PATNA HIGH COURT

Punit Lall Saha

Vs

State of Bihar

Misc. Judicial Case No. 326 of 1956

(Ramaswami, C.J. and Raj Kishore Prasad, J.)

02.04.1957

JUDGMENT

Raj Kishore Prasad, J.

1. In this case, the petitioner, Punit Lall Shah, has obtained a rule for an appropriate writ, under Article 226 of the Constitution against the State of Bihar, to show cause why its order, dated the 3rd September, 1955 (Annexure C), to his application, discharging him from service, should not be quashed.

2. The opposite party has shown cause through the Government Advocate against the rule, and also filed a counter-affidavit.

3. The petitioner was appointed a temporary Sub-Deputy Collector on the 6th December, 1947. Thereafter, on the 4th June 1949, he was appointed to a substantive post in the Bihar Subordinate Civil Service on probation. On the 22nd February, 1954, the petitioner was served with a letter by the Government of Bihar, through the District Magistrate, to show cause, within one month of the receipt of the order, why his services should not be terminated forthwith for the reasons given in this letter.

4. This letter is Annexure A, and, is in the following terms :

> "Confidential No. 1632A.
> Government of Bihar
> Appointment Department.
> From V. Balasubrahmanyan, Esqr. I.A.S. Addl. Under Secretary to Government.
> To

The District Magistrate, Furnea. Dated, Purnea, the 22nd February, 1954.

> Subject- Allegations against Mr. Punit Lal Sahu Sub-Deputy Collector employed as

Circle Officer at Purnea.
Sir,

I am directed to say that the Annual Confidential reports on Mr. Punit Lal Sahu, Sub-Deputy Collector for the years 1949 and 1950-51 show that he had a very bad reputation. Enquiries made by the Anti-Corruption Department revealed evidence to suspect that Mr. Sahu was corrupt. The following are some of the cases in which Mr. Sahu's conduct was suspicious.

(i) In rent commutation case No. 243 of 1947- 48 in which Gajanand Misser was the opposite party, arguments were heard on 22nd February, 1949, 28th February, 1949, was fixed for orders, but the judgment was actually delivered on 30th May, 1949. The delay in passing orders appears to be due to the fact that in the meantime negotiations for bribe were going on between the party and Mr. Sahu.
(ii) In case No. 184 of 1948-49 a sum of Rs. 130/- was paid by Sri Sadanand Roy to Mr. Sahu. The statement of Sadanand Roy is supported by Sri Bulanand Singh who was present at the time the payment was made. Nityanand Roy, a partner of Sadanand Roy has stated that he gave Rs. 750/- and his share out of Rs. 150/- paid to Mr. Sahu.
(iii) In 11 cases bearing Nos. 117 to 127 of 1948-49 the tenant had prayed for commutation of rent in respect of about 200 bighas of land. It appears that in all these cases, orders were passed in favour of the landlord after acceptance of bribe. Case No. 125 (ii) of 1947-48 against the same landlord was decided in favour of the landlord. Mr. Sahu kept this case pending for about two years and delivered judgment after two months of hearing of arguments in favour of the landlord. It appears that the landlord paid him Rs. 1500/-in cash and also two rings.
(iv) Gorku Mandal of village Rampur P.S. Araria filed a rent suit bearing No. 130 of 1949-50 against the landlord Mostt. Mojidan for commutation of rent. Sri Bibhutibhusan Das Gupta of Araria claimed that he had purchased the said land from Mosst. Mojidan and was in possession of it. It appears Sri Bibhuti Bhusan Das Gupta paid Rs. 1500/- as against Rs. 250/- paid by Mr. Darogi Mandal who was a co-applicant. The applicant's case was dismissed and he was directed to go to the Civil Court to establish his title and Mr. B.B. Das Gupta was allowed to continue in possession of the land.
(v) While in charge of the Relief operations at Banmankhi Mr. Sahu stayed and had free food at the house of Sri M.P. Mehta who was the proprietor of a fair price food grain shop at Banmankhi.

2. The work of Mr. Punit Lal Sahu has been unsatisfactory throughout. In 1949, he was employed as Rent Commutation Officer and both the Collector and the Commissioner found his work to be unsatisfactory. In 1950, Mr. Sahu worked as Circle Officer under a different Collector who also found Mr. Sahu's work to be unsatisfactory. The Collector further reported that Mr. Sahu had done positively bad work in census and that he had a very bad reputation not only for gross immorality. The Collector considered Mr. Sahu to be below average. The Commissioner also thought that Mr. Sahu's work as Relief Officer

and in census was bad. In 1951-52 Mr. Sahu showed slight improvement, but even then his work was considered to be much below the average in every respect.

3. In view of Mr. Punit Lal Sahu's unsatisfactory record, Government have decided that he is unfit to be retained in service. I am, therefore, to request you to direct Mr. Sahu to show cause, within one month of receipt of this order, why his services should not be terminated forthwith. The cause shown by him may be forwarded to Govt. with your comments, through the Commissioner, Bhagalpur Division, at an early date.

Yours faithfully.

Sd. V. Balasubrahmanyan,
Addl. Under Secretary to Government"
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5. The petitioner submitted his explanation on the 3rd April, 1954, denying all the charges mentioned in Annexure A. He made a grievance therein, that, in all fairness, the reports and records of the cases referred to in the letter (Annexure A) should have been supplied to him, and, in their absence, he was not in a position to make an effective representation, although he was submitting one. The Government, therefore, on the 18th June, 1954, sent a letter (Annexure B) to the Commissioner, Bhagalpur Division, directing that the petitioner may be permitted to look into the records of the cases, which have been kept in his office, and, he may submit a supplementary show cause petition, if he so desired, within one week of the inspection of the records.

6. The petitioner, after inspection of the records, submitted a supplementary explanation on the 13th July, 1954. Thereafter, a letter was received from the Government, through the District Magistrate, Bhagalpur, informing the petitioner that the cause shown by him had been carefully considered by the Governor, and was found to be wholly unsatisfactory; and, that he was, accordingly, discharged from his service with effect from the date on which this order is served on him.

7. This letter is Annexure C, and is to the following effect :

Government of Bihar,
Appointment Department.
Resolution No. Camp. 316-55-A 6492
Patna, the 3rd September, 1955.

Read :

1. Appointment Department letter No. 1632 dated the 22nd February, 1954 asking Mr. Punit Lal Sahu, Sub-Deputy Magistrate and Sub Deputy Collector to show cause against discharge from Government service.

2. Letter No. 219-C(2) dated 29th May, 1954, and 408-C dated 27th September, 1954, from the Commissioner, Bhagalpur Division, forwarding Mr. Punit Lal Sahu's show cause petitions dated 3rd April, 1954 and 13th July, 1954 respectively.

Mr. Punit Lal Sahu was appointed temporary Sub Deputy Collector in December, 1947,

and he was appointed on probation to the junior civil service with effect from 4th June, 1949. Ever since his appointment on probation Mr. Sahu's record of service has been unsatisfactory. He has also had a reputation for dishonesty and gross immorality.

(2) Enquiries revealed evidence to suspect his integrity. In view of all this, Mr. Sahu was asked to show cause why his probation should not be terminated and he should not be discharged from service.

The cause shown by Mr. Sahu was carefully considered by the Governor who found it to be wholly unsatisfactory. Mr. Sahu is accordingly discharged from service with effect from the date on which this order is served on him.

ORDER.

Ordered that a copy of this resolution be forwarded to the District Magistrate, Bhagalpur, for service on Mr. Sahu.
By order of the Governor of Bihar,
Sd. V. Balasubrahmanyan.
Addl. Deputy Secretary to Government.

8. The petitioner, thereafter, on the 10th December, 1955, submitted a memorial to the Chief Minister of Bihar, but this was also rejected, and, he was informed of this decision by a letter dated the 14th March, 1958 (Annexure F).

9. In support of the rule, Mr. Baldeva Sahay appeared, and, attacked the validity of the order of discharge, (Annexure C) on two grounds : First, that reasonable opportunity had been denied to the petitioner, in that, Anti Corruption reports were neither supplied, nor, shown to him, and, further, that he had no opportunity to cross-examine Sadanand Roy, or, the two witnesses Bulanand, Singh and Nityanand Roy, who supported Sadanand Roy, regarding payment of bribe to the petitioner as mentioned in charge (ii) in Annexure A; and, Secondly, that the petitioner was given only one notice, and no second notice was given to him, as required by Article 311(2) of the Constitution, before the final order of discharge was passed against him.

10. The first ground, in my opinion, is not well founded, and accordingly, it must be overruled.

11. The petitioner, as will appear from Annexure B, was permitted to look into the records of the cases, which were in the office of the Commissioner. The petitioner inspected such records, and submitted thereafter his supplementary explanation. It is true in his supplementary explanation as well as in his supplementary affidavit in this Court, he has made a grievance that reports of the officers of the Anti-Corruption Department and the statements of Sadanand Roy, Bulanand Singh and Nityanand Roy were not even shown to him or to anybody on his behalf at any time in connection with the proceedings against him. But the State of Bihar, in its counter-affidavit, has stated that relevant facts mentioned in the reports of the Anti Corruption Department were mentioned in the letter (Annexure A) served upon the petitioner asking him to show cause against his discharge, and, has further stated that the confidential remarks made against the petitioner were communicated to him, when such annual confidential remarks were recorded in the usual course.

12. Strong reliance was placed by Mr. Baldeva Sahay on *Gopi Kishore Prasad v. State of Bihar*[1] particularly on the following observation of my Lord the Chief Justice, Ramswami, J., as he then was, at page 373 :

> "These two special reports contain matters which are highly relevant and prejudicial to the petitioner and in my opinion, these reports should have been shown to the petitioner or their contents communicated to him before he was asked to show cause against the notice of discharge. It is a matter of general principle that a person should not be condemned on ex parte statements and no order of removal or discharge should be passed against a Government servant unless he has been given a real and effective opportunity of refuting the statements upon which his notice of discharge is based. This follows from the principle of law embodied in the maxim 'audi alteram partem'. It is true that the final order of discharge of a probationer is an administrative act but the proceedings leading to that final order are quasi-judicial in character, and the principle embodied in the maxim 'audi alteram partem', therefore, applies to such proceedings".

His Lordship in reaching the above conclusion observed that the view which he had taken was borne out by the judgment of Lord Loreburn in *Board of Education v. Rice*[2] *Errington v. Minister of Health*[3]*, R. v. Architects' Registration Tribunal*[4]*,* (D); and *Dhakeshwari Cotton Mills Ltd. v. Commissioner of Income-tax, West Bengal*[5]*,*

13. Relying on the above observation of Ramaswami, J., as he then was, Mr. Sahay contended that in the present case the Anti Corruption reports were neither supplied to him, nor were shown to him, and, as such, according to the above Bench decision of this Court, the order of discharge dated the 3rd September, 1955 (Annexure C) was illegal and ultra vires, in that, there has obviously been a violation of the principles of natural justice.

14. I am in respectful agreement with the view expressed by his Lordship Ramaswami, J., in Gopi Kishore Prasad's case; but in my opinion, in the present case, the principles laid down therein, which are undoubtedly supported by high authorities mentioned above, have been complied with, and, therefore, there has been no violation of the principles of natural justice here.

15. From Gopi Kishore Prasad's case, it will appear that what was laid down therein was that reports, which contain matters highly relevant and prejudicial to the petitioner, should be shown to him, or, their contents communicated to him before he was asked to show cause against the notice of discharge. In the instant case, as will appear from Annexure A, the substance and the contents of the enquiries made by the Anti Corruption Department, which revealed evidence to suspect that the petitioner was corrupt, were divulged and communicated to him, because, we find that the substance of such enquiries, in the different cases, is seriatim mentioned in Annexure A, and, the petitioner was given an opportunity by Annexure A of rebutting the adverse statements contained therein. It is, therefore, not correct to say that whatever the Anti-Corruption reports contained were not divulged to the petitioner, and, that opportunity was denied to him to rebut the same. Such a communication of the information, or substance of such reports, which were hostile or contained severe criticism of the petitioner, is a sufficient

compliance with the principle embodied in the maxim 'audi alteram partem', and, as such, Gopi Kishore Prasad's case, cannot be called in aid by the petitioner. This view is supported by Gopi Kishore Prasad's case, as well as by the other English decisions relied upon in that case.

16. In *Board of Education v. Rice,* (supra), Lord Loreburn, J.C., while dealing with the duty imposed upon officers of State of deciding or determining questions of various kinds imposed by certain statutes, observed :

> "They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

17. This view of Lord Loreburn was referred in *'R. v. Architects' Registration Tribunal,* (supra)', by Lewis, J., of the King's Bench Division, and, his Lordship observed :

> "The principle is that a person before a tribunal of this character should, to use the words of Lord Greene, M.R., at p.*, in R. v. Archbishop of Canterbury*[6]*,* have :
>
> .....a real and effective opportunity of meeting any relevant allegations made against him. If that is not done in a case where the committee or tribunal concerned is a quasi-judicial tribunal, then it is contrary to natural justice and the infringement of the rule that justice must always 'be seen to be done'."

His Lordship, further observed regarding the case under consideration by them, as below :

> "The tribunal had before them, and used, documents which should have been disclosed, or documents which the applicant was entitled to see if they were going to be used by the tribunal."

18. The Dicta laid down by Lord Loreburn, L. C. in 1911 AC 179, and by Viscount Haldane L. C. in *'Local Government Board v. Arlidge*[7]*,* were applied and followed in (1935) 1 KB 249.

19. Following the above principles, it is plain that, in the present case, the principle of natural justice was not violated, rather applied and followed, because the contents or substance of the documents, which were prejudicial to the petitioner and which were before the Government, and were going to be used by it, were disclosed to him, and, he was given an opportunity of rebutting the adverse statements, or the unfavourable
observations contained in the Anti-Corruption reports against the petitioner. Such a procedure was certainly quite consistent with, what I can only call, a sense of natural fairness.

20. It is true that the Anti-Corruption reports were not actually shown to the petitioner, but, for administrative reasons, if the Government considers such reports to be strictly of a confidential nature, which should not be shown to any party, in the interest of public safety and welfare of the State, the Government was not bound to show the actual reports of the Anti-Corruption department, which obviously, in the view of the Government and in the nature of things was of a

highly confidential character and of a secret nature. In such circumstances, in case of such confidential and secret reports, it is a sufficient compliance with the principles of natural justice, if the party affected thereby is given information of the contents of such reports, or, the substance thereof is communicated to him; and before the Government takes a decision in the matter, the party affected thereby is given a real and effective opportunity of meeting any relevant allegations made against him.

21. In the present case, the Government had before it the reports of the enquiries made by the Anti-Corruption Department which revealed evidence to suspect that the petitioner was corrupt, and, therefore, they adopted, if I may say so, the right attitude and correct procedure, before looking or acting on them to inform the petitioner what they contained and the source from which they came and, accordingly, communicated the substance thereof to the petitioner and gave him an opportunity of meeting or contradicting the unfavourable observations made in such reports. For these reasons, therefore, I cannot accept the argument of the petitioner that the Government was bound even to show the Anti-Corruption reports to the petitioner, even if it thought such reports to be strictly confidential, and, to be kept secret in the interest of the State, and, that the omission of the Government to show these reports, or to supply him with the copies thereof amounted to a violation of the principles of natural justice. In my opinion, the communication of the substance of these reports, and divulging of the information contained therein, or, the substance thereof was a sufficient compliance with the principles embodied in the maxim 'audi alteram partem'.

22. It was, then, contended by Mr. Sahay that the petitioner should have been given an opportunity to cross-examine Satyanand Roy and the two witnesses, Bulanand Singh and Nityanand Roy, who supported him with regard to the payment of bribe to the petitioner. I am unable to accede to this argument as well.

23. In my opinion, the real answer to this contention is to be found in the dicta of Lord Loreburn L. C., in 1911 AC 179. While considering the duty imposed by statutes upon departments or officers of State deciding or determining questions of various kinds, the distinguished Lord Chancellor made certain observations, which are so apposite that I wish to read the following passage from his judgment :

> "In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts.

I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view." In the instant case, it will appear from charge (ii) in Annexure A that the Anti-Corruption Department enquired into case No. 184

of 1948-49, in which it was alleged that a sum of Rs. 150/-was paid by Sadanand Roy to the petitioner. The Anti-Corruption Department examined Sadanand Roy as also Bulanand Singh and Nityanand Roy, all of whom said that this sum of Rs. 150/- was paid to the petitioner.
The statements of these three witnesses were, therefore, recorded by the Anti-Corruption Department in course of their enquiry, and the substance of the statements of these witnesses was communicated to the petitioner and divulged to him. It was not a regular trial by any court exercising judicial functions against the petitioner that these witnesses should have been examined in his presence and cross-examined by him. That was a case which was decided by the petitioner, and, there was an allegation that he had taken a bribe in it. This matter was referred to the Anti-Corruption Department, and, they held an enquiry, and, on the statements of these three witnesses, a report was submitted that the petitioner was rightly suspected. There was no question of the petitioner being given an opportunity to cross-examine these three persons, because there was no trial held, nor, any departmental enquiry conducted. What appears to have happened is that the reports of the enquiries made by the Anti-Corruption Department against the petitioner were placed before the Government, and, all the cases, in which the conduct of the petitioner was suspected, were collected by the Anti-Corruption Department for the purposes of their enquiry, and, placed before the Government. The Government divulged the substance of Anti-Corruption reports as well as the substance of the statements of these witnesses to the petitioner, and, therefore, when no trial was being held, and, the petitioner was not being hauled up for taking bribe in that particular case, the question of examining and cross-examining all these witnesses in presence of the petitioner did not arise, and, as such, it was enough if the substance of the statements of these witnesses was communicated to the petitioner, and, he was given an opportunity of meeting unfavourable statements made by these witnesses against the petitioner.

24. In these circumstances, in my judgment, the first ground of attack on the validity of the order of discharge (Annexure C) has no merit, and must, therefore, be rejected.

25. The second contention of Mr. Sahay is a substantial ground and well founded, and, therefore, it must prevail. The argument presented for determination is whether the petitioner should have been given a second notice under Article 311 (2) of the Constitution before the final order of discharge (Annexure C) was passed against him.

26. Relying on the case of 'Gopi Kishore Prasad (A) (supra)', Mr. Sahay contended that there also, as here, the petitioner was a probationary officer, and, still it was held by this Court that he was entitled to a second notice under Article 311 (2) if the Government had reached the finding that the allegations were proved against the petitioner, and, therefore, in the absence of such a second notice, the final order of discharge was held to be void and inoperative.

27. Mr. Sahay reinforced his argument by relying on several other cases of the different High Courts in which Article 311 (2) of the Constitution had been construed, and, it had been held that a second notice under Article 311 (2) was necessary. He submitted that, no doubt, such cases are of a confirmed officer, but, in principle, so ran his argument, there was no difference between the case of a probationer and the case of a confirmed officer, and, as such the principles laid down in these cases should be applied to the present case also. The cases relied upon by him are *State of Bombay v. Gajanan Mahadev*[8]*, Tribhuwannath v. Government of the Union of India*[9]*, M. A. Waheed v. State of Madhya Pradesh*[10]*, Sambandam v. General Manager South Indian Railway, Tiruchirapalli*[11]*', High Commissioner for India v. I. M. Lall*[12]*,* (L); and *P. Joseph John v. State of*

Travencore-Cochin[13]*,*

28. The learned Government Advocate refuted the contention of Mr. Sahay, and submitted that as the petitioner was a probationer, and not a confirmed officer, he was not entitled to a second notice, because his case was a case of a single punishment, and, as such, there was no question of awarding one or more of several punishments provided for such an officer. He therefore, submitted that as the petitioner was a probationer, the only punishment provided for his case was a single punishment, namely, the termination of his service, which would follow if the Government considered that the petitioner was not fit for confirmation as a Sub-Deputy Collector.
In the present case, to continue his argument, the grounds and the reasons, which satisfied the State Government that the petitioner was not fit to be confirmed as a Sub-Deputy Collector, were mentioned in Annexure A, and the decision of the Government that on these materials his services should be terminated forthwith which was the only punishment provided for by the rules to which a reference will be made hereafter, were communicated to the petitioner, and, he was asked to show cause against the said proposed action of the Government, and, therefore, here there was no question of giving a second notice to the petitioner. The learned Government Advocate further submitted that the question of confirmation of a probationary Government Officer was within the absolute discretion of the Government, and, if the Government thought fit that a particular probationer should not be confirmed for the reasons given by it, there was nothing to force the Government to confirm such an officer, provided, of course a real and an effective opportunity has been given, as in the present case, to such a probationer, to shew cause against such a proposed action of the Government.

29. The learned Government Advocate placed reliance, in support of his argument, on *Ajit Kumar Mukherji v. Chief Operating Supdt., East Indian Railway, Calcutta*[14]*,*
Jyoti Nath Ganguly v. State of Assam[15]*, Jatindra Nath Biswas v. R. Gupta, Superintendent of Police*[16]*,* and on a passage at page 126, in the judgment of the Privy Council in AIR 1948 PC 121 : 75 Ind App 225 (L).

30. The answer to the question raised at the Bar depends on the construction of the phrase "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" occurring in Article 311 (2) of the Constitution.

31. Article 311 (2) reads thus :

> "311. (1) XX XX XX
> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :
> Provided XX XX XX"

32. I may state here that the provision as to a reasonable opportunity of showing cause against the action proposed now put in Article 311 (2) is on the same footing as the provision was in Section 240 (3) of the Government of India Act, 1935. As, in my opinion, the question raised is covered by the decision of this Court in Gopi Kishore Prasad (A) (supra), the decision of the

Privy Council in I. M. Lall's case (supra), and, the decision of the Supreme Court in P. Joseph John (M) (supra), I do not propose to discuss in detail the other decisions of the various High Courts on the subject relied upon by Mr. Baldeva Sahay, but I shall deal with the cases relied upon by the learned Government Advocate, as they need, in my opinion, to be specifically noticed.

33. It is now, I think, well settled that Article 311 of the Constitution applies to a probationary Government Officer also, as will be evident from the amendments of R. 49 and R. 55 of the Civil Services (Classification, Control and Appeal) Rules, which apply to the present case.

34. Explanation (a) to R. 49 provided previously before its amendment in 1947 that the discharge of a person appointed on probation "does not amount to removal or dismissal within the meaning of this rule", meaning R. 49, which provides the penalties which may for good and sufficient reason be imposed upon the members of the services comprised in any of the Classes (1) to (5) specified in R. 14. Rule 49, however, was amended on the 15th November, 1347, by notification No. 8184-A of the Government of Bihar, and, the existing Explanation, which contained Clauses (a) to (c), was renumbered as Explanation I, and, a new Explanation II was added to R. 49 to the following effect :

> "The discharge of a probationer, whether during or at the end of the period of probation, for some specific fault or on account of his unsuitability for the service, amounts to removal or dismissal within the meaning of this rule."

35. This amended Explanation II to R. 49, therefore, makes Article 311 of the Constitution applicable to the case of a probationer also.

36. R. 55 prescribes the procedure for holding an enquiry in case the Government proposes to take action against any member of a service. R. 55, previously, provided for a full-dress enquiry in all cases, after an action was proposed to be taken against a Government officer. R. 55 was also amended on the 15th November, 1947, by the same notification, by which a third sub-paragraph was added to R. 55 to the following effect :

> "The full procedure prescribed in this rule need not be followed in the case of a probationer discharged in the circumstances described in Explanation II to R. 49. In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against the discharge after being apprised of the grounds on which it is proposed to discharge him and his reply duly considered before orders are passed."

37. The learned Government Advocate relied on this amended third sub-paragraph to R. 55, and, submitted that in the present case it had been fully complied with, because the petitioner was given an opportunity to show cause in writing against his contemplated discharge after being apprised of the grounds on which it was proposed to discharge him. and, his reply thereto was duly considered before orders for his final discharge were passed.

38. In my opinion, it is plainly seen by reading the amended Explanation II to R. 49, and the

third sub-paragraph to R. 55, that Article 311 (2) applies to the case of a probationer, and, that he is entitled to be given an opportunity to show cause in writing against his discharge after being apprised of the ground on which it was proposed to discharge him, and, that the final order of discharge has to be passed after a consideration of his reply to such grounds. Neither Article 311 (2), nor, even the new third sub-paragraph, which was added to R. 55, nor even the amended Explanation II to R. 49, both of which specifically apply to a probationer, speak expressly of a second notice being given to a probationer.

39. The question for determination, therefore, is: What is the true construction, and, precise meaning of the expression "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" occurring in Article 311 (2) of the Constitution?

40. Mr. Sahay has vehemently argued that this question is covered completely by Gopi Kishore Prasad's case, in which it has been held, following the two Nagpur decisions referred to before, that under Article 311 (2), which applies to the case of a probationer also, he is entitled to a second notice requiring him to show cause against the order of discharge from Government service before passing the final order discharging him from service.

41. On an examination of Gopi Kishore Prasad's case, it will be found that the above view was taken by my lord the Chief Justice, Ramaswami, J., as he then was, but Mr. Justice Kamla Sahai, who was sitting with him, did not however, concur in this view and his Lordship did not consider it necessary to give his final conclusion on this question. I however agree with the line of reasoning adopted by my Lord the Chief Justice, Ramaswami, J., as he then was, in that case, and, I shall give further reasons in support of that view, in the later portion of this judgment.

42. The contrary view expressed in AIR 1955 Assam 171, which was relied upon by the learned Government Advocate, in which Sarjoo Prosad, C.J., while agreeing with his colleague, Deka, J., held that Article 311 (2) does not necessarily contemplate the issue of two different notices to the person concerned; and, therefore, where, as there, the action proposed to be taken against him was the removal from service, and, he had sufficient, notice about this, it was not necessary that there should have been two notices, one asking him to show cause in answer to the charges framed against him, and, the second asking for a fresh explanation as to why he should not be removed from service, if Government so decided. Their Lordships followed the decision of the Single Judge of the Calcutta High Court in AIR 1954 Calcutta 383, in which Deep Narayan Singh, J., observed that where the facts are such, and, the punishment proposed is such, that it would be unnecessary to give two chances to the Civil servant instead of one; for instance, 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, the second opportunity may not be necessary. I am, however, unable to accept the views expressed in the just mentioned two decisions, one of the Assam High Court and the other of the Calcutta High Court that the question of giving the second notice will depend on, and vary with, the facts and circumstances of each case, for the reasons which I am going to state hereafter.

43. In the Privy Council case of I. M. Lall (L) (supra), Lord Thankerton, in delivering the opinion of the Board, while considering sub-section (3) of Section 240 of the Government of India Act, 1935, which corresponds to Article 311 (2) of the Constitution of India, as also R. 55, on appeal from a decision of the Federal Court in *I. M. Lal v. High Commissioner for India*[17], on

observed :

> "In their opinion, sub-section (3) of Section 240 was not intended to be and was not, a reproduction of R. 55 which was left unaffected as an administrative rule. R. 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.

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."

44. This view of the Privy Council was affirmed by the Supreme Court in P. Joseph John's case (supra), and, his Lordship Mahajan, C.J., in pronouncing the unanimous judgment of the Supreme Court, relied on the decision of the Privy Council in I. M. Lal's case (supra), and observed :

> "As regards the question whether the petitioner was given reasonable opportunity of showing cause against the action proposed to be taken in regard to him, the legal position in that respect and the nature of opportunity to be granted was stated by the Privy Council in the case of 'AIR 1948 PC 121, and it was held that when a stage is reached when definite conclusions have been come to as to the charges, and the actual punishment to follow is provisionally determined on, that the statute gives the civil servant an opportunity for which sub-section (3) of Section 240 of the Government of India Act, 1935 (which corresponds to Article 311) makes provision, and that at that stage a reasonable opportunity has to be afforded to the civil servant concerned.

It was also held that there was no anomaly in the view that the statute contemplates a reasonable opportunity at more than one stage".

45. I may here mention that the Full Bench decision of the Travencore-Cochin High Court *Joseph John v. State of Travencore-Cochin*[18], which was dissented from by the Assam High Court in AIR 1955 Assam 171, was affirmed on appeal by the Supreme Court in the just mentioned case.

46. The learned Government Advocate, however, relied on the following passage in the judgment of Lord Thankerton in the Privy Council Case of I. M. Lal (L) (Supra), in support of his argument that two notices are not always necessary in all cases, and, therefore, the question of a second notice will depend on the facts and circumstances of each case as held by the Assam High Court and the Calcutta High Court in the cases mentioned earlier.

47. Lord Thankerton at page 126 of the Reports, observed :

> "In the Federal Court Varadachariar, J., agreed with the conclusion of the High Court on this question, but the majority of the Court held a contrary view, which is expressed by the learned Chief Justice as follows :
> "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 told and he shall be given an opportunity of putting his case against the proposed action and as that opportunity has to be 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.

It is suggested that in some cases it will be 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 if all or any of the charges are proved, dismissal or reduction in rank will follow. This may indeed be sufficient in some cases. In our judgment each case will have to turn on its own facts but the real point of the sub-section is in our judgment that the person who is to be dismissed or reduced must know that that punishment is proposed as the punishment for certain acts or omissions on his part and must be told the grounds on which it is proposed to take such action and must be given a reasonable opportunity of showing cause why such punishment should not be imposed". Their Lordships agree with the view taken by the majority of the Federal Court."

48. The learned Government Advocate submitted that their Lordships of the Privy Council agreed with the view taken by the majority of the Federal Court as expressed by the learned Chief Justice, which has been quoted above. In the judgment of the learned Chief Justice of the Federal Court, which expressed the majority view of the Court, it has been observed that :

> "It is suggested that in some cases it will be 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 if all or any of the charges are proved, dismissal or reduction in rank will follow. This may indeed be sufficient in some cases."

49. The learned Chief Justice further observed that "each case will have to turn on its own facts."

This observation of the learned Chief Justice, to continue the argument of the learned Government Advocate, was a part of the view quoted by their Lordships of the Privy Council, and approved by them, and as such, it must be held that each case has to turn on its own facts, and, on that view, the present case, so ran his argument, was a case in which a second notice was not necessary. I am, however, unable to accept this argument of the learned Government Advocate for the simple reason that in spite of accepting the view taken by the majority of the Federal Court, their Lordships of the Privy Council laid down the construction as quoted earlier, and, from what has been laid down in that case, it is absolutely clear that as a matter of construction of Section 240 (3) of the Government of India Act, 1935, their Lordships held that two notices were necessary, because Lord Thankerton said that "they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage." If the contention of the learned Government Advocate is correct, then there was no necessity for their Lordships of the Judicial Committee to say that "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 imposed as the result of final enquiry." It is plain, therefore, on the decision of the Privy Council, that as a matter of construction of Section 240 (3) of the Government of India Act, 1935, their Lordships unhesitatingly found that two notices should be given.

50. In my judgment, whatever doubt might have been left, whatever difficulty might have been felt, and, whatever impression may have been created by the decision of the Privy Council in I.M. Lal's case (supra), now this uncertainty has been removed by the decision of the Supreme Court in P. Joseph John's case (supra).

51. The question, therefore, as to what is the true construction of the expression "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" in Article 311 (2) of the Constitution is, no longer, at large and, in my opinion, on the judgment of the Supreme Court, it must now be held firmly established that the true construction and the precise meaning of Article 311 (2) is that two notices should be given to the civil servant concerned, if an action is proposed to be taken against him, because, as observed by their Lordships, "there was no anomaly in the view that the statute contemplates a reasonable opportunity at more than one stage."

52. The Bench decision of this Court in Ajit Kumar Mukherji (N) (supra), decided by Ramaswami and Sarjoo Prosad, JJ., as then they were, that in case of railway servants, second notice contemplated by Article 311 (2) was not necessary, has no application to the present, case, because that was the view of their Lordships in the special context and background of the Railway Services (Safeguarding of National Security) Rules, according to which the requirement of a second notice is not necessary in the case of railway servants, whose activities were suspected to be subversive.

53. The further argument of the learned Government advocate is that a probationer means a person, who has been temporarily appointed, and he is not as a matter of right entitled to be confirmed until he has, by his conduct, proved himself to be fit to be confirmed. In support of this contention, he has relied on Annexures I and J to the application of the petitioner.

54. Annexure (I) is a copy of R. 39, in S. V. (Confirmation in the Subordinate Civil Service) of

the Rules framed under Rule 39 of the Civil Services (Classification, Control and Appeal) Rules, which were published with the notification of the Government of India dated the 9th June 1930, as subsequently amended for the training and departmental examination of officers serving in the Province of Bihar and Orissa. It provides the conditions on which every recruit, who will be in the first instance, appointed on probation, will be eligible for confirmation as soon as the conditions envisaged in the said R. 39 are fulfilled. One of such conditions is condition No. 4, which is to the effect that he must be considered by the Local Government fit for confirmation as a Sub-Deputy Collector.

55. Annexure, J., which is a copy of R. 440 of Board's Miscellaneous Rules, lays down that :

> "No steps will, however, be taken to remove an officer from service until he has been given an opportunity by warning and censure to effect an improvement."

On reading the above R. 440, however, it is manifest that before an officer is removed from service, he has to be given an opportunity to effect an improvement by warning and censure. Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, provides the different forms of penalties which can be imposed upon the members of the services specified in R. 14, which include under item No. 6. "the Subordinate services" also. Some of the penalties, provided by R. 49, which can be legitimately imposed upon the members of the subordinate services, who are on probation, like the petitioner, are :

> "(i) Censure.
> (ii) Withholding of increments or promotion, including stoppage at an efficiency bar.
> (iii) Reduction to a lower time-scale, or to a lower stage in a time-scale.
> (iv) Recovery from pay of the whole or part of any pecuniary loss caused for Government by negligence or breach of orders.
> (v) Suspension.
> (vi) Removal from the civil service of the Crown, which does not disqualify from future employment.
>
> (vii) xx xx xx"

56. It is, therefore, not correct to say, as contended by the learned Government Advocate, that the case of a probationer is a case of a single punishment. The probationer may be censured, his increments may be withheld, he may be suspended, he may be reduced to a lower stage in a time-scale, or, removed from service.

57. The view which I have taken of the construction of Article 311 (2) that a second notice must be given also to a probationer civil servant, after he has shown cause against the first notice, and, his explanation has been found unsatisfactory and, before the final order of discharge is passed against him, is not only in accord with the principles laid down by the Supreme Court and the Privy Council in the cases mentioned before, is not only consistent with true meaning of Article 311 (2), and, the third sub-paragraph of R. 55, but is also in consonance with the principles of natural justice embodied in the maxim audi alteram partem; and, it will, as such, serve the ends

of justice much better than otherwise; if, on the other hand, the construction, sought for by the learned Government Advocate, is accepted, and, if a second notice is not given, then it is not only contrary to natural justice, but is also the infringement of the rule that justice must always "be seen to be done".

58. This view of mine can be further supported by taking a concrete example. Suppose, for instance, two or more charges are served on a probationer, and, he is asked to show cause why his services should not be terminated. If the probationer has shown cause, and, the Government is satisfied after a consideration of his show cause that out of the two or more charges, only one charge has been proved, in such a case the Government may take the view that it would not be fair to the probationer, and, it would defeat the ends of justice, and, entail an undue hardship on him, if he is discharged from service, and, that in the circumstances, a lesser punishment should be imposed upon him, and, the proper punishment should be either censure, or withholding of increments or suspension, of the like as provided in R. 49. In such a case, it is obvious that before any such action is taken, the Government will have to give a second notice to the probationer concerned, because prior to that stage, the charges were not proved, and, the suggested punishment was merely hypothetical. It is only after the probationer has shown cause against the charges, and, a definite conclusion has been come to on the charges after a consideration of the show cause of the probationer against such charges that the actual punishment to follow is provisionally determined. After a second notice, it is open to the probationer to show that in view of the fact that only one charge has been proved against him, the punishment suggested originally prior to that stage should not be imposed upon him, he can only be let off by a mere censure and a warning, or the like, and, the extreme penalty of removal from service would be disproportionate to his fault, and therefore, it should not be imposed upon him. This view of the matter also, in my opinion, supports my construction of Article 311 (2), and, the amended third sub-paragraph of R. 55, that a second notice should be given to the probationer, after a consideration of his show cause petition against the charge framed against him communicating to him the decision of the authority concerned as to why they found his show cause petition satisfactory or unsatisfactory, and, whether even on consideration of his show cause petition they were satisfied that the original punishment suggested should be imposed upon him.

59. On this view of the proper construction of Article 311 (2) it is not disputed that the petitioner has not been given the second notice to which he is entitled thereunder, and, the purported removal of the petitioner on the 3rd September, 1955 (Annexure C) did not conform to the mandatory requirements of Article 311 (2) of the Constitution, and, was, therefore, void and inoperative.

60. In the result, the rule must be made absolute, and, the purported discharge of the petitioner from service with effect from the date on which the order of removal from service dated the 3rd September, 1955, (Annexure C) was served must be declared to be null and void. A writ, therefore, must go quashing the order (Annexure C) of the discharge of the petitioner on the ground that the mandatory requirement of Article 311 (2) of the Constitution, which entitles him to a second notice, has been violated.

61. The application, accordingly, succeeds, and, is allowed, but in the circumstances of the present case, there will be no order for costs to the petitioner.

Ramaswami, C.J.

62. I agree.

Application allowed.

Cases Referred.

[1] AIR 1955 Pat 372
[2]1911 AC 179
[3](1935) 1 KB 249
[4](1945) 2 All ER 131
[5] AIR 1955 SC 65
[6]290, (1944) 1 All ER 179 at p. 181
[7] 1915 AC 120
[8] AIR 1954 Bom 351
[9]AIR 1953 Nag 138
[10]AIR 1953 Mad 54
[11]AIR 1954 Nag 229
[12] AIR 1948 PC 121 : 75 Ind App 225
[13] AIR 1955 SC 160
[14]1953 BLJR 171 : (AIR 1953 Pat92)
[15]AIR 1955 Ass 171
[16]AIR 1954 Cal 383
[17]AIR 1945 FC 47
[18]AIR 1953 Tra Coc 130 (FB)