PATNA HIGH COURT

Tribhuwan Nath

Vs

State of Bihar

A.F.O.D. No. 706 of 1956 and Misc. Judicial Case No. 935 of 1956

(V. Ramaswami, C.J. and Kanhaiya Singh, J.)

01.09.1959

JUDGMENT

Kanhaiya Singh, J.

1. The appeal and the miscellaneous judicial case arise out of the same matter and will be disposed of in one judgment. The appeal is by the plaintiff and arises out of a suit brought by him against the State Government for a declaration that the order of the latter removing him from the State Medical Service and permanently debarring him from re-appointment in service is illegal, ultra vires, void and wrongful and that he should be deemed to be continuing in service of the defendant as Civil Assistant Surgeon.

2. The facts giving rise to the appeal and the petition are these: The plaintiff is a Medical Graduate (M. B. B. S.) of the Patna University and was appointed as a Civil Assistant Surgeon under the Government of Bihar on 17-9-1947 on a permanent basis. He was posted at Jehanabad as Civil Assistant Surgeon and was put in charge of the sub-divisional hospital. While he was at Jehanabad an incident took place. On the morning of 10-4-1951 chaukidar Amawas Ahir of village Mainpur, police station Arwal, in the district of Gaya, received an information that a man was lying dead in a mango orchard in village Belaon with several injuries on his person. The chaukidar went to the spot and found the dead body there in that orchard with several injuries. The deceased was subsequently identified as Ramdhani Mahto of Belaon within Arwal Police station. The chaukidar went to Arwal police station and lodged the first information report stating that the deceased had several bhala and geransa injuries, that his intestines had come out and that there was copious blood on the spot. The Sub-inspector of Arwal police station, Sheopujan Singh, went to the place of occurrence, reaching there at 2 P. M., and found Ramdhani lying on the right side with face downwards in a pool of dried-up blood. He also found many cut injuries on the body. He prepared an inquest report in presence of witnesses and also a sketch map. He forwarded the dead body of Ramdhani with Abdul Wahid Khan dafadar for post-mortem examination. The dead body was taken to Jehanabad morgue with a chalan and the inquest report of the police on 11-4-1951, and the plaintiff was required to hold post-mortem examination of the said dead body. The plaintiff conducted the post-mortem examination on the same day at 4 P.M. and found that there were 22 wounds on the dead body and all the soft parts including the wind

pipe and the great vessels of the right side of the neck were cut along with the fourth cervical vertebra. From the nature of the injuries and other indications obtained therefrom the plaintiff gave the opinion that the injuries were post-mortem, and no opinion as to the cause of death could be given. The Sub-inspector of Arwal investigated the case, and since the culprits had not been named, he eventually submitted final report.

3. It appears that some suspicion arose about the correctness of the opinion given by the plaintiff, and about five days after the plaintiff gave his opinion on 16-4-1951, the then Sub-inspector, Jehanabad, submitted a confidential report to the then Sub-divisional Officer, Jehanabad, making certain insinuations against the plaintiff. The Sub-divisional Officer contacted the plaintiff and made certain enquiries. The plaintiff asserted before him that all the injuries on the corpse of Ramdhani were post-mortem and could not be ante-mortem and that there was no question of "post-mortem" having been mentioned in the post-mortem report for "ante-mortem" by slip of pen. The Superintendent of Police, Gaya, was not satisfied about the correctness and *bona fides* of his report and referred the matter to the Government in the Anti-Corruption department. The allegations against him were investigated by the said department, and it transpired during the course of the investigation that the post-mortem report had been procured from the plaintiff for a consideration of Rs. 1800. Accordingly, a report was submitted by the Anti-Corruption department to the Government of Bihar. The latter referred the whole matter to the Inspector-General of Civil Hospitals, Bihar, and sought his opinion on the correctness or otherwise of the post-mortem report made by the plaintiff. Thereupon, the Inspector-General of Civil Hospitals suggested that the plaintiff should be prosecuted for knowingly submitting a false post-mortem report.

4. Thereafter, the plaintiff proceeded on leave from Jehanabad and, on its expiry, was placed on supernumerary duty at the Patna Medical College Hospital. While he was so employed on supernumerary duty, he was suspended by the Government with effect from 5-10-1951. The Government decided to have a fuller enquiry made into the allegations under the Public Servants (Inquiries) Act, 1850, after formulation of charges, and accordingly on 6-10-1951 the following notification was issued :
"No. 1-15/51P (A/C) 16689/Medl.

Government of Bihar.
Local Self-Government Department, Medical Section. Patna, the 6th December, 1951.

ORDER

Whereas the Governor of Bihar is of opinion that there are good grounds for making a formal and public inquiry into the truth of the imputations of misbehaviour which have, in substance, been drawn up under the discretion of the Governor, in articles of charges (hereunder specified) against Dr. Tribhuwan Nath, Civil Assistant Surgeon.
Now, therefore, in exercise of the powers conferred on him by sections 2, 3 and 4 of the Public Servants (Inquiries) Act 1850 (Chapter (Act ?) XXXVII of 1850) the Governor is pleased to direct that a formal and public inquiry be made into the truth of the charges by Mr. K.K. Banerji, District and Sessions Judge, Patna, who is hereby appointed Commissioner for the purpose and to him the inquiry, hereby ordered, is committed. The Governor is also pleased to direct that the Commissioner shall commence and thereafter proceed to hold inquiry at Patna or such other

place or places as he may consider suitable as soon as possible and not less than 10 days after the charges have been communicated to the said Dr. Tribhuwan Nath. Articles of charges.

1. That on the 10th April, 1951 early in the morning Chowkidar Amawas Ahir of village Mainpur, P.S. Arwal, District Gaya, learnt through some pedestrians that a man was lying dead in a mango garden of village Belaon with several injuries on his person. Having heard the news the Chowkidar went to the spot and found the dead body in the mango orchard with several injuries on his person. The deceased person was subsequently identified to be Ramdhani Mahto of village Belaon, P. S. Arwal. The chowkidar went to Arwal P.S. and lodged the F. I. R. about the murder of Ramdhani Mahto stating that the dead man had several Bhala and Garasa injuries, that his intestinal portion was out and that there was copious blood present at the place near the dead body. The Sub-Inspector of Police Arwal also visited the place of occurrence and held an inquest over the dead body. The Inquest Report shows that the dead body was lying in a pool of blood with various injuries on his person.

2. That the dead body was brought before Mr. Tribhuwan Nath then posted as Civil Assistant Surgeon, Jehanabad Sub-Division and hospital, for post-mortem examination on the following day i.e. on the 11th April, 1951 at 5.45 A.M.

3. That he (Dr. Tribhuwan Nath) held the post-mortem examination on the dead body at 11-30 A.M. on the same date i.e., on the 11th April, 1951 and in his post-mortem report he mentioned as many as 11 injuries of various nature but he stated that all the injuries caused on the deceased person were post-mortem and that no opinion as to the cause of his death could be given.

4. That from the F.I.R. the Inquest Report, Supervision Report and the Post-mortem report it is informed that for the reasons noted below the injuries on the deceased persons were not post-mortem but ante-mortem :

(a) That the body was found lying in a pool of dried up blood but there is not much bleeding from post-mortem wounds and the blood that comes out from post-mortem wounds a little while after death does not coagulate;
(b) Appreciable separation between the margin of the wounds i.e., gaping is a feature of only ante-mortem and not of post-mortem wound and this gaping of the wounds had been several times noted in the description of wounds;
(c) In injury No. 5 it was noted by Dr. Tribhuwan Nath that there was a stab wound 1" x 1" by peritoneal cavity deep on left side of abdomen 1" to the left of umbilicus loops of small intestine coming out from the wounds. It is to be noted in this connection that it is extremely rare and unusual for the intestine to come out by a wound of 1" x 1" going down into the peritoneal cavity, if the person is already dead. Loops of the intestine do tend to come out of peritoneal wounds if there is some peristalsis still existing in the intestine;
(d) The doctor's statement that both chambers of the heart were empty tends to go against the theory of post-mortem injury. The heart is more likely to be empty in a case where a patient has died from causes such as shock and bleeding as a result of injuries inflicted on him.

5. That the facts definitely stated in the inquest report that the body was lying on the right side facing downwards in a pool of dried up blood and that the head was saturated with blood should have led Dr. T. Nath to conclude that the injuries were ante-mortem. Since his own opinion was contrary to the findings at the inquest report he should have definitely stated the reasons for arriving at the conclusion that the injuries were post-mortem but he deliberately avoided to give reasons for arriving at such a conclusion. It is this opinion of the Assistant Surgeon (Dr. T. Nath) which, in view of the injuries and the circumstances of the case, he has given rise to great suspicion against his conduct to the effect that the opinion which he gave might have been for some consideration and with the object of destroying chances of a successful prosecution of the person or persons who might be accused of having committed murder of the deceased person."

5. The plaintiff was informed of the order of the Government regarding this inquiry on 6-12-1951. Mr. K.K. Banerji, the then District and Sessions Judge (now a retired Judge of the Patna High Court), who had been appointed Commissioner under the Public Servants (Inquiries) Act, received the said order of the Government on 11-12-1951, and on 23-1-1952 a letter was received from the Government intimating Mr. S.K. Mitra, Government Advocate, Patna, to conduct the prosecution. Copies of the Articles of Charges were served on the plaintiff. The latter appeared before the Commissioner on 24-1-1952. Both parties were given ample opportunity to file documents, and the hearing commenced on 1-3-1952 and went on till 15-3-1952.

6. The plaintiff filed his written defence on 14-3-1952. The hearing was again resumed on 3-5-1952 and was concluded on 19-5-1952. Both parties adduced evidence and filed their documents. The plaintiff filed a fresh written statement on 17-5-1952. Arguments were heard on behalf of both, and the Commissioner submitted his report on 4-6-1952. In his opinion the charges were satisfactorily proved against the plaintiff. He reached the following conclusion :

> "In view of my findings mentioned above, I hold that Article 5 has also been fully proved. The person accused has deliberately avoided to give his reasons for arriving at his conclusion and his conduct is likely to give rise to great suspicion that the opinion might have been for some consideration or with the object of destroying chances of a successful prosecution of the person or persons who might be accused of having committed the murder of the deceased. I am convinced that this is not a case of honest difference of opinion. It cannot be said to be even a case of negligence when he insisted throughout that his opinion was correct and had not been given inadvertently."

The Government considered the report of the Commissioner and tentatively reached the conclusion that the plaintiff should be removed from service. Accordingly, on 26-8-1952 the following communication was sent to the plaintiff by the Secretary, Local Self-Government Department :

"Order

Patna, the 26th August, 1952.

No. 11656 Medl. The Commissioner appointed in Government order No. 1-15/51P (A/C/16689-Medl), dated the 6th December, 1951 under the Public Servants (Inquiries) Act, 1850 (Act 37 of 1850) to enquire into allegations against Dr. Tribhuwan Nath, Civil Assistant Surgeon, now under suspension, has found that the charges framed against him have been satisfactorily proved. The Governor of Bihar has therefore provisionally arrived at the conclusion that the only punishment that should, in the circumstances of the case, be imposed on Dr. Tribhuwan Nath is dismissal from service. Under clause (2) of Article 311 of the Constitution of India, he is, therefore, directed to show cause within 15 days from the receipt of this order as to why the punishment referred to should not be awarded to him. A copy of the Commissioner's report is appended to this order." On 30-9-1952 the plaintiff showed cause (exhibit C). It is a lengthy document, in which the report of the Commissioner has been subjected to minutest scrutiny. In substance, his defence was that the post-mortem report submitted by him was correct and that the finding of the Commissioner was unsustainable and not sufficient to falsify his report. He pleaded that he was not guilty and no disciplinary action should be taken against him. The records and the papers, including the report of the Commissioner, were submitted to the Public Service Commission for their opinion on 28-1-1953. The Public Service Commission was satisfied that the plaintiff was guilty of submitting a false post-mortem report and supported the action of the Government proposed to be taken against him (vide their letter dated 14-4-1953, exhibit A). On 24-6-1953 the plaintiff was removed from service with effect from the said date, as per resolution given below :
"No. 128 HR

Government of Bihar
Health Department
Resolution.
Dated, Ranchi, the 24th June, 1953.

Read Government order No. 16689-Medl. dated the 6th December, 1951 directing by virtue of the powers conferred by Sections 2, 3 and 4 of the Public Servants (Inquiries) Act, 1850 (XXXVII of 1850) the making of a formal and public enquiry into the truth of certain imputations of misbehaviour by Dr. Tribhuwan Nath, Civil Assistant Surgeon and appointing Mr. K.K. Banerji, District and Sessions Judge, Patna as Commissioner for the purpose of conducting the enquiry.
Read also the report and findings of the Judge-Commissioner dated the 4th June, 1952.

2. The imputations of misbehaviour by Dr. Tribhuwan Nath, Civil Assistant Surgeon were drawn up into the following five charges.

* * * *

The Governor of Bihar, having given his most anxious consideration to the report and findings accepts the conclusions of the Commissioner that Dr. T. Nath is guilty of intentionally giving false post-mortem report and accordingly directs that Dr. Tribhuwan Nath be removed from the State Medical Service with effect from the date of this order and should be debarred from any further employment under Government. Order : Ordered that a copy of this resolution be forwarded to Dr. Tribhuwan Nath, Civil Assistant Surgeon at present under suspension for information.
By order of the Governor of Bihar Sd. P.K.J. Menon

Secretary to Government."

7. Thereafter the plaintiff served a notice of suit on the respondent under section 80 of the Code of Civil Procedure , and on 1-2-1954 filed Title Suit No. 9 of 1954 challenging the validity of the Commissioner's report and the order of the Government dated 24-6-1953 on the following grounds : (i) the post-mortem report submitted by him was correct and not mala fide; (2) in course of enquiry the Commissioner violated the first principles of natural justice and criminal jurisprudence and made unauthorised, unjust and illegal observations and inferences, being influenced by matters extraneous to the enquiry and by letters and documents which were legally not on the records of the case and the plaintiff had been given no opportunity whatsoever to meet and answer the same; (3) there was no evidence to establish conclusively the falsity of his report and the four doctors examined in this case on one side or the other though highly qualified, could not give any unanimous opinion on the nature of the injuries, and their evidence did not exclude the possibility of the injuries being post-mortem; (4) though there was insinuation of acceptance of illegal gratification by him, no evidence was led before the Commissioner to prove it nor was any charge framed against him to that effect; (5) the conclusion of the Commissioner is vitiated by admission into evidence of blood-stained clothes which were highly suspicious articles and had been fabricated for the purposes of the prosecution case; (6) the order of the State Government removing him from service was null and void for infraction of the mandatory provisions of Article 311(2) of the Constitution and also because of the violation of R. 55 of the Civil Services (Classification, Control and Appeal) Rules; (7) the removal from service does not disqualify a person from future employment, and, therefore, the imposition of bar on his future employment was illegal and wrong; and (8) the report of the Commissioner was bad and invalid as it is based on mere conjectures and surmises.

8. The State Government contested the suit and refuted all the allegations of the plaintiff and maintained that his report was deliberately false and the injuries, though ante-mortem, were reported by him to be post-mortem, and that the Government duly considered the explanation offered by him and after giving their most anxious consideration to the report and the findings of the Commissioner and the submissions made by him accepted the conclusions of the Commissioner that he was guilty of intentionally giving a false post-mortem report and, therefore, after due notice to him and faithfully observing the rules and procedure dismissed him from service.
It is alleged that there was no irregularity at all in the conduct of the enquiry by the Commissioner. The plaintiff was given adequate and reasonable opportunity to defend himself and meet the allegations made against him. They also further pleaded that the correctness of the report of the Commissioner could not be challenged by a suit.
9. The learned Subordinate Judge held that the proceedings before the Commissioner were conducted fairly and the plaintiff was represented by senior and eminent Advocates, such as, Mr. Nageshwar Pd., Mr. Lalbihari Lal, Pandey Narsingh Sahai with several junior lawyers to assist them and was given full and ample opportunity to vindicate his conduct, that the provisions of Article 311(2) of the Constitution were fully complied with and he was given reasonable opportunity of showing cause both at the preliminary stage of enquiry as well as after the Government provisionally decided to remove him from service on the report of the Commissioner, that the plaintiff was not at all prejudiced by withholding from him the report of the Special Officer of the Anti-Corruption section dated 15-6-1951 since the Commissioner neither referred to it nor based his conclusions thereon, and that the order of the Government was

perfectly legal and valid.

10. Being aggrieved by the aforesaid judgment the plaintiff preferred this appeal on 18-12-1956. As abundant precaution he also filed on that very day an application under Articles 226 and 227 of the Constitution praying for issue of an appropriate writ, order or direction quashing the order of the Government of Bihar dated 24-6-1953 as also the report of the Commissioner dated 4-6-1952 and for a further direction to the State Government to forbear from enforcing the said order against him and to allow him to continue in service.

11. It appears that there has been full and fair hearing of the case, and the plaintiff appellant had ample opportunity to defend himself and vindicate his honour. At first, allegations made against him were enquired into by a Commissioner appointed by the Government under the Public Servants (Inquiries) Act, 1850. The charges levelled against him were made over to him. Both parties adduced evidence, oral and documentary. The Commissioner afforded the plaintiff all facilities for entering on his defense. He filed written statements and was represented before the Commissioner by eminent Advocates of Patna. After careful consideration of the entire evidence, the Commissioner found that the charges had been satisfactorily established against plaintiff, and the post-mortem report was deliberately false and that the injuries, though ante-mortem, were described to be post-mortem. The Government considered the report and the findings of the Commissioner and agreed with him that the charges had been fully proved. As to the punishment to be awarded, it provisionally decided that he should be removed from service and should be disqualified for future employment. After this tentative decision of the Government the plaintiff was again served with a notice, as provided in Article 311(2) of the Constitution asking him to show cause why he should not be removed from service. He gave his explanation, and after further consideration of his explanation and the report of the Commissioner and after consultation with the Public Service Commission, the Government finally decided that the only punishment that could appropriately be awarded was his removal from service. It would thus appear that he had reasonable opportunity at both stages to enter upon his defense and place his case, and he fully availed himself of both these opportunities.

12. Mr. B.C. Ghose appearing for the appellant, however, contended that there was denial of fair and reasonable opportunity to the plaintiff to defend himself effectively in that the report of the Anti-Corruption department which led to the initiation of the proceedings against him and which the Government by their letter dated 11-12-1951 (exhibit 10) forwarded to the Commissioner was not made over to him, and he was not given opportunity to meet its contents. When the allegations of misconduct were made against him, it was only right for the Government to have them examined by an officer before proceeding against him. This was a confidential enquiry, and when the Anti-Corruption department reported adversely to him, the Government decided to have the matter fully investigated. There is no law nor rule forbidding the Government to have a confidential enquiry made prior to the framing of a charge, and the delinquent officer cannot as a matter of right have a copy of the report of the Anti-Corruption department or, for the matter of that, of any Government Officer, unless that report formed part of the evidence before the enquiry Commissioner and was relied upon by him. In the instant case, the said report of the Anti-Corruption department was not admitted into evidence and was not even referred to in course of the proceeding by the Commissioner. The Commissioner has not also referred to it, nor his report is based upon this document. It is manifest that this report is not the foundation of the

conclusion of the Commissioner or of the order of the Government.
All the evidence that the Government adduced in support of the charges was produced in presence of the plaintiff, and it is not his case that he was not given reasonable opportunity to meet that evidence or to adduce evidence in rebuttal. In fact, on the contrary, he had ample opportunity to adduce evidence in disproof of the allegations made against him. The report of the Commissioner is based on evidence that was adduced before him. As will appear from his report (exhibit B) he scrupulously excluded from consideration papers and documents which were not made part of the evidence before him. He has observed as follows :

> "Learned advocate for the person accused has stressed that his opinion should be judged from the inquest-report, the chalan and the post-mortem report and from nothing else. I have done so and I have excluded from consideration the supervision note or any other papers, which have been scrupulously kept out of the record."

When this document was not the foundation of the charges against him and did not constitute evidence in the proceedings the plaintiff cannot complain of denial of fair opportunity to meet. It is not imperative upon the Government to disclose to the delinquent officer information confidentially received by it against him, and he cannot legally insist upon having it when the alleged report of which disclosure is sought was never used in course of the enquiry, nor was the order of the Government based upon it. A reasonable opportunity which a Government servant is to be given to satisfy the Constitutional requirements of Article 311(2) envisages only this that he should be informed of the charge or charges levelled against him and the evidence by which they are sought to be established. Once it has been done and ample opportunity has been afforded to him to meet the evidence and enter on his defence, there is no denial of reasonable opportunity and there is no legitimate ground for complaint.
If the report of the Anti-Corruption department had been considered by the Commissioner and relied upon at any stage of the enquiry, then surely he was entitled in law to have an opportunity of examining it and meeting the allegations contained therein. When, however, this report was not at all exhibited in the case nor was it referred to nor relied upon by the Commissioner, there was no meaning in contesting it and consequently absence of opportunity to meet its contents involved no violation of Constitutional provisions. It was pointed out by Mr. Ghose that it had been sent to the Commissioner and had been kept on the record, and this must have influenced his decision. There is no foundation for such an assumption. This had no doubt been sent to the Commissioner, but the plaintiff also had equal opportunity to look into it. It will be wrong to assume that the Commissioner was influenced by this report when he avers that he had scrupulously excluded from consideration any document or paper that had not been admitted into evidence, and his report evidences it. The plaintiff has admitted that neither he nor his lawyer was ever prevented from looking into the records of the proceedings before the Commissioner. If the grievance of the plaintiff be only this that it had been kept on the record of the proceedings, then he had ample opportunity to examine it and adduce evidence accordingly, and he does not say that he was prevented from adducing any evidence that he liked to. Considering this document from any point of view, no prejudice ever accrued to the plaintiff by not making it available to him. In my opinion, this contention has no force and must be overruled.

13. Mr. Ghose next contended that the order of the Government removing the plaintiff from service was invalid as no enquiry was made according to R. 55 of the Civil Services

(Classification, Control and Appeal) Rules and the enquiry under the Public Servants (Inquiries) Act, 1850, cannot be regarded as a substitute for, or alternative to, the enquiry contemplated by R. 55. His submission is that the enquiry made by Mr. K.K. Banerji did not exhaust his Constitutional remedy and even after this enquiry, there should have been a further regular departmental enquiry, as provided in R. 55 which, he urged, is mandatory and its violation rendered the order of removal legally ineffective. There is no warrant in law for such a contention. It is settled by the pronouncements of their Lordships of the Supreme Court that the aforesaid rules are mere administrative rules and have no statutory force and their infringement per se does not give the officer accused a right of action against the Government. They are, however, not without value. They provide a measure to interpret the provisions of Article 311 and to give effect to the right thereunder, and to determine, inter alia, whether in a given case termination of service of a Govt. servant was made by an authority subordinate to that by which he was appointed whether termination amounted to dismissal or removal or reduction in rank so as to entitle the officer concerned to the Constitutional protection under Article 311 and whether reasonable opportunity was afforded to him to defend himself against both the charges levelled against him and the proposed punishment. But they are not intended for direct enforcement, and their non-observance did not invalidate the order of dismissal unless it involved also contravention of any Constitutional provision. In the case of *Venkata Rao v. Secretary of State*[1], the Privy Council held that these rules were of an administrative character and not justiciable in a Court of law. Following this decision,
their Lordships of the Supreme Court held in *Venkataraman v. Union of India*[2],
as follows :

> "Rule 55, which finds a place in the same chapter, lays down the procedure to be followed before passing an order of dismissal, removal or reduction in rank against any member of the service. No such order shall be passed unless the person concerned has been informed in writing, of the grounds on which it is proposed to take action against him and has been afforded an adequate opportunity of defending himself. An enquiry has to be made regarding his conduct and this may be done either in accordance with the provisions of the Public Servants (Inquiries) Act of 1850 or in a less formal and less public manner as is provided for in the rule itself.

These rules have no statutory force and it was held by the Privy Council that when an officer was dismissed from service without complying with the provisions of these rules, he had no right of action against the Crown - vide, AIR 1937 PC 31. In other words, the rules, which were not incorporated in a statute, did not impose any legal restriction upon the right of the Crown to dismiss its servants at pleasure. The position was altered to some extent in the Government of India Act, 1935 and in addition to the restriction imposed by Section 96-B(1) of the Government of India Act, 1919 that a civil servant could not be dismissed by an authority subordinate to that by which he was appointed, a further statutory provision was made - 'Vide Section 240 (3) of the Government of India Act, 1935', that a civil servant could not be dismissed or reduced in rank unless the person concerned was given a reasonable opportunity of showing cause against the action proposed to be taken against him. Article 311 (2) of the present Constitution has further added the word 'removal' after 'dismissal' and before 'reduction in rank' and thus in all the three cases, which are covered by R. 55 of the Civil Services Rules, a civil servant has now a

constitutional right to claim a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. As the law stands at present, the only purpose, for which an enquiry under Act 37 of 1850 could be made, is to help the Government to come to a definite conclusion regarding the misbehaviour of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon prior to giving him a reasonable opportunity of showing cause, as is required under Article 311(2) of the Constitution. An enquiry under this Act is not at all compulsory and it is quite open to the Government to adopt any other method if it so chooses. It is a matter of convenience merely and nothing else." This case is thus an authority for two propositions of law : (i) the service rules are not enforceable in a Court of law, and (ii) he is entitled to an enquiry into the charges made against him before punishment is decided upon. Though before a punishment is determined on and the Government servant is asked to show cause against the proposed punishment, there must be an enquiry in his presence into the truth or otherwise of the allegations, he cannot insist upon a particular form of enquiry. It is a matter of convenience to the Government, and whether the enquiry is conducted under Rule 55 or under Act 37 of 1850 or in any other manner is of little consequence, so long as, consistent with the principles of natural justice, the officer concerned has been informed, in writing, of the charges against him and has been afforded adequate opportunity of defending himself.
What is justiciable is the constitutional guarantee under Article 311 and, therefore, the only thing which a Government servant can demand as a matter of legal right is the constitutional protection thereunder. This principle was affirmed by the Supreme Court in the case of *Parshotam Lal Dhingra v. Union of India*[3], wherein their Lordships expressed themselves as follows :

> "The protection given by the rules to the Government servants against dismissal, removal or reduction in rank, which could not be enforced by action, was incorporated in sub-sections (1) and (2) of Section 240 to give them a statutory protection by indicating a procedure which had to be followed before the punishments of dismissal, removal or reduction in rank could be imposed on them and which could be enforced in law. These protections have now been incorporated in Article 311 of our Constitution."

These rules "only made provision for redress of grievances by administrative process" and gave no right of action against the Government for their breach. Therefore, R. 55 or other service rules enjoining enquiry and prescribing procedure for such enquiries are not as such enforceable against the Government.

14. Mr. Ghose referred to the decision of the Supreme Court in the case of *Khem Chand v. Union of India*[4], This case does not lay down a different rule of law and does not advance the plaintiff's case any further. Their Lordships referred with approval to the following observations of the Privy Council in the case of *High Commr. for India v. I. M. Lall*[5],

> "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."

I may note here that in I. M. Lall's case AIR 1948 PC 121, their Lordships of the Privy Council referred approvingly to their previous opinion in the case of Venkata Rao, AIR 1937 PC 31, where it was held that failure to comply with the rules did not give any right of action. In Khem

Chand's case their Lordships of the Supreme Court further considered the meaning of the expression "reasonable opportunity to show cause" in Article 311 (2) of the Constitution in all its aspects. In their view the substance of the protection provided by R. 55, which required a special procedure to be followed, before the three major punishments of dismissal, removal or reduction in rank is implicit in Article 311 of the Constitution, and, therefore, even if there had been no rule like R. 55, enquiry was imperative before deciding the actual punishment to be meted out. They have thus laid down that the reasonable opportunity envisaged by Article 311 (2) includes :

> "(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 on 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 the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant. In short the substance of the protection provided by rules, like R. 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in Section 240(3) of the Government of India Act, 1935 so as to give a statutory protection to the Government servants and has now been incorporated in Article 311(2) so as to convert the protection into a constitutional safeguard."

In I. M. Lall's case : (*Secy. of State v. I. M. Lall*[6]*),* the majority of the Judges of the Federal Court expressed the view that section 240(3) of the Government of India Act, 1935, corresponding now to Article 311(2) does not "require any enquiry, any formulation of charges or any opportunity to defend against those charges". According to them "all that it expressly requires is that when it is proposed to dismiss or reduce in rank a civil servant he should be given reasonable opportunity of showing cause against the proposal to dismiss or reduce him." Their Lordships of the Supreme Court have not accepted the restricted meaning given by the Federal Court to the expression "reasonable opportunity to show cause". They have given it a wider meaning and have laid down that constitutional guarantee embodied in Article 311 required double opportunity to be given to the civil servant, namely, first, at the stage of enquiry, and, second, at the time of awarding punishment. Thus, according to their decision in Khem Chand's case, 1958 SCR 1080 : (AIR 1958 SC 300), "the procedure followed in such cases must, therefore, include the giving of two notices to the servant, one at the enquiry stage and the other when the competent authority, as a result of the enquiry, tentatively determines to inflict a particular punishment on him."
They have held that there is no difficulty in the statutory opportunity being reasonably afforded at more than one stage and that "the opportunities at more stages than one are comprised within the opportunities contemplated by the statute itself". When, however, an enquiry has been held and he has been given ample opportunity to exonerate himself from the charge, he cannot reasonably

ask for a repetition of that stage. In this connection the observation of their Lordships is as follows :

> "Of course if the government servant has been through the enquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, which implies that if no enquiry has been held under Rule 55 or any analogous rule applicable to the particular servant then it will be quite reasonable for him to ask for an enquiry. Therefore, in a case where there is no rule like R. 55 the necessity of an enquiry was implicit in Section 240 (3) and is so in Article 311(2) itself."

Thus, "the right to defend himself in the enquiry and the right to make representation against the proposed punishment are all parts of his 'statutory right' and are implicit in the reasonable opportunity provided by the statute itself for the protection of the government servant". It is manifest therefore, that R. 55 has no importance in itself and cannot be regarded as having a statutory force. It is noteworthy that both in the cases of Parshotam Lal Dhingra and Khem Chand the Supreme Court relied upon the decision of the Privy Council in the case of Venkata Rao, AIR 1937 PC 31, referred to above, in which it was held that these rules were not enforceable in a Court of law against a Government. Therefore the decision of the Privy Council in that case is still a good law. In view of the decisions of the Privy Council and the Supreme Court, it must be held that the service rules are merely of an administrative character and are not legally enforceable against the Government. After these decisions it cannot be reasonably argued that compliance with the service rules as such is a constitutional requirement and their breach, even when there has been a regular and fuller enquiry under Act 37 of 1850, will invalidate the order of dismissal. The constitutional requirement is, therefore, only this that there should be first a preliminary enquiry into the charges levelled against the civil servant and he should have adequate opportunity at this stage also to defend himself by cross-examining the witnesses called against him and showing that it is not worthy of credence and by examining himself or any other witness in support of his case. If, on such enquiry, the charges have been established and the punishment to be inflicted has been provisionally determined on by the Government, he should be given another opportunity to make representation against the action proposed to be taken in regard to him. This is all that is necessary.

If he has already gone through an enquiry under Rule 55 or under Act 37 of 1850 or under any other provision, it is sufficient compliance of the statutory provision. In this case, there has been enquiry under the said Act, and at this enquiry the plaintiff was given adequate opportunity to defend himself. In fact he was represented by eminent counsel, and the witnesses called against him were cross-examined at length, and he also examined himself and other witnesses in support of his defense. In these circumstances, it cannot be reasonably urged that there should be a further enquiry, as provided in R. 55. This contention, therefore, has no substance and must be rejected.

15. Mr. Ghose next urged that while removing the appellant from service the Government imposed on him a bar against future employment, and this rendered the order of removal invalid. It is true, as pointed out by their Lordships of the Supreme Court in the case of Parshotam Lal Dhingra and subsequently affirmed in the case of Khem Chand, 1958 SCR 1080 : (AIR 1958 SC 300), that the words 'dismissal' and 'removal' are not merely tautologous but are technical words, "words of art", and have acquired special significance. According to the said service rules,

dismissal from service disqualifies a civil servant from future employment, whereas removal from service ordinarily does not. Where, however, removal from service was accompanied with a bar against future employment, it cannot be said that the entire order was null and void. If the emphasis is on the imposition of the bar against future employment, the word 'removal' may be taken to have been used loosely, and what was intended by the Government was to dismiss him from service which created absolute disqualification for future employment. The order of the Government, therefore, may be interpreted to be an order of dismissal and not that the whole order has become ineffective. Apart from that, that is the ordinary meaning given to the words 'dismissal' and 'removal', and if to the order of removal is superadded a disqualification for future employment, it cannot be said that the whole order is illegal and invalid. At best, it is a mere irregularity for which no action lay in a Court of law. I may mention here that in *P. Joseph John v. State of Trav-Co*[7]*.,* a similar order was passed by the Government. The Government servant concerned was removed from service of the State and was further permanently debarred from re-appointment in service. The Supreme Court did not consider this order as invalid. This contention, in my opinion, is utterly devoid of merit and must be overruled.

16. Lastly, Mr. Ghose contended that the report of the Commissioner was mala fide, perverse, biassed and prejudiced. Elaborating his argument he submitted that the procedure followed by the Commissioner was not in accordance with law and that he rested his report not on materials furnished by the State Government, but on extraneous matters obtained during the course of the enquiry, and also on irrelevant and inadmissible evidence. There is no factual basis for this argument. There is no evidence worth the name to show even indirectly that there was bias or prejudice on the part of learned Commissioner, nor is there anything to show that his report was influenced by any mala fide consideration. Again it will be simply wrong to say that the report is perverse, because there is ample evidence to support the conclusion reached by him. Mr. Ghose made too much of the fact that the learned Commissioner admitted into evidence certain wearing apparels belonging to the deceased and the blood stained earth which the investigating officer had scraped from the place of occurrence at the time of the investigation. It transpired during the course of the enquiry that although the list of witnesses and documents (exhibit 12) showed that there were reports of the Chemical Examiner and Serologist, the blood stained Mirjai (exhibit I), blood stained Chadar (exhibit II), blood stained Dhoti (exhibit III) and Dhoti with a little blood stain (exhibit IV) which the deceased had put on at the time of the occurrence and also blood stained earth which the investigating officer had scraped from the place of occurrence had not in fact been sent to the Chemical Examiner and Serologist for chemical examination. In fact these documents had not been produced before the Commissioner previously. It was in course of the enquiry that it came to light that those material exhibits were still lying in Malkhana. The learned Commissioner allowed the State to produce them, and the investigating officer (P. W. 6) went to Arwal and brought them from the Malkhana. They were sent to the State Serologist, and his opinion was that the wearing apparels as well as the scraped earth contained human blood. These garments, therefore, had blood stains on them. There were not a few scattered stains on the garments. In fact the extent of blood stains on the Dhoti (exhibit III) was about 9 1/2 feet in length with an average breadth of about a foot and a few inches. The Mirjai (Ext. I) was soaked with blood, especially towards the neck side. The Chadar (exhibit II) was also heavily stained with blood. Only the other Dhoti (exhibit IV) had only one or two stains visible. The learned Commissioner found that a mere glance at the blood stains showed that there was coagulation. Mr. Ghose contended that these documents had been fabricated to establish the prosecution case, and in this connection he drew our attention to the fact that they had not been mentioned either in

the Station Diary or in the Malkhana register. The learned Commissioner found that there was no fabrication on the part of the prosecution, and the garments produced before him were the actual garments which the deceased had put on when he was murdered, and for his conclusion he has given cogent reasons. He has also given satisfactory explanation how the omission to enter them in the Malkhana register and the Station Diary took place. If there existed such evidence and it was not known to the Commissioner or to the party before the enquiry commenced, there is nothing wrong if the Commissioner in his wisdom allowed the State Government to adduce that evidence. It cannot be regarded as irrelevant or inadmissible in evidence. They are no doubt perfectly relevant and admissible pieces of evidence. Any court would have given permission to adduce such evidence. The case against the appellant remained throughout the same, namely, that the post-mortem report given by him was deliberately false and the injuries were ante-mortem and he wrongly opined that they were post-mortem. These garments were only a piece of evidence to substantiate that charge, and I do not find any possible objection to the permission granted by the Commissioner to adduce it in evidence. The only thing to guard against was whether they had been concocted for the purpose of the case, and the learned Commissioner was careful about this, and on a thorough examination of the evidence he was satisfied that there was no fabrication. In these circumstances, the grievance of the appellant that they should not have been admitted in evidence is wholly unfounded. Mr. Ghose took us through the evidence and contended that the report of the Commissioner was wrong. This argument is based upon misconception about the function of the Civil Court in such matters. The Civil Court does not sit as a Court of appeal and decide whether the conclusion reached by the enquiry officer was erroneous on facts or law. If a proper enquiry was instituted by the Government, either under Rule 55 or Act 37 of 1850 or any other analogous rules, and if the Government servant was afforded opportunity to defend himself by cross-examining the witnesses called against him and to examine himself or any other witness, and if he was also given reasonable opportunity to show cause against the punishment which is eventually determined on by the Government, and if the enquiry has been conducted fairly without bias and without infringing the principles of natural Justice, there is the end of the matter, and this Court cannot set aside the order of the enquiry officer, even if on the evidence a different conclusion is possible. All that the Court has to see in such cases is whether the constitutional requirements have been satisfied. There should be, first, an enquiry into the allegations against the Government servant and the latter should be afforded ample opportunity to defend himself. If on the basis of the report the Government decides provisionally the punishment to be inflicted upon the Government servant, at that stage also he should be given opportunity to show cause why the proposed punishment should not be inflicted. Where there has been a regular enquiry and the procedure has been properly followed and the Government servant has been given the two notices required by law, namely, one at the enquiry stage and the other when the competent authority tentatively determines to inflict a particular punishment on him, and the enquiry has been conducted fairly and justly without bias or prejudice and without violating the principles of natural justice, there is, so far as the Civil Court is concerned, the end of the matter, and it is not permissible for the Court to subject the evidence adduced before the enquiry officer to a critical examination and decide for itself whether his opinion was correct or erroneous. Even if the Court is satisfied that on proper appraisal of the evidence another conclusion was also possible, it is not sufficient to upset the finding of the enquiry officer. In this case, as stated above, the appellant had been given sufficient opportunity at both the stages. Further, the garments of the deceased and the blood stained scraped earth were admitted into evidence in his presence and he had opportunity to meet that evidence also. There is no allegation that any evidence was admitted at his back, nor is there any grievance that he had

not got proper opportunity to meet the evidence adduced against him.
It is apparent that there was ample evidence to support the conclusion of the enquiry officer. I may say here that there is hardly any evidence worth reliance to support the defense set up by the appellant. Therefore, the opinion of the learned Commissioner cannot be characterised as perverse. This contention also fails and is overruled.

17. It follows that there is absolutely no merit in this appeal, which is accordingly dismissed with costs.

18. Miscellaneous Judicial Case No. 935 of 1956. This application was presented by the appellant along with the appeal as abundant precaution for an appropriate writ to call up and quash the report of the Commissioner dated 4-6-1952 and the order of removal passed by the Government on 24-6-1953. In view of my judgment just delivered, this application must also be rejected. This application is accordingly dismissed. There will be no order as to costs.

Ramaswami, C.J.

19. I agree.

Appeal and petition dismissed.

Cases Referred.

[1] AIR 1937 PC 31
[2] AIR 1954 SC 375
[3]1958 SCR 828 : (AIR 1958 SC 36)
[4]1958 SCR 1080 : (AIR 1958 SC 300)
[5] AIR 1948 PC 121
[6]1945 FCR 103 : (AIR 1945 FC 47)
[7](1955) 1 SCR 1011 : (AIR 1955 SC 160)