

# PUNJAB AND HARYANA HIGH COURT

Engineer-In-Chief Army Head Quarters Union of India

Vs

C A Gupta Ram

(Kapur J.)

09.08.1956

## JUDGEMENT

### **Kapur J.**

(1.) THESE four separate appeals under Clause 10 of the Letters Patent raise a common question of law, namely whether the learned Single Judge from whose orders the appeals have been preferred was justified in sending for the record and restraining the Central Government from going ahead with the removal proceedings.

( 2. ) A Board of Officers set up to enquire into the conduct of one Major Naidu, Garrison Engineer of Secunderabad, recorded the statements of a large number of persons, including those of the four petitioners who happened to be serving as officiating Assistant Garrison Engineers. As the petitioners appear to have made statements in which they incriminated themselves, they were placed under suspension and written statements of charges were handed over to them. No oral enquiry was held but the explanations furnished by them were considered and the enquiry Officer submitted his report on the basis of which Government called upon the petitioners to show cause why their services should not be terminated. The petitioners thereupon presented four separate petitions under Art. 226 of the Constitution in which they complained that the enquiry had been conducted without notice or hearing and requested that the records of the case should be sent for and examined, that appropriate directions be issued, to the Enquiring officer requiring him to comply with the provisions of law, and that Government should be prohibited from taking any action against the petitioners on the basis of the said report. The learned Judge of this Court before whom these petitions came up for hearing came to the conclusion that the provisions of Rule 6 of the Rules Regarding Discipline which correspond to rule 55 of the Civil Services (Classification, Control and Appeal) Rules were not complied with, that the request of the petitioners for an oral hearing was not acceded to, that they were not permitted to cross-examine the witnesses on whose evidence the prosecution proposed to rely and in short that they were not afforded a reasonable opportunity of defending themselves. He accordingly declared the findings of the Enquiry Officer to be void and of no effect and directed the respondent to afford the

petitioners a proper opportunity for producing their defence. The Central Government is dissatisfied with the order and has preferred four separate appeals under Clause 10 of the Letters Patent. Mr. Nambiar, who has argued the case for the petitioners with conspicuous ability, contends that an enquiry into the conduct of a Government servant is completed in two stages. The first stage is concerned with the ascertaining of facts, the existence of which alone can furnish the basis for the proposed action. It consists of the formulation of charges, notice thereof, a hearing and a report. If the report is unfavourable to the officer concerned and if Government comes to a provisional decision as to the punishment that should be awarded to him, the enquiry enters upon the second stage. A copy of the report submitted by the Enquiry Officer is sent to the Officer whose conduct is under investigation and is required to show cause why he should not be dismissed or removed or reduced in rank. In the present case, it is contended, proceedings have been instituted against the petitioners without hearing when they are entitled to be heard and a report has been submitted which presents only one side of the picture. If the factual basis on which action is proposed to be taken is wrong and misleading, no explanations furnished by the petitioners are likely to induce government to exonerate them from blame or to impel it to alter the provisional decision at which it has already arrived. The petitioners, it is contended, are entitled to defend themselves at two stages and as their right to defend themselves at the first stage has been violated, they are entitled to claim the protection of the Courts. They accordingly pray that this Court should send for the records of the proceedings and review the action of the Enquiry Officer on certiorari so that it should be in a position to determine for itself, from the contents of the record, whether the Enquiry Officer has exceeded his jurisdiction or has not proceeded according to the essential requirements of law. In the alternative, it is prayed that a writ of prohibition should issue to the appropriate officer restraining him from proceeding further without complying with the statutory and other formalities. There can be no question of a writ of prohibition being issued in this case, for it has not been alleged or proved that there has been any wrongful adjudication by an unauthorised body. A writ of certiorari lies when the inferior Court or tribunal has exceeded its jurisdiction or when such Court or tribunal has proceeded illegally and no appeal lies. It can be issued, only to restrain the exercise of judicial functions as distinguished from ministerial and executive acts. It can be issued to Courts and to officers, boards and tribunals who possess judicial or quasi-judicial powers and have to act judicially -- 'rex v. Electricity Commissioners', (1924) 1 kb 171 (A), and in extreme cases also to purely ministerial bodies when they usurp judicial functions--'braizie V. Fayettee County', (1884) 25 W Va 213 (B ). It cannot extend to the Questioning of annulling of acts which are ministerial, executive or legislative. It is the nature of the act sought to be restrained and not the general character of the tribunal or officer proceeded against which determines the propriety of this writ.

( 3. ) TWO questions at once arise for decision, namely-- (1) Whether an officer conducting a removal proceeding in accordance with the provisions of art. 311 acts in an executive or administrative capacity, and (2) Whether the statutory rules by which the 'conditions of service of the petitioners are regulated have provided another adequate remedy by way of appeal or revision or other appropriate proceeding. If both these questions are answered in the affirmative, it is

obvious that the Enquiry Officer is not amenable to the writ of certiorari and it is not within the competence of this Court to intervene at this stage. 'prima facie' the power to remove from office is an executive function, (In re. Opinion of justices, 118 Am LR 166 at p. 169 (C)), for if a public servant holds office at the pleasure of the state, it is open to the appointing power to remove him arbitrarily without cause, or to remove him for cause, or to remove him for such cause as it may think fit or proper or upon such enquiries as it may think fit to make or in the absence of any enquiry whatever. In such a case courts are powerless to interfere. ;