CALCUTTA HIGH COURT

Sudhir Ranjan Halder

Vs

State of West Bengal

(B Banerjee and Niyogi, JJ.)

22.03.1961

JUDGMENT

Banerjee, J.

1. The plaintiff Sudhir Ranjan Halder, who is the appellant before us, obtained an appointment as a lower division clerk, under the then Government of Bengal, on April 15, 1944. At the time material to the suit, out of which this appeal arises, however he was serving as a Sub-Inspector of Rationing, under the Rationing Officer, Bhowanipur Sub-Area, Calcutta.

2. On October 31, 1947, the residence of the plaintiff at 13A, Gangaprosad Mukherjee Road, Bhowanipur was searched by the men of the Enforcement Department, who seized a number of Ration Cards and cloth folders allegedly from the possession of the plaintiff. Thereupon, the plaintiff was arrested by the Police on the ground of wrongful and illegal possession of the said cloth folders and ration cards.

3. By an order. Exhibit 2(a), dated November 4, 1947, the Joint Controller of Rationing suspended the plaintiff, with effect from the date of the order, on the ground of his arrest by the Enforcement Branch. The aforesaid order was forwarded to the plaintiff on November 5, 1947, and was said to have been received by him on November 8, 1947.

4. The plaintiff was thereafter charged with having contravened Clauses 11 and 14 of the Bengal Rationing Order, 1943 and Clause 12 of Bengal Cloth Rationing Order, 1945, and was prosecuted for an offence punishable under Section 7(1) of the Essential Supplies (Temporary Powers) Act, 1946. While that case was pending, disciplinary proceeding was started against the plaintiff and the following charge (Exts. C and E) was drawn up against him:--

"Proceedings drawn up against Sri Sudhir Ranjan Halder, S. I.

Whereas the Police in course of search of his room found 65 ration cards and 27 cloth folders in

his possession and as a consequence thereof a criminal case has been started against him for contravention of Bengal Cloth Rationing Order and Bengal Rationing order he is to show cause by 10-6-48 why he will not be dismissed from the service of the Govt., on the charge mentioned above.

Sd/- J.N. Roy.

3-6 R.O. Bhowanipur."

5. This charge was said to have been forwarded to 'the plaintiff by registered post, to his home address at DeuI Kati, Barisal (East Pakistan), on June 8, 1948 (Exts. F and F(1)) and was said to have refused by him on June 18, 1948.

6. There was a Board of Enquiry constituted by the authorities to go into the charge framed against the appellant. Before the Board started its enquiry, we find the following two orders in the memorandum of proceeding (Ex. A):

".....Memo No. T/1252/G.S. Hated 30-6-

48 from R.O. Bhowanipur intimates that the copy

of proceedings sent under Registered Post to the home address of S. I. Sudhir Ranjan Halder has been returned with this remark 'Refused'; as such a copy of proceedings as at SI. 19 has been hung up by him on the office Notice Board,

P. Mitra. The Clerk should be dismissed
2-7-48. from service.
K.K. Mitra
S. O. (S) 3. 7.

The case of Sri Sudhir Ranjan Halder.....
.....should go to the Enquiry Board
with a precis.....

Illegible
S. O. (S) Reed. 2 P. M.
5. 7 P.Mitra
6-7-48."

7. The cases of the appellant and a co-accused, Nalini Ranjan Halder (with whom we are not concerned in this appeal), were taken up by the Board for investigation and the following report was submitted:--

"The case against Sri Nalini Ranjan Halder, L.D.C. Ballygunge Rationing Office, and Sri Sudhir Ranjan Halder, S. I. of Bhowanipore Rationing Office is that a large number of ration cards and cloth folders were seized from their home by the Enforcement Branch of the Calcutta Police on 80-10-47.. The Enforcement Branch detected the cards under the pillows and bedding of L.D. Clerk, Nalini Halder. A police case is pending against both the delinquents. Sudhir Ranjan Halder, S. I. is however absent to-day. From the reports of the Inspector Calcutta Police and R.O. it is clear that L.D.C. and the Sub-Inspector took these ration cards for illegal use. There is practically no explanation for keeping so many ration cards and cloth folders in their house. Nalini Halder now states that he took the cards for using as fuel. This is quite unusual. The Board therefore recommends that both the delinquents be dismissed with effect from the date of their suspension.

B.N. Chowdhury, S.K. Sanyal
Secretary, Chairman,
Board of Enquiry. Board of Enquiry,
10-8-48 10-8-48"

8. Sri D.K. Ghosh, who was the Director of Rationing, accepted the recommendation of the Board and passed the following order (Ext. A(4)):

"I agree with the recommendation of the Board of Enquiry and dismiss both the incumbents.

D.K. Ghosh.
13-8-48."

9. The order of dismissal was served on the appellant under Memo No. C. R.C./398-2852/10-(S), dated August 20, 1948. Some unknown hand added an embellishment to the reasons for dismissal and over and above the reasons given by the Board of Enquiry added a second reason, namely, "refusal to accept the letter containing proceedings drawn up."

10. The criminal case, which had been started against the appellant, ended in his conviction on July 6, 1949, and he Was sentenced to rigorous imprisonment for 6 months and a fine of Rs. 2000/-. On anneal, however, the Additional Session Judge of Alipore set aside the conviction and sentence and directed acquittal of the appellant. The appellate order (Ex. 10) was made on November 24, ,1949.

11. We need not refer, for the purposes of this appeal, to the several memorials the appellant sent to the authorities praying for reconsideration of the order of his dismissal, which are Exts. S and 9 series in this case.

12. On December 16, 1950, the appellant caused a notice under Section 80 of me Code of Civil Procedure to be sent to the Chief Secretary, Government of West Bengal. To that notice, somewhat curiously worded, we shall refer hereinafter. Thereafter, on June 2, 1951, the appellant, as plaintiff, filed the suit, out of which this appeal arises, alleging, inter alia, that his dismissal from service, notwithstanding his acquittal by the Criminal Court, was bad and that the procedural requirements for dismissal were not observed. Me claimed the following reliefs:--

"(a) *****

(b) that a declaration may be made that the order (dated 20-8-1948 as per Memo No. CRC/398-2852/10(3)) of the Joint Controller of Rationing (Initial area) purporting to dismiss the plaintiff with effect from 5-11-1947 is void and inoperative and without jurisdiction and that the plaintiff remained a Sub-Inspector of Rationing at the date of such dismissal and also at the institution of this suit.

(c) that the defendants may be restrained permanently from preventing the plaintiff from attending to his lawful duties and from in any way interfering with the carriage of his duties.

(d) that a decree may be made in favour of the plaintiff and against the defendants for the recovery of Rs. 5,799-2-0 for arrears of pay and allowances as detailed in schedule 'A' hereto below from 1-11-1947 till date and all future amounts from date.

(e) ***** "

13. The defendants contested the suit and denied the allegations of the plaintiff. The defendants pleaded that the plaintiff had refused the notice to show cause against the proceeding drawn up against him and as such the enquiry proceeded ex parte and as a result of the enquiry the charge against the plaintiff was found to be proved and he was dismissed. The defendants further pleaded that the acquittal of the plaintiff in the criminal case did not stand in the way of the plaintiff being departmentally dealt with. The defendants also pleaded that the plaintiff's claim was barred by limitation and that the notice under Section 80 of the Code of Civil Procedure is illegal and insufficient. The plaintiff's claim regarding the arrears of salary was disputed by the defendants on the ground that the State Government was not liable to be sued by a Government servant either for arrears of salary or for damages.

14. The trial court dismissed the plaintiffs claim in its entirety. The propriety of the decree, made by the trial court, is being disputed before us in this appeal.

15. Mr. Bijan Behari Das Gupta. the learned Advocate for the plaintiff-appellant contended, in the first place, that there was no reasonable opportunity given to the plaintiff to show cause against the charge of misconduct made against him.

16. It is undisputed that notice (Ext. E) of the charge made against the plaintiff appellant was sent to him from Calcutta to his village address at Deulkati, Barisal, (East Pakistan), by registered post. J.N. Roy (D. W. 2), who was working as the Rationing Officer of Bhowanipore at the material time, deposed;--

"I cannot say when letter Exhibit E was sent through post on 8-6-48. I directed for the sending of the letter Exhibit E to the plaintiff by (?) the Barisal address through registered post. I also directed for the publication of one copy of the proceeding in the office Notice Board and the publication was made on 9-6-48".

17. We have already seen from 'Ext. E' that the plaintiff was directed to show cause against the charge by June 10, 1948. To require a man at Barisal to show cause on the very next date of the despatch of a notice from Calcutta is not giving him any opportunity to show cause, far less a reasonable opportunity. The peon's endorsement on the registered envelop (Ext. F) shows that the letter was refused by the addressee on June 18, 1948. The date is some indication of the time consumed by the registered letter to reach Barisal. The plaintiff, however, denied that the Registered letter was at all tendered to him and was refused by him. The Court below did not disbelieve the plaintiff's version in its totality but disposed of the objection on the following line of reasoning:--

"In his evidence the plaintiff (P. W. 3) has said that he lived at 13A Gangaprosad Mukherjee Road from the date of release OQ bail till the first part of April 1948 and in the second week of April, 1948 he went to Haltoo and lived there at the place of his sister's husband. He also said that he came back to ISA, Gangaprosad Mukherjee Road afterwards in Sriban. He did not notify his change of address from Gajigaprosad Mukherjee Road to Haltoo to his office. In the cross examination he admitted that the change of address had got to be intimated to the office but as he was suspended so he did not think it to be his duty to inform his office about the change of address. He admitted that his permanent address is Daulkathi, Barisal and his father was living there. He admitted that his father and mother were at Barisal in the year 1948 in the village Daulkathi. It cannot be said that the defendants managed to influence the postal peon of Deulkathi, Barisal to write out a false endorsement 'refused' on the registered postal envelope. Further it is seen that the registered letter which was sent through the post was properly addressed and it must have reached the plaintiffs home at Daulkathi, Barisal. But the plaintiff says that he did not go to Barisal in June, 1948. It is accordingly argued that he did not himself refuse to accept the letter, but there is no doubt that somebody of his house at Barisal must have refused to accept the letter when it was tendered by the postal peon. It was not practicable on the part of the defendants to send the copy of the proceeding to the plaintiff by his 'Haltoo' address as it was not intimated to the office by the plaintiff. I do not think that it was proper on the part of the office to send the letter containing the copy of the proceeding to his home address as no other address was known to the office. And when the letter sent to the plaintiff by his home address came back refused it was not improper on the part of the defendants to dispose of the proceeding against the plaintiff ex parte."

18. We need not concern ourselves with propriety of the line of reasoning adopted by the Court below. Even assuming for the sake of argument that the registered notice was properly sent to the plaintiff's Barisal address and there refused by him or by somebody on his behalf, even then we have to hold that the notice gave too short a period to the plaintiff-appellant to show cause. The giving of notice to show cause against charges of misconduct in a disciplinary proceeding is not merely a matter of form, but a substance. The notice, that was given in the instant case, merely satisfied a formality, it did not give to the plaintiff appellant any opportunity to show cause because the notice did not even reach him, if at all it did, before expiry of the time fixed for showing cause. We need only refer to the observation by the Supreme Court in Khem Chand v. Union of India, -

"He must not only be given an opportunity but such opportunity must be reasonable one"

--in older to emphasise on the impropriety of giving an impossibly short date to a party to show cause, as in this case -- one day's time to a person resident abroad.

19. We have already referred to the language of the charge to which the appellant was called upon to show cause. The charge merely said that inasmuch as the police had recovered certain ration cards and cloth folders from the appellant's possession and started a criminal case against him, he must show cause why he shall not be dismissed from the service of the Government. This was no charge at all and this is all the more so because the plaintiff was acquitted in the criminal trial. Mere prosecution is not conviction and the pendency of a criminal prosecution is no proof of the guilt of an accused. To call upon a man to show cause why he should not be dismissed from Government service because of the pendency of a criminal prosecution against him is only to make a nonsense of a charge of misconduct.

20. Then again the Board of Enquiry, which ex parte found the plaintiff guilty of the charge made against him, did not itself make any enquiry. Ajit Kumar Guha (D. W. 1), who was himself a member of the Board, deposed as follows:--

> "We the members of the Board did not make any separate enquiry. We relied on the enquiry report of the Rationing Officer and the Police Officer."

21. This was strange procedure. The appointing authority did not himself conduct the enquiry. He set up a Board of Enquiry which also did not itself enquire. It relied on certain ex parte reports, made either by the Rationing Officer or by a Police Officer, and endorsed them. Nothing could be more undesirable, particularly in an ex parte enquiry.

22. Over and above all these, we find from the Memorandum of Proceeding (Ext. A) that before the matter was placed before the Enquiry Board, an Officer of the Department, presumably the dealing officer, had made up his mind and noted that the plaintiff should be dismissed from service. Nothing could be more irregular, nothing more undesirable, nothing more damaging to a reasonable form of procedure.

23. The order of dismissal was also faulty. Dismissal was directed to take effect not from the date of the order, which was dated August 13, 1948 but from the date of the order of suspension, dated November 5, 1947. This is what appears from Ext. 2 (b), the order of dismissal as communicated to the appellant. Exhibit A (4), the original order, does not contain the words with effect from the date of suspension.

24. Suspension or dismissal or removal from service with retrospective effect has always been condemned by the Court as illegal and invalid. Reference in this connection need only be made to the cases reported in Hemanta Kumar Bhattacharjee v. S.N. Mukherjee, , A.R.S. Choudhuri v.

Union of India, , *Damodar Valley Corporation v. Provat Roy*[1]*, Abdul Hamid v. District School Board*[2]*,* Amulya Kumar Sikdar v. L.M. Bakshi, , Satyendra Kumar Dutta v. Administrator, District Board, 24 Parganas, , and a judgment by Bose, J. in Civil Revn. Case No. 2243 of 1954 (Ajit Kumar Ghosh v. Divisional Supdt., Eastern Rly. -- un-raported.

25. Mr. Bankim Chandra Banerjee, learned Advocate for the State, did not attempt to support the retrospective part of the order of dismissal. He, however, contended that its prospective part was good and should be upheld. In support of his contention he relied upon a judgment of Sinha, J. in Akloo v. Chief Executive Officer, Corporation, Calcutta -- unreported. In the unreported decision aforementioned, an employee of the Corporation of Calcutta was dismissed from service with retrospective effect. The employee moved against the order and obtained a Rule from this Court. When the matter came up before Sinha, J., for hearing, the learned counsel for the Corporation made it clear that retrospective operation would not be given to the order. Thereupon his Lordship ordered as follows :

> "Mr. Hazra appearing on behalf of the Corporation states that the Corporation had no intention of making it retrospective, and therefore, it is declared that this order of dismissal dated 26/27th March, 1957 will be only valid as and from the date when it was made."

The declaration as above was made by Sinha, J. on a concession by the Corporation that it would .not dismiss the employee with retrospective effect.We do not think that his Lordship laid down any proposition that if an order for dismissal was made with retrospective effect, the prospective portion of the order always stood saved. The difficulties in the way of laying down such a proposition are many. A court of law does not sit in appeal over an order of dismissal made by an executive authority in a disciplinary proceeding and as such has no power to modify such an order. If such an authority passes an order of dismissal with retrospective effect, it may not be easy to separate the retrospective portion from the prospective portion of the order, because if the authority had not made the order retrospective, it is difficult to say from which other date the authority would have made the order effective. It may not always be that otherwise the authority would, have made the order effective from the date of the making of the order; it might as well be that the authority would have otherwise made the order effective from the date of the service of the order on the delinquent. Since a court of law has no power to make a proper order for dismissal on behalf of the executive authority and since indication may be lacking) in the impugned order itself, as to from which other date it would have commenced, had it not been retrospective, it may not always be easy to draw a line between the retrospective and the prospective part of the Order and to uphold the prospective operation of the order. We need not, however make much of this point in this appeal.

26. Mr. Das Gupta's last grievance against the order of dismissal was that the appellant was not given a second opportunity to show cause against the punishment meted out to him. In support of this contention Mr. Das Gupta relied on High Commr. for India v. I.M. Lall . Interpreting Section 240 of the Government of India Act, 1935 read with Rule 55 of the C. S. (C. C. A.) Rules, their Lordships of the Privy Council observed in Lall's case (Supra) as follows :

> "In their opinion, Sub-section (3) of Section 240 was not intended to be, and was not, a reproduction of Rule 55, which was left unaffected as an administrative rule. Rule 55 is concerned that the civil servant shall be informed 'of the grounds on which it is proposed to take action', and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing; this is in marked contrast to the statutory provision of a reasonable opportunity of showing cause against the action proposed to be taken in 'regard to him'. 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. It is on that stage being reached that the statute gives the civil servant the opportunity for which Sub-section (3) makes provision. 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 inquiry under Rule 55, it would not be reason-able 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 o the findings of the inquiry. On this view of the proper construction of Sub-section (3) of Section 240, it is not disputed that the respondent hag not been given the opportunity to which he is entitled thereunder, and the purported removal of the respondent on August 10, 1940, did not conform to the mandatory requirements of Sub-section (3) of Section 240, and was void and inoperative."

27. Alike Lull's case , the present case is also governed by Section 240 of the Government of India Act, 1935, the order of dismissal having been made prior to the Constitution and the observation of the Privy Council in the aforesaid case certainly supports the contention made on behalf of the appellant.

28. Mr. Bankim Chandra Banerjee, learned Advocate for the respondent State tried to get out or the difficulties created by Lall's case by contending that in Lall's case there were a number of punishments proposed against the delinquent, and that was the reason why the Privy Council said that he should be given a second opportunity of showing cause why any particular punishment should not be inflicted upon him in view of the nature of the 'Charges' that had been brought

home against him. In support of his contention, he relied firstly, on an observation by Sinha J. in Jatindra Nath Biswas v. R. Gupta, , namely:

> "This however is not a procedure which is immutable. There may be such a case where the facts are such and the punishment proposed is such that it would be unnecessary to give the civil servant two chances instead of one. For example, if there was a single charge and the proposed punishment was a single punishment and the civil servant had the amplest opportunity at the enquiry stage to meet the whole case, a second opportunity may not be necessary. That this is so has been expressly recognised by both the Federal Court and the Judicial Committee in Lall's case . In a case however where a number of charges have been made and/or a number of punishments are proposed to be inflicted, it is essential that the civil servant must know what charge or charges have been brought home to him and what particular punishment was being sought to be inflicted therefor. Without knowing it, he cannot be said to have had a reasonable opportunity of defending his case"

and secondly, on another decision by the same learned Judge in Probodh Chandra v. Executive Engineer, Canal Division, , in which also his Lordship expressed a similar view.

29. Lall's case. was explained by the Supreme Court in the case of and S.R. Das, C.J., in delivering the judgment, observed :

> "The learned Solicitor-General appearing for 'the Union of India, then, contends ' that assuming that the Government servant is entitled to have an opportunity not only to show cause against his guilt but also an opportunity to show cause against the punishment proposed to be inflicted on him, the appellant in the present case has had both such opportunities, for by the notice served on him on July 9, 1949, the appellant was called upon to show cause against the charges as well as against the punishment of dismissal in case the charges were established. He points out that in , the notice given to I.M. Lall did not specify dismissal as the only and particular punishment proposed to be imposed on him, but called upon him to show cause why he should not be dismissed, removed or reduced or subjected to such other disciplinary action as the competent authority might think fit to enforce, whereas in the present case the notice referred to above clearly indicated that the punishment of dismissal alone was proposed to be inflicted. The learned Solicitor-General in support of his contention relies on the observations of the majority of the Federal Court quoted above and in particular on the passage where their Lordships stated :
>
> 'that in some cases it would be quite sufficient to indicate the charges, the evidence on which those charges are put forward and to make it clear that unless the person can on that

information show good cause against being dismissed or reduced in rank if all or any charges are proved, dismissal or reduction in rank would follow and that this would be sufficient in some cases.' He also strongly relies on the circumstance that their Lordships of the Judicial Committee, after quoting the above passage, stated that they agreed with the view taken by the majority of the Federal Court. But as we have already explained, the other observations of their Lordships of the Judicial Committee, which follow immediately, quite clearly indicate that what they agreed with was that a second opportunity was to be given to the government servant concerned after the charges had been brought home to him as a result of the enquiry. Their Lordships made it clear that no action could, in their view, be said to be proposed within the meaning of the section until a definite conclusion had been come to on the charges and the actual punishment to follow was provisionally determined on, for before that stage the charges remained unproved and the suggested punishments were merely hypothetical and that it was on that stage being reached that the statute gave the civil servant the opportunity for which Sub-section (3) made provision. A close perusal of the judgment of the Judicial Committee in I.M. Lall's case, will, however, show that the decision in that case did not proceed on the ground that an opportunity had not been given to I.M. Lall against the proposed punishment merely because in the notice several punishments were included, but the decision proceeded really on the ground that this opportunity should have been given after a stage had been reached where the charges had been established and the competent authority had applied its mind to the gravity or otherwise of the proved charge tentatively and proposed a particular punishment. There is as the Solicitor-General fairly concedes, no practical difficulty in following this procedure of giving two notices at the two stages. This procedure also has the merit of giving some assurance to the officer concerned that the competent authority maintains an open mind with regard to him. If the competent authority were to determine, before the charges were proved, that a particular 'punishment would be meted out to the Government servant concerned, the latter may well feel that the competent authority had formed an opinion against him, generally on the subject-matter of the charge or, at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also be seen to have been done."

30. Lall's case (supra) was explained again by the Supreme Court, in the light of Khem Chand's case, (supra), in a much more recent case in Hukum Chand Malhotra v. Union of India, and S.K. Das, J. who delivered the judgment observed:

(a) "In the recent decision of this Court explained the true scope and effect of Article

311(2) of the Constitution. It was stated in that decision that the reasoiwble opportunity envisaged by. Article 311(2) of the Constitution included (a) an opportunity to the Government servant to deny his guilt and establish his innocence, (b) an opportunity to defend himself, and finally (c) an Opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority after the enquiry is over and after applying its mind to the gravity Or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant. It is no longer in dispute that the appellant did have opportunities (a) and (b) referred to above. The question before us is whether the show cause notice dated April 14. 1954. gave the appellant a reasonable opportunity of showing the cause against the action proposed to be taken in regard to him. Mr. N.C. Chatterjee has emphasised two observations made by this Court in Khem Chand's case (supra). He points out that in connection with opportunity (c) aforesaid, this Court observed that a Government servant can only make his representation if the competent authority after the enquiry is Over and after applying its mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant. Mr. Chatterjee emphasises the observation one of the three punishments'. Secondly, he has drawn our attention to the observations made in the judgment of the Judicial Committee in , which observations were quoted with approval in Khem Chand's case, (supra). One of the observations made was:

'In the opinion of their Lordships no action is proposed within the meaning of the sub-section, (their Lordships were dealing with Sub-section (3) of Section 240 of the Government of India Act, 1935) until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on.' Mr. Chatterjee emphasises the expression 'actual punishment' occurring in the said observations. It is to be remembered, however, that both in I.M. Lall's case (supra) and Khem Chand's case, (supra), the real point of the decision was that no second notice had been given to the Government servant concerned after the enquiry was Over to show cause against the action proposed to be taken in regard to him. In I.M. Lall's case (supra), a notice was given at the same time as the charges were made which directed the Government servant concerned to show cause 'why he should not be dismissed, removed or reduced or subjected to such other disciplinary action as the competent authority may think fit to enforce etc.' In other words, the notice was what is usually called a combined notice embodying the charges as well as tile punishments proposed. Such a notice, it was held, did not comply with the requirements of sub- Section (3) of Section 240. In Khem

Chand's case, (supra), also the report of the Enquiring Officer was approved by the Deputy Commissioner, Delhi, who imposed the penalty of dismissal without- giving the Government servant concerned an opportunity to "show cause against the action proposed to be taken in regard to him. In Khem Chand's case, (supra), the learned Solicitor-General appearing for the Union of India sought to distinguish the decision in I.M. Lall's case (supra), on the ground that the notice there asked the Government servant concerned to show cause why he should not be dismissed, removed or reduced or subjected to any other disciplinary action, whereas in Khem Chand's case, (supra), the notice issued to the Government servant before the enquiry mentioned only one punishment, namely, the punishment of dismissal. Dealing with this argument of the learned Solicitor-General this Court said :

"A close perusal of the judgment of the Judicial Committee in I.M. Lall's case , will, however, show that the decision in that case did not Proceed on the ground that an opportunity had not been given to I.M. Lall against the proposed punishment merely because in the notice several punishments were included, but the decision proceeded really on the ground that this opportunity should have been given after a stage had been reached where the charges had been established and the competent authority had applied its mind to the gravity or otherwise of the proved charge tentatively and proposed a particular punishment.' Therefore, the real point of the decision both in I.M. Lall's case (supra) and Khem Chand's case, (supra), was that no opportunity had been given to the Government servant concerned to show cause after a stage had been reached when the charges had been established and the competent authority had applied its mind to the gravity or otherwise of the charges proved and tentatively proposed the punishment to be given to the Government servant for the charges so proved. It is true that in some of the observations made in those two decisions the words 'actual punishment' or 'particular punishment' have been used, but those observations must, however, be taken with reference to the context in which they were made."

(b) "We turn now to certain other decisions on which learned counsel for the appellant has relied. They are : , Dayanidhi Rath v. B.S. Mohanty, , and Lakshmi Narain v. A.N. Puri, . In the case of Jatindra Nath Biswas, , no second show cause notice was given and the decision proceeded on that footing. Sinha, J. observed however :'Where there, is an enquiry, not only must he have an opportunity of contesting his case before the enquiry but, before the punishment is imposed upon him, he must be told about the result of the enquiry and the exact punishment which is proposed to be inflicted.' Mr. Chatterjee has emphasised the use of the word 'exact'. As we have pointed out, the decision proceeded on a different footing and was not rested on the ground that only one punishment must be mentioned in the second show cause notice. The decision in Dayanidhi

Rath's case, (supra), proceeded on the footing that if the punishment that is tentatively proposed against a civil servant is of a graver kind, he can be awarded punishment of a lesser kind; but if the punishment that is tentatively proposed is of a lesser kind, there will be Prejudice in awarding a graver form of punishment. What happened in that case was that the show cause notice stated that in view of the Enquiring Officer's findings contained in the report with which the Secretary agreed and in consideration of the past record of the Government servant concerned, it was proposed to remove him from Government service; in another part of the same notice, however, the Government servant concerned was directed to show cause why the penalty of dismissal should not be inflicted for the charges proved against him. Thus, in the same notice two punishments were juxtaposed in such a way that it was difficult to say that the punishing authority had applied its mind and tentatively come to a conclusion as to what punishment should be given. It was not a case where the punishing authority said that either of the two punishments might be imposed in the alternative; on the contrary, in one part of the notice the punishing authority said that it was proposed to remove the Government servant concerned and in another part of the notice it said that the proposed punishment was dismissal. In Lakshmi Narain Gupta's case. , the notice called upon the petitioner to show cause why disciplinary action such as reduction in rank, withholding of increments etc. should not be taken against him. The learned Judge pointed out that there were seven items of penalties under Rule 49 of the Civil Service (Classification, Control and Appeal) Rules, and the notice did not indicate that the punishing authority had applied its mind and come to any tentative conclusion as to the imposition of any of the punishments mentioned in that rule. On that footing it was held that there was no compliance with the provisions in Article 311(2) of the Constitution, We do not, therefore, take these decision as laying down that whenever more than one punishment is mentioned in the second show cause-notice, the notice must be held to be bad. If these decisions lay down any such rule, we must hold them to be incorrect."

31. The position in law being such as explained by the two decisions of the Supreme Court aforementioned, we have to hold that the combined notice (Ext. E) sent to the appellant asking him to show cause against the charge as well as the proposed punishment of dismissal was not in compliance with Section 240 of the Government of India Act, 1935. The punishment inflicted without a second opportunity to show cause against the proposed punishment, after the charges were taken to have been established, was bad, inoperative and void in the eye of law.

32. The defect in the charges, the infirmities in the procedure adopted in the enquiry, and the denial of a second opportunity to show-cause against the proposed punishment were not specifically pleaded in an otherwise verbose plaint. The service of the charge sheet was specifically denied and stripped of the verbiage, all that was stated against the procedure, in paragraph 7 of the plaint, was as hereinbelow set out:--

"The plaintiff states and submits further that the alleged Board of Enquiry and the Director of Rationing did not grant the plaintiff any opportunity to explain and/or to show cause and it is submitted that the act and conduct of the Director bears the stamp only of unjust and illegal official cliques and red-tapism and amounted to contempt of Court and the constitution of the Board of Enquiry and the proceedings thereof alleged to have been held on 10-8-1948 were not only devoid of common procedures of equity and justice but were high-handed, injust and illegal and ultra vires of the Directorate of Rationing. ....."

33. The general allegations quoted above were denied in equally general terms in paragraph 9 of the written statement. Fortunately for the plaintiff-appellant there was an issue raised to the following effect:--

"Are the orders of suspension dated 5th November, 1947 and the order of dismissal of the plaintiff, as communicated to him by Memo No. CRC/398-2852/10 dated 20th August, 1948 legal, valid and operative and binding on the plaintiff? Are the said orders non-existent in the eye of the law? Was the plaintiff afforded opportunity to represent his case before the Board of Enquiry?"

34. The materials to which we have already referred were exhibited in connection with the dispute between the parties as in Insue No. 4. The learned Subordinate Judge, however, disposed of the Issue in a somewhat cavalier fashion with the following observation:--

"In the present case we are not to consider all these things. We are to see whether there was ;any error on the face of the record and if the departmental proceedings had been carried on honestly and impartially (vide Sisir Kumar Das v. State of West Bengal, I find nothing to show that, in the present case, there was any malice against the plaintiff. He was found to be in possession of some spurious Ration Cards and cloth folders and a proceeding was drawn up against him and he was asked to explain. No explanation was forth-

coming from (him) and the authority relied on the police report and dismissed the plaintiff."

35. That was not really deciding a case or the point at issue. The exhibits, hereinbefore referred to, spoke, on the face of them, of manifold illegalities and irregularities in the conduct of enquiry against the appellant. To have ignored them all was to have shut the judicial eyes on the most crucial point involved in the case.

36. In our opinion, the most fundamental principles of natural justice were violated in the matter of conducting the disciplinary proceeding against the appellant and tbe order of dismissal passed

against him was bad in law, inoperative and void.

37. Mr. Bankim Chandra Banerjee argued, as his last resort that the notice under Section 80 of the Code of Civil Procedure was bad and that must defeat the plaintiffs claim.

38. We, now, propose to consider the sufficiency or validity of the notice under Section 80 of the Civil Procedure Code. The notice is Exhibit 18, dated December 16, 1950, and is addressed to the Chief Secretary to the Government of West Bengal. If preciseness and conciseness are virtues to be proud of, notice (Ext. 18) can boast of none Wrongful dismissal and consequential loss of wages were the causes of action and grievances of the plaintiff. The notice, full of adjectives and adverbs did nowhere describe dismissal of the present appellant as wrongful and did not claim a particular sum of money as wages due to him. We quote below a material portion from the said notice:--

"And whereas by a communication sent under the signature of one Sri K.K. Maitra alleging to act for the Joint Controller of Rationing (Initial Area) and received by my client on the 24th day of Aug. 1948 (bearing Memo No. CRC/398-

2852/10(s) dated the 28th August 1948) he was informed that the 'D.R. has been pleased to dismiss' him from Government services with effect from the date he was 'placed under suspension' on the allegation 'for illegal possession of 65 spurious ration cards and 27 cloth folders' while still he was awaiting his trial for the alleged offence of possession of 103 spurious ration cards and 40 cloth folders before the Special Magistrate, Mr. N.C. Ganguli, Alipore;

And whereas my client was finally acquitted of the charges levelled against him by the learn-ed District and Sessions Judge of the Third Additional Court of 24-Parganas at AlipOre by his appellate judgment in Cr. Appeal No. 340 of 1949 made and delivered on the 24th day of November 1949;

And whereas the order of suspension dated 5-11-1947 and the order of dismissal made against my client by the D. R. (as per Memo No. CRC/ 398-2852/10(s) dated the 20th August, 1948) aforementioned amount to unlawful abrogation of the courts lawfully established for the due enquiry into offences complained of against the State and its Good Governance, and are without jurisdiction or lawful authority conferred and are void ab initio and without any legal force and operation;

And whereas in spite of repeated lawful attempts by my client for allowing him to work in his position as a Sub-Inspector of the Department of Rationing he has been illegally and unlawfully prevented from doing his duties as such and has thereby been put not only to serious pecuniary losses but also to loss of his position and status in society;

And whereas by the unauthorised, illegal and malicious action and unreasonable obduracy of your Government the chances of my client for earning living for himself and members of his family, far to speak of a decent living, have been impaired beyond repairs:

Now, therefore, as the duly authorised agent and attorney of my client abovementioned I do hereby call upon your Government to allow him to work in his substantive position as such Sub-Inspector of Rationing and to pay him all his outstanding dues from 5th November, 1947 till date immediately on the receipt hereof failing which my client will on the expiry of sixty days from date of your receipt hereof take appropriate action so that your Government may not prevent or obstruct him in the discharge of his duties and for recovery of his just and lawful dues from your Government from 5th November, 1947 till such date when he is allowed to join in his office or in the alternative sue your Government for recovery of Rs. 50,000/- (Rupees Fifty thousand) only for compensation for loss of service and of his position and status in life as also for loss of better prospects together with all actual costs and expenses that may be incurred by my client in this behalf and without further reference."

39. In , Bhag Chand v. Secretary of State, the Privy Council no doubt expressed the opinion that the terms of Section 80 of the Code of Civil Procedure must he strictly complied with. In two later decisions the Supreme Court defined the measure of strictness to be applied, namely, in the cases of Dhian Singh v. Union of India, and State of Madras v. C.P. Agencies, . In the first of the two cases Bhagwati, J., observed as follows:--

"We are constrained to observe that the approach of the High Court to this question was not well founded. The Privy Council no doubt laid down in 54 Ind App 338: (AIR 1927 PC 176), that the terms of this section should be strictly complied with. That does not however mean that the terms of the notice should be scrutinized in a pedantic manner or in a manner completely divorced from common sense. As was stated by Pollock C.B. in Jones v. Nicholls, (1844) 13 M and W. 361 (363): 153 ER 149, at p. 150, We must import a little common sense into notices of this kind.' Beaumont, C. J., also observed in Chandu Lal Vadilal v. Government of Bombay ILR 1943 Bom 128: (AIR 1943 Bom 138):

'One must construe Section 80 with some regard to common sense and to the object with which it appears to have been passed. ..... .'"

40. The aforesaid observations were followed with very great approval by the Supreme Court in its later decision above referred to.

41. Applying the tests laid down by the Supreme Court, we have to hold that the notice although somewhat curiously worded leaves no doubt that the real grievance of the present appellant was

his dismissal, which he described as "without jurisdiction or lawful authority" and also as Void ab initio and without legal force and operation." He also stated that he was being "illegally and unlawfully prevented from doing his duties" in his position as a Sub-Inspector. In the opening portion of the notice he fully described the circumstances which led to the dismissal. Later on he described such dismissal as without jurisdiction and lawful authority but the ground on which he considered such dismissal wrongful was a fantastic ground of his own, as will amply appear from, the extract from the notice quoted above.

42. So far as the claim for arrears of wages was concerned he did not name any sum but nevertheless he claimed "recovery of his jus! and lawful dues and from....5th November, 1947 till such date when he is allowed to join in his office."

43. We have already criticised the notice as curiously worded but nevertheless it satisfies the minimum requirement of a notice under Section 80 of the Code of Civil Procedure. In the case of (Supra) the Supreme Court stated the object of a notice under Section 80 in the following language:--

"The object of Section 80 is manifestly to give the Government or the public officer sufficient notice of the case which is proposed to be brought) against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision it is necessary that it or he should he informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim, is founded and the precise reliefs asked for."

44. That object, in the minimum, the notice fulfils. Reading the notice as a whole there is no doubt left that the plaintiff's grievance was his dismissal from service, which he variously describes as without jurisdiction, without authority, void ab initio and without any legal force; he claimed also reinstatement in his substantive position as Sub-Inspector of Rationing further he claimed recovery of his dues from the Government since the date of his suspension.

45. On a fair reading of the notice it has to be held that however clumsy and curious the notice may be, it fulfils the minimum requirement of Section 80 of the Civil Procedure Code. We, therefore, repel the argument of Mr. Banerjee that the plaintiff's claim must fail on the ground of insufficiency of the notice under Section 80 of the Civil Procedure Code.

46. We now turn to the plaintiff's claim for arrears of his salary. It is now well settled that a civil servant can maintain a suit for arrears of salary against the Government. In the case of State of Bihar v. Abdul Majid, , Mahajan, C.J. observed;

"The Code of Civil Procedure from 1859 right up to 1908 has prescribed the procedure for all

kinds of suits and Section 60 and the Provisions of Order 21 substantially stand the same as they were in 1859 and those provisions have received recognition in all the Government of India Acts that have been passed since the year 1858. The salary of its civil servants in the hands of the Crown has been made subject to the writ of civil Court.' It can be seized in execution of a decree attached. It is thus difficult to see on what grounds the claim that the Crown cannot be sued for arrears of salary directly by the Civil servant, though his creditor can take it, can be based or sustained. What could be claimed in England by a Petition of Right can be claimed in this country by ordinary process."

47. Mr. Bankim Chandra Banerjee, learned Advocate for the State, however, contended that part of the plaintiff's claim for wages was barred by limitation under Article 102 of the Limitation Act. Article 102 provides for a 3 years' period of limitation starting from the time when the wages accrued due. The plaintiff was suspended by an order, dated November 4, 1947, and the copy of the order was sent to him on the next following day. By the order of suspension he was only allowed to draw one-fourth of his pay during the period of suspension. He was dismissed by an order, dated August 13, 1948, and the order was forwarded to him on August 20, 1948. There is nothing to show that the suspension was illegal. Therefore, during the period of his suspension he could not sue for his wages. His dismissal was, however, wrongful and illegal and his cause of action for wrongful dismissal and wrongful withholding of his pay and emoluments arose from that date. As such his suspended wages became due and payable again only after his wrongful dismissal. In the facts of the instant case the date of the wrongful dismissal (or the date of intimation of the order to the plaintiff) must be treated as the date when the wages accrued due. The present suit filed on June 2, 1951 was within the period of limitation prescribed under Article 102 of the Limitation Act.

48. For the reasons aforesaid we allow this appeal. The plaintiff shall be entitled to a declaration that the order of his dismissal from service from November 5, 1947 was void and inoperative. The plaintiff must be treated as a person who has not been dismissed from Government service and entitled to his pay and allowances according to the scale of pay in which he was serving. We also pass a decree in terms of prayer (d) of the plaint, subject to the reservation that if the plaintiff has in the meantime reached the age of super-annuation, he will not be entitled to pay and allowance beyond that date. The matter must go back to the trial court for calculation of the amount as in the aforesaid prayer, but subject to the reservation herein stated, and for passing of a decree for the amount found due. We are not sure whether the Rationing Department is still in existence and whether the plaintiff has reached the age of super-annuation and as such we do not make any order in terms of prayer (c) of the plaint. Nothing contained in this judgment shall however, prevent the State Government from investigating into the charge made against the plaintiff in an appropriate manner and according to law.

49. The suit was filed by the plaintiff as a pauper; so also was the appeal filed by the plaintiff-appellant. We direct that the amount of court fees which would have been payable by the plaintiff if he had not been permitted to appeal and to sue as pauper, both in this court and in the Court below, shall be calculated and shall be deemed to be payable by the defendant State Government.

50. This appeal is allowed, with costs, to the extent indicated above. Costs shall be Payable by respondent No. 1.

51. Let a copy of the decree be forwarded to the Collector concerned.

Niyogi, J.

52. I agree.

Cases Referred.

160 Cal WN 1023
224 Parganas, 61 Cal WN 880