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**(1987) 11 CAL CK 0001**  
**In the Calcutta High Court**  
**Case No : F.M.A.T. No. 2107 of 1986**

Arunagshu Biswas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 18-11-1987

**Acts Referred:**

Constitution of India, 1950 — Article 14, 311(1), 311(2)

**Citation :** 92 CWN 785

**Hon'ble Judges :** M.N. Roy, J; Dilip Kumar Basu, J

**Bench :** Division Bench

**Advocate :** Arup Kumar Lahari, for the Appellant; Amaresh Chandra Bhattacharjee, for the Respondent

**Final Decision :** Dismissed

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## Judgement

M.N. Roy, J.—This appeal is directed against the judgment and order dated 12th June, 1986, passed by a learned Single Judge of this Court in C.R.No. 60(W) of 1981 and by such determination the Rule, which was obtained by the Appellant/petitioner, who was initially appointed as a Lower Division Clerk in the office of the Commissioner, Commercial Taxes. Government of West Bengal and at the material time of obtaining the Rule, was transferred to the office of the Commercial Taxes. Jalpaiguri Charge, was discharged. Admittedly, on or about 4th January, 1975, one Shri S.R. Das Roy, Inspector of the Anti Corruption Bureau, Vigilance Commission. Government of West Bengal visited the house of the appellant/petitioner and instructed him to appear before the said Inspector at Calcutta on diverse dates and thereafter on or about 14th February, 1978, the appellant/petitioner was served with a charge-sheet by the Commissioner of Commercial Taxes, Government of West Bengal, Respondent No. 3, along with a statement of imputation of allegations. The charges as appeared from the charge-sheet were as under : -

Sri Arunagshu Biwas while functioning as L.D. Clerk in the office of the Commercial Tax Directorate, Govt. of West Bengal, 14, Beliaghata Road,

Calcutta-15 made the following transactions :

- (i) Purchased land on 20.11.76 measuring 3 1/2 cottash at a cost of Rs. 5,500/- in the name of his wife Sm. Hashi Biswas.
- (ii) Purchased on 18.1.72 two storied building at 104, Kabi Nabin Sen Road, Calcutta-28 at a cost of Rs. 35,000/- in the name of his wife Sm. Hashi Biswas.
- (iii) The plot of land mentioned in item (i) was sold out on 28.5.75 at Rs. 8,000/-.

Sri Biswas, as it appears did not obtain prior permission of his. Appointing Authority at the time of purchasing the aforesaid land and house and the selling the" land in the name of his wife and thereby contravened rule 15(2) of the West Bengal. Government Servant's Conduct Rules, 1959.

#### ARTICLE OF CHARGE - II

Shri Arunangshu Biswas, while functioning as above in the above office, during the period from 1.1.71 to 28.1.72 acquired by purchase a two storied building pucca building at 104, Kabi Nabin Sen Road, Calcutta-28, in the name of his wife Sm. Hashi Biswas at a cost of Rs. 35,000/- Out of the said amount, a sum of Rs. 3,000/- for which the explanation of Sri Biswas does not seem to be convincing, appears to be disproportionate to his known source of income. Thus the conduct of Sri Biswas prima facie shows lack of integrity violative of Rules 3 and 4 of the West Bengal Government Servant's Conduct Rules, 1959.

2. On a reading of the concerned charges, it appeared that it was alleged that the appellant petitioner did not obtain prior Permission from his employer at the time of purchase and thereafter disposed of a plot of land measuring about 3 1/2 cottachs standing in the name of his wife and also at the time of purchasing a two storied building at No. 104, Kabi Nabin Sen Road, Calcutta-28 in her name at a price of Rs 35,000/- and that a sum of Rs. 23,000/- appeared to be disproportionate to Ms known source of income.

3. The appellant/petitioner replied to the charge-sheet, claiming inter alia amongst others, that the assets acquired by him were not disproportionate to his known source of income. Thereafter, there was a departmental proceeding held against him and it was contended that in the said proceeding, the rules of natural justice were violated inasmuch as the appellant petitioner was not allowed the" assistance of lawyer, though he was faced in such proceeding against a well trained Police Officer, possessing sufficient knowledge in the matter of prosecution. It has also been claimed that the appellant petitioner was not favored with a copy of the report of the Preliminary enquiry as conducted by the Inspector of the Anti Corruption Bureau, whose particulars have been given hereinbefore, on the ground that the same was a secret document. The appellant petitioner also contended that while conducting the enquiry, the enquiring authority also misplaced the onus upon him though the same should have been with the prosecution and they were required to prove the charges.

4. The appellant petitioner further claimed that the disciplinary authority i.e. the Respondent No. 3, mechanically agreed with the findings as recorded by the enquiry authority and recommended his dismissal from the service. From such order, the appellant petitioner had preferred an appeal, which also failed and the concerned appellate authority; according to the appellant-petitioner mechanically accepted the findings of the enquiry authority and so also of the disciplinary authority without assessing the point itself viz. whether the charges as framed, were established against him on proper evidence.

5. Against such determination the application on which the Civil Rule was issued, was moved in this Court asking for Writ of or in nature of Mandamus amongst others commanding the Respondent authorities to cancel, withdraw and set aside the appellate order, which was passed on 14th October 1980, by the Secretary to the Government of West Bengal, Department of Finance, Respondent No. 2 as well as the order of dismissal dated 5th June 1979, the particulars whereof have been indicated hereinbefore.

6. The Respondents in the writ proceeding filed their affidavit-in-opposition through Devy Kurian Mansvalan, Respondent No. 3, wherein the allegations as made in the writ petition were denied. The said affidavit of course accepted the other facts with reference to the joining of the appellant petitioner in the post of Upper Division Clerk on promotion, but the date of such joining was mentioned as 4th January 1978. The deponent of the affidavit has further stated that the appellant petitioner was allowed the benefit of New Intermediate Selection Grade in consideration of his continuance in the service in the same cadre or post. It has been stated that for such grant of the concerned grade, the qualification of the appellant petitioner or his meritorious performance in the service as claimed, was not required to be considered. It has been stated that the appellant petitioner could not explain or the explanation as given by him, could not establish the sources from which he collected the sum of Rs. 23,000/- at the time of purchasing of the house at No. 104, Kabi Nabin Sen Road, Calcutta-28. It was also the case of the deponent that the prayer of the appellant petitioner for being represented by a lawyer as mentioned in his letter dated 4th July 1978, was duly considered by the enquiry authority and it is not necessary or permissible by the existing Government Servants' Conduct Rules i.e. West Bengal Services (Classification, Control and Appeal) Rules, 1971, that he should be given opportunities to have his case represented by a lawyer. It has been stated that such refusal in not allowing a lawyer to represent the case of the appellant petitioner before the enquiry officer, has not prejudiced the enquiry and the same does not amount to denial of reasonable facilities for defending the case.

7. It was also the case of the deponent that the refusal to furnish the concerned Inspection report of the preliminary enquiry and on the basis of which the provisional charge was framed did not by itself prejudice the appellant petitioner, in the matter" of his defence and that such action, by itself could constitute

refusal of reasonable opportunities to put forward the defence of the appellant petitioner inasmuch as the order of the appointing authority discharging him, contained the articles of charges and he was allowed to rebut them with due and sufficient opportunities both by the enquiry authority and the appointing authority. The relevant papers were also claimed to be confidential. It had also been indicated that it is upto the head of the department to decide which evidence or any unpublished record relating to the personal affairs of a Government servant's should be made available to him and the appellant petitioner was allowed reasonable and effective opportunities to explain the charges as levelled and withholding as involved in the case, was strictly administrative and also related to secret records relating to the Government Servant's conduct and as such the refusal was not contrary to the principle of natural justice and such refusal in no way in no way infringe the fundamental rights. It has been pointed out that while issuing the charge-sheet, the appointing authority considered the report of the Vigilance Commission, Government of West Bengal but it is not a fact that the said authority did not apply its mind in issuing the concerned charge-sheet. It has further been indicated that the appellate authority in the instant case made independent findings with regard to the charges against the appellant petitioner or his concerned conduct while serving the Government after taking into consideration all the charges as framed duty. The deponent has also stated that the appellant authority in the instant case came to the conclusion that the enquiry in question, was considered in contemplation with the provision of the Rules as mentioned hereinbefore and so also in law and the said authority was satisfied regarding the validity and bona-fide of the charges of the substance whereof, they were issued. The charge-sheet, the deponent has also pointed out, has not indicated contend any explanation of the authorities concerned about the petitioner's guilt and the same has further been claimed to have been issued in accordance with law and in any event, the same was said to be not bad in law, illegal or void ab initio as alleged. It has also been stated by the deponent that the concerned charge-sheet was issued after due application of mind and there was no motive behind the same. It was his case that the findings of the enquiry authority were not perverse or based on no evidence, since, the explanation as submitted by the appellant petitioner, could not justify the stand as taken by him now. The deponent has further stated that while making the impugned orders the authorities concerned duly considered all "aspects and to submissions as made by the appellant petitioner and the findings as arrived, were not perverse or motivated or illegal and bad in law as claimed.

8. Before the learned Trial Judge, Mr. Lahari appearing for the appellant petitioner, challenged the departmental proceedings leading upto his order of dismissal, as violative of the principles of natural justice mainly on the grounds (a) refusal to the appellant petitioner of the assistance of the lawyer Inspite of asking for the same, was bad, irregular and in violation of principles of natural justice, (b) non supply to the appellant petitioner the copy of the preliminary

enquiry report also vitiated the proceedings, apart from claiming that the grounds as mentioned hereinbefore, would also apply in such case of non-supply of the preliminary enquiry report and (c) the placement of onus of proof on the appellant petitioner was wrong and such onus, in the facts and circumstances of the case lay very heavily on the Respondent authorities and they have failed to discharge such onus. Apart from the grounds as mentioned above. Mr. Lahari also claimed that the issue of the charge-sheet after a long lapse of time was not proper, bonafide and valid and because of such delay, the charge-sheet, which became state should not have been given effect to or proceeded with.

9. The learned Trial Judge, after quoting the relevant particulars of the concerned charge-sheet has indicated that so far charge No. 1 was concerned, there was no dispute that the transactions mentioned therein, were effected by the appellant petitioner without the previous knowledge of his appointing authority and as such the same was in clear violation of Rule 15(2) of the Service Rules, the particulars whereof, have been indicated earlier. He has further recorded that the appellant petitioner, in his" reply simply pleaded ignorance and such pleading, which according to the learned Trial Judge was of no assistance, was rightly held to be so by the departmental authorities.

10. So far charge No. 2 is concerned, the learned Trial Judge has recorded that the same is graver of the two charges and the same related to acquisition of assets by the appellant petitioner, which was disproportionate to his known source of income. He has also mentioned that the appellant petitioner acquired by purchase, a two storied building at 104, Kabi Nabin Sen Road, Calcutta-28, by registered deed of sale dated 28th February 1982 in the name of his wife and it has further been indicated what defence the appellant petitioner took regarding his assets as stood on 1st January 1972. In fact, it has been indicated that the appellant petitioner has disclosed that he acquired the consideration money of Rs. 35,000/- by (i) Rs. 12,000/- by sale of land, (ii) Rs. 5,000/- by way of inheritance of paternal wealth, (iii) Rs. 3,000/- way of marriage dowry, (iv) a loan of Rs. 2,000/- from his cousin one Sri P.C. Bose, (v) a loan of Rs. 5,000/- from his brother-in-law, Sri K.N. Bhahmo, (vi) a loan of Rs. 2,000/- against his L.I.C. Policy, (vii) a loan of Rs. 4,000/- from one Sri G.C. Sur and (viii) secured a sum of Rs. 1,500/- from his own savings. It has been stated by the learned Trial Judge that out of the abovementioned sources in respect of such sum of Rs. 35,000/- the authorities have accepted as correct, the amount as shown against (iv), (v), (vi) and (vii) i.e. a total sum of Rs. 12,000/- and regarding the balance of Rs. 23,000/- the sources as disclosed in (i), (ii), (iii) and (viii), were not accepted and as such a sum of Rs. 23,000/- as mentioned above, was found observed to be disproportionate to the appellant petitioner's known source of income and the charge-sheet in question, was issued against him on that basis.

11. The learned Trial Judge has further pointed out that on filing his explanation to the charge-sheet, a departmental enquiry was held and in response to the notice, the appellant petitioner, by letter dated 4th July 1978, requested the

enquiry authority to permit him to be represented by lawyer. The said letter has been disclosed in Annexure "C" to the writ petition and the learned Trial Judge has also recorded that by the same, the appellant petitioner simply stated that it would be convenient for him if he is allowed to be represented by an Advocate, without mentioning the difficulties as felt or experienced by him.

12. Before the learned Trial Judge, the learned Advocate appearing for the appellant petitioner, pointed out that since one Inspector of Police of the Vigilance Commission was appointed as presenting officer in the departmental enquiry, and since he was required to face in the said enquiry a person having sufficient knowledge in the matter of prosecution, in all fairness, he should have been allowed the assistance of a lawyer, so that he could properly defend himself. The learned Trial Judge has recorded in his finding with regard to the right of legal representation on a departmental proceedings and has indicated that it is well settled that though normally the Court should discourage involvement of a legal practitioner in simple domestic enquiry for avoiding complication and delay, the necessity of such a representation in exceptional cases could be ignored and such exceptional cases would be where refusal of their representation would constitute failure of the enquiry itself. According to him no general rule can be laid down in this aspect and the concerned issue should be left for consideration in the light of the facts of each individual case. He has also pointed out that such refusal to be represented by a lawyer would amount to failure to give reasonable opportunities to show cause within the meaning of Article 311(2) of the Constitution of India.

13. It has been held and observed by the learned Trial Judge in this case, that neither of the two charges as levelled against the appellant petitioner involved any complicated question of facts or law. He has recorded that so far charge no. (1) is concerned, the same is simply a question of technical default and the appellant petitioner admitted the fact by pleading ignorance of the relevant rules. Regarding charge no. 2, it has been observed by the learned Trial Judge that the relevant assets statement submitted by the appellant petitioner clearly showed that he understood the implication of the said charge and disclosed item-wise the sources.

14. With regard to non supply of the preliminary enquiry report, which was claimed to be secret document, it was contended before the learned Trial Judge, by the learned Advocate that such refusal of the enquiry authority or in not supplying the concerned report, amounted to refusal on their part, the reasonable facilities and opportunities to do justice in the case of the petitioner or to have him necessary opportunities to defend himself properly. The learned Trial Judge has recorded that on the basis of the concerned charge as levelled against the appellant petitioner, it was not clear how the preliminary enquiry report was necessary for him, to defend himself properly. He has pointed out that so far charge No. 2 was concerned, the appellant petitioner could have proved the sources of money before the departmental authorities or to their satisfaction,

by adducing legal, oral or documentary evidence and as such also, it was not clear to him as to how the said preliminary enquiry report or the production thereof, could have helped the appellant petitioner. He has further indicated that the officer of the Vigilance Commission, who held the preliminary enquiry, was examined by the disciplinary authority and from the report, which has been disclosed as Annexure-E to the writ petition, it would appear that he simply produced the salary sheet of the appellant petitioner from January 1965 - December 1972, a certified copy of the relevant deed of sale and certain other documents. It, has also been recorded by the learned Trial Judge that before the enquiry authority, the appellant petitioner never complained that without the report as mentioned hereinbefore, it was not possible for him to effectively cross-examine the witness and as such, he was of the view that the appellant petitioner did not actually experience any difficulty in the matter of defending himself in the departmental enquiry without the assistance of the preliminary enquiry report. It was also his view that in view of the nature of the enquiry in the instant case, the prosecution witnesses did not actually have very much to prove, excepting that the impugned transactions had taken place, which fact again was admitted by the appellant petitioner himself and the remaining onus rested on him and that being so, the officer holding the preliminary enquiry, did not have any scope to record such statements which might have been necessary for the appellant petitioner to cross-examine the prosecution witnesses, who were examined in the departmental enquiry and consequently, a decision of the Supreme Court, in the case of State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., which was relied on and referred to by the learned Advocate, appearing in support of the writ petition, would be of no assistance. It has also been recorded by the learned Trial Judge that as a matter of fact, it was incumbent that the copies of document relied upon by the prosecution in departmental enquiry should be supplied to delinquent employee and normally the departmental authorities have no responsibility to supply copies of such documents to the said employee, which are not relied upon, during the enquiry.

15. In view of the findings as above, the points which were submitted before him by the learned Advocate, appearing in support of the petition, were not accepted and the learned Trial Judge has specifically found that the onus to prove, acquisition of the consideration money in this case was rightly placed on the appellant petitioner. He has also indicated that punishment as imposed, was not excessive and the ground of delay in issuing the charge-sheet and on the basis whereof, it was claimed that a stale charge-sheet should not be allowed to be enquired into, had no basis. The learned Trial Judge has further observed that the authorities in the instant case, had not acted with a closed mind as alleged.

16. We have indicated the salient points which were advanced by the learned Advocate for the appellant petitioner before the learned Trial Judge and in fact, he advanced these submissions in this Appeal also.

Mr. Lahari, placed before us Rule 15(2)

15. Moveable, immovable and valuable property : -

(1) ...

(2) No Government servant shall, except with the previous knowledge of the appointing authority : -

(a) Acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either in his own name or in the name of any member of his family nor shall he permit any member of his family to do so.

(b) Enter into any transaction concerning any moveable property exceeding one thousand rupees in value, whether by way of purchase, sale or otherwise, nor shall he permit any member of his family to do so;

Provided that, in either case, any such transaction conducted otherwise than through a regular or reputed dealer shall require the previous sanction of the appointing authority.

(c) Allow himself or any member of his family to be a benamder for the acquisition of any kind of property, moveable or immovable, by some other person.

(3) ...

(4) ...

We have recorded the Rule for the purpose of indicating and dealing hereinafter, the additional point which was sought to be argued by him on the basis of the above provisions. While on the question of assistance of a lawyer or whether and under what circumstances refusal to give such assistance would constitute violation of principles of natural justice, reference was made by Mr. Lahari firstly, to the case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, , where the narrow question was examined whether, where in a disciplinary enquiry before a domestic tribunal, the employer complaining misconduct appoints legally trained person as Presenting-cum-Prosecuting officer, the denial or refusal of a request by the delinquent employee seeking permission to engage a legal practioner to defend him at the enquiry, would constitute such denial of reasonable opportunities to defend oneself and thus violate one of the essential principles of natural justice which would vitiate the enquiry. In that case, it has been observed that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated and where the request of an employee of the Bombay Port Trust in an enquiry against him, for being represented by layer was refused while legally trained officers were appointed as presenting officers for the employer-Trust, the enquiry would be deemed to be vitiated for denying the employee a reasonable

opportunity of hearing specially when the request was not acceded to even after coming into force of Regn. 12(8) of Bombay Port Trust Employees Regulation at a time when only one out of 25 witnesses to be examined on of the employer was examined. In such a case, it would not be urged that after the Regulation 12(8) came into force, the request was not renewed. That is hardly relevant. The unjustly refused request" was already there and obligation under the regulation coupled with fair play in action demanded that the employer should have suo motu reviewed his order refusing the request, apart from observing that one has to consider the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a Judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a Court presided over by an unbiased Judge? The enquiry officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to this uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not an euphemism for Courts alone, it applies with equal figure and rigour to all those who must be responsible for fair play in action. Secondly, to the case of Hemendu Bikash Nag v. Union of India, 1973 CLJ 236. The said case has considered whether a delinquent's right to have assistance of lawyer when the presenting officer is a lawyer constitute violation of principles of natural justice under Rule 14(8) of the Central Civil Services (Classification, Central and Appeal) Rules 1965. In that case on the allegation that the petitioner, an officer in the office of Iron and Steel Control has assets disproportionate to his known sources of income, a disciplinary proceeding under Rule 15 of the Rules as mentioned above, was started against him and his prayer for inspection of statements recorded by the Investigation officer was turned down on the ground that he is entitled to inspection of the statements of only those persons mentioned as witnesses in the list of witnesses by whom the article of charge was to be proved and to no other evidence in view of Rule 14(3) and note to 14(1). It would appear that the further of the petitioner for assistance of a lawyer was refused on the ground that such assistance would be permissible only when the prosecution takes the help of lawyer in view of Rule 14(8) or in other words the Presenting officer is a lawyer himself. In that case it has been observed amongst others that Rule 14(8) contemplates two contingencies where the delinquent can have the assistance of a lawyer. Firstly, when the Presenting officer being a lawyer is to confront such a lawyer and secondly, when having regard to the circumstances of the case he is permitted by the Disciplinary Authority to have the assistance of a lawyer. For the second contingency it is not necessary as a condition precedent that the Presenting officer is a lawyer and further, here the Presenting officer being a legally trained Inspector of Police, refusal to delinquent

to have the assistance of a lawyer has vitiated the departmental proceeding. Thirdly, reference was made by Mr. Lahari, the learned Advocate for the appellant petitioner in the case of Collector of Customs, Calcutta & Ors. v. Biswanath Mukherjee, 1974 CLJ 251, where it has been observed that the determinations in the case of Joydeb Gorai Vs. State of West Bengal, , would fully apply and since in the case under consideration, the Presenting officer was a seasoned Police officer and a trained prosecutor and the employee had no legal training and a charge against him was quite serious entailing serious consequences. In such facts of that case, it was held that the refusal to give necessary assistance as was asked for, was against the principles of natural justice, Fourthly, reference was made to the case of Anandam Jiandrai Bhasani v. Union of India & Ors., 1983 Lab. IC 624, where it has been observed that the ability or efficiency of the delinquent officer to defend himself would be no ground for refusing him permission to engage a lawyer and the refusal to engage a lawyer despite repeated requests would result in violation of Rule 15(5) of the Central Civil Services (Classification, Control and Appeal) Rule's, 1957 and that would thereby deprive him of reasonable opportunities to defend himself in terms of Article 311(2), more particularly when the department had appointed an experienced and well-trained prosecutor.

17. On the basis of the above determination Mr. Lahari contended that if not charge No. 1, but charge No. 2 was such, in which the appellant petitioner's repeated requests to have a lawyer engaged should not have been refused and such refusal has resulted in violation of principles of natural justice or reasonable opportunities to defend his case under Article 311(2) of the Constitution of India. It was also submitted by him that when the appellant petitioner in the instant case, was required to face an officer who was either duly trained in law or had sufficient knowledge of prosecution, in all fairness he should have been given the opportunities to engage a lawyer. That apart, Mr. Lahari submitted that when a delinquent employee is required to face a charge, for which he may lose his job, he may not be expected to maintain the same mental balance or equilibrium in the enquiry and as such, if asked by him, the authorities concerned should give him the opportunities to engage a lawyer and otherwise there is no doubt or any dispute that the employee concerned may not be in a position to place forward or defend his case properly.

18. Mr. Lahari then contended that the preliminary enquiry report could not have been a secret document, on the basis of which the supply of the same to the appellant petitioner was refused and such refusal to him was not only unauthorised in the facts of this case and more particularly when the substance of the same supplied to the appellant petitioner, disclosed that the statements were obtained from his uncle behind his back and on such statement the authorities concerned has relied while forming their opinion on the question of the appellant petitioner's assets being disproportionate to his income. For such non supply of the concerned report Mr. Lahari also contended that a great prejudice was caused to the appellant petitioner in the matter of putting forward

his defence and more particularly when and as stated hereinbefore, reliance has been placed on the said report. To establish that such action of the authorities concerned had greatly prejudiced the appellant petitioner in the matter of putting forward his defence, reference was made by Mr. Lahari to the case of *State of Uttar Pradesh v. Md. Sharif* (supra), where such question as to whether there would be denial of reasonable opportunities to defend a case by the appellant in the departmental enquiry came up for consideration and it has been observed that wherein a departmental inquiry against Head Constable of police for his alleged misconduct of hunting a bull in Government forest by taking advantage of his office and rank, the charge-sheet served on the delinquent, did not mention the date and time of his alleged misconduct, even the location of the incident in the vast forest was not indicated with sufficient particularity, the copies of statements of witnesses recorded during preliminary inquiry were also not furnished to the delinquent at the time of disciplinary inquiry it was held that in the absence of these particulars and statements of witnesses the delinquent was prejudiced in the matter of his defence and was thus denied reasonable opportunity to defend himself at the disciplinary inquiry. The order of his dismissal was, therefor, illegal. While on the point, reference was also made by Mr. Lahari to the case of *Himangshu Kumar Bose v. Union of India & Ors.*, 1985 (1) CHN 252, where a learned Single Judge of this Court while dealing with the question of violation of principles of natural justice and the basis of a right to cross-examine witness and when reliance has been placed on some records has observed that the propriety and validity of an enquiry proceeding conducted against the petitioner, a clerk in the office of the Security Officer, Eastern Railway, Sealdah, has been challenged on amongst the grounds that he was refused inspection of some relevant documents mentioned in the charge-sheet and the report of the Vigilance Inspector which was being sought to be used against him, that the enquiry officer conducted the enquiry by adopting a procedure for examination and cross-examination of witness which was neither bona fide nor lawful and would go to show that he was not maintaining impartiality but was acting with a bias against the petitioners and that in spite of a direction the report of the hand writing expert was not produced, apart from observing that it is accepted position in law that the necessity of supplying copy of document will have to be judged not only from the stand point of the prosecuting authority but also from the standpoint of the defence. A document may not be at all relevant or useful for the purpose of prosecution but may be of immense value for the purpose of defence. The right to cross-examine a particular witness on whom reliance of has been placed by the prosecution, is a fundamental part of the principles of natural justice. Keeping the defence of the delinquent deprived of the previous statements or reports renders illusory such a right. The contention on behalf of the respondents that the Rules do not provide for any opportunity being given to the delinquent at the stage of fact finding preliminary enquiry cannot be accepted. The refusal in the instant case, amounted to failure of principles of natural justice and vitiated the "enquiry. Thereafter, a further reference was made by Mr. Lahari to the case of *Anandram*

Jiandrai Vaswanti v. Union of India & Ors., (supra), where, the views as indicated hereinbefore, have more or less been restated, apart from stating that the question as to whether the findings arrived at by the Enquiry officer are vitiated in law and/or perverse is a pure question of law. In determining the question of perversity of the findings, court does not appreciate the evidence but it has to look into the evidence as such. In this respect there cannot be any difference in the approach in the case of a suit and a writ proceeding. The same principle will apply in both the cases. The appellant is entitled to urge a pure question of law for the first time in the first appellate court on the basis of evidence on record and while dealing with the submissions. Lastly, reference was made by Mr. Lahari to the case of Hamendra Bikash Nag v Union of India (supra), the particular finding whereof, have been quoted hereinbefore.

19. It was then argued by Mr. Lahari, after placing the dates of the incident as alleged by the authorities concerned, when the appellant petitioner was said to have acquired properties disproportionate to his known source of income and the date of the charge-sheet, would on the face of it should and establish that the charge were stale. It was his submission that charge levelled through the charge-sheet which was state at the point of time and the delay in framing the charges have been duly explained that and would itself cause a denial of reasonable opportunity. He categorically pointed out that the charge-sheet in the instant case, was issued on 14th September, 1978, while the acquisition as, made, against the appellant petitioner, were of 1967 to 1972. Such delay in issuing the charge-sheet, according to Mr. Lahari has not at all been explained. Such being the position, he referred to the case of Samarendra Narayan Ghosh v. The State of West Bengal & Ors., 1984 (1) CLJ In that case the petitioner, a Government servant, had challenged an order of common enquiry under Rules 9 and 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1972 including the appointing of the Enquiry officer and the issuance of the charge-sheet and on facts it has been held that (1) admitting an unexplained delay in initiating the disciplinary proceeding constitute violation of principles of natural justice, (2) the said 1972 Rules is not retrospective in operation and no proceeding can be initiated under the same relating to an offence committed before the coming into force of the said Rules, (3) refusal to supply copies of documents asked for by the charge-sheeted employee amounts to violation of principles of natural justice and (4) no proceeding can be the initiated on the mere suspicion as suspicion cannot be equated with proof. The last three findings as mentioned above, in our view, have no application in the facts of this case and if at all we shall be considering the question of application of the first finding as mentioned above, in the facts and circumstances of the case. Then, a reference was made by Mr. Lahari to the case of R. Srinivasan v. Union of India & Anr., 1982 Lab IC 920, which has indicated that even a delay as in the case of one year would constitute denial or reasonable opportunity to show-cause and as such, there would be violation of principles of natural justice and the order passed in an enquiry would be vitiated and liable to be set-aside.

20. We have earlier quoted the relevant provisions of the West Bengal Governments' Conduct Rules, 1959 and on the basis thereof and also after relying on Charge No. 1, Mr. Lahari contended that, there cannot be any contravention of Rule 15(2) of the said Rules as the said Rules postulate that no Government servant shall, except with the previous knowledge of the appointing authority (a) acquire or dispose of immoveable property ..., (b) enter into any transaction concerning any immoveable property exceeding one thousand rupees in value, whether by way of purchase, sale or otherwise, nor shall he permit any member of his family to do so. Provided that, in either case any such transaction conducted otherwise than through, a regular or reputed dealer shall require the previous sanction of the appointing authority, (c) allowing himself or any other member of his family to be a benamder for the acquisition of any kind of property moveable or immovable, by some other persons. It was Mr. Lahari's specific submissions that since the Rules mentioned about previous knowledge/permission, then the very basis of Charge No. 1, which has charged the appellant petitioner for not obtaining prior permission could not be the actual basis of the issue of the same charge. With due respect, such submission of Mr. Lahari cannot be accepted on reading and construing Rule 15(2) as a whole along with the proviso as mentioned therein. Similar arguments were advanced by Mr. Lahari in respect of Charge No. 2 and on our findings as above, such submissions cannot also be accepted.

21. While on his submissions on the Rules, Mr. Lahari also referred, to Rules 3 and 4 and claimed them to be vague. It was his submission that when the Rules were vague, then the concerned charge-sheet could not have been issued for violation of the Rules. In support of such submissions reference was made by him TO the case of A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., , where a point arose as to whether removal from the service of an employee can be given effect to on the basis of an alleged misconduct when such misconduct would not come under any of the misconducts specifically enumerated in the Rules and on the facts of that case it has been observed that where misconduct proved entails penal consequences, it is obligatory on the employer to specify and if necessary denied it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. The findings of the case under consideration, in our view, would not fit in properly with the facts of this case and as such, the submissions of Mr. Lahari as indicated hereinbefore, cannot be accepted.

22. Lastly, Mr. Lahari claimed that onus in the facts and circumstances of this case was wrongly shifted on the appellant petitioner and the charge-sheet as issued, disclosed apparent bias. On consideration of the facts and circumstances of the case we do not also find any justification to accede to such submission of Mr. Lahari.

23. Mr. Amaresh Chandra Bhattacharjee, appearing for the authorities concerned, who are respondents herein, while replying on the submissions of legal

assistance as put forward by Mr. Lahari, referred to the case of Sunil Kumar Banerjee v. State of West Bengal, AIR 1980 SC 1170 In the facts of the case it has been observed that when the disciplinary authority has arrived at his own conclusion on materials available to them such findings and decision cannot be said to be tainted with any illegality because it concerned Vigilance Commissioner and obtained his views on the very same material. The reference to this case, for the reasons as would be indicated hereinafter, in our view, would not really be applicable in the facts of this case. Reference was also made by Mr. Bhattacharjee to the case of Narayan Das v. State, AIR 1968 Ori 14, where it has been observed that it is in the discretion of the enquiring officer in departmental proceedings to allow or refuse to allow a lawyer to represent the delinquent. Hence mere denial or such legal help will not necessarily involve failure to observe question of prejudice, other facts like nature of charges, educational and other attainments of delinquent should also be considered and thus where, though the delinquent is a failed matriculate, the charges are pure questions of facts and within the special knowledge of the delinquent and he has many years of experience in service and the enquiry is conducted only by ordinary police officials without a lawyer, he is competent to conduct his defence. Refusal to afford him legal assistance does not amount to unfair discrimination offending Article 14 of Constitution. Lastly, reference was made by him to the case of Krishna Chandra Tandon v. The Union of India, AIR 1974 SC 1989, where, while dealing with the point as to at what point of time the report of the Investigating officer against the delinquent servant preliminary to the starting of the enquiry is to be supplied, it has been observed that it is very necessary for an authority which orders an enquiry to be satisfied that there are prima facie grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinates to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of interdepartmental communications between officers preliminary to the holding of enquiry have really no importance unless the Enquiry officer wants to rely on them for his conclusions. In that case it would only be right that copies of the same should be given to the delinquent and thus, where neither the enquiry officer nor the punishing authority relied on the report made against the delinquent servant for arriving at his conclusions the servant cannot make a grievance of the denial of non-supply of copies of these reports. In fact, the above case was cited by Mr. Bhattacharjee while meeting the submissions of Mr. Lahari on the question of non supply of the preliminary enquiry report.

24. We have already indicated our views in respect of the submissions of Mr. Lahari on the question of onus, the interpretation and effect of the provisions of the West Bengal Government Servants Conduct Rules 1959 and the fact, whether the charge-sheet has disclosed a premeditated idea or bias and closed mind were state that there are no substance in the submissions as made on them by Mr.

Lahari. From the Article of Charge No. 2 or the facts leading to the same or at least and only in respect of item No. 1 i.e. sale proceeds of land amounting to Rs. 12,999/- as claimed and disclosed by the Appellant petitioner, the Authorities have disallowed the same and while doing so, they have relied on the evidence of one Shri Mukunda Lal Biswas, an uncle of the Appellant petitioner and really, such reception of evidence was behind the back of the Appellant petitioner or either his knowledge or any notice to him. It should be noted that the said uncle of the Appellant petitioner has stated not to have corroborated him or his defence viz. the amount in question was received by him from his uncle on account of the sale proceeds of their ancestral property at East Pakistan. On such circumstances, the prayer of the Appellant petitioner for a copy of the Preliminary enquiry report was not unjustified and for non supply of the same, there has not only been a grave irregularity, but such action was also against principles of natural justice and for that, the Appellant petitioner could also very reasonably claim that he did not receive due opportunities to defend his case or to put forward his defence. We also fail to understand how and why the concerned report was claimed to be confidential, more particularly when the Authorities have really used the same or have taken full advantage of the same, in the matter of prima facie formation of opinion against the Appellant petitioner. Really, the non supply of the concerned report, when the Appellant petitioner had asked for the same, had prejudiced him in the matter of defending his case duly. Mr. Bhattacharjee pointed out that such was not the submission on the point, which are placed now Mr. Lahari, which were urged before the learned Trial Judge. But agreeing and considering the determinations in the case of *Anandram Jiandari Vaswanti v. Union of India & Ors.*, (supra), we held that those submission in the facts of the case, would be available to the Appellant petitioner even at this stage and during the course of hearing of the Appeal, not only on facts but on due application of law and also to follow the requirements of the principles of natural justice. If a delinquent employee feels that he could very well put or try to put forward his defence appropriately after looking at the report, which has been referred to and relied on by the Authorities for returning or verdict of guilt against him or for forming a prima facie opinion against him, he can very easily ask for the copy of the said report. Thus, the submission of Mr. Lahari on the aspect should succeed.

25. So far lawyers' assistance in a departmental proceeding, we feel that the finding of the learned Trial Judge, with the exceptions as pointed out by him are unassailable. Thus, we shall have to see and find out whether the case of the Appellant petitioner can be brought or has been brought within such exception. Before dealing with the point, it must be placed on record that Mr. Lahari in his usual fairness stated that to far charge No. 1 or the allegations and imputations relating to the same, the Appellant petitioner could defend himself without the assistance of a lawyer. Such submissions were made by him as he felt that the charge or the effect thereof was not so grave, for which the Appellant petitioner could reasonably feel any difficulty in putting forward his defence or for

establishing his innocence. But, so far charge No. 2 was concerned, the Appellant petitioner in the facts of the case-could certainly claim the assistance of a lawyer, for putting forward his case or for defending himself duly. While on the point, apart from the decisions as cited at the Bar, another Division Bench judgment of this Court in the case of Bholanath Das v. Director of Rationing Government of West Bengal, 1972 (2) SLR 293, may be profitably looked into and considered. There, while considering Rules 7 and 10 of the Bengal Subordinate Service (Discipline and Appeal) Rules, 1936 and when charge of serious misconduct involving complicated questions of fact and law is involved it has been observed that the words "reasonable opportunity" as used in Articles 311 (1) of the Constitution we are of the view that the refusal to give permission to engage a lawyer or to have the assistance of an agent would amount to the failure to give such reasonable opportunity is mentioned in Article 311(2) of the Constitution to the delinquent, apart from indicating that if the charges are grave and serious and the delinquent has a feeling (as in the instant case) that he would not be able to have his case defended properly and more particularly of the fact that he will have to face a trained Prosecutor, the question of granting him the assistance as asked for, on application of the general principles of natural justice read with the provisions of reasonable opportunities as in Article 311(2), even in the absence of the provision for such assistance in the relevant rules, will have to consider, keeping in view the fact that when an employee is charged with serious misconduct, he may lose his mental equilibrium or balance and he may not also be able to deal with the complicated question of fact and law as involved. The guiding principle should be compliance with the principles of natural justice and reasonable opportunity as mentioned hereinbefore. We are also of the view that when the charges against a delinquent are grave and serious he should be given the opportunity to have the assistance as asked for the more so when such prayer is not either against public policy or has been refused on that ground. The complexity of a case in relation to the delinquent and the circumstances in which he has been placed should be the criteria or guidance for allowing or refusing the assistance as has been asked for, and the principles of natural justice, as has been put graphically by Coke, consist in (1) vocate (2) in errogate and (3) adjudicate. Unless these three principles are fulfilled there would certainly be a case for thinking that there has been violation of principles of natural justice. The rules of natural justice, according to us would also require that the delinquent must have a feeling that justice has been done in his case and no injustice has been caused to him by the refusal to have the assistance as asked for. Under the relevant rules the delinquent was entitled to know the case which he was required to meet and also to have an adequate opportunity to meet the charges. Thus, when the delinquent was entitled to a hearing he would also be entitled not only to lead evidence as also to call for the witnesses and other facilities necessary for presentation of his case properly. It has further been indicated that since in the rules as are relevant to this proceeding there is no absolute bar or any such provision prohibiting appearance by agent or lawyer, we think the authorities concerned did not act fairly and properly in refusing the appellant

petitioner the assistance which was asked for and that too in the facts and circumstances of the present case and such refusal has vitiated the proceeding, the more so when the enquiring authority has, while refusing the necessary assistance to the delinquent, allowed the department to be represented by a trained Prosecutor. The effect of charge No. 2, if proved certainly would be fatal for the Appellant petitioner and there was no doubt that in defending himself, he was required to face a learned prosecutor conversant with the procedure and formalities for proof in a Departmental proceeding, then he was certainly entitled to ask for the aid and assistance of a lawyer, to effectively defend himself and more particularly when because of the graveness of the charge or the effect of the same, he may not maintain same or equal and necessary mental equilibrium or balance and furthermore, when he may not be in a position in such circumstances to deal with the charge or the complicated question of fact and law as involved. The principles of natural justice, as indicated earlier has been put graphically by Coke, consist in (1) vocate, (2) interrogate and (3) adjudicate. Unless the three principles are fulfilled there would certainly be a case for thinking that there has been violation of principles of natural justice. Here in the facts and circumstances of the case we feel that those principles have not been followed. As such, the submissions of Mr. Lahari on the point of refusal to grant lawyers" assistance should succeed at least in respect of charge No. 2. We also feel that if the Appellant petitioner had the requisite training or knowledge in law, and the preliminary enquiry report in respect of item 1 of the charge No. 2 was supplied to him, he could have taken steps or decided to produce, such or any evidence to have the statements as made by his uncle disproved or to establish by legal evidence, that what the uncle had stated, was wrong and the position was otherwise.

26. This leaves us with the only other question for determination viz. on the question of staleness of the charge-sheet or the effect thereof, in view of the first limb of findings, as made in the case of Smarendra Narayan Ghosh v. The State of West Bengal & Ors., (supra). As it is, on the basis of the determinations as cited at the Bar, there is no doubt that a stale charge-sheet cannot ordinarily be allowed to be proceeded with. But, the determination" in that case, even though the charges were stale in nature, would not appropriately apply in this case, because the Appellant petitioner had and without being influenced by any body, himself admitted the basis of the charges. Thus, he can only ask for reasonable opportunities to rebut the evidence through which the charges against him were sought to be proved.

27. Thus, the submissions of Mr. Lahari succeed only on the ground of refusal to allow lawyers" assistance in the proceeding, which constituted violation of principles of natural justice in terms of the requirements of Article 311(2) of the Constitution of India and the non supply or the preliminary enquiry report and on no other ground.

28. The appeal is thus allowed in part and the judgment and order, as

impeached, is set aside. Now as the enquiry was held in violation of principles of natural justice on the ground that the appellant was not given reasonable opportunity to appear through a legal practitioner and non-supply of the preliminary enquiry report, the consequential effect would be open to the Respondent to commit the enquiry, if so advised. The appellant shall be entitled to appear through a lawyer and to adduce fresh evidence in respect of charge No. 2, if so advised. The appellant shall also be entitled to cross-examine the witness, if and as produced by the Respondent.

29. As we have set aside the dismissal order dated 6th June, 1979 and have directed to hold and have given opportunity to the Respondent to hold fresh enquiry, if so advised, in the manner as stated above, appellant is ordinarily required to be reinstated. But on the facts and circumstances of this case, the appellant shall be deemed to be under suspension with effect from the date of dismissal i.e. 6th June 1979 and the Respondents are directed to pay subsistence allowance to him in accordance with law till the enquiry is completed.

On the facts and circumstances we could have made the Respondent liable to pay costs. But we are refraining from doing so.

Dilip Kumar Basu, J.

I agree.