 to July 8, 1969, he remained under suspension. He was then posted as Regional Transport Officer, Kanpur, from July 9, 1969 to June 9, 1971. Thereafter he was posted as Regional Transport Officer, Dehradun, and he continues in that post till today.

2. Certain charges against him in respect of his posting at Allahabad were investigated by the Vigilance Establishment. Upon the basis of the findings of the Vigilance Establishment, the matter was referred to the Administrative Tribunal, U. P. It was in connection with these proceedings that the petitioner remained under suspension from May 17, 1967 to July 8, 1969. The Administrative Tribunal submitted its findings on May 23, 1969 exonerating the petitioner of all the serious charges leveled against him. On the basis of these findings, the Governor passed an order, which is contained in Annexure '3' to the writ petition. This order recites that the petitioner was found to have committed some ordinary irregularities, and that the main charges against him had not been established. By this order the petitioner was reinstated in service from the date of his suspension. Thereafter the order gives the following three directions:-

(1) A warning or censure be given to the petitioner, which should be

entered in his character roll;

(2) that he given 3/4th of the salary for the period of suspension; and

(3) that the period of suspension be not counted as period spent on duty for earning increments by the petitioner.

These are challenged by the petitioner in this writ petition on grounds, which will be mentioned later.

3. By a letter dated August 11, 1969 (Annexure '5' to the writ petition), the petitioner was communicated the confidential remarks for the year 1966-67.

Almost at the end of these remarks is contained the following entry:-

"The Officer's conduct is under enquiry by the Vigilance Establishment. in the circumstances his integrity certificate cannot be granted."

Against the with-holding of this integrity certificate the petitioner made a representation on June 22, 1970. The petition's complaint is that this representation has not yet been disposed of and he has prayed for a mandamus directing the respondents to dispose of the representation.

4. It appears that a number of complaints were received against the petitioner from, Agra, Kanpur and Dehradun, in which places he had been posted. These complaints were also referred to the Vigilance Establishment for investigation. Some progress reports were received from the Vigilance Establishment, particularly in respect of the charges relating to the petitioner's Agra posting. The last of these reports was received on March 14, 1972. Thereafter by an order dated May 6, 1972, the Governor placed petitioner under suspension. The main relief sought in this petition is the quashing of this order of suspension. It is challenged on the ground that it is has been passed mala fide by Sri Balram Singh Yadav the then Minister for Transport, Government of Uttar Pradesh Lucknow.

5. It will be convenient to deal with the question of malafides first, towards which question most of the arguments of learned counsel for the petitioner and of the learned Advocate General have been directed. In May 1971, when the petitioner as posted at Dehradun, a complaint was addressed to the Chief Minister, U. P., by one Ram Singh Dhagggar against the petitioner regarding his actions during his Kanpur posting. Since a number of complaints had been received against the petitioner, the Chief Minister asked the Transport Secretary

to acquaint him with full details about the matter. A note was thereupon put up by the Deputy Secretary Transport to the Secretary, who forwarded it to the Chief minister on July 17, 1971, with his comments. The Chief Minister asked for comments as to why the petitioner should not be placed under suspension and enquiry be not entrusted to the Vigilance Establishment. On this, the Transport Secretary submitted another note and recommended the suspension of the petitioner from his office, so as to facilitate the enquiry against him. This note came up before Sri Yadav, the Transport Minister, who on September 13, 1971, agreed with the views of the Transport Secretary and forwarded them to the Chief Minister. In the meantime the attention of the Chief Minister was drawn towards the earlier proceedings in respect of the Allahabad posting of the petitioner and to tie exoneration of the petitioner by the Administrative Tribunal. On October 6, 1971. the Chief Minister directed that the question of immediate suspension of the petitioner he deferred and the file regarding the findings of the Administrative Tribunal in favour, of the petitioner he looked into. The Transport Secretary examined the whole file and re-submitted it along with the report of the Administrative Tribunal together with his note dated October 17, 1971. In this note he pointed out that the findings of the Tribunal were in respect of the Allahabad charges and had no common with the Kanpur charges against the petitioner. He again recommended that the petitioner be placed under suspension. Sri Yadav, the Transport Minister, forwarded the file to the Chief Minister on November 4, 1971, with his observation that the petitioner be not suspended till an enquiry was made departmentally into the charges. Thereupon on November 5, 1971, the Chief Minister ordered that the matter be entrusted to the Vigilance Establishment for an immediate enquiry and that the question of suspension of the petitioner be considered after the receipt of the preliminary report of the Vigilance Establishment. The matter was actually referred to the Vigilance Establishment in December, 1971, and no report has yet been received from the Vigilance Establishment regarding the Kanpur Charges.

6. The petitioner's case is that while the matter relating to the Kanpur Charges was under consideration along with the recommendation of Transport Secretary to immediately put the petitioner under suspension, Sri Yadav, the Transport Minister, thought of taking advantage of this situation and of getting something illegal done by the petitioner. According to the petitioner, with this end in view,

Sri Yadav called the petitioner by telephone to Lucknow and the petitioner saw Sri Yadav at Lucknow on October 31, 1971. According to the petitioner, Sri Yadav showed him the file and told him that the Transport Secretary was insisting upon the petitioner's suspension, and that Sri Yadav would try to help him. Sri Yadav then asked the petitioner to collect funds, as they were needed by Sri Yadav for the forthcoming elections and for certain other political purposes. Sri Yadav, further, asked the petitioner to help one J. P. Goyal in getting a bus permit on the Meerut-Ambala route. This matter was pending before the Regional Transport Authority, Dehradun, of which the petitioner was a non-member Secretary. According to the petitioner, he felt himself in a predicament at the suggestion of the Minister to collect and provide funds and he kept quiet. On the question of permit the petitioner told Sri Yadav that since he was not a member of the Regional Transport Authority, he could not take part in its decision, but promised that he would convey the desire of the Minister to the Commissioner-cum-Chairman of the Regional Transport Authority. According to the petitioner, he spoke to the Commissioner-cum-Chairman of the Regional Transport Authority about this matter and the Minister also spoke to him on telephone. The meeting of the Regional Transport Authority took place on 5th and 6th November, 1971, and a permit was, in fact, granted to Sri J. P. Goyal.

7. According to the petitioner, Sri Yadav telephoned him from Delhi on November, 10, 1971, and enquired about Sri J.P. Goyal and that on the petitioner informing him that a permit had been granted to Sri J. P. Goyal, Sri Yadav thanked him for the same. According to the petitioner, Sri Yadav then reminded him about the other matter about which he had spoken to the petitioner on October 31, 1971, and told the petitioner that he should come to Lucknow as early as possible and apprise him of the position. On November 16, 1971, a meeting was held at Lucknow between the Transport Authorities of Uttar Pradesh and Haryana, and the petitioner was present at this meeting. At a lunch held in this connection the Transport Commissioner, Sri R. B. Saxena, told the petitioner that he was requested by Sri Yadav to meet him at his residence in the evening. According to the petitioner, he went and met the Minister in the evening. The Minister told him that the by-elections to the State Assembly were near at hand in which the son of the Chief Minister was also a candidate, and that a substantial sum had to be arranged and asked the petitioner that he should arrange for ₹ 20,000/-. The petitioner expressed his

inability, but the Minister insisted that the money should be collected somehow. The petitioner then came back to Dehradun. On the 18th or 19th of November, 1971, he received a telephonic call from the Transport Commissioner. According to the petitioner, the Transport Commissioner enquired whether the petitioner had been asked to collect funds by the Minister for the by-elections and on his replying in the affirmative, the Transport Commissioner directed him not to collect any funds. According to the petitioner, the Minister again contacted him on telephone on November 21, 1971, and asked him to arrange for the funds immediately, whereupon the petitioner told him about the earlier message of the Transport Commissioner forbidding him from making any such collection. The Minister still insisted whereupon the petitioner politely but firmly expressed his inability to collect funds. According to the petitioner, the Minister got annoyed and banged the telephone saying that other Regional Transport Officers were cooperating in the matter, but the petitioner was not prepared to cooperate and he might as well hear the consequences. The petitioner's case is that it is on account of this annoyance that Transport Minister has suspended him from service.

8. Sri Balaram Singh Yadav, the then Transport Minister, has filed a counter-affidavit refuting the charge of malafides. He has asserted that he was not, at all, interested in J. P. Goyal and he had never asked the petitioner to help J. P. Goyal to get a permit. He has further asserted that he never asked the petitioner to collect funds for the elections or for any other political purposes. Counter-affidavits have been filed by Sri L. K. Gupta, Deputy Secretary, Transport Department and by Sri G. P. Pandey, Secretary, Transport Department. These two affidavits give the detail, regarding the consideration of the Kanpur matter on the complaint of Sri Ram Singh Dhaggar by the various authorities. They also state that the question of the petitioner's suspension was taken up on the basis of the reports received from the Vigilance Establishment in respect of the Agra complaints against the petitioner and that ultimately the order of suspension was passed by the Chief Minister and not by the Minister for Transport. A counter affidavit has also been filed by Sri R.B. Saxena, the Transport Commissioner. He was made a party by the petitioner at a late stage and he has filed a short affidavit supporting some of the assertions made by the petitioner.

9. Obviously. the matter relating to the grant of permit to Sri J.P. Goyal could not be the basis of the alleged annoyance of the Minister with the petitioner, for the simple reason that the permit was, in fact, granted to Sri J. P. Goyal In support of his contention that the Minister asked him to collect funds for the forthcoming elections particularly the election of the Chief Minister's son-the petitioner has relied upon the following circumstances :

- (1) The large number of telephone trunk-calls, which the Minister made to the petitioner from Lucknow and Delhi;
- (2) the action of the Transport Commissioner in forbidding the petitioner from collecting funds and his action in issuing a Circular to that effect to all Regional Transport Officers, and (3) the false denial by the Minister of certain allegations made by the petitioner.

10. Before examining the material in support and against the charge of malafide, it will be well to notice the principles laid down by the Supreme Court in this regard. In *C.S. Rowjee v. State of Andhra Pradesh and others* ¹ the Supreme Court observed :

"It is, no doubt, true that allegations of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact, are made in several of the cases which have come up before this and other Courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of it at least might stick. Consequently it has become the duty of the Court to scrutinize these allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact. In this task which is thus cast on the courts it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made came forward to place before the Court either their denials or their version of the matter, so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of malafides on the part of authorities of the status of those with which this appeal is concerned, have discharged their burden of

proving it."

In *Pratap Singh v. State of Punjab*² the Supreme Court said :-

"Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by Government of its powers. While the indirect motive or purpose, of bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the appellant has to establish in this case though this may some times be done (See *Edgington v. Fitzmaurice*.³ The difficulty is not lessened when one has to establish that a person in the position of a Minister apparently acting in the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. We must, however, demur to the suggestion that mala fide in the sense of improper motive should be established only by direct evidence that is that it must be discernible from the order impugned of must be shown from the contents in the file which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts."

11. What the petitioner has to establish in the present case is that Sri Yadav, the Transport Minister, asked him to collect funds and that the expression of his inability to do so by the petitioner angered and annoyed Sri Yadav to this extent that he passed the impugned order of suspension against the petitioner. The petitioner's case in this regard has been set out above.

12. The petitioner has placed great reliance on the facts that Sri Yadav contacted him on telephone several times from Lucknow and once from Delhi in support of his contention that Sri Yadav was trying to put pressure on him to collect funds. In paragraph 3 of the Supplementary Rejoinder-Affidavit filed by the petitioner details of the telephone trunk-calls made by Sri Yadav to the petitioner are given. It is not disputed by the respondents that all nine trunk calls, which Sri Yadav is alleged to have made from Lucknow to the petitioner at Dehradun, and the 10th call, which he is alleged to have made from Delhi, were in fact made by Sri Yadav. Sri Yadav has asserted in the affidavit filed by

him that he used to receive many complaints from the members of the legislature and other persons regarding the work of the Transport Department and in this connection he used to contact the various Regional Transport Officers on telephone. According to him, he contacted the petitioner also for this purpose and not for the purpose of putting pressure upon him to collect funds for him. The first trunk-call was made on October 14, 1971. According to the petitioner, Sri Yadav asked him to see him at Lucknow in about a week's time. Admittedly, the petitioner did not do so. It is urged by the learned Advocate General that if the Minister had telephoned the petitioner and asked him to see him at Lucknow, the petitioner would have done so forthwith and the fact that the petitioner did not do so indicates that by this trunk-call the Minister had not asked the petitioner to see him at Lucknow. The second trunk-call was made on October 21, 1971. Again the petitioner's case is that the Minister asked him to see him at Lucknow on October 21, 1971. Even if these two calls were made by the Minister, they prove nothing more than this that the Minister desired to see the petitioner. The next two calls were made on November 5, 1971. It may be recalled that the meeting of the Regional Transport Authority was to take place on November 5 and 6, 1971. According to the petitioner, by these calls the Minister again asked the petitioner to help Sri J. P. Goyal in getting the permit. As already stated earlier, the Minister has denied that he ever asked the petitioner to help Sri J. P. Goyal. In this connection it is urged by the learned Advocate General that the petitioner, not being a member of the Regional Transport Authority was not in a position to get a permit for Sri J. P. Goyal and the Minister of Transport who knew about the petitioner's powers, could not have asked him to help Sri J. P. Goyal to get the permit. He has, further, relied upon the fact alleged by the petitioner that the Minister contacted the Commissioner-cum-Chairman of the Regional Transport Authority on November 5, 1971, and had asked him also to help Sri J. P. Loyal in getting the permit. It has been urged that if the Minister could approach the Commissioner-cum-Chairman of the Regional Transport Authority, there would be no point in directing the petitioner to help Sri J. P. Goyal. There seems considerable force in this contention. Since, admittedly, the petitioner was not in a position to help Sri J. P. Goyal to get the permit, it is difficult to accept that the Minister was all the time asking him to help Sri J. P. Goyal. It appears unlikely that the two calls made by the Minister to the petitioner on November 5, 1971, were to ask him to help Sri J. P. Goyal. The next call was made on November 6, 1971, and this call

is also said to have been made by the Minister to the petitioner enquiring about the grant of the permit to Sri J. P. Goyal. For the reason given above, it is difficult to accept that this call was made for the purpose alleged by the petitioner. The next call was made by the Minister from Delhi on November 10, 1971. According to the petitioner, the Minister first enquired about the permit of Sri J. P. Goyal and on being told by the petitioner that the permit has been granted, the Minister thanked the petitioner and informed him that he had noted favourably in the petitioner's file. It is difficult to accept this. Since the petitioner was not in a position to help Sri J. P. Goyal and since the permit had been granted by the Regional Transport Authority there was no occasion for the Minister to thank the petitioner. According to the petitioner, the Minister also reminded him about the other matter, about which he had spoken to the petitioner on October 31, 1971 that is to say, the matter relating to collection of funds, and asked the petitioner to see him at Lucknow as early as possible. The Minister has denied this allegation. The next two calls were made on November 21, 1971, from Lucknow. According to the petitioner, the Minister asked him about the collection of funds and upon the petitioner's expressing his inability to collect the funds, the Minister got annoyed and hung up the telephone saying that the petitioner might as well bear the consequences. The Minister has denied that on November 21, 1971, he had such a talk with the petitioner. The last call was made on November 22, 1971, but the petitioner has not disclosed what conversation took place on that day. If the allegations of the petitioner about the calls of November 21, 1971, were true, then it is inconceivable that the Minister would again telephone the petitioner the very next day. It, thus, appears that even according to the petitioner only two calls- one from Delhi on November 10, 1971, and the other from Lucknow on November 21, 1971, related to the matter relating to the collection of funds. Therefore, the mere fact that the Minister put in 10 calls to the petitioner within a period of five weeks does not by itself support the petitioner's assertion that the Minister was pressing him to collect the funds and that the failure of the petitioner to do so annoyed the Minister.

13. The petitioner has relied upon the counter-affidavit filed by Sri R. B. Saksena, Transport Commissioner, and a circular issued by him in support of his allegation that the Minister was pressing the Regional Transport Officers to collect funds for the elections. In paragraph 5 of his counter-affidavit Sri

Saksena has stated that he had telephoned the petitioner on November 19, 1971, and had asked him to desist from collecting funds in connection with the by-elections. It was as asserted by the petitioner in paragraph 53 of the petition that Shri Saksena had enquired from him whether the Minister had asked him to collect funds for the by-elections: that, on the petitioner's replying in the affirmative Sri Saksena had asked the petitioner not to do so. Sri Saksena has not corroborated the petitioners assertion that Sri Saksena enquired from him whether the Minister had asked him to collect funds for the by-elections and that he replied in the affirmative. Sri Saksena has said that he does not correctly re-call the details of the conversation. However, it is contended for the petitioner that there was no occasion for the Transport Commissioner to ask the petitioner to desist from collecting funds for the elections, unless he knew that the minister had asked the petitioner to do so. A Circular was issued by the Saksena, which is annexure-X' to the rejoinder affidavit. This Circular was issued on November 19, 1971. By this Circular Sri Saksena directed the Regional Transport Officers and other Officers in the Transport Department not to assist any candidate or political party in procuring vehicles, collection of funds, enlisting volunteers etc. It is urged by the petitioner that such a circular would not have been issued by the Transport Commissioner, if the Transport Minister had not been pressing the Officers of the Transport Department to collect funds to assist in the election. It is difficult to accept the contentions of the petitioner. The Circular was issued to bring to the notice of the Officers some provisions of the Government Servants Conduct Rules in connection with the elections. The Circular appears to have been issued in the normal course, as the elections were due to be held in December and there were always complaints that the Officers of the Transport Department helped the candidates with vehicles and funds. There is nothing to show that this Circular was issues to counter-act the demand of the Transport Minister upon Regional Transport Officers and other Officers of Transport Department for collection of funds. It appears to me that the direction of Sri Saksena to the petitioner in the trunk-call to desist from collecting funds was also in pursuance of this Circular. I am unable to agree with the petitioner that this circular and the telephone trunk-call of Sri R. B. Saksena support the petitioner's assertion the the Minister was pressing the petitioner and other Regional Transport Officers to collect funds.

14. The learned counsel for the petitioner then relied upon what he called two

patent false statements made by the Minister and contended that the e false statements could only be made if the Minister was trying to hide the truth. The first false-hood is said to be in connection with the trunk call dated November 10, 1971, made by the Minister from Delhi. The allegations about this call were made in paragraph 50 of the petition. In the counter-affidavit filed by the Minister, it was stated in paragraph 9 that the contents of paragraph 50 of the writ petition are denied. It is urged that since the call as, in fact, made, as subsequently admitted, the denial in paragraph 9 of the counter-affidavit was patently false. From a reading of the entire paragraph 9 of the counter affidavit, it appears that the denial was really, in respect of the conversation alleged to have been made on that date. Though in the first part of paragraph 9 the denial appears to be rather comprehensive, the later part of the paragraph makes it clear that the denial was really in respect of the alleged conversation. Therefore, it is not correct to say that the Minister was guilty of any patent false-hood in connection with the trunk-call of November 10, 1971. The second alleged falsehood relates to what happened at Lucknow on November 16, 1971. In paragraph 51 of the writ petition the petitioner has asserted that on that day the Transport Commissioner, Sri R.B. Saksena, told him that the Minister wanted to see the petitioner at his residence in the evening. In paragraph 52 of the petition the petitioner has alleged that he, in fact, saw the Minister in the evening on that day and the Minister again pressed the petitioner to collect funds. In his counter-affidavit the Minister has stated in paragraphs 10 and 11 that he never asked the Transport Commissioner to send the petitioner to him, and that no meeting took place between him and the petitioner on that day. Sri R. B. Saksena, the Transport Commissioner, has in his counter-affidavit supported the petitioner's version that as desired by the Transport Minister he had asked the petitioner to see him on that day. There is no doubt that there are conflicting versions regarding this occurrence, but it is very difficult to hold that the version given by the Minister is necessarily false. It has been urged by the learned Advocate General that Sri Saksena may he under some misapprehension that the Minister wanted to see the petitioner, and, therefore, he might have told the petitioner to see the Minister. He has urged that there is nothing to support the petitioner's version that he, in fact, met the Minister that evening. There is the version of the Minister on oath against the version of the petitioner on oath. In these circumstances, I am unable to agree with the petitioner's contention that the Minister is clearly guilty of two false-hoods.

15. Some reliance was also placed by the learned counsel for the petitioner on Annexure '8' to the writ petition, which contains instructions as to the circumstances in which suspension orders should be passed. These infractions show that the period of suspension should be reduced to the barest minimum, that it should not be resorted to lightly, and that it should be made only when serious charges are prima facie established against an officer. It has been urged that in the present case these instructions were thrown to the wind and the suspension was made in defiance of these instructions. The learned Counsel for the petitioner has also relied upon the fact that in the earlier proceedings before the Administrative Tribunal, the Tribunal had found the investigation by the Vigilance Establishment to be improper and inspired; and has contended that in view of this opinion of the Administrative Tribunal, the Government should not have taken action against the petitioner upon the basis of the report of the Vigilance Establishment. It is no doubt true that in the charges relating to Allahabad, the Administrative Tribunal found the investigation made by the Vigilance Establishment not to be proper. In this circumstance, it was certainly necessary for the authorities to examine the reports of the Vigilance Establishment now more carefully and to pass the suspension order after due consideration. There is no material on the record to show that the present order of suspension was passed lightly, without giving due consideration and thought to the reports of the Vigilance Establishment and to the opinion of the Administrative Tribunal about the earlier investigation made by the Vigilance Establishment. In fact, as has been stated above, in respect of the Kanpur charges the authorities, even though the Transport Secretary recommended the petitioner's suspension, did not suspend him and referred the matter to the Vigilance Establishment for its report. This was done after a perusal of the findings of the Administrative Tribunal.

16. Two reports were received from the Vigilance Establishment on January 10, 1972 and on March 14, 1972. The major portions of these reports dealt with the charges against the petitioner in respect of his conduct and actions while posted at Agra. In the report dated March 14, 1972, the Vigilance Establishment observed that the Government might consider the question of placing the petitioner under suspension. This file was received in the Home Department. The Home Department put up a note on April 15, 1972, in respect of this matter

and recommended that the petitioner be suspended during the pendency of the Enquiry. The Chief Secretary agreed with this recommendation on April 20, 1972. Sri Yadav, the Transport Minister, expressed his agreement on April 21, 1972. The file was then placed before the Chief Minister and he on April 29, 1972, ordered the suspension of the petitioner. It, thus, appears that the matter regarding the suspension of the petitioner was given due consideration and was not passed lightly. The final order was passed by the Chief Minister and not by the Transport Minister. Even if the Transport Minister was biased against the petitioner, that bias could not vitiate the order of suspension. The report regarding the suspension was not put up by any Officer of the Transport Department, but was put up by the Home Secretary. It was approved by the Chief Secretary before it was placed before the Transport Minister. Therefore, the Transport Minister came on the scene at a late stage. He was neither responsible for sponsoring the report, nor was he responsible for passing the final order. He merely expressed his agreement with the Home Secretary and the Chief Secretary. The final order was passed by the Chief Minister. No allegations of mala fide have been made against the Chief Minister. The petitioner's charge that the impugned order was passed by the Transport Minister mala fide must, therefore, fail.

17. It has already been mentioned above that after the enquiry by the Administrative Tribunal, the Governor reinstated the petitioner with effect from the date of his suspension, but gave the three directions, which have been set out in the earlier part of this judgment. These three directions have been challenged by the petitioner. The first direction was that the petitioner be given a warning, which should be entered in his character roll. Sri B. L. Gupta, learned counsel for the petitioner, has contended that this amounts to a censure, and that the petitioner should have been given an opportunity to show cause before the punishment of censure was inflicted on him. The word used in the order is 'Chetavani' and the learned Advocate General has contended that it 'means warning' and not 'censure'. He has further contended that even if it amounts to 'censure', no show cause notice was required to be given. This seems to be the correct position. Under Rule 49 of the U. P. Civil, Services (Classification, Control and Appeal) Rules 'censure' certainly one of the punishments mentioned. There is no provision in these rules for giving a government servant an opportunity of hearing before the punishment of

'censure' can be inflicted. Detailed provision is made for giving an opportunity in cases where it is proposed to inflict one of the major punishment, but there is no corresponding procedure provided for infliction of the punishment of 'censure'. Rule 55-B(a) provides that whenever the punishing authority is satisfied that good and sufficient reason exists for adopting such a course, it may impose the penalty of censure, or stoppage at an efficiency bar. It further provides that it shall not be necessary to frame formal charges against the government servant concerned or to call for his explanation. This clearly negatives the contention of the petitioner.

18. The other two directions which are complained of are:-

- (a) allowing the petitioner only 3/4th of the salary for the period of suspension, and
- (b) directing that the period of suspension be not counted as period spent on duty for purposes of earning increments.

It is urged that these directions could not be given, without giving the petitioner an opportunity of being heard. Admittedly, these directions relating to the period of suspension could be given only under Fundamental Rule 54. The Supreme Court has now held in *Gopal Krishna v. State of Madhya Pradesh*,⁴ that principles of natural justice require that in passing an order under fundamental Rule 54 an opportunity to show cause against the action proposed must be given. Admittedly, in the present case no such opportunity was given to the petitioner. Therefore, the part of the order, which falls under Fundamental Rule 54, must be held to be illegal as violating the principles of natural justice.

19. The last complaint of the petitioner is that his representation against the with-holding of his integrity certificate for the year 1966-67 has not yet been disposed of by the authorities. The adverse remarks for the year 1966-67 were communicated to the petitioner by the letter dated August 11, 1969, Annexure '5' to the writ petition. After seeking some clarification, the petitioner made a representation on June 22, 1970. According to the petitioner this representation has not yet been disposed of by the authorities. In the counter affidavit filed by Sri L. K. Gupta it is stated that the representation of the petitioner is not available with the Government. If the representation was misplaced, the

authorities should have asked the petitioner to supply them with another copy. A copy of the representation has been annexed to the writ petition as Annexure '6'. It is desirable that this representation should be disposed of by the authorities forthwith.

20. The writ petition is, accordingly, dismissed so far as it challenges the order of suspension dated May 6, 1972. It is also dismissed in respect of the direction regarding the making of the censure entry in his character roll. Against the censure entry the petitioner can make a representation. The writ petition is allowed regarding the last two directions given under Fundamental Rule 54 in Annexure '3', the order passed in the earlier proceedings. The directions given in that order to pay the petitioner 3/4th of the salary for the period of his suspension and further directing that the period of suspension shall not be counted as period spent on duty for the purposes of earning increments are quashed. The authorities may, after giving the petitioner an opportunity of being heard, pass fresh orders under Fundamental Rule 54. The writ petition is also allowed in respect of the relief against the failure of the Government to dispose of the petitioner's representation. The Government is directed to dispose of the petitioner's representation regarding the withholding of the integrity certificate for the year 1966-67. The parties will bear their own costs of this writ petition.

21. Before I part with this case, I would like to mention that it is desirable that the enquiries against the petitioner as well as the disciplinary proceedings, if necessitated by those enquiries, should be concluded expeditiously. The equines and the disciplinary proceedings regarding the petitioner's Allahabad posting ended five years afterwards sometime in 1969. In relation to the petitioner's posting at Agra, which was from 1964 to 1967, the enquiries appear to have been concluded only recently after about five years and the disciplinary proceedings are yet to commence. Delay in investigation and disciplinary proceedings causes grave hardship and great harassment to government servants. I have been informed by the earned Advocate General that the charge-sheets in respect of the Agra posting of the petitioner is now ready. If that is so, it is desirable that the disciplinary proceedings be initiated forthwith.

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Case Referred.

1. (AIR 1964 S. C. 962)
2. (AIR 1964 S. C. 72)
3. (1884) 29 Ch D 459
4. 1967 Service Law Reporter 800: AIR 1968 S.C. 240