**ORISSA HIGH COURT**

State of Orissa

Vs

Sailabehari Chatterji

First Appeal No. 59 of 1958

(R.L. Narasimham, C.J. and R.K. Das, J.)

10.01.1962

**JUDGMENT**

**R.L. Narasimham, C.J.**

1. This is an appeal by the defendant (State of Orissa) against the judgment of the Additional Subordinate Judge of Cuttack, decreeing the plaintiff-respondent's suit for damages for wrongful discharge from Government service and for other reliefs.

2. The respondent was appointed as sub-deputy Collector by the Government of Orissa on 11-12-39 (Ext. 2). After serving in various posts, he was promoted as Deputy Collector on 3-2-1946, posted to Koraput as Sub Divisional Officer and Special Assistant Agent on 4-5-58 and transferred to Sundargarh as Sadar Sub-divisional Officer on 18-10-48 and confirmed as Deputy Collector with effect from 1-1-1949.

3. A case under Section 406 I. P. C. was pending in his file against one Batakrushna Sahu from March 1949 and in connection with that case it was alleged that the respondent, through his Bench Clerk, demanded a bribe from one Gopal Sahu, uncle of Batakrushna Sahu. As respondent's reputation for honesty was not good, the then Additional Magistrate of Sundargarh decided to lay a trap against the respondent with the assistance of Gopal Sahu who was given two marked one hundred rupee notes to be delivered to the respondent. The trap which was laid on the night of 27-7-49 was said to have been successful, when the said Gopal Sahu handed over the money to the respondent at his residence. Immediately afterwards a search party consisting of the Additional District Magistrate, Sundargarh, and some Police Officers entered the respondent's house and recovered the two marked currency notes, along with cash amounting to Rs. 1074/- from an open drawer in a room of the respondent's house. On further search cash amounting to Rs. 6600/- was also recovered (in currency notes) from a locked almirah along with a Post Office Savings Bank Pass book showing a balance of Rs. 1500/-. Immediately afterwards the respondent was placed under suspension and a case under Section 161 I. P. C. (G. R. Case No. 1/268/45 of 1949) was started against him. That case ended in his conviction in the Court of the then District Magistrate of Sundargarh, but on appeal the learned Sessions Judge by his judgment dated 24-5-56 (Ext. 8) acquitted the respondent holding that the evidence adduced by the

prosecution did not "completely exclude the possibility of the theory of planting". But the learned Judge also observed that there "was enough room for suspicion against the conduct of the respondent".

4. The Police also started another case under Section 5 (2) of the Prevention of Corruption Act (Act 2 of 1947) - (G. R. Case No. 314/49) mainly on the basis of the recovery of the sums of Rs. 6600/- and Rs. 1074/- in cash from the respondent's house. In this case, however, the Police submitted a final report (Ext. 9) on 9-6-50 stating that the evidence was insufficient for placing him on trial. But as regards the cash of Rs. 6600/- recovered from a locked Almirah in the house of the respondent, the District Magistrate by his order dated 31-7-51 (Ext. o) under Section 523 (i) Cri. P. C. directed the forfeiture of the same to Government holding that the said sum "was found under circumstances which creats a suspicion of the commission of an offence." Against this order the respondent came up to this Court with a Revision petition (*Sailabehari Chatterji v. State*[1],) and a Division Bench of this Court by its judgment dated 30th August 1951 (Ex. 17) set aside the order of the District Magistrate and directed the return of the aforesaid sum to the respondent.

5. After the termination of the aforesaid two police cases Government decided to proceed against the respondent departmentally for disciplinary action. On 6-12-50 (Ext. 12) formal proceedings were drawn up and the following eight charges were framed against him :

> "Where it appears that you Shri Saila Behari Chatterji, Deputy Magistrate and Deputy Collector, ex-sub-divisional, Magistrate of Sundargarh now under suspension, had generally a very bad reputation regarding honesty and many specific allegations were also made against you, you are hereby charged as follows and required to show cause on or before the 7th February 1951, why you should not be dismissed or otherwise suitably punished.
> (2) You had kept under your personal custody on 27-7-49 at Sundargarh in your residence a sum of Rs. 7674/- and claimed the sum to be your savings in your service career though such a large sum could not have been ordinarily saved by you in your service career after meeting the cost of maintaining a family consisting of your wife and two children and supporting your dependants including your old mother. You had besides, a sum of Rs. 1500/- standing in your name in the Post Office Saving Bank account. Considering your total legitimate income in your service career and taking into account your family liabilities these large savings suggest improper sources.
> (3) You had kept a sum of Rs. 7674/- in your house in spite of the fact that you had a Post office Savings Bank account, a fact which has not been properly explained by you leads to the presumption that the sum was accumulated by dishonest means and kept in your residence to avoid suspicion.
> (4) You attached a receipt for a sum of Rs. 900/- to your Transfer T. A. bill on the occasion of your transfer from Koraput stating the sum to have been paid to One Kala Simhadri of Salur towards the cost of transporting your luggage though enquiries revealed that you paid him a sum of Rs. 195/- only and have not yet paid the balance.(5) You accepted a sum of Rs. 180/- from one Mohammad Yakub of Bandaga P. S. Talasara

District Sundaragarh on 1-7-49, as illegal gratification and promised to recommend a road permit for his passenger bus.

(6) You accepted a sum of Rs. 100/- in two instalments of Rs. 75/- and Rs. 25/- from one Sheikh Sukur Mian of Khatkurbahal P. S. Rajgangpur, dist. Sundargarh as illegal gratification and made him a Gountia.

(7) You allowed the above mentioned Sukur Mian to come to your house and negotiate for the release of one of his relatives on bail in a case pending in your Court on his paying your Peshkar Rs. 65/- in your presence.

(8) On the night of 27-7-49 at Sundargarh you accepted a sum of Rs. 200/- in your residence from one Gopal Sahu uncle of one Batakrushna Sahu against whom a Criminal case (Case No. 107 of 1949 under Section 406 I. P. C.) was pending in your Court as S. D. M. as bribe for showing favour to the accused. Though you have been acquitted in appeal in the bribery case launched against you, the learned Sessions Judge acquitted you by giving you the benefit of doubt but at the same time came to the conclusion that there was enough room for suspicion against your conduct. It cannot be, therefore, said that you are innocent.

Sd. B. Mukherji.
Chief Secretary to Government.
".

6. Copies of the charges were in due course served on the respondent and after protracted correspondence the respondent submitted his first explanation to the charges through the District Magistrate of Sundargarh on the 3rd November 1961 (Ext. 20). This explanation was forwarded to Government by the District Magistrate along with his comments (Ext. 25) on 12-4-52. Then the Government on 25-9-52 (Ext. 24) forwarded to the respondent a copy of the comments made by the District Magistrate and directed the District Magistrate to hold a regular departmental proceeding in respect of the various charges. The respondent was further informed that if he desired to cross examine any of the witnesses he can communicate his desire to the Dist. Magistrate of Sundargarh. The District Magistrate thereafter held a regular departmental enquiry in October-November 1952. The respondent was represented by some lawyers, some witnesses were examined and cross examined and the respondent submitted a second explanation (Ext. 27) dated 20/21st October, 1952 before the District Magistrate. Ultimately the District Magistrate, on 5-12-52 submitted his findings on all the charges (Ext. 32) to the Government. Government, however, differed from the District Magistrate in respect of his findings on some of the charges and tentatively decided that the respondent should be dismissed from Government service. Hence on 19th August 1953 Ext. 36, a notice under Article 311 (2) of the Constitution was served on the respondent in which the findings of Government in respect of the charges were recorded and he was called upon to show cause why he may not be dismissed. The respondent thereupon submitted his third Explanation (Ext. 37) dated 3rd September 1953 but that was not accepted and on 27th February 1953 Government, after consulting the Public Service Commission passed orders discharging him from Government service.

7. The respondent then brought the present suit under appeal on 4th January 1956 alleging that his discharge was wrongful and claiming damages and other consequential reliefs.

8. Before discussing the merits of the case I may briefly refer to the law dealing with the powers of a Civil Court to interfere with an order of dismissal passed by Government on a public servant. By virtue of Article 310 of the Constitution every Government servant in a State holds office during the pleasure of the Governor "except as expressly provided by the Constitution". Article 311 contains such an express provision and hence, as pointed out by their Lordships of the Supreme Court in the well-known Khem Chand's case, (*Khem Chand v. Union of India*[2]*),* "the limitations thus imposed on the exercise of the pleasure of the President or the Governor in the matter of dismissal, removal or reduction in rank of a Government Servant constitute the measure of the constitutional protection afforded to a Government servant by Article 311 (2)." Thus though ordinarily the Civil Court will have no jurisdiction to question an order of Government dismissing any of its servants, nevertheless, that Court will have jurisdiction to examine whether the provisions of Article 311 have been complied with or not. This principle was emphasised in *State of Andhra Pradesh v. Kameswar Rao*[3]*,* Similarly in *Nrupendra Nath v. Chief Secy., Govt. of West Bengal*[4]*,* it was observed that Article 311 acts as a rider or limitation on the 'pleasure' in Article 310. The full import of Article 311 was also fully explained by their Lordships of the Supreme Court in the aforesaid Khemchand's case, AIR 1958 SC 300, where after considering the provisions of the Service rules dealing with departmental enquiries against Government servants such as Rule 55 of the Civil Services (Classification, Control and Appeal) Rules their Lordships held that in a departmental enquiry the delinquent servant concerned was entitled to :

> (a) an opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based :
> (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence and finally,
> (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted against him which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against him, tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.

Their Lordships further pointed out that

> "the substance of the protection granted to the public servant concerned, by rules like Rule 55 of the Civil Service (Classification, Control and Appeal) Rules was bodily lifted out of those Rules and together with an additional
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> opportunity as embodied in Section 243 of the Government of India Act, 1935,
> so as to give a statutory protection to the Government servant and has now been incorporated in Article 311 (2) so as to convert that protection into a constitutional safe-guard".

As to what is meant by "rules of natural justice" to be followed in a departmental proceeding against a delinquent public servant, the following observations of Venkatarama Ayyar J. in *Union of India v. T. R. Varma*[5], may be quoted :

> "Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have an opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given an opportunity of cross examining the witnesses examined by that party and that no material should be relied on against him, without his being given an opportunity of explaining them.

If these rules are satisfied the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed." This principle was reiterated in a very recent decision of the Supreme Court reported in *State of M. P. v. Chintaman*[6],

9. Thus, in a suit by a Government servant for damages for wrongful dismissal, the only question that would be justifiable in the Civil Court is whether the constitutional safe-guard provided in Article 311 (2) has been followed and whether the rules of natural justice have been observed. The Civil Court however cannot sit, like an appellate Court, over the decision of Government, re-examine the evidence produced in the departmental enquiry and come to its own conclusions as to whether the findings were justified or not.

10. The learned lower Court seems to have correctly understood the limitations of the Civil Court in litigations of this type, but while examining the correctness of the findings of Government in respect of each of the charges against the respondent, he has practically taken upon himself the role of an appellate Court and reversed the findings of Government as I shall presently show.

11. I shall now deal with the charges one by one.

12. Charges Nos. 2 and 3 : It was admitted that when the respondent's house was searched on 27-7-49 by the Additional District Magistrate of Sundargarh and the Police a sum of Rs. 6600/- was recovered from a locked up almirah and another sum of Rs. 1074/- was recovered from an open drawer. The latter sum was not claimed by the respondent and the learned Sessions Judge by his appellate judgment (Ext. 8) directed that it should be forfeited to Government. Even if it be assumed that the sum of Rs. 1074/- was planted by some other person, the question arises as to how such a
large sum as Rs. 6600/- in cash was kept in respondent's house; and it was open to the
Government to draw an inference that in view of the length of service, the pay and the number of dependants of the respondents, that sum could not have been acquired by honest means. It is also unchallenged that at the time of search a Post Office Savings Bank account pass book was recovered from the house, showing a balance of Rs. 1500/-. The respondent's explanation was that the sum of Rs. 6600/- represented the balance of the money obtained by selling his father's house at Bhubaneswar sometime in July 1948. Government however, did not accept this explanation and held this charge to have been proved mainly on the ground that if the sum of Rs. 6600/- had been honestly acquired the same would have been deposited in the Savings Bank

account in the normal course. They further held that the explanation that the said sum was kept in cash so as to enable him to purchase a motor car when available could not be believed. They also observed that if that was the main purpose the money could have been kept in the Post Office Savings Bank and withdrawn, when required, at two or three days notice. They further held that when the evidence showed that such a large sum of money was kept under circumstances leading to a reasonable inference that the money was not acquired by honest means, it was the duty of the Government servant to give satisfactory explanation to account for the same, and that he did not lead any evidence on this point. Thus the inference drawn by Government in respect of these charges is based on appreciation of evidence and on the other circumstances mentioned above; and even though another Court of fact might possibly take a view different from that taken by Government that alone will be no ground to interfere with the finding. It is true that in Criminal Revision 125/1951 Ext. 17 this Court directed that this sum should be handed back to the respondent inasmuch as his explanation to account for the same seemed prima facie reasonable. The learned lower Court seems to have been very much influenced by the aforesaid observations of this Court in the Criminal Revision. But it has over-looked the fact that the said Criminal Revision was filed against an order under Section 523 (1) of Cri. P. Code passed by the District Magistrate. Admittedly the money was recovered from the possession of the respondent. Under ordinary circumstances he was entitled to return of the money when the criminal case started against him was not proceeded with and final report was submitted by the Police. The District Magistrate thought that the money was found "in circumstances which created a suspicion about the commission of an offence as required by that Section." The burden of proving this would lie primarily on the prosecution and as they were unable to discharge the same this Court directed that the ordinary rule in respect of property seized by the Police during investigation should apply viz., that it should be returned to the party from whom it was recovered.

But in the departmental proceeding the position becomes entirely different. Once the Government have shown that the amount of money recovered from the possession of the delinquent servant was disproportionate to his known resources and also that the circumstances under which the money was kept indicated that he was anxious to conceal its presence, the reasonable inference would be that the money was acquired by means other than honest and the burden of proving that it was acquired by honest means would shift to the public servant concerned. In fact even if he has been prosecuted in a criminal case for an offence under Section 5 (2) of the Prevention of Corruption Act (Act 3 of 1947) the burden would have been shifted on him by Section 5 (3) of that Act to prove this fact. In a departmental proceeding the position of a Government servant could not be better than that of an accused in a Criminal case. The respondent, however, failed to show how he acquired such a large sum of money by honest means. It is true that his father's house was sold at Bhubaneshar for a large sum, but no evidence was led to show what were the debts that were discharged on receipt of the money. The respondent had a large number of dependants including a widowed mother, two sisters, one of whom is a widow and the other unmarried, and a number of children to look after besides two brothers one of whom was then studying in the Jadavpur Engineering College. Under such circumstances, it was always open to Government to refuse to accept his explanation for keeping so much liquid cash in his house when he had already a Post Office Savings Bank account showing a balance of Rs. 1500/-. Ultimately this becomes a simple question of fact as to whether his explanation should be accepted or not, and whether any adverse inference against him may be drawn, and if Government chose to reject his explanation and hold him guilty of the aforesaid charges, it cannot be said that the view taken by Government is based on no evidence whatsoever. The view taken by the High Court in the Criminal Revision (Ext. 17) is irrelevant in

this connection.
It is true that the District Magistrate who held the departmental enquiry found that these two charges were not proved, but his finding was not binding on the Government who are the final authority to decide about the guilt or otherwise of a delinquent public servant. I must therefore reverse the finding of the Trial Court in respect of charges 2 and 3.

13. Charge No. 8 : This charge deals with the trap case in which the respondent was acquitted on appeal by the Sessions Judge. The sole witness to directly implicate the respondent in respect of the charge of bribery is the decoy witness, Gopal. Sahu who stated that he handed over the two marked hundred rupee currency notes to the respondent on 27-7-49. These currency notes were admittedly recovered from the respondent's drawers and his explanation before the trying Magistrate was that they might have been planted by some of his enemies. Along with that sum another sum of Rs. 1074/- was also recovered from the drawer and as the respondent did not claim the same the learned Sessions Judge directed its forfeiture to Government. But on these very facts Government held the petitioner guilty of this charge. Doubtless, if the Criminal Court had acquitted the respondent honourably, a subsequent enquiry in respect of the same allegations may offend the rules of natural justice and may have to be quashed, as held in *Qamarali v. State of M. P*[8]*.,* But the learned Sessions Judge did not acquit the respondent honourably on the ground that the evidence of Gopal Sahu was not false. On the contrary he expressly stated that though there was a strong suspicion against the respondent the prosecution evidence did not completely exclude the possibility of the theory of planting. This only shows that the learned Judge applied the well known rule of criminal jurisprudence that in a criminal case the accused was entitled to the benefit of doubt. Thereafter further departmental enquiry in respect of the same subject matter was not excluded especially as the standard of proof required in such an enquiry against a delinquent public servant is not the same as that required against an accused in a criminal case. I may, in this connection, refer to "The Instructions to be followed in drawing up proceedings and conducting departmental enquiries before an order of dismissal, removal or reduction is passed" appearing at pages 41 to 43 of Orissa Service Code, Volume II (1951 Edition) Rule 5

(c) of the said Instructions reads as follows :

> "5. Orders inapplicable to persons judicially Convicted.
>
> Rules 1 to 3 shall not apply :
>
> (a) .....
> (b) .....
> (c) where from facts elicited in a criminal case brought against him in which he had not been convicted or in a Civil Suit instituted against him, it is apparent that his retention in the public service is prima facie no longer desirable. These facts may be used as the basis of an order calling on him to show cause why he should not be punished by dismissal or otherwise. In such a case the officer concerned should have an opportunity of submitting his defence and he should not be precluded from tendering such further evidence in support of his case as he may see fit to produce."

The respondent was fully aware of these instructions and he knew that notwithstanding his

acquittal in the criminal case it was open to Government to start departmental proceedings against him in respect of the same subject matter provided he was given an opportunity of submitting his defence and tendering further evidence.
Article 311 of the Constitution does not either expressly or by implication refer to any ground on which a delinquent public servant can be dismissed or removed. Nor does it lay down any standard of proof required for holding such a public servant guilty. Even on reasonable suspicion Government may be entitled to take departmental action against a public servant as pointed out in *Lazarus Gabriel v. Union of India*[9], The only safe-guard that Article 311 insists upon is that the grounds on which Government base their suspicion should be communicated to the public servant concerned and he should be given an opportunity to cross examine the witnesses on whose evidence those suspicions are based, and to adduce evidence on his own behalf. In holding the respondent guilty of charge No. 3 the Government took into consideration not only the deposition of Gopal Sahu in the Criminal Court, but also the admitted fact that a sura of Rs. 1074/-/- was recovered from the drawer of the respondent in which the two marked currency notes were kept, and the further fact that the respondent did not claim the money himself. In the findings of Government, Ext. 35 dated 24-7-1953, this circumstance was used as an argument to repel the theory of planting for the simple reason that if the enemies of the respondent wanted to plant the marked currency notes in the house of the respondent, they could not have taken the risk of planting a further large sum of money (Rs. 1074) which was not only unnecessary for the purpose of establishing the charge, but might damage the prosecution case. It is not the function of this Court to consider whether another Court might take a contrary view in this matter. It is enough to say that there was sufficient evidence on the basis on which Government could hold the respondent guilty of this charge.

14. Mr. C. V. Murty for the respondent thereupon contended that the findings of Government on this charge must be struck down for the simple reason that the sole witness to establish it namely Gopal Sahu was not produced as a witness in the departmental proceeding. He relied on *Nanjundeswar v. State*[10], *State of Bombay v. Gajanan*[11], *Amulya Kumar v. L. M. Bakshi*[12], *Amulya Ratan v. Deputy Chief Mechanical Engineer, Eastern Rly*[13], in support of his contention that whatever might have been the statement of a witness in a previous proceeding, that statement cannot be used against a public servant in departmental proceeding unless that statement is repeated by that witness in that proceeding. In the charge (Ext. 12) it was practically made clear that notwithstanding the acquittal by the Sessions Judge Government were tentatively of the view that Gopal Sahu's evidence was sufficient to establish charge No. 8. It is also clear from the paragraph 17 of the respondent's explanation dated 3-11-51 (Ext. 20) that he was fully aware of the implications of this charge and he gave his own comments on the judgment of the learned Sessions Judge. The District Magistrate of Sundargarh also, in his comments on the explanation (Ext. 25) which were forwarded to the respondent, pointed out that the learned Sessions Judge only gave him the benefit of doubt. In his second explanation also (Ext. 27) the respondent merely contented himself by saying that the Sessions Judge's judgment did not show that the acquittal was based on the principle of benefit of doubt. Thus, it seems to have been assumed by all concerned that the only point in controversy in respect of this charge was with regard to the construction of the judgment of the Sessions Judge. Government in their letter dated 26th /27th August 1951 (Ext. J from Deputy Secretary Enforcement) addressed to the respondent, gave him a copy of the statement of Gopal Sahu recorded in the case diary by the Deputy Supdt. of Police; and after the framing of charges in their letter Ext. 24 dated 24th/25th September 1952 addressed to him, Government told him that the departmental enquiry would be held by the District

Magistrate of Sundargarh and that he may inform that officer whether he would like to cross examine any witness. It is true that a copy of the deposition of Gopal Sahu before the Criminal Court was not handed over to him, but as he was himself the accused in that Criminal case and Gopal Sahu was examined in his presence and cross examined by his lawyer in that case, his deposition was always available with the respondent and if he wanted to cross examine Gopal Sahu further in the departmental proceeding, he could easily have, in response to the specific query of Government in Ext. 24 requested the District Magistrate to produce Gopal Sahu for the purpose of cross examination. But the respondent kept; quiet and did not inform the District Magistrate during the departmental enquiry that he wanted to cross-examine Gopal Sahu further. It is true that rules of natural justice requirethat any evidence against a public servant which is not tested by cross examination cannot be used against him, but this principle was not violated here. Gopal Sahu was cross examined by the respondent's lawyer in the Criminal case and Government also made it quite clear to him that if he so desired, the respondent might communicate to the District Magistrate his wish to cross examine that witness or any other witness during the departmental enquiry. But, if in spite of this, the respondent kept quiet, it would only show that so far as this charge (charge No. 8) was concerned he had not wanted to cross examine Gopal Sahu in the criminal case and that he relied solely on his own interpretation of the reasoning's given by the learned Sessions Judge on appeal. In fact, in his own letter (Ext. 26) dated the 10th October 1952 addressed to the Government which was in reply to their letter Ext. 24 D/- 24th/25th September 1952, he confirmed this impression by stating as follows :

> "I beg leave to conclude that my presumptions noted above are correct in which case I am to face only charges 2, 3, 4 and 8 of the proceedings. Of these all except charge No. 4 relate to judicial pronouncement for which no witness is presumably necessary to be examined."

The clearly shows that the respondent himself was under the impression that in respect of a charge relating to a judicial proceeding (i.e. charge 8) no witness need be examined in the departmental enquiry. I am therefore of opinion that the principle of natural justice has not been violated by the omission to examine Gopal Sahu in the departmental enquiry, in the peculiar circumstances of this case. Doubtless it might have been better if this witness had been produced in that enquiry to repeat the statement made by him in the criminal case and also to face further cross examination. But when the respondent himself did not want him to be brought forward for such cross examination no prejudice was caused to him. Hence the finding of Government in respect of charge No. 8 is not open to challenge.

15. The cases relied on by Mr. Murty (cited above) are all distinguishable. Thus in AIR 1960 Mysore 159, the statements of some of the witnesses recorded behind the back of the public servant were put in the departmental enquiry, and the witnesses were produced only for the purpose of cross-examination by the public servant.
Their Lordships held that it would have made a great difference if the statements of the witnesses were taken in the presence of the Tribunal and also in the presence of the person charged rather than have them taken behind his back. Here, however, in the Criminal case the statement of Gopal Sahu was recorded in the presence of the respondent who thoroughly cross examined him through his lawyer. In AIR 1954 Bombay 351 the only material witness against the public servant was not produced for examination, but the servant was asked to cross examine him on the

basis of a statement made by the witness while another statement which was subsequently made by that witness and which was the basis of the charge was not produced. The learned Judges therefore held that the public servant had no opportunity to cross-examine that witness on the basis of the subsequent statement, Here Gopal Sahu did not make any subsequent statement. His entire evidence was recorded by the Magistrate in the Criminal case, in the presence of the respondent. In AIR 1958 Calcutta 470 it was held that where the enquiring authority has the duty to come to a conclusion regarding the guilt of the Government servant upon evaluation or assessment of the evidence, it was necessary that the principal witnesses against the Government servant should be examined in his presence, so that he may form his own impressions about their demeanour. This is undoubtedly eminently desirable, but where - as in the instant case - the respondent was clearly informed that if he wanted to cross examine a particular witness he may do so and yet the respondent replied that he presumed that no witness would be examined in respect of the charge, and when it is further clear that the evidence of this witness was taken in his presence, in the previous criminal proceeding, and he was also cross-examined through his lawyer, it would be taking too technical a view to say that the rules of natural justice were not observed. In AIR 1961 Calcutta 40, the evidence of a witness in a previous fact-finding enquiry, taken behind the back of the public servant concerned, was used against him in the departmental enquiry without giving him an opportunity to cross-examine that witness. Here as stated already, the facts are quite different.

16. Some of the broad observations in the aforesaid decision may require modification in view of the recent pronouncement of the Supreme Court in *State of Orissa v. Muralidhar Jena*[14], decided on the 8th August 1961, which went up from this Court. That case presents some peculiar features which may be noticed. There, there was a preliminary confidential investigation by the Enforcement Department against a public servant held be hind his back, and during the course of that investigation the statements of some of the witnesses directly implicating the public servant on charges of bribery, corruption etc., were recorded. Subsequently there was a departmental enquiry by the Member Administrative Tribunal. In that enquiry almost all the witnesses who had, in the course of the previous confidential investigation spoken against the Government servant, completely resiled from their statements and exonerated him. In view of this the officer did not care to cross examine them during the departmental enquiry as their statements did not affect him in any way. Thereupon the Tribunal tendered in evidence the previous statements of some of these witnesses recorded during the confidential investigation by the Enforcement Department, after putting them to the witnesses and exhibiting them during the departmental enquiry. Their Lordships of the Supreme Court held that even under such circumstances the previous statements of witnesses (though recorded behind the back of the officer) could be used as the basis of a finding against him.
On the question of his right to cross examine these witnesses their Lordships observed, :

> "If the respondent thought it necessary to obtain a copy, he could have easily obtained it and could have even asked for an adjournment to enable him to cross examine the witness on that statement".

This decision therefore clearly lays down the rule that the previous statement of a witness recorded in the absence of the public servant and not repeated in the subsequent departmental enquiry, may be used against a public servant so long as that witness is available for cross-

examination by the public servant if so desired by him. The only distinguishing feature between that case and the instant case is that, there, the witness was actually produced in the subsequent departmental enquiry. Here though Gopal Sahu was not produced in the depatmental enquiry, a copy of his previous statement before the police was given to the respondent and he was further asked to state whether he desired to cross examine any of the witnesses. But I do not think this makes any difference in the principle. For these reasons I must, in disagreement with the learned lower Court hold that the conclusions arrived at by Government in respect of charge No. 8, are not vulnerable in this litigation.

17. Charge No. 4 : The respondent drew Rs. 900 as travelling allowance in connection with his transfer from Koraput to Sundargarh. It was alleged that he actually paid only Rs. 195/- to the truck owner who carried his personal effects from Koraput to Sundargarh. But as the truck owner did not agree to give evidence, Government rightly held that the charge was not proved conclusively. Nevertheless they came to the conclusion that there was strong suspicion against the respondent inasmuch as the receipts which he produced in proof of payment to the truck owner are dated 31-4-1949 whereas the trucks were used for carrying the articles of the respondent on 10-
11-48 on which date, according to the explanation given by the respondent in Ext. 20, they actually reached Sundargarh. If this was a case of *bona fide* use of the trucks by the respondent on proper payment one would have expected the respondent ordinarily to pay the charges to the truck owner at the place where the articles were delivered, namely, Sundargarh, and also on the very date on which the goods reached the place, namely 10-11-48. But it is admitted by the respondent in his explanation that he obtained these receipts from the truck owner several months later after writing to a clerk in the office of the Special Assistant Agent, Koraput. The District Magistrate Sundargarh while commenting on the aforesaid explanation rightly pointed out (See Ext. 25) :

> "Had he paid the money himself while at Koraput, he would not have left the vouchers to be collected by the clerk later on. If he sent the money later on, he should have been in a position to produce evidence of the remittance."

Though the aforesaid circumstance, by itself may not suffice to show that the charge was established, nevertheless Government were entitled to hold that the production of receipts in token of payment, several months after the alleged payment with the help of a clerk in the Special Assistant Agent's office at Koraput raised a strong suspicion against the conduct of the respondent. This finding also cannot be disturbed by the Civil Court, in this appeal, as no rule of natural justice has been contravened - especially when the respondent was given a copy of the comments of the District Magistrate and given full opportunity to meet the same.

18. Charge No. 5 : This relates to the alleged acceptance of a sum of Rs. 180/- from one Md. Yakub on 1-7-49 by the respondent as bribe for recommending grant of road permit for his passenger bus. Government held that this charge was not proved but thought that there was failure on the part of the respondent to discharge his duties properly in respect of this charge because he delayed for a very long time in taking of action on the application for a road permit and gave an explanation to the effect that as Sub-divisional Officer he had nothing to do with Road Transport Authority which explanation was rightly found to be false. The application for

permit was filed on 2-7-49 and admittedly the respondent delayed taking action for about 27 days till 29-7-49. Whether the delay was reasonable or not, in the circumstances, is a matter with which the Civil Court has no concern. Government were entitled to hold that, in the circumstances, the delay was unreasonable especially when in the earlier stages of the enquiry he gave a false explanation to the effect that he had nothing to do with the Road Transport Authority.

19. Charge No. 6 : This charge relates to acceptance of bribe of Rs. 100/- from one Sk. Sukur Mian for making him the Gountia of his village. Though Government held that this charge was not established, they nevertheless found that there was failure to discharge his duty. This finding was based mainly on the decision of the Revenue Divisional Commissioner, Northern Division, in Revenue Appeal No. 24 of 1949-50 (Ex. G-1) where he made adverse comments on the conduct of the respondent in appointing the said Sukkur Mian as Gountia; in preference to Safi Ahmed the son of the previous Gountia and also on his conduct in suppressing from the District Magistrate about the representation made by the son of the previous Gountia against the appointment of Sukkur Mia. The respondent gave some explanation for ignoring the claim of Shafi Ahmed and for not putting up his representation before the District Magistrate, but this was not accepted by Government. No question of contravention of any rule of natural justice arises at all here because the facts (excluding of course the charge of bribery) are all admitted and these are based on the respondent's own orders in the Order sheet of Revenue Case No. 366 of 1948-49 (Ext. G).

20. Charge No. 7 : This charge relates to an allegation of acceptance of bribe by the respondent from Sukur Mian for releasing on bail one of his nephews, Jhakru Mian, who was involved in a criminal case. Here also though the Government found that the charge of bribery had not been established, they nevertheless found him guilty of failure to discharge his duty properly. Here also no question of contravention of any rule of natural justice arises. The facts are all admitted. A petition for bail was moved on behalf of Jhakru Mian on 30-6-49 before the respondent. During the absence of the respondent on tour one Sri G. S. Behera who was in charge of the Sub-divisional office rejected the bail petition on 9-7-49 and remanded the accused till 25-7-49. But when the respondent'returned from the tour he took up the bail matter on 16-7-49 though that was not the date fixed. He severely criticised the order of Sri G. S. Behera and granted bail to Jhakur Mian. Though the respondent gave some explanation, it was open to Government to hold that the conduct of the respondent in this particular matter was somewhat extraordinary especially in granting bail on a date to which the case had not been posted and when Sri G. S. Behera had already rejected bail and the Police had reported that the accused was likely to tamper with the evidence if released on bail.

21. Charge No. 1 : This is the general charge to the effect that the respondent had a bad reputation regarding honesty. This charge was put in almost like a preamble in the charge-sheet (Ext. 12) though the numbering of the other charges showed that this was taken as the First charge. Government held this charge proved mainly on the information collected by the Deputy Collector, Supply and Transport, during his tours in Koraput district in September 1948 and also on the basis of a letter recovered from the respondent's house , during search at Sundargarh (See Exts. 28 and N). From the tour diary of the aforesaid officer it appears that this officer (Sri J. N. Misra) had learnt from his general enquiries in Koraput district that the Special Assistant Agent (meaning the respondent) had no reputation for honesty and that in connection with the

smuggling of rice from Koraput to Andhra Pradesh through the Sunki Check gate, he had learnt from the Inspector of Supplies at that check post that illegal gratifications were being taken by public servants including the Special Assistant Agent (respondent). One Khilla Appala Narsimham specifically told this officer that bribe was given to the respondent for unauthorised transport of rice. Similarly one Poshala Raju of Salur also made some statements against the respondent. It is true that none of these persons appeared as witnesses in the departmental enquiry against the respondent but Sri J. N. Misra was examined as a witness (and his tour diary was proved Ext. 3 (a) ) and the respondent also cross examined him. It is true that in order to establish a criminal charge any inferences which a touring officer may draw from enquiries which he might have made in the localities during his inspection regarding the integrity of a public servant, may not suffice. But the position is different in the
case of departmental enquiries. In *Dr. Krishnamoorthy v. State of Madras*[15], it was pointed out that dismissal or removal from service may be based merely on general reputation for corrupt conduct. Rules of evidence are not strictly applicable in such cases and if Government thought fit to act on the statement of Sri J. N. Misra so far as this charge was concerned I do not think this Court can interfere. Moreover some corroboration of Sri Misra's statement will be found in the letter which was said to have been recovered from the respondent's house at Sundargarh and there are contradictious versions as to what happened to the same. Ext. N is a copy of the letter and it shows that the Inspector of Supplies at Sunki Check Post wrote a letter to the Special Assistant Agent (respondent) in which he referred to the supply of the A. B. Patrika, Cream Chacker biscuits, whisky and other articles. It is indeed very unusual for the Inspector of Supplies to supply these articles to the Special Asst. Agent. The explanation of the respondent was that these supplies were meant for higher officials who came on tour to Koraput. Whatever that may be, this unusually friendly dealings between the Inspector of Supplies at Sunki Check post (whose primary duty was to check smuggling of rice) and the Special Assistant Agent, may lead to an adverse inference against the respondent's reputation for honesty - especially when it is admitted that the respondent gave a very good certificate to the Inspector of Supplies. There is also no satisfactory explanation to account for the recovery of this letter from the respondent's house at Sundargarh long after his transfer from Koraput.

22. It was then urged that in respect of charges 5, 6 and 7 Government at a belated stage exonerated the respondent from allegations of bribery but by their letter dated 19-8-53 (Ext. 36) they called upon him to show cause why in respect of these charges he may not be held guilty of the lesser charge of failure to discharge his duties properly. But in that very letter they also stated that they had already tentatively decided that he should be dismissed from service and gave him a notice as required under Article 311 (2) to show cause against such dismissal. The respondent showed cause on 3-9-53 (Ext. 37) and then Government by their order Ext. 18 D/- 27-2-54 discharged him from service. Mr. Murty's argument is that so far as the charge of failure to discharge duties properly (charges 5, 6 and 7 as modified) was concerned, Government after considering his explanation dated 3-9-53 should first have come to a conclusion as regards the guilt or otherwise of the respondent in respect of the lesser charge and also as regards the tentative punishment which they proposed to inflict in respect of those charges and then should have given him a further opportunity to show cause against the punishment. There is doubtless some force in this contention, because the original charges 5, 6 and 7 dealt with allegations of bribery; and it was only on 19-8-55 that Government for the first time in Ext. 36 called upon the respondent to show cause why the lesser charge of failure to discharge duties properly may not be held to have been established against him. The respondent showed cause on 3-9-53 (Ext. 37).

He may reasonably contend, in the circumstances, that so far as charges 5, 6 and 7, as modified, are concerned he was entitled to a further notice under Article 311 (2) as regards the proposed punishment, as they related to a lesser offence. Mr. Murty urged that even before he showed cause against the charge of failure to discharge duties properly, Government had already held him guilty in their memo Ext. 36 dated 19-8-53 and that the notice under Article 311 (2) served on him was a mere formality. The question however arises whether this slight irregularity so far as charges 5, 6 and 7 (as modified subsequently) are concerned, is sufficient to vitiate the entire proceeding.

23. As already pointed out there were 8 charges but the main charges which were held to have been proved were charges 8, 2 and 3 which dealt with allegations of bribery and charge No. 1 which related to his general reputation for dishonesty. The charge of failure to discharge duties properly was obviously a minor charge, and by itself would not justify the infliction of the extreme punishment of discharge or removal from Government service. But if the other graver charges be held to have been established such a punishment may be justified. Hence, merely because in respect of the lesser charges Article 311 (2) of the Constitution was not strictly complied with, I would not be justified in quashing the entire proceeding. In this connection I may refer to the observations contained in *Karam Deo v. Bihar State*[16], where it was held that even though there was non-compliance with the provisions of Article 311 (2) in respect of additional minor charges, nevertheless, where the said provision was strictly complied with in respect of the original major charges and the punishment of dismissal was tentatively proposed on the basis of the original charges themselves and notice was given to the delinquent public servant to show cause against that punishment, failure to give notice of the proposed punishment in respect of the additional charges would not suffice to invalidate the order of dismissal. These observations in my opinion, apply with full force in the instant case.

24. Though the respondent had made a grievance of the fact that many valuable papers which have a direct bearing on the charges were not made available to him and that his defence was thereby prejudiced, I am satisfied that all the necessary papers were supplied. The main charges were based on the result of searches made in his house on 27-7-49. So far as the Criminal case was concerned, copies of the statements of witnesses made during the Police investigation were handed over to him during trial. Similarly so far as the case under Section 5 (2) of Act 2 of 1947 was concerned, Ext. D shows that on the petition of the respondent, he was permitted to see all the Police papers including the records of the case on 17-7-51. The respondent's first explanation dated 3-11-51 (Ext. 20) shows that he took copious notes from the case diary and used them in some of his explanations. In respect of some other charges Government's letter Ext. J dated 26th/27th August 1951 and their subsequent letter dated 19-9-51 (Ext. 13) show that a copy of the report of the Deputy Superintendent of Police made during investigation and other police papers, including portions of the case diary, were supplied to him. The findings in respect of these charges were based mainly on inferences drawn from facts admitted by the respondent in his first and second explanations. I do not therefore see how any prejudice can be said to have been caused by the alleged non-supply of any relevant papers which the respondent wanted.

25. For the aforesaid reasons I must, in disagreement with the learned lower Court, hold that considering the limited jurisdiction of the Civil Court to interfere with orders of removal passed by Government against a delinquent public servant, no ground whatsoever has been made out for declaring the order of discharge to be wrongful.

The appeal is therefore allowed, the judgment and decree of the lower Court are set aside and the plaintiff's suit is dismissed. But in the peculiar circumstances of this case both parties will bear their own costs throughout.

**R. K. Das, J.**

26. I agree.

Appeal allowed.

Cases Referred.

[1] Criminal Revn. No. 125 of 1951
[2] reported in AIR 1958 SC 300
[3] AIR 1957 And Prad 794
[4] AIR 1961 Cal 1 (SB)
[5] AIR 1957 SC 882
[6] AIR 1961 SC 1623
[8] AIR 1959 Mad Pra 46
[9] AIR 1957 Hyd 13
[10] AIR 1960 Mys 159
[11] AIR 1954 Bom 351
[12] AIR 1958 Cal 470
[13] AIR 1961 Cal 40
[14] Civil Appeal No. 129 of 1961 : (AIR 1963 SC 404)
[15] AIR 1951 Mad 882
[16] AIR 1956 Pat 228