
(1956) 07 CAL CK 0001
In the Calcutta High Court
Case No : Civil Revn. No. 967 of 1955

A.R.S. Choudhury

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-07-1956

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : AIR 1956 Cal 662 : 60 CWN 933 : (1957) 1 LLJ 494

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Anil Kumar Das Gupta and Somendra Chandra Bose, for the Appellant; Ajoy Kumar Basu, for the Respondent

Judgement

Sinha, J.—The facts in this case are briefly as follows; In 1948, the petitioner was appointed as a temporary brakesman in the B. N. Railway. In May 1949 he was promoted to the rank of a Guard and posted at Khargpuf. The B. N. Railway has subsequently merged in the Eastern Railway. On or about 25-5-1951, while the petitioner was working at Nainpur, he was verbally ordered to proceed to Khargpur and attend an enquiry. He was not informed as to the subject-matter of the enquiry and no charge-sheet was framed against him at the time. At Khargpur the petitioner was informed that the said enquiry was against four Railway servants including himself, in respect of certain stolen articles. The petitioner alleges that he was confronted by four persons and directed to cross-examine them. It appears that the Railway authorities obtained confidential information that certain Khargpur Guards would be carrying stolen articles which had been previously found missing on transit. Certain articles were apprehended in a brake van sometime in August 1950 and the enquiry was to find out the connection of four guards including the petitioner, with these goods. There took place, what is called a "First class joint enquiry", being an enquiry by four officers. At this enquiry, a number of witnesses were examined, but all in the absence of the petitioner. On 31-5-1951, the petitioner was confronted with four witnesses, viz., Wilson, Ghose, Pal and Chatlerjee. These witnesses had already

made statements implicating the petitioner. Apart from the fact that these statements had been made in the absence of the petitioner, he was not even furnished with a copy of their statements. He was merely asked to cross-examine them. According to the petitioner, he asked for time but was compelled to go on then and there, and examine these witnesses, without being told as to what were the specific charges against him and what the witnesses had said against the petitioner. This however is not the whole picture. The petitioner was not confronted with all the witnesses that gave evidence against him. The Report of the enquiry (Ex. "B" to the petition) shows that at least 6 witnesses deposed against the petitioner. It is difficult to identify all of them, as only cryptic abbreviations denoting their rank are used. However, it is admitted by learned Advocate for the respondent that at least one witness, namely literate watchman A. Rahman had given evidence, upon which the enquiry tribunal relied, but he was not at all called to be cross-examined by the petitioner. In the counter affidavit, an attempt has been made to make out a case that the petitioner wanted to cross-examine, only "some" of the witnesses who had given evidence against him. This is wholly misleading, because the petitioner was never told as to who had given evidence against him, and what they had said. He was merely confronted with four witnesses and asked to cross-examine them.

2. The petitioner then went back to Khargpur and on 14-8-1951, was verbally informed that he had been suspended from the afternoon of that date. It appears that the Joint Enquiry Committee made a report on 8-6-1951, holding the petitioner guilty of the charges.

3. On 14-8-1951, a formal charge-sheet was Issued upon the petitioner. It runs as follows:

1. "You are hereby charged with the following offence-

(a) serious misconduct, (which may include one or more of the charges detailed below;---

(1)

(ii) Fraud.

2. Reasons for the charges are-

that on 11-8-50 you booked six packages containing stolen articles, i.e., tea-chests booked under Inv. No. 2 R.R. No. 78195 dated 10-8-50 Ex. TWH to VZM and waterproof caps and caps booked under P. W. Bill No. 47518-19 of 1-8-50 Ex. HYB to HWH by 42 Up with owner booked to MDN but got them loaded in the B/Van of the train (42 Up) in direct contravention of all rules.

On the same date, you travelled in the B. Van of the same train (42 Up) while not on duty Ex. HWH and you also left head-quarters without permission.

You were held responsible for the above charges at the first class joint enquiry.

3. You are directed to show cause in writing why you should not be removed from service or punished with any of the lesser penalties specified in Rule 1702 of the State Railway Code, Vol. I.

4. Your written explanation to the above charge is required to be submitted through DTS, NIR. An interval of 7 clear days is allowed to you from the date of receipt of this chargesheet. Failure to submit your explanation will be taken to mean that you have no explanation to offer and that you will be dealt with on the strength of the material available.

If you desire to be heard in person you should state so at the time of submitting your explanation to the charge(s)."

4. On 29-8-1951, the petitioner showed cause in writing and asked for a personal hearing. The Report, dated 8-6-1951 a copy whereof is annexed to the petition and marked "B" is in three parts. The first part consists of a summary of the facts. It concludes by saying that a "prima facie" case against the Guards (including the petitioner) for carrying stolen property "Is therefore established, and their complicity in the original thefts may not altogether be ignored". The second part of the Report is headed "Proceedings". This discusses the evidence adduced. I have already stated the nature of this evidence. Witnesses were examined in the absence of the petitioner and he was confronted with only some of them, and their statements already made were not made available to him. The Report then proceeds to state as follows:

"In view of all this evidence and Guard A. R. S. Chowdhary's denial of complicity in the whole affair, the Guard was confronted with the specific charges of:

(i) Leaving headquarters without permission,

(ii) Travelling by brake-van while not on duty, and

(iii) Carrying of stolen property for which he obtained an E.F.T. on an Inter Class ticket produced by him, which authorised him to carry the packages only with the "Owner" and not in the "Brake-van".

The evidence in support thereof was pointed out to him and he was given every opportunity to defend himself by cross-examination, of any of the witnesses. He persisted in his denial of all knowledge and was also unable by his cross-examination of the witnesses to challenge the veracity of the evidence on record proving his guilt.

The Committee of Officers are convinced that Guard A. R. S. Chowdhury has failed to disprove the charges against him and hold him responsible as being the prime mover in the commission of the crime."

I have already mentioned that in spite of this finding, a formal charge-sheet was issued. In answer, the petitioner gave an explanation and asked for a personal hearing. No personal hearing was given.

5. On 20-11-1951, a notice was issued upon the petitioner, a copy whereof is Ex. "O" to the petition. It intimated to the petitioner that with reference to the charge-sheet dated 14-8-1951, the petitioner had been held guilty of the offence he was charged with, namely, "Fraud". It was, therefore, proposed to remove him from service. He was asked to show cause as to why the proposed penalty should not be inflicted. On 16th/19th August, 1952, a letter signed by the District Traffic Superintendent, Eastern Railway, Nainpur, was issued, stating that the explanation tendered was not considered satisfactory and that the petitioner was dismissed. There has been some controversy upon the point as to whether it was this officer who dismissed the petitioner. It was however been made clear in paras 13 and 15 of the counter affidavit affirmed by Rajani Kanta Mitter on 25-7-1955, that the petitioner was dismissed by the Deputy Chief Operating Superintendent, Eastern Railway, Calcutta on 14-8-1952. On 8-9-1952, the petitioner appealed to the Chief Operating Superintendent, Eastern Railway, Calcutta. As nothing happened thereafter, the petitioner made an application to this Court and a rule was issued on 11-3-1953. In answer, it was alleged that the appeal was still pending and the application was premature. On 2-8-1954, the rule was discharged on the ground that regard being had to the pendency of the appeal, the application was premature.

6. On 5-8-1954, the petitioner caused a request to be made to the C. O. S. to proceed with the appeal. On 22-10-1954, the Personnel Officer (Traffic) wrote to the petitioner that he should submit the "final appeal" within 7 days. On 30-10-1954, it was pointed out by the petitioner that he had already filed an appeal and in fact the Personnel Officer had himself affirmed an affidavit in this Court and taken the objection that an appeal was pending. The petitioner prayed that the said appeal should be disposed of according to law. On 11-12-1954, the petitioner received a surprising communication from the Personnel Officer that as he had not complied with the "ad-Vice" contained in the letter dated 22-10-1954, to submit a "Final appeal", it was assumed that he had no appeal to prefer against the original decision and the case was "Accordingly closed". The petitioner protested against this and repeatedly asked that the appeal should be proceeded with, but nothing happened. This rule was issued on 5-4-1955, calling upon the opposite parties to show cause why a writ in the nature of mandamus should not issue directing them to forbear from giving effect to the order of removal and the order of the suspension and for other reliefs. In the affidavit in opposition it is stated that the Deputy General Manager (Personnel) has directed on or about 16-4-56 that the appeal should be disposed of according to law and before a decision was taken, the petitioner should be given a personal hearing. Nothing whatever was communicated to the petitioner. I shall come back to this aspect of the case later on.

7. Upon the facts of the case enumerated above, I am clearly of the opinion that the procedure followed is not in accordance with law and must be condemned. In this case, a departmental enquiry is supposed to have been held. If the first class joint enquiry be considered to be the departmental enquiry, then it was held

without framing a charge. The delinquent was confronted with some of the witnesses whose statements were taken behind his back. Other witnesses were not produced at all. If the charge-sheet dated 14-8-1951, is considered as the basis of the departmental enquiry, then it is evident that there was no enquiry at all. In fact, it was not a charge-sheet at all, because the charges are already stated to have been proved, and the only opportunity given is to show cause against the proposed punishment.

8. I have often heard the complaint that departmental proceedings are meant to be simple affairs and that the Courts by introducing variable legal dicta were making them too complicated to be conducted by lay-men not versed in law. I do not think that the complaint is justified. The Constitution of India, that fountain-head of our law enjoins that before a certain step is taken against a civil servant, a particular procedure is to be followed. The Courts have done their best to enunciate this procedure, which is by no means a complicated one, or too difficult for the lay-men to comprehend. But if these simple rules are not learnt or followed, if every enquiring officer tries to evolve his own peculiar rules of procedure, which in many cases are plainly arbitrary and unjust, then there is no other way left to the Court than to intervene and set matters right. It inevitably results in a frightful waste of time and harassment to all parties concerned. The departmental work is upset; officers who should be employed in their respective duties are taken away from their work, and the poor employee is kept on starvation diet for an indefinite period, leaving a scar which may never be healed. I shall therefore try to collect and enunciate these principles, which have by now become well established.

(1) The Constitution of India is paramount. While the Legislatures in their allotted spheres are supreme and can enact any law, however arbitrary it may be, the limits imposed by the Constitution cannot be exceeded. Unless the exemption is contained in the Constitution itself, a law which violates the Constitution, is to the extent void. (Article 13 of the Constitution).

(2) Article 311(2) of the Constitution lays down that no person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a Civil Post under the Union or a State, shall be dismissed or removed or reduced in rank until he has been given a "Reasonable opportunity" of showing cause against the action proposed to be taken in regard to him. There are three exceptions to this Rule, namely, (a) when there is a conviction upon a criminal charge, (b) where an authority empowered to punish is satisfied for reasons recorded in writing that it was not reasonably practicable to give such opportunity and (c) where the President, Governor or Rajpramukh deems it inexpedient to do so in the interest of the security of the State.

(3) This article applies to all civil servants of the category mentioned therein. There exist separate rules and regulations applicable to different classes of civil servants (e.g. Fundamental Rules, C. S. (C, C. A.) Rules, Railway Establishment Code, Subordinate Services Rules etc.), some of which have statutory force and

others are merely departmental rules. See Hirendra Nath Roy v. State of West Bengal 59 Cal WN 450 (A) for a history of some of the rules). But even where there are statutory rules, the provisions of the Constitution must prevail, and such rules, in so far as they are inconsistent with the provisions of Article 311, are void, and must be declared to be so. Mere departmental rules cannot of course be the subject-matter of mandamus, Surya Kumar Chatterjee and Another Vs. S.N. Banerjee and Others, ; Nagendra Kumar Roy, Assistant Executive Engineer Vs. Commrs. for the Port of Calcutta and Others, . But whether rules are statutory or departmental, the provisions of Art, 311 cannot be violated or overruled.

(4) What is reasonable opportunity has not been defined in the Constitution or in the General Clauses Act.

(5) The words have a legal meaning. It cannot be left to the vagaries of each individual, since that would introduce a thousand shades of reasonableness, which cannot be permitted.

(6) It must therefore mean "reasonable" according to the rules of natural justice, which are rules of law. P. Joseph John Vs. The State of Travancore-Cochin, .

(7) What are "Rules of natural justice" has not been completely or absolutely defined. But some principles have been laid down, which are widely accepted.

(8) Two of these principles are generally applicable to all departmental enquiries, namely, (a) a person must be told clearly and specifically of the offences with which it is intended to charge him, and (b) he must not be condemned unheard. Board of Education v. Rice, 1911 AC 179 (E) ; Local Government Board v. Aldridge 1915 AC 120 (F) ; Statford v. Minister of Health (1946) 1 KB 621 (G) ; Dipa Pal Vs. University of Calcutta, ; Kandinella Ramayya Vs. The Madras State, ; Kanai Lal Chatterjee Vs. Union of India (UOI) and Others, ; Shiv Nandan Sinha v. State of West Bengal 59 Cal WN 794 (K).

(9) Bearing these two principles in mind, the procedure to be followed becomes easy of comprehension. A departmental enquiry consists of four main stages, viz., (a) charge, (b) investigation of the charge, (c) finding, punishment and (d) appeal. It will be useful to deal with each of these stages progressively.

(10) Charge.-- A departmental enquiry is not conducted with the rigidity of a judicial trial. Hence, the charge which is to be framed need not be framed with the precision of a charge in a criminal proceeding. But it must not be vague or so general as to make it impossible of being traversed. The test is as to whether the charge conveys to the delinquent, the exact nature of the alleged offence, in a way that would enable him to meet the charge. In order to frame a charge, it is permissible to have a preliminary enquiry. This preliminary enquiry may be ex parte and it would be permissible to interrogate the delinquent; Such a preliminary enquiry is not only permissible but is a very desirable step, because civil servants should not be charged with offences recklessly and without reason.

(Judgment in Civil Revn. No. 3558 of 1953, D/- 11-3-1954 (Cal) (L) and Bhagwandas Vs. Senior Superintendent, Way and Works, Eastern Rly., . But there is one important limitation to such an enquiry, which is so often forgotten. It is no substitute for the departmental enquiry itself. The preliminary enquiry is merely for the purposes of framing a charge, and the results cannot be deemed to be conclusive. If there is a report, this cannot be evidence unless the delinquent has been furnished with it and afforded an opportunity of meeting it, High AIR 1948 121 (Privy Council) ; Queen v. London County Council Exp. Commercial Gas Co. 11 TWN 237 (O). Evidence heard at such preliminary enquiry must be repeated at the enquiry, if it is considered necessary to rely upon it. The charge must be issued in the name of the punishing authority and must consist of the particulars of the alleged offence, with the object of affording the delinquent an opportunity of meeting them. There is no question of the alleged offences having been "Tentatively proved", and the delinquent called upon to disprove them. Until the charges have been proved, the punishing authority must keep an open mind. A charge which merely calls upon the delinquent to deal with the proposed punishment is bad because the delinquent is entitled to show cause against the charge as well as the punishment, State of Bombay Vs. Gajanan Mahadev Badley, . The charge-sheet which is a document containing the charge or charges, may contain particulars of the proposed punishment or may not do so. Where there is a single charge and a single punishment is proposed, it is advisable to mention the punishment, since this obviates the necessity of a second show cause notice. But where there are more than one charge or more than one proposed punishment, it is necessary to serve a second show cause notice to convey to the delinquent the information as to what charge has been proved and what punishment proposed to be inflicted upon a proved charge. Otherwise he cannot effectively deal with the question. AIR 1948 121 (Privy Council); C. Sambandam Vs. The General Manager, South Indian Railway, Tiruchirapalli, ; Jatindra Nath Biswas Vs. R. Gupta, Superintendent of Police and Others, ; Sisir Kumar Das Vs. State of West Bengal and Others, ; P. Joseph John Vs. The State of Travancore-Cochin, .

(11) Investigation of the charge.--A departmental enquiry is not a judicial proceeding and the law and procedure applicable to judicial proceedings are not applicable. The strict rules of the law of evidence are not to be applied. 1911 AC 179 (E) : 1915 AC 120 (F).

But this does not mean that the proceedings can be held in an arbitrary manner. The rules of natural justice must still be applied. (See under heading 8). The question often arises as to whether, after a person has submitted his written explanation, there should be a personal hearing or not. Ordinarily there must be a personal hearing. If a person is entitled to show cause, he is entitled to a hearing, and if he is entitled to a hearing, he must have the opportunity of being personally heard, of calling his own evidence and cross-examining any witness called by the prosecution. Rama Shanker Srivastava Vs. Divisional Supdt., Northern Railway, Allahabad, ; Avadhesh Pratap Singh Vs. State of Uttar Pradesh

and Others, ; Ravi Pratab Narain Singh Vs. The State of Uttar Pradesh and Another, .

It Is, therefore, advisable to include a direction in the show cause notice that if the delinquent wishes to be heard in person, he should indicate it in his defence. If in spite of such a direction, the delinquent does not ask for a personal hearing, there is nothing to prevent the case being disposed of on the charge-sheet and the written explanation. Where there are statutory rules laying down the procedure such rules must be followed. Some rules, framed prior to the coming in force of the Constitution, provide that the punishing authority may, upon a consideration of the written explanation, decide not to initiate a departmental enquiry but proceed to make such order as it- thinks fit. For example, Rule 1707 of the Railway Establishment Code, Vol. I, page 180, deals with the dismissal of Non-gazetted staff. Sub-rule (a) requires a formal charge-sheet to be served and the delinquent is required to submit a written explanation. Sub-rule (b) lays down that the officer competent to dismiss should consider the explanation and then either institute a departmental enquiry or "pass such order as he thinks fit". Sub-rule (c) pro-Tides that if the railway servant asks to be heard in person, there must be a departmental enquiry. In the case of removal, it seems that in the "case of officers who have completed 7 years continuous service, a departmental enquiry may be dispensed with. In that case, if the railway servant asks for a personal hearing he will be granted a personal interview only. In the case of railway servants who have not completed seven years" continuous service, under Rule 1709(b) read with Rule 1712 there need not be any departmental enquiry. Sub-rule (b) of Rule 1709 has now been omitted by an amendment made in 1953. Rule 1707 seems to be in accord with the Constitution because it pro-Tides for a departmental enquiry if the railway servant wants it. The rules for removal however are clearly invalid as they violate the provisions of Article 311(2) of the Constitution. No rules can be framed, or are valid which take away the rights conferred by that Article. It seems, however, that the authorities realised this in the case of non-gazetted servants who have not been in seven years continuous service. In the case of the latter, however, this has been lost sight of.

There is no bar upon the authority entitled to punish, to delegate the enquiry to subordinate officials. Indeed, this is the manner in which it is usually conducted. Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court, .

But the person dealing with the enquiry at any stage is in the position of a Judge, and the rules of natural justice demands that he should not himself be personally interested in the case. Frome United Breweries Co. v. Bath Justices. (1926) AC 586 (X). He should be a person with an open mind, a mind which is not biased against the delinquent. Eckersly v. Mersey Docks and Harbour Board (1894) 2 QB 667 (Y); R. v. Sussex Justices (1924) 1 KB 256 (Z): R. v. Rand (1866) 1 QB 230 (Z1) : (1926) AC 586 XX); R. v. Camborne Justices (1954) 2 All ER 850 (Z2). He should not have prejudged the issue. East India. Electric Supply and Traction Co.

Ltd. v. S. C. Dutt Gupta 59 Cal WN 162 (Z3). He cannot act both as a Judge and a witness. Bijoy Ch. Chatterjee v. State of West Bengal, 58 Cal WN 988 (Z4), There is no bar to a person, issuing the show cause notice to try it himself. The principle that a prosecutor cannot be a Judge is not strictly applicable to departmental enquiries. Province of Bombay Vs. Kusaldas S. Advani and Others, . But he must not lower himself to the status of a common prosecutor, that is to say of a person who feels it a part of his function to bring the guilt home to the accused at any cost. He must act with the detachment of a Judge, since he is professing to exercise that dignified function.

The provisions of the Indian Evidence Act are not strictly applicable, so it is not relevant to consider if facts have been "Proved", according to law. It is permissible to look into documents or records which strictly speaking would not be evidence in a Court of law, but with one safeguard. Any document or record which is looked into or relied upon must be disclosed to the delinquent and he must be afforded an opportunity of dealing with it. P. Joseph John Vs. The State of Travancore-Cochin, . Where witnesses are called, their entire evidence must be taken in the presence of the delinquent, who must be permitted to cross-examine all such witnesses. It is not permissible to examine witnesses in the absence of the delinquent or take ex parte statements and then ask the delinquent to cross-examine. State of Bombay Vs. Gajanan Mahadev Badley, .

It frequently happens that after the show cause petition, the delinquent is called upon to give a list of witnesses which he proposes to call and state the relevancy of their evidence. If the delinquent does not satisfy the enquiry tribunal that the evidence is relevant, he can disallow it after recording the reasons in writing. This I think is a salutary principle and permissible in a departmental enquiry. There is an unfortunate tendency amongst delinquents of citing all the top ranking officers as witnesses, hoping that this would act as a deterrent to further proceedings. But where the evidence is relevant, it cannot be excluded. There is also a very vexed question as to who is to produce the evidence. Departmental tribunals have no power to issue summons or subpoenas. Often the delinquent asks the authorities to produce witnesses at the enquiry. There is no law which requires the authorities to produce any witness when required by the delinquent to do so. But equally it must be remembered, that when such a witness is within the control of the authorities and when the delinquent cannot produce him and the evidence appears to be relevant, the authorities must extend all help to the delinquent to procure such evidence. Krishna Gopal Bose v. Director of Telegraphs, West Bengal 60 Cal WN 692 (Z6). The same is the case with regard to documents in the possession or power of the authorities. If they are relevant and the delinquent requires their production they should be produced. Where such evidence is relevant and within the possession and power of the authorities but not produced, there results only a mockery of a trial and the proceedings may be set aside. The Court must see that justice is done.

(12) Upon a charge being served upon the delinquent, he is generally suspended

and kept on a subsistence allowance. Most rules provide for suspension. But in any event the authority having power to appoint has the power to suspend or dismiss (S. 16, General Clauses Act). An order of suspension cannot be retrospective. *Hemanta Kumar Bhattacharjee Vs. S.N. Mukherjee*, . But when an order of dismissal is made, the order of suspension merges in it. If such order of dismissal is set aside by Court, the order of suspension does not revive. *Om Prakash Gupta Vs. The State of Uttar Pradesh*, . If it is intended to continue the departmental proceedings, a fresh order of suspension should be passed again, without delay. (13) Finding:--The enquiry, where it is held by a delegate, results in a report containing the recommendations of the tribunal enquiry. The enquiring officer must be careful to deal with the charges as framed and not depart from them or import extraneous matters. 60 Cal WN 692 (Z6). The report is forwarded to the punishing authority. Even at this stage, the charges cannot be said to have been proved, even if the enquiring officer finds them to be so. Such findings are still in a vicarious stage. The punishing authority must himself be satisfied about the correctness of the findings. He is neither bound by the findings or the recommendations. He must give his independent attention to the matter and come to his own conclusions. Usually he agrees with the findings of the investigating tribunal. In such a case, there is no question of his giving reasons for such acceptance. But where he disagrees, he should record reasons as otherwise the delinquent cannot show cause against it or appeal. Where there are more than one charge and more than, one punishment has been mentioned in the first show cause notice, or where no punishment has been mentioned therein, a second show cause notice must be issued by the punishing authority to the delinquent to show cause against the particular punishment to be inflicted upon a proved charge. *High Commr. for India v. I. M. Lal (N) (Supra)*, *P. J. John v. The State of T. C. (D) (Supra)*, *Jatindra Nath Biswas v. R. Gupta (B) (Supra)*.

At this stage, there is no question of reagitating the findings upon the charges or of again hearing evidence. All that is necessary is to intimate to the delinquent as to what charge has been proved and what punishment is sought to be inflicted. At this point of time, however, the delinquent is entitled to a copy of the Report (or to inspection thereof) of the enquiry tribunal and if the punishing authority disagrees with the same, to the reasons for his disagreement. It is plain that without the same the delinquent can never show cause against the proposed punishment. Many rules and regulations require that copies of the proceedings including the report can only be supplied after the order of punishment. One can understand such a rule with regard to copies of the evidence, since that will be required only for the purposes of appeal. But this does not apply to the "Report" of the preliminary enquiry which is essential at this stage and must be supplied.

(14) Punishment.-- What punishment can be meted out to public servants are contained in the rules and regulations applicable to them. (e.g. Section 49 of C.S. (C.C.A.) Rules). Article 311(2) deals with three kinds of punishment only, namely, dismissal, removal from service or reduction in rank. Termination of service in accordance with a contract or the conditions of service, does not

amount to dismissal. *Satish Chandra Anand Vs. The Union of India (UOI)*, . *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, ; *Sm. Anima Munshi Vs. Engineer-in-chief and General Manager, Calcutta Telephone District*, . Nor where the post is temporary and the post has been abolished. *Brajnandan Prasad and Another Vs. State of Bihar and Others*, . Where by contract or the conditions of service, a service may be terminated without reasons shown or simply by serving notice, the mere fact that there has been a prior enquiry, does not take away the power of the authorities to terminate such service in terms thereof. Government is not expected to act arbitrarily and does often make such enquiries to make up its own mind as to whether the services of the employee should be terminated or not (Judgment D/- 11-5-1954 in Civil Revn. No. 3558 of 1953 (Cal) (L)). *Bhagwandas Vs. Senior Superintendent, Way and Works, Eastern Rly.*, . In such cases, however, care should be taken not to mention the enquiry or the finding in the letter terminating the services. This often leads to applications to Court urging that the action taken was in fact punitive and amounted to a dismissal. *Kamta Charan Srivastava Vs. Postmaster-General and Another*, .

But where, the action taken is plainly not in accordance with the terms of a contract but by way of punishment, it amounts to dismissal and the provisions of Article 311(2) is attracted. *Balai Chand Basak Vs. N. Roy Choudhury, Additional Refugee Rehabilitation Commissioner, West Bengal and Others*, . In this respect there is no difference between permanent or temporary service.

Reduction in rank by way of a penalty attracts the provisions of Article 311(2). *Jatindra Nath Biswas Vs. R. Gupta, Superintendent of Police and Others*, . An order of suspension however does not amount to reduction in rank. *Shiva Nandan Sinha and Others Vs. State of West Bengal*, . Where a person is reverted from an officiating post to his substantive post, on the ground of unsuitability, this is not reduction in rank. *Rabindra Nath Das v. The General Manager, Eastern Rly.* 59 Cal WN 859 (Z16).

(15) Appeal.-- Appeal is a matter of statute, Unless the law or rules having the force of law provide for it, there is no inherent right to appeal. But where there is an appeal, it presupposes that the appellant is entitled to a hearing, even though there may be no specific rules to that effect. In a departmental enquiry the appellant must of course claim to be heard in person, before he can be heard to say that a hearing has been denied. *Bhagat Ram Baika Vs. Prabirendra Mohan Tagore and Others*, . An alternative remedy by way of appeal is not an absolute bar to proceedings under Article 226, *Atulya Kumar De and Others Vs. The Director of Procurement and Supply and Others*, . But the Court is very reluctant to interfere where there is an alternative legal remedy which is equally efficient and adequate, and would not do so where the delinquent has actually taken recourse to it.

9. These being the rules to be applied to departmental enquiries, let us see whether they have been followed. In the first instance, there was an enquiry

without the framing of a charge. If this is considered as a preliminary enquiry to frame a charge, I could have understood it. But it is not so. If however the charge-sheet dated 14-8-1951, be considered as the basis of the departmental enquiry, then it is evident that there was no enquiry at all. As I have already pointed out, the so called charge-sheet is not a charge-sheet at all because it is stated that the charges have already been proved. The petitioner was confronted with some witnesses and forthwith asked to cross-examine them. He was not given their statements although they had deposed behind his back. Some witnesses were not produced at all. Thus there has been a violation of the rules at every stage and the order of dismissal and the proceedings culminating in such order, are all invalid and must be set aside and quashed. It is argued by Mr. Basu that the order made here is one of removal and he draws my attention to Rule 1709 in the Railway Establishment Code, Vol. I, p. 180. Prior to the amendment of 1953, a Railway servant without seven years continuous service, had no right to ask for a departmental enquiry at all. As I have mentioned above, this rule is clearly ultra vires and void as contravening the provisions of Article 311(2) of the Constitution, Fortunately however Sub-rule (b) has been omitted by an amendment of 1953. Even though this is a case prior to the amendment, the position is the same. The petitioner has a right to be heard under Article 311(2) of the Constitution and this right is paramount. No rules can affect it. A removal by way of punishment is nothing but a dismissal. Lastly, the point is taken that the appeal preferred by the petitioner is still pending. This appears to me to be a most untenable point. It will appear from the facts stated above that the petitioner appealed to the Chief Operating Superintendent on or about 8-9-1952. As nothing happened, the petitioner made an application to this Court and a rule was issued on 11-3-1953. In answer to the rule, the Personnel Officer himself affirmed an affidavit that the appeal was pending and an application under Article 226 was premature. On 2-8-1954, the rule was discharged on that ground. I have set out above what happened subsequently. "In my opinion, after the events that have happened, it cannot be said that the respondents are going on with the hearing of the appeal. The Deputy General Manager (Personnel) has no right to direct the Chief Operating Superintendent to hear the appeal. In any event, an alternative remedy is not an absolute bar to the making of an order under Article 226 of the Constitution. This is a most appropriate case in which such Jurisdiction should be exercised. Already about four years have passed and the petitioner has been first put on a starving allowance, which also has now stopped. I do not for a moment minimize the gravity and seriousness of the offences charged. But since the enquiry held is plainly defective, and any valid order of punishment will be dependant upon a fresh enquiry, the sooner it starts, the better for all parties concerned. There is no sense in uselessly prolonging the agony.

10. The result is that this rule must be made absolute and a writ in the nature of certiorari should be issued and the order of removal and/or dismissal of the petitioner made by the Deputy Chief Operating Superintendent, Eastern Railway,

respondent 6 on or with effect from 14-4-1952 and in the pleadings mentioned must be set aside and/or quashed, and a writ in the nature of mandamus should be Issued directing the respondents to forbear from giving effect to it. If the respondents are desirous of continuing the departmental proceedings against the petitioner they should proceed to do so now, according to law. There will be no order as to costs.