ORISSA HIGH COURT

Bimal Charan Mitra

Vs

State of Orissa

O.J.C. No. 214 of 1956

(Mohapatra and Das, JJ.)

22.03.1957

JUDGMENT

Mohapatra, J.

1. Shri Bimal Charan Mitra files this petition under Article 226 of the Indian Constitution with a prayer for issue of a Writ of Mandamus or any other Writ as may be deemed fit by the Court.

2. The petitioner was appointed as Personal Assistant to the Minister for Law, Development and Health Departments and was drawing a salary of Rs. 305/- per month in the scale of Rs. 175 - 350. File No. I. Med. XII A/1 of 1952 relating to the Health Department of the Government of Orissa was sent by the Secretary Health Department to the Minister for Health inside a closed cover on 24th of July, 1952 and was received at the Minister's office on the same date. The Minister disposed of this file as also several other files on 25th of July, 1952. It so happened that all other files excepting this one which were disposed of by the Minister on that date were dispatched back to the respective departments promptly on the same day by the Gr. I assistant Shri Sankarsan Samal and the Diarist Shri Bijoynath Das of the Minister's office. This file however, remained in the Minister's office till 22nd of August, 1952 when the Diarist put the file in a cover, sealed it as it was confidential and returned it to the Secretary, Health Department. The file, however, was found in an open condition along with other files by the Secretary, Health Department. On 23rd of August, 1952, the file was received by the Assistant Secretary of Health Department, who for the first time, noticed that the Minister's order dated 25th of July, 1952 had been scored through. He, therefore, resubmitted the file to the Secretary on that very day. It is to be noted that the Minister concerned was absent from Orissa from 30th of July, 1952 till 30th of October, 1952 as he had been to the United States of America on some official duty. On the Minister's return from America and resuming his duties here on 30th of October, 1952, he could detect the aforesaid order of 25th of July, 1952 having been scored through and, therefore, on his suggestion a preliminary enquiry was started by Shri E.B. Samuel, Under Secretary of Home Department. On 16th of December, 1952, the said Under Secretary took down the statements of Shri Bijoynath Das, Diarist of Minister's office, Shri S. Nayak, Assistant Secretary, Health Department. Shri Pulin Kumar Mitra, assistant of Health Department and Shri Gabriel Subudhi, Diarist of Health Department, all in the absence of the petitioner. On 23rd of December, 1952. he

took down the statement of the petitioner. He also took down the statement of Shri Sankarsan Samal, Gr. I assistant of the Minister's Office on 12th of January, 1953 in the absence of the petitioner. On a close of the preliminary enquiry four charges were framed and handed over to the petitioner on 18th of February, 1953. The charges are as follows :

> "1. Scoring through the order dated the 25th of July, 1952 of the Health Minister in Health Department Pile No. I-Med.XII A/1 of 1952 which reached the Secretary, Health Department with the said order scored through.
> 2. Negligence of duty and carelessness in handling a confidential matter in that he did not take steps to ensure that confidential papers were secured e.g. Healths Department file No. 1. Med. XII-A/1 of 1953.
> 3. Inordinate delay in returning Health Department File No. 1. Med. XII-A/1 of 1952 to the department concerned.
> 4. Absenting himself from duty without permission, viz., from about the 3rd of August, 1952 to about the 20th of August, 1952."

On petitioner's request, the statements of the aforesaid witnesses examined by Shri E.B. Samuel during the preliminary enquiry were handed over to the petitioner on 19th of February, 1953. The petitioner filed the written statement on 2nd of March. 1953 demanding a thorough enquiry into the matter under the provisions of rule 55 of the Civil Services (Classification, Control and Appeal) Rules. He asserted that the charges were absolutely baseless and prayed for opportunities to be given to adduce evidence in defence. After the written statement was filed, the enquiring officer Shri E.B. Samuel took down the statements of the Secretary of the Health Department on 9-3-1953 which he calls as 'Conversational Statements'. He also inspected the peon's book of Minister's office and took down the statement of the Jamadar on 18-3-1953. It is significant to note that all this was done behind the back of the petitioner. On 2-4-1953, the petitioner was served with Memo No. 4565/ A., dated 2-4-1953 by the respondent No. 2 Shri A. K. Barren, I. A. S., Secretary to the Government of Orissa, Home Department containing the proposed punishment to be inflicted on the petitioner and called upon him to give further explanation. The proposed punishments are as follows :-

> "That he Will be reverted to the rank of grade I stenographer and that he will not be considered for promotion for the next two years." It would be pertinent to note here that this proposed punishment contained in the aforesaid memo was not accompanied by any finding of Shri A.K. Barren, Secretary to the Government of Orissa nor any grounds on the basis of which the punishment was proposed. On 11-1-1953, the enquiring officer supplied to the petitioner a copy of the enquiry report, the ex parte conversational statement of the Secretary, Health Department and examination report of the peon's book of the Minister's office. On 25-4-1953, the petitioner submitted his written defence asserting that the whole enquiry was illegal and no intimation of such enquiry was given to the petitioner, there has been flagrant violation of the mandatory provisions of rule 55 of the Civil Services (Classification, Control and Appeal) Rules and no opportunity was given to the petitioner to defend himself. However, on 8-5-1953 at 8-30 A. M. the petitioner was granted a personal interview with the respondent No. 2. Thereafter, there

> was no further enquiry and no further opportunity was given to the petitioner for cross-examining any of these witnesses whose statements were recorded by the enquiring officer. On 30-5-1953, the Home Secretary Shri A. K. Barren. I. A. S. recorded his findings. The petitioner was found not guilty under Charge No. 1 but was found guilty of the other three charges, viz., 2, 3 and 4. On 5-6-1953, the order of punishments was intimated to the petitioner, the punishments inflicted upon the petitioner being :
> (i) Shri B.C. Mitra shall be reverted to the rank of Grade I Stenographer;
> (ii) He shall not be considered for promotion or for special posts for a period of two years and
> (iii) The period of suspension will be treated as such leave as he has to his credit and the balance, if any. will be treated as suspension. This order will take effect from the date of joining."

The petitioner thereafter filed an appeal to the Minister for Health in charge of Home Department on 2-12-1953 which was rejected and communicated to the petitioner on 20-5-1954. The petitioner had submitted two memorials dated 20-11-1954 and 17-12-1954 to the Chief Minister and the Governor of Orissa. The memorials having been rejected, the present petition before this Court has been filed.

3. Mr. B.K. Pal appearing on behalf of the petitioner has advanced a two-fold argument before us. The first point taken by him is that the entire proceedings have been vitiated and rendered illegal on account of flagrant violation of the principles laid down in rule 55 of the Civil Services (Classification, Control and Appeal) Rules and on account of violation of fundamental rules of natural justice. His further point is that the provisions of Article 311 of our Constitution have not been complied with and, particularly, for the reason that the proposed punishment contemplated under Clause (2) of the Article was not accompanied by the grounds on the basis of which the punishment was proposed. His argument is to the effect that a public servant against whom punishment has been proposed, has got the right under the provisions of the Constitution to know the findings of the punishing authority before he can be said to have reasonable opportunities of meeting the case against him and to defend himself by adducing evidence. At this stage, it will be pertinent to quote rule 55 which runs as follows :-

> "C. S. (C. C. A.) R. 55 - Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a criminal court) or by a Court Martial unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person. If

he so desires or if the authority concerned so direct an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases, for special and sufficient reasons to be recorded is writing, be waived, where there is a difficulty in observing exactly the requirements of the rule and those requirements can be waived without injustice to the person charged." We will now refer to a few salient features appearing in the case which would assist us in coming to a finding whether there has been flagrant violation of the procedure laid down under the rule or as a matter of that violation of fundamental principles of natural justice. It is significant to note that no date, place or hour was fixed for an enquiry far less any notice was served upon the petitioner of any such enquiry. The fact remains that after the charges were handed over to the present petitioner on 18-2-1953, the enquiring officer Shri E.B. Samuel, Under Secretary had taken down the statement of the Secretary or the Health Department on 9-3-1953. He had also taken down the statement of the Jamadar and had inspected the peon's book. All this admittedly was behind the back of the petitioner. It is important to remark that the punishing authority Shri A.K. Barren, I. A. S. in his final findings dated 30-5-1953 had made use of the statements of such witnesses which were recorded in the absence of the petitioner. The enquiring officer characterises the statement of the Secretary, Health Department as 'Conversational statement'. We are not able to understand the meaning of such a term according to the legal terminology. We need not reiterate that before the framing of the charges whatever statements were taken of the Grade I assistant Shri Sankaran Samal and four other persons whom we have named already, were ex parte. It can, therefore, be safely concluded that the entire proceeding was ex parte. In the very first written statement filed by the petitioner on receiving the copy of the charges on 2-3-1953, the petitioner had demanded a thorough enquiry into the matter under rule 55 for ascertainment of the real position, reiterated his demand for adducing evidence to prove the facts relied upon by the petitioner in disproving the charges which he characterises as baseless. On receipt of the notice of the proposed punishment under Clause (2) of Article 311 of the Constitution, the petitioner made categorical assertion in his reply dated the 25-4-1953 that the whole enquiry was illegal and no intimation of such enquiry was given to the petitioner. The enquiry was flagrant violation of the mandatory provisions of rule 55 of the Civil Services (Classification, Control and Appeal) Rules. He also complained therein that he was not given opportunity whatsoever to defend his case. In spite of this assertion and the demand made by the present petitioner on the basis of his elementary rights of defending himself no legal and proper enquiry was made, no date, hour or place was given notice to the petitioner of holding such an enquiry in his presence; even though the fact remains that the enquiring officer Shri E.B. Samuel after delivery of the charges, had examined some witnesses and inspected some documents which were made use of against the petitioner in inflicting the final punishment by the punishing authority. Clearly enough, in our view, the proceedings are in violation of the rules codified in R. 55 and also the principles of natural justice. The right of cross-examination and the right to adduce evidence in defence are very

valuable rights which can never be ignored before punishing a man. I cannot express the principles of natural justice in a better manner than quoting the language of a very great Judge in India. I mean, Justice Bose of the Supreme Court as he expressed himself in the case *Sangram Singh v. Election Tribunal, Kotah*[1] The passage occurs in paragraph 17 appearing at Page 429 of the report.

> "(17) Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible in the light of that principle."

We will now notice a few other decisions cited at the Bar. The decision in the case of *Amiya Prosad v. Director of Procurement and Supply*[2]. even though it is a judgment of a Single Judge, we are tempted to notice it as the facts are almost similar. Justice Sinha observed :

> "The position, therefore, seems to be as follows : under rule 55 of the Civil Services (Classification. Control and Appeal) Rules, the petitioner was entitled under the circumstances of this case, to an enquiry to be held in his presence and to be heard in person. At such enquiry evidence had to be taken not only on behalf of the opposite parties but on behalf of the petitioner and he was entitled to cross-examine all the witnesses, upon whose evidence the opposite parties intended to rely. This is also the procedure which is warranted by virtue of Article 311 (2) of the Constitution. In this particular case this procedure was not at all followed. Firstly, the enquiry pursuant to the charge-sheet was ex parte and the enquiring officer relied on evidence of persons not given at the enquiry and without confronting the petitioner with these persons and without giving him an opportunity of cross-examining them".

His Lordship was constrained to find that the entire proceedings was arbitrary and not in accorddance with law. It is no doubt true and it has been pronounced by several authorities that departmental enquiries are not to be conducted with the strictness of a judicial trial. Where documents had to be used, it may not be necessary to prove them under the Evidence Act as in a judicial trial. But nevertheless, the rules of natural justice which form the basis also of rule 55 have got to be followed and there should
not be any order of punishment without giving the delinquent reasonable and
adequate opportunities for defending himself by challenging the materials which are proposed to be used against him and by adducing evidence as the delinquent may think fit and proper. We will now refer to a Bench decision of the Allahabad High Court in the case of *Shyam Lal v. State of U. P*[3]. Their Lordships While interpreting the word "showing cause" observed that it does not merely imply submitting an explanation but implies further adequate opportunities of leading evidence in support of the contentions of the person concerned and controverting the contentions

raised against him and where necessary opportunity of cross-examining witnesses of the other side. In the case of *M.A. Waheed v. State of Madhya Pradesh*[4] Chief Justice Sinha and Bhutt, J., observed after quoting some passages from the famous case of High Commr. for *India v. I.M. Lall*[5]

> "The decision of their Lordships postulates that a case must first be made out against the civil servant, concerned and action determined provisionally on that basis, before a show-cause notice is given. This cannot evidently be done unless there is initially a proper departmental enquiry in which full opportunity has been given to the civil servant to defend himself. Article 311(2) comes into play only after this preliminary action has been taken. Another opportunity has then to be given to the civil servant to show cause against the proposed punishment, on the basis of the grounds on which Government have provisionally determined it. It would be a travesty of justice if without taking the preliminary steps, Government were to determine the punishment simply on the basis of the charges that are framed and then make a formal show of complying with Article 311(2) of the Constitution."

The facts of the Nagpur High Court are almost similar to that of ours as in our opinion, in the present case, there was no enquiry in the presence of the public servant and giving him full opportunities to meet the charges. The position in our case is still worse because the Under Secretary took down statements of some witnesses and inspected some documents behind the back of the public servant and very unfortunately, these were made use of in the final order passed by the punishing authority. A recent decision of our High Court of Chief Justice Narasimham and my learned brother was also placed before us in the case of *M.V. Ranga Rao v. Director of Forests, Orissa*[6]. The facts in that case are dissimilar to ours. The petitioner, an employee as an Upper Division Gr. II assistant in the office of the Director of Forests, Orissa was dismissed on charge of mis-appropriation of Government money etc. The petitioner was in fact called upon to show cause. Charges were framed and handed over and a date was fixed for examination of witnesses at the enquiry. Due notice was given to the delinquent of the date and place of such enquiry. The delinquent, however, made an application to adjourn the case. But nevertheless, the application for adjournment was rejected and the evidence of several witnesses including Shri D.H. Khan, who was the Director of Forests during the relevant period were taken during the enquiry. As the delinquent's application for adjournment was rejected, the enquiry had to be conducted ex parte. Indeed, here sufficient opportunities were given to the delinquent for defending himself as due notice was served upon him of the date.

We cannot interfere with the discretion of the authority in question in having refused the application for adjournment. The further fact in that case was that even after the service of the second notice as contemplated under Article 311. the petitioner had never demanded to cross-examine the important witnesses. As. in that case, in the first stage specific charges were framed and detailed report containing full report about the various documents were prepared and sent to the petitioner, and full opportunities were given to the delinquent which were not availed of by him, the learned Judges had to reject his petition on the finding that he had waived his right of cross-examination which appeared from his subsequent conduct in not demanding to cross-examine the important witnesses. But, nevertheless, their Lordships in unmistakable terms have acknowledged the principle that the right of cross-examining the witnesses who might depose

against the delinquent is a very valuable right. Their Lordships further observed that the rule of natural justice also requires that a person who has the right to cross-examine the witnesses must be aware prior to the date of the enquiry of the name of such witness together with some indication as to the nature of the evidence that he would give. The Government Advocate appearing on behalf of the State has drawn our attention in this decision to the passage which runs thus :

> "In considering whether the provisions of R. 55 of the Civil Services (Classification, Control and Appeal) Rules have been substantially complied with or not this Court has to satisfy itself whether the irregularity committed at any stage of the departmental enquiry really caused prejudice to the public servant concerned, and for that purpose it is very necessary to find out whether the objection to such an irregularity was taken at the earliest possible stage when it could have been remedied".

In our opinion, this observation is confined to the facts appearing in that case where according to their Lordships' finding there was no flagrant violation of R. 55 and no serious omission to follow even the elementary rule of natural justice as in the present case. In the present case, we have already observed that everything was ex parte and no opportunity was given to the petitioner to exercise his valuable right of cross-examining the witnesses and adducing evidence in spite of the petitioner's demand on two occasions, once in his written statement following the charge, and, again, in reply to the proposed punishment. No date, hour or place was fixed for holding such an enquiry. This is a serious illegality which has vitiated the entire proceedings culminating in the order of punishment. We may observe that if this is not prejudicial to the petitioner it passes our comprehension what else would be. The first point taken by Mr. Pal must therefore, prevail.

4. The second point taken by Mr. Pal is that the provisions of Article 311 of the Constitution have not been complied with as the letter containing the proposed punishment is not accompanied with the grounds on the basis of which the punishing authority proposes such punishment. In other words he contends that the public servant against whom proceedings are pending is entitled to know the conclusions arrived at by the punishing authority for proposing such a punishment in order that he may be able to be in a position to defend his case. The public servant should not be left in the dark about the conclusions of findings of the punishing authority and a mere service of notice of the proposed punishment cannot be deemed to be giving a reasonable opportunity to the public servant for showing cause against the action proposed to be taken in regard to him. In our opinion there appears to be sufficient force in this contention. It would be better to produce here entire notice proposing the punishment.

Government of Orissa.
Home Department.
Memo No. 4565/A.
DatedCuttack, 2-4-1953.
To
Sri Bimal Ch. Mitra,
Personal Assistant to Minister, Law
(under suspension)

Mitrapara, Town Cuttack.

In Home Department Order No. 360-C., dated 18-2-1953 charges were framed against Sri Bimal Ch. Mitra and communicated to him in Memo No. 361-C, D/-18-2-1953. The explanation furnished by him has been carefully considered with reference to the documents available in the Home Department and it has been proposed that the following punishment will be inflicted on him.

> "That he will be reverted to the rank of grade I stenographer and that he will not be considered for promotion for the next two years." He is called upon to give any further explanation, if he so desires, and should state whether he wishes to be heard in person. He should give his reply within 10 days from the date of receipt of this memo and he is informed that if no reply is received within the aforesaid period it will be considered that he has no further explanation to offer and he has no desire to be heard in person.

Sd. A.K. Barren.
Secretary to Government".

We will immediately refer to the famous Lall's case of their Lordships of the Privy Council reported in AIR 1948 PC 121. The appeal arose out of a suit brought by Mr. Lall for a declaration that the order of dismissal was invalid and inoperative on account of the provisions of Section 240(3) of the Government of India Act, 1935 not having been complied with. Indeed, in that case, there was no second notice proposing the punishment as contemplated under Section 240(3) of the Government of India Act, the provisions of which are similar to the provisions of Article 311 of our Constitution. But nevertheless both the Federal Court and their Lordships of the Privy Council made elaborate observations regarding the meaning of the terms 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him'. At page 126 column 2 their Lordships of the Privy Council have quoted with approval a passage from the majority judgment of the Federal Court. The passage runs thus :

> "It does however seem to us that the sub-section requires that as and when an authority is definitely proposing to dismiss or reduce in rank a member of the civil service he shall be so told and he shall be given an opportunity of putting his case against the proposed action and as that opportunity has to be a reasonable opportunity, it seems to us that the section requires not only notification of the action proposed but of the grounds on which the authority is proposing that the action should be taken and that the person concerned must then be given a reasonable time to make his representations against the proposed action and the grounds on which it is proposed to be taken."

On these observations of their Lordships of the Federal Court the Judicial Committee of the Privy Council remarked as follows in paragraph 21 of the report :

> "Their Lordships agree with the view taken by the majority of the Federal Court.......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. Prior to 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 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 findings of the enquiry." Thp observations of the Federal Court and of the Judicial Committee apply with greater force in this particular case on account of there being no enquiry in the presence of the present petitioner prior to the proposed punishment. This dictum has been consistently respected in several High Courts of India since the decision of their Lordships of the Privy Council, It would be sufficient to refer to the decision in the case of *State v. Gajanan Mahadev Badley*[7] the decision of the Chief Justice Chagla and Dixit, J., the main judgment having been delivered by the Chief Justice Chagla. It has been laid down by Chagla, C. J., that the opportunity which the State has to furnish has to be a reasonable opportunity and a reasonale opportunity is only afforded to the servant when he can show cause not only against the punishment but also against the grounds on which the State proposes to punish him. Therefore, it is not sufficient that the State should call upon the servant to show cause against the quantum of punishment intended to be inflicted upon him. The State must also call upon the servant to show cause against the decision arrived at by a departmental enquiry. It is important to bear in mind that the findings given by the officer holding the departmental enquiry are at that stage merely tentative. It is only when the authority who has a right to dismiss the servant comes to definite conclusion on the charges which have been preferred against the servant and the actual punishment to follow is provisionally determined that the stage arises when a reasonable opportunity should be given to the servant to show cause against the action proposed to be taken. In such circumstances in our opinion, it is mandatory that the public servant should also be served
with a copy of the findings of the punishing authority in order that he may reasonably defend himself. It has been contended by the iearned Government Advocate that it was a substantial compliance of the provisions of Article 311(2) when the present petitioner was supplied with a copy of the report of the enquiring officer. Indeed, such a copy was served upon him but, that is the conclusion of the Under Secretary who is not the punishing authority. There is not even any indication in the notice served upon the petitioner that the authority competent to punish agrees with the findings of the enquiring officer Shri E.B. Samuel. A decision of our High Court in the case of *V.V. Kameswar Rao v. State of Orissa*[8], has been cited in support of the contention that there has been substantial compliance of the provisions of Article 311. The petitioner in the case received a notice on 10th of April, 1952 from the Collector to show cause why he should not be dismissed

from service for the charges of gross indiscipline and misconduct brought against him and he was given an opportunity to appear before the Collector for a personal hearing on 3rd of May, 1952. Ultimately, after all the procedure had been complied with, the petitioner was dismissed on 1st of July, 1952. The order of dismissal was challenged as not legal and constitutional on account of the non-compliance of the provisions of Article 311 (2) on the ground that the notice given to the petitioner under Article 311 (2) did not contain nor was it accompanied with the grounds on the basis of which the appropriate authority was proposing to punish the public servant. The important distinguishing feature in that case was that the public servant was supplied in due time with report of the enquiring officer and further which is more important is that the enquiring officer was the authority competent to dismiss. The report of the enquiring officer as also the dismissing authority contained all the conclusions and findings regarding the charges. Their Lordships, therefore, held that it was substantial compliance of Article 311 (2). Without discussing any further the decision in that case it is sufficient for our purpose to definitely indicate that the above feature is important enough to distinguish the case from ours and as such, it will not serve as a guide for the purpose of the present case. A similar contention was indeed negatived by their Lordships of the Supreme Court in the case of *P. Joseph John v. State of Travencore-Cochin*[9] The facts of the case are entirely different. In that case Mr. Justice Sankaran took charge as Enquiry Commissioner and forwarded the articles of charges against the petitioner, the list of witnesses and the list of documents placed before him together with the notice regarding the commencement of the enquiry to Shri K.S. Raghavan, Secretary to Government for service on the petitioner. A full enquiry was conducted where the public servant was defended by a leading lawyer who was afforded fullest opportunity to examine and cross-examine the witnesses examined by the Commissioner. The enquiry concluded and the Commissioner submitted his report to the Government. Some of the charges were held proved while others were not established. Thereafter, the second notice was sent to the petitioner by the Chief Secretary to Government. The relevant passages in the notice are :

"I am to enclose herewith a copy of the above report and to point out that the Government agree with the findings of the Enquiring Commissioner on the several charges against you. Government also agree with the Commissioner that the objections raised by you challenging the validity of the enquiry itself are not tenable.

As against the 26 charges framed against you, the nine charges noted in the margin have not been established and they are accordingly dropped. As regards charge No. IX in view of the extenuating circumstances, the irregularity is condoned." The notice also contained that the remaining charges had been established and that the petitioner misused his official position as Electrical Engineer to Government and had shown undue favoritism at the expense of State revenues to private firms and issued materials from Government stores to private companies and individuals in violation of all rules. It further contained that he was found guilty of having shown defiance and insubordination towards the authority of the Government by his refusal in connextion with the supply of power to the Nagercoil Electric Supply Corporation. Thereafter,

the notice called upon the petitioner to show cause why he should not be removed from service which the Government proposed to do. Their Lordships while finding that there was substantial compliance of the provisions of Article 311, observed that the petitioner had reasonable opportunity at both stages to enter upon his defense. He fully availed himself of the first opportunity and though a reasonable opportunity was also given to him at the second stage, he failed to avail himself of it and it is not open to him now to say that the requirements of Clause (2) of Article 311 have not been satisfied. It was not denied that the petitioner was given by the Enquiry Commissioner all facilities for entering upon his defense. The petitioner was afforded full opportunities of inspecting the documents also. He was defended by a leading lawyer who was afforded fullest opportunity to examine and cross-examine the witnesses examined by the Commissioner. It is to be noted here that in the early part of paragraph 7 of the report their Lordships have stated with approval the dictum laid down by their Lordships of the Privy Council in the case of AIR 1948 PC 121. In our view, therefore, the aforesaid decision of the Supreme Court has no application to the facts of the present case.

5. Following with greatest respect the dictum laid down by their Lordships of the Privy Council in Lall's case, we are definitely of the view that the second point raised by Mr. Pal is also to prevail. In conclusion, therefore, the petition is allowed and the rule must accordingly be made absolute. We order, a Writ in the nature of Certiorari be issued quashing the final order of punishment (Order No. 8293-A., dated 5-6-1953) passed by Shri A.K. Barren, Secretary to the Government of Orissa, Home Department and quashing the order dated 30th of May, 1953 of the same authority. The Writ in the nature of Mandamus be issued directing the opposite parties to forbear from giving effect to the aforesaid orders. This however, will not prevent the opposite parties if they so deem fit, to start enquiry in accordance with law giving the petitioner reasonable opportunities for cross-examining the witnesses that may be examined by the appropriate authority and to inspect documents and to defend himself in respect of the charges framed. The appropriate authority should also substantially comply with the provisions of Article 311 of the Constitution. The petitioner is entitled to the costs of this O. J. C. and the hearing fee which are consolidated into a fixed amount of Rs. 125/-.

Das, J.

6. I agree.

Petition allowed.

Cases Referred.

[1] AIR 1955 SC 425
[2] AIR 1956 Cal 114(B)
[3] AIR 1954 All 235(C)
[4] AIR 1954 Nag 229(D)
[5] AIR 1943 PC 121
[6] AIR 1957 Ori 21
[7] AIR 1954 Bom 351
[8] AIR 1956 Ori 99
[9] AIR 1955 SC 160