

(1965) 10 GUJ CK 0019
In the Gujarat High Court

Case No : Special Civil Application No. 20 of 1962

Amirkhan F. Pathan

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 14-10-1965

Acts Referred:

Bombay Local Boards Act, 1923 — Section 26(1)
Bombay Police (Punishments and Appeals) Rules, 1956 — Rule 1(a), 2, 3(a), 3(b), 4
Bombay Police Act, 1951 — Section 25(2), 5
Constitution of India, 1950 — Article 226, 227, 311, 311(2)
Government of India Act, 1935 — Section 240(3)

Citation : (1966) 7 GLR 56 : (1965) 2 LLJ 645

Hon'ble Judges : Shah, J;N.M. Miabhoy, J

Bench : Division Bench

Judgement

Miabhoy, J.—Petitioner Amirkhan F. Pathan has filed this writ petition under Arts. 226 and 227 read with Art. 311, Clause (2) of the Constitution of India for issuance of a writ of or in the nature of certiorari or any other appropriate writ, order or direction quashing or setting aside the report made and findings recorded by respondent 3 and the show-cause notice, dated 16 December 1961, issued by respondent 2 pursuant to the report and findings and for a writ of prohibition restraining the three respondents from dismissing or taking any other disciplinary action against the petitioner on the basis of the report and the findings.

2. Petitioner was, at the relevant time, a sub-inspector of police. Respondent 1 is the State of Gujarat. The original respondent 2, Sri Nagarwala, was, at the relevant time, Inspector-General of Police, Gujarat State, and he is now represented by his successor, Sri Imdadali. Respondent 3, Sri Shethna, was, at the relevant time, Deputy Inspector-General of Police, Baroda Range, Baroda. In the month of July 1956, petitioner was working as police sub-inspector, Dahanu, Thana district. One Captain Hirasing was District Superintendent of Police, Mehsana, at about that time. Hirasing appeared on 9 and 10 July 1956 in an

examination called the Police Higher Standard Examination held in Bombay by the Public Service Commission. The Government of Bombay found that Hirasing had committed malpractices in that examination. In that connexion, the petitioner's statement was recorded on 11 July 1957 by Sri Modak, Deputy Inspector-General of Police, Anti-Corruption Branch. In September 1957, Hirasing was ordered to be removed from police service. Thereafter, on 26 November 1957, petitioner was served with a chargesheet by the Deputy Inspector General of Police. Ahmedabad, who was ordered to hold an enquiry by the Inspector-General of Police into the charges which were proposed to be levelled against the petitioner in connexion with the malpractices alleged to have been committed by Hirasing. Broadly speaking, the charges against the petitioner were that he had prepared, in company with some others, answers to the examination papers set in the aforesaid examination after copies of the examination papers were brought by some others at the Hotel Delamar, Bombay, and that, therefore, he had despatched the answer-books to the examination hall. Three other sub-inspectors of police and a constable-driver working in the office of District Superintendent of Police, Mehsana, were also served with similar chargesheets at about the same time. Petitioner gave his reply to the chargesheet on 14 December 1959. Thereafter, a joint enquiry was held against petitioner and the aforesaid three sub-inspectors of police. A number of witnesses were examined on behalf of the department. Petitioner examined three witnesses in his defence and, on 9 December 1960, petitioner filed a final defence statement. Thereafter, the enquiry officer made his report on a date which is not to be found on the record. The enquiry officer reported that the charges levelled against petitioner had been proved to his satisfaction. Thereupon, the original respondent 2 provisionally came to the conclusion that the charges against petitioner had been proved and, on that basis, he issued a second show-cause notice on 16 December 1961, calling upon petitioner to show cause why he should not be dismissed from service. Whilst the departmental enquiry was at this stage, petitioner came up to this Court on 15 January 1962 and filed the present petition. This Court admitted the petition on 16 January 1962 and issued a rule. It also granted an interim injunction restraining respondents from taking further proceedings or disciplinary action against petitioner pursuant to the aforesaid report and findings recorded by respondent 3 and the show-cause notice, dated 16 December 1962, issued by respondent 2. The result, therefore, today is that only a second show-cause notice has been issued against petitioner and the final proceedings, which may or may not result in his dismissal, have yet to be taken. Sri Daru, who appears in support of the petition, says that he presses for a writ of prohibition in the first instance and that, if the Court comes to the conclusion that there is no case for the issuance of a writ of prohibition in the alternative, he prays for the issuance of a writ of certiorari in regard to the report and the findings recorded by respondent 3, and a writ of prohibition against respondent 2 then would follow as a sequel.

3. Sri Sompura, the learned Assistant Government Pleader, raises a preliminary objection on the above facts. He contends that the facts disclosed by the petition do not entitle petitioner to the issuance of a writ of prohibition and that the prayer for the issuance of a writ of certiorari against the report and the findings of respondent 3 is premature. Sri Sompura's submission is that petitioner deserves to be dismissed in limine on the aforesaid grounds and that the proceedings started by respondent 2 by the issuance of the second show-cause notice should be allowed their normal course and petitioner should be left to come to this Court only when and if an order of dismissal is passed against him. Before we discuss the submissions made by Sri Daru in detail regarding the preliminary objection, it is necessary to bear in mind the grounds of attack which he presses in support of the petition. Sri Daru contends that the proceedings so far recorded against petitioner are bad for two reasons :

(1) that there was no evidence whatsoever on the record prepared by respondent 3 which would sustain all or any of the charges levelled against petitioner; and

(2) that the enquiry held by respondent 3, was not fair and proper such as afforded a reasonable opportunity to petitioner to make his defence.

4. Sri Daru amplifies the second ground by contending

(i) that copies of all the relevant documents required for defence of petitioner were not given to him at or before the material stages of the enquiry;

(ii) that a statement given behind his back was taken on record and has been relied upon by respondent 3 in his report and is probably also relied upon by respondent 2; and

(iii) that one of petitioner's co-delinquents was examined as a witness in the proceedings in defiance of his protests.

5. In order to appreciate the rival arguments in regard to the prayer for a writ of prohibition, it is important to bear in mind that that writ is sought to be obtained against respondent 2 in regard to the second show-cause notice. Sri Daru accepts the proposition that a writ of prohibition issues in cases where there is patent absence or usurpation or excess of jurisdiction. It is well-settled law that, in such cases, a superior court interposes at an interim stage in order prevent the authority concerned from usurpation of jurisdiction which it does not possess or acting in excess of such jurisdiction. The superior Court interposes at an interim stage because, ex facie, the authority concerned has usurped jurisdiction or is exceeding the same. Now, in order that his principle may apply, it is necessary for petitioner to show that there is no jurisdiction vested in respondent 2 in regard to the second show-cause notice or that he is exceeding the same and that such absence or excess of jurisdiction is patent on the, record. In our judgment, there is not the slightest doubt that respondent 2 has jurisdiction to issue to second show-cause notice. It is not denied that he is the competent

authority who is entitled to dismiss petitioner from service. But Sri Daru contends that, though this is so, it is a case of absence or usurpation or excess of jurisdiction inasmuch as the enquiry which preceded the show-cause notice suffered from the two infirmities which we have already indicated above. Sri Daru's submission is that the jurisdiction of a competent authority is dependent upon the validity of the enquiry which precedes it and inasmuch as that enquiry suffers from the aforesaid vital defects, the competent authority has no jurisdiction to issue notice or to proceed further with the departmental enquiry. We will deal with this part of Sri Daru's submission just in a moment when we deal with his alternative submission. We propose to show at that time that there is a fallacy underlying the aforesaid submission that there are two different proceedings, viz. :

- (1) enquiry proceedings commenced by the reading of the charge, and
- (2) the punishment proceedings commenced by a second show-cause notice.

6. For the present, we will deal with the two authorities on which Sri Daru strongly relies in support of his first submission. The first authority is the case of *Shantaram D. Salvi Vs. M.M. Chudasama and Others*, . In that case, the enquiry was conducted by an inspector of Anti-Corruption Branch against a police officer who was governed by City of Bombay Police Act and the rules framed thereunder, and, on the basis of his report, the Commissioner of Police issued a second show-cause notice calling upon the delinquent to show cause why he should not be dismissed from police force. On these facts, a writ of prohibition was issued against Commissioner of Police and others prohibiting them from proceeding to take any further action against the officer concerned by way of dismissal from police force or doing any other act to the prejudice of petitioner based on the purported enquiry and the findings thereon referred to in the petition. Now, the facts of this case are clearly distinguishable from the facts obtaining in the present case. In the Bombay case, the enquiry was held by an inspector. The relevant rules regarding the authority which was entitled to hold the enquiry were rules 1(a), 2, 3(a) and 3(b), and on the construction of these rules, the Court came to the conclusion that "the so-called enquiry was held by a person not duly authorized to do so." In that case, it was held that the only competent authority who was entitled to hold an enquiry was the Superintendent of Police. It was also further held that, under the rules, the holding of an enquiry by a Superintendent of Police was a condition precedent to the assumption of jurisdiction by Commissioner of Police for starting proceeding for final order of dismissal. On these facts, the Court came to the conclusion that Commissioner of Police had no jurisdiction to start proceedings for punishment of the delinquent in the absence of an enquiry by a duly authorized officer. The case was clearly a case of total absence of jurisdiction on the part of Commissioner of Police. In the present case, respondent 2 is the competent authority to commence proceedings of dismissal. His authority is not dependent upon the holding of any preliminary enquiry by any other authority. Respondent 2 is, entitled in law to take all the

proceedings which are necessary under the Constitution and under the relevant law and the Bombay Police Act, 1951 (hereafter called the Act), and the Bombay Police (Punishments and Appeals) Rules, 1956 (hereafter called the Police Rules) framed by the Government under Clause (c) of Sub-section (2) of S. 25 read with S. 5(b) of the Act. In discharging his duty, he has to afford a reasonable opportunity to the delinquent. Under rule 4 of the Police Rules, respondent 2 is prohibited from passing the punishment of dismissal unless a departmental enquiry into the conduct of the delinquent is held. That enquiry can be either held by him or by an authority duly authorized by him. Therefore, there is a vital distinction between the provision contained in the Act and the Police Rules and those contained in the City of Bombay Police Act (4 of 1902) and its rules. Whereas, under the latter Act, an enquiry by a Superintendent of Police is a condition precedent to the holding of proceedings for dismissal by the Commissioner, under the Act and the Police Rules such is not the case. The enquiry under the Act and the Police Rules can be held also by respondent 2 himself. He need not entrust that task to any other officer if he is so minded. The enquiry that he starts prior to the second show-cause notice is an enquiry which is designed to frame the charge, explain the same to the delinquent, to acquaint the delinquent with the materials on the basis of which the charge is framed, to lead evidence in support of the charge, and to give an opportunity to the delinquent to explain the charge and to make his defence. Usually, the enquiry officer makes a report to the competent authority. But all these steps which are taken up to this stage are preliminary steps and the report embodies conclusions or findings which are not binding on the competent officer. The jurisdiction of the competent officer is not dependent upon anything which has taken place during the course of the enquiry. It may be that if any defect has taken place in the course of the enquiry and if the same does not happen to be rectified by the competent officer, it may provide the delinquent with a ground for attacking the final order of dismissal. But nothing which takes place during the course of the enquiry touches the question of jurisdiction of the competent officer. The holding of an enquiry is not a condition precedent to the assumption of jurisdiction by respondent 2 but it stems from his jurisdiction itself. Under the circumstances, *Shantaram D. Salvi Vs. M.M. Chudasama and Others*, is of no assistance in deciding the present case. Then Sri Daru relies upon the case of *Chhanalal A. Patel v. State of Gujarat* [I G.L.R. 260. Sri Daru strongly contends that this case is very close to the facts of the present case. In that case, petitioner was the president of the district local board, Mehsana, and proceedings for removal from that office were started against him under S. 26(1) of the Bombay Local Boards Act, 1923 (6 of 1923), on allegations of misconduct which related to a period prior to a date when the district local board, Mehsana, of which petitioner in that case was the president, was reconstituted. Petitioner prayed for the issuance of a writ of prohibition directing the State Government not to proceed with the enquiry contemplated by that show-cause notice. One of the questions for decision in that case was whether misconduct practiced at a point of time earlier than the time when petitioner was elected the president of the district local board

in question could or could not be the basis of proceedings for removal. The Court came to the conclusion that it could not be so done. On these facts, a writ of prohibition was issued by this Court. Now Sri Daru contends that the facts of this case are similar to the facts of the above case, Prima facie, there is some substance in this contention. But, on a closer scrutiny, it would be found that the question as to whether the aforesaid finding did or did not result in the absence of jurisdiction in the State Government was never raised in that case. On the aforesaid finding, the Court, in the absence of any contention to the contrary by the State Government, came to the conclusion that the usual show-cause notice was beyond the competence of the Government. There is no discussion whatsoever for reaching this conclusion. In the rest of the judgment, the question which is discussed is as to the nature of a writ of prohibition-whether it is a writ "of right," a writ "of discretion" or a writ "of course" and the Court came to the conclusion that a writ of prohibition requires to be issued the moment patent absence of jurisdiction is shown and that it is a writ which requires to be issued almost "as a matter of course." The former part of the above decision does not pertain to the question raised by Sri Daru for decision in the present case. In Chhanalal case [1 G.L.R. 260] (vide supra) the point as to whether the jurisdiction of the State Government was or was not dependent upon the misconduct being antecedent or subsequent to the constitution of the district local board was never raised for decision. The point appears to have been assumed that the moment misconduct was proved to be antecedent, there was lack of jurisdiction in the State Government. Therefore, the decision in that case is also not of any assistance for deciding the point raised by Sri Daru. On the facts of the present case, it is impossible to reach the conclusion that there was want of jurisdiction in respondent 2 because of the defects alleged. For the purposes of deciding this question, necessarily we will have to assume that the allegations made by Sri Daru are correct. It is obvious that, on that assumption, it cannot be said that, because there was no evidence before the enquiry officer respondent 2 had no jurisdiction to issue the second show-cause notice. If the departmental proceeding is one and continuous and there are no two departmental proceedings in the sense contended for by Sri Daru - and, as we shall presently point out, this contention of Sri Daru is against an authority of the Supreme Court - then, it cannot be said that the jurisdiction of respondent 2 to issue the second show-cause notice was dependent upon the existence of some evidence at the time of the enquiry. He has jurisdiction to take departmental proceedings for punishment and the question as to whether there is or is not the evidence to sustain the charge against the petitioner would be one of the facts which respondent 2 will have to determine and the determination of such question would be entirely within the jurisdiction of that officer. If the law were otherwise, one would also have to hold that the absence of any evidence against a delinquent in any departmental enquiry would deprive him of the jurisdiction to hold the enquiry. That would be putting the cart before the horse. Situations may be contemplated where evidence is expected against a delinquent and still, at the end of the enquiry, no evidence may be available. The fact that there is absence

of evidence cannot mean that initially the officer concerned had no jurisdiction to entertain the proceedings. But, even if one were to assume that Sri Daru is right in contending that total absence of any evidence touches the question of jurisdiction, it is difficult to concur with him that such absence is patent on the aforesaid ground. It is quite obvious that such a ground would not appear on the show-cause notice. By reading the show-cause notice itself, one cannot come to the conclusion that there was total absence of evidence in

7. the enquiry. It does not make any difference that the show-cause notice is accompanied by the report of the enquiry officer. Even if one were to read the report of the enquiry officer for the aforesaid purpose, one will not be in a position to reach the conclusion unless and until one is taken through the whole of the record prepared by the enquiry officer and it is only after one is taken through the whole of the evidence, oral and documentary, led before the enquiry officer that one would be able to reach the final conclusion that the case was one of total absence of evidence. In a case of this type, the defect of jurisdiction would be latent and not patent and, in our judgment, such a defect is not amenable to be cured by the issuance of a writ of prohibition. If this is so in regard to the first ground of attack by petitioner, it is much more so in regard to the second ground of attack. As was pointed out by Justice Sri S. T. Desai of the Bombay High Court in *S. C. Prashar v. Vasantsen* [(1955) 58 Bom. L.R. 184], in the second and the fourth propositions which he framed in regard to the true measure and scope of the power of the Court to issue a writ of prohibition, a distinction has to be made between a case where an authority is committing or has committed an error of law apparent on the face of its proceedings and a case of excess or usurpation of jurisdiction by such authority. The second ground of Sri Daru would come within the purview of an error of law and not an error relating to usurpation or excess of jurisdiction. Therefore, in our judgment, the first and the primary submission of Sri Daru deserves to be rejected.

8. That brings us to the alternative submission of Sri Daru and that alternative submission is that, having regard to the aforesaid two alleged defects, this Court has jurisdiction to issue a writ of certiorari in respect of the enquiry proceedings. Now Sri Daru's contention is that this Court has jurisdiction to issue a writ of certiorari in regard to enquiry proceedings

(i) if there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or

(ii) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice.

9. He contends that when these two defects appear in the course of the enquiry proceedings, the delinquent need not wait till a final decision is reached by the competent officer and that it is open to him to come straight to this Court to have the enquiry proceedings quashed. Sri Daru supports this proposition by the case of *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand*

Sobhraj Wadhvani and Another, . The two propositions on which Sri Daru relies are to be found in Para (8) at pp. 1508 and 1509 of the report. From that paragraph, it appears that the aforesaid two propositions did not embody a decision of the Court but represented concessions made by the learned Solicitor-General in that case. Sri Daru contends that those two concessions were approved of by their lordships in Para. (1) at p. 1509 and the approval was based upon the consideration of the previous decisions of the Supreme Court. The passage relied upon is as follows :

"The passage in the judgments of this Court we have extracted would indicate

(1) that the two exceptions which the learned Solicitor-General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive ..."

10. Sri Daru further submits that the propositions on which he relies were also formulated and approved of by their lordships of the Supreme Court in the case of *The State of Uttar Pradesh Vs. Mohammad Nooh*, . In that case, at p. 608 after an exhaustive review of a number of cases, their lordships reached the following conclusion on which Sri Daru relies :

"On the authorities referred to above it appears to us that there may conceivably be cases - and the instant case is in point - where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior Court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules or procedure and which offends the superior Court's sense of fair play, the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even, if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals" hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior Court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that."

11. In our judgment, the facts of the above two Supreme Court cases have no resemblance to the facts of the present case and the ratio of those two cases has nothing to do with the proposition for which Sri Daru contends. In both the aforesaid Supreme Court cases, decisions were already recorded by the quasi-

judicial authorities or tribunals and the question which arose for their lordships" decision was whether in those cases a writ of certiorari should go when the delinquents had not pursued the alternative remedies available to them by way of appeal from the decisions of the quasi-judicial authorities or tribunals. The observations which their lordships have made in both the above cases have got to be read in this context. In none of those two cases was the writ jurisdiction of the superior Court invoked when a decision had not yet been taken by the quasi-judicial authority or tribunal of the first instance. What petitioner has done in the present case is that he has approached this Court even before a decision is recorded by the competent officer who has authority to dismiss him. The competent officer has yet to reach a decision and for aught one knows, if the two contentions which Sri Daru now presses are urged before that officer, he may himself give a proper relief to petitioner. The question for consideration is whether, in a case of this type when a final decision has not yet been recorded by the authority of the first instance, this Court has jurisdiction to issue a writ of certiorari merely because an enquiry officer has recorded findings adverse to petitioner and the competent authority has recorded provisional and hypothetical decisions. The considerations which apply in those cases where a decision has been reached by the competent authority are totally different from the considerations which apply when a competent authority has yet to take a final decision which would punish the delinquent for which a remedy is available to him in this Court by invoking its writ jurisdiction. In the first case, a decision dismissing or removing the delinquent is reached and the proceedings are complete so far as the tribunal or the authority of the first instance is concerned and if there is lack of jurisdiction or violation of the principles of natural justice, this Court may be inclined in its discretion to interfere, even though the delinquent may have the alternative remedy of preferring appeals to higher authorities. Moreover it is important to notice that even in such cases the issuance of a writ is "discretionary" and not "as of right" or "as a matter of course." If the authority or the tribunal concerned has no jurisdiction whatsoever, the authority, as was done in *Shantaram D. Salvi Vs. M.M. Chudasama and Others*, may be prohibited by a writ of prohibition. But, once it is held that the authority has jurisdiction, there is no reason why, at an interim stage, the Court should withdraw the proceedings from the hands of the tribunal concerned and prevent the tribunal or authority from taking a decision on the defects relied upon by the delinquent. In deciding this matter, it would be important to bear in mind that the power which the Court exercises under Art. 226 of the Constitution of India is the power of judicial review and the power is not that of judicial supervision, superintendence or revision. Although the present petition purports to be under Art. 227 of the Constitution also, it is quite clear that the application of that article is misconceived. The article that can apply to the facts of the present case is Art. 226 and, having regard to the fact that there is no decision recorded by the competent officer, there is no occasion for any judicial review and it will be highly improper for this Court to arrogate the powers of superintendence or supervision or revision in regard to proceedings pending

before a quasi-judicial tribunal. Sri Daru tries to get over this difficulty in the following way. He contends that, in a departmental enquiry, instituted under the Police Rules, in fact, there is not one proceeding, but there are two proceedings, and that the first proceeding is complete before the second proceeding starts. We are unable to agree with this submission. Rule 4 of the Police Rules on which Sri Daru relies does not contemplate more than one proceeding at all. It contemplates the holding of a departmental enquiry without which an order of punishment cannot be recorded. Even the constitutional protection of a reasonable opportunity embodied in Art. 311, Clause (2), of the Constitution of India, which also must be satisfied, does not at all contemplate two proceedings. We may mention that the case of petitioner is governed by Clause (2) aforesaid before it was amended by the Constitution (Fifteenth Amendment) Act, 1963, on 7 October 1963. In regard to an enquiry designed to give a reasonable opportunity as contemplated by the Constitution, the submission made by Sri Daru is contrary to the observations made by their lordships in the case of *Bachhittar Singh Vs. The State of Punjab*, . Their lordships have observed at p. 397 as follows :

"Before we deal with the grounds we may state that the High Court was of the opinion that the proceedings taken against the appellant were made up of two parts :

- (a) the enquiry (which involved a decision of the question whether the allegations made against the appellant were true or not), and
- (b) taking action, i.e., in case the allegations were found to be true, whether the appellant should be punished or not and if so, in what manner.

12. According to the High Court, the first point involved a decision on the evidence and may in its nature be described as judicial while the latter was purely an administrative decision and that in so far as this was concerned, there was no reason why the State Government was incompetent to change its decision "if it thought administratively advisable to do so." We cannot accept the view taken by the High Court regarding the nature of what it calls the second part of the proceedings. Departmental proceedings taken against a Government servant are not divisible in the sense in which the High Court understands them to be. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the Government servant are established or not and the second is reached only if it is found that they are so established. That stage deals with the action to be taken against the Government servant concerned. The High Court accepts that the first stage is a judicial proceeding-and indeed it must be so because charges have to be framed, notice has to be given and the person concerned has to be given an opportunity of being heard. Even so far as the second stage is concerned, Art. 311(2) of the Constitution requires a notice to be give to the person concerned as also an opportunity of being heard. Therefore, this stage of the proceeding is no less judicial than the earlier one. Consequently,

any action decided to be taken against a Government servant found guilty of misconduct is a judicial order and as such it cannot be varied at the will of the authority who is empowered to impose the punishment" [The italicizing is done by us

13. The observations made by their lordships of the Privy Council in the case of AIR 1948 121 (Privy Council) also support the same view. At p. 126 of the report, their lordships state as follows :

"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) of S. 240 of the Government of India Act (1935) makes provision."

14. It is quite obvious from these observations that the findings recorded by the enquiry officer have no binding effect and do not determine any question regarding the right of the Government servant. If a writ of certiorari were to issue against the enquiry proceedings, this Court will be issuing a writ in respect of a matter which does not affect the right of the delinquent in regard to public service. Only the final order of the competent authority will have that effect and it is quite clear that, though the competent officer has reached provisional conclusions, he may record findings in favour of the delinquent and there may be no occasion for this Court to interfere with the final order in that case at all. In any case, having regard to the stage at which the proceedings are pending even in regard to the two matters on which reliance is being placed, the proper forum which the delinquent must address in regard to those matters is the forum of the competent officer and there is no occasion for the invocation of the powers of this Court for the issuance of the prerogative writ of certiorari. Under the aforesaid circumstance, in our judgment, the preliminary objection raised by Sri Sompura must be upheld and the writ petition must be dismissed on that ground.

15. We may mention that still, in the alternative, Sri Daru contends that we must, in the special circumstances of this case, exercise discretion in favour of the petitioner. The special circumstances relied upon by Sri Daru are that a joint enquiry was held against petitioner and three sub-inspectors of police. In regard to those three sub inspectors of police, final orders have been passed and they have preferred writ petitions which are pending decision in this Court and which are to be heard by us immediately hereafter. Sri Daru contends that, if those petitions are to be allowed, then, having regard to the fact that the contentions raised by petitioner in the present case are similar to the contentions to be raised in the other or some of those petitions we must exercise the discretion in favour of petitioner. We have given our careful thought to this submission of Sri Daru. Sri Sompura very strongly objects to any such course being taken. He says that, in case an adverse decision against the other petitioners is reached in any of

those petitions, then, highest respect would be given by respondent 2 in treating the two defects or any other defects which petitioner may point out. But the fact that those other matters have been decided by respondent 2 and the decisions in those matters are reversed is no ground for withdrawing the proceedings from the hands of respondent 2 and imposing our own decision at this interim stage. The point raised is of considerable importance, and, having regard to the fact that we are exercising jurisdiction of a special nature and of a high prerogative nature, we are of the opinion that we should not be influenced by the aforesaid considerations and interrupt the ordinary course of a departmental enquiry. Therefore, we propose to discharge the rule on the aforesaid preliminary ground. In the circumstances of this case, there will be no order as to costs.

16. Rule discharged. No order as to costs.