

(1957) 04 AHC CK 0015
In the Allahabad High Court
Case No : Special Appeal No. 169 of 1956

Bireswar Chakravarti

APPELLANT

Vs

L.N. Kaula and Others

RESPONDENT

Date of Decision : 26-04-1957

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 101, 102, 103, 104, 114

Citation : AIR 1957 All 671

Hon'ble Judges : Tandon, J; Mukerji, J

Bench : Division Bench

Advocate : M.H. Beg, for the Appellant; J. Swarup, for the Respondent

Final Decision : Dismissed

Judgement

Mukerji, J.—This Special Appeal is by Bireswar Chakravarti and the respondents to the appeal are: (1) Sri L.N. Kaula, Divisional Accounts Officer, Northern Railway, Allahabad, (2) Sri M.R. Sud, Divisional Mechanical Engineer, Northern Railway, Allahabad, (3) Sri A.L. Gupta, Divisional Personal Officer, Northern Railway, Allahabad, (4) Sri P.C. Shulda, Divisional Operating Superintendent, Northern Railway, Allahabad, (5) The Divisional Superintendent, Northern Railway, Allahabad.

2. Bireswar Ghakravarti, the appellant, filed a petition under Articles 226 and 227 of the Constitution of India in this Court in July 1956 praying for:

(i) a writ of "prohibition" commanding the respondents to this appeal not to take any further steps in progress of an enquiry which had been instituted against the appellant on the ground inter alia that the enquiry was without jurisdiction;

(ii) a writ of certiorari to quash the orders of suspension made against the petitioner on the 26th of May 1956;

(iii) the issue of an order, writ or direction in the nature of mandamus or any

other appropriate writ against the respondents commanding them to observe and enforce "law and rules of justice" in respect of the fundamental Constitutional rights of the petitioner.

3. An interim order or direction was also claimed to prohibit the respondents taking further steps in respect of the enquiry that was being conducted against the petitioner.

4. The writ petition came up for preliminary hearing before a learned single Judge who dismissed the petition on the 17th of July 1956. This Special Appeal is directed against that order of the learned single Judge.

5. The circumstances and the facts on which the aforementioned petition was filed in this Court may now be stated.

6. The petitioner was appointed a class I Clerk at Rs. 100/- per mensem in the grade of Rs. 80-200/- in the erstwhile Railway Administration named the E.I.R., at Calcutta. On the "re-grouping" of the Indian Railways the petitioner's employment was placed under the Railway Administration group known as the Northern Railways. The petitioner had his posting at Allahabad, apparently, since 1946 and the petitioner's salary on the date of his filing the petition was Rs. 168/- per mensem.

7. It appears that with the re-grouping of the Railways there grew up a Railwaymen's Union for that group of workmen who fell under the jurisdiction and control of the Northern Railways--this Union was known as the Northern Railwaymen's Union. The petitioner claims to be the Secretary of this Union. This Union is however not recognized by the Railway Administration as a properly constituted Union.

8. In the first week of May 1956 the petitioner in his capacity as Secretary of the Northern Railwaymen's Union conveyed a copy of the resolution passed by the Union to some of the respondents in respect of the payment of wages due to the workers for the period closing with the 10th of May 1956. It was the Custom of the Railway and apparently part of their contract with their workers that wages due for a particular wage period which ended with the tenth day of a month would be paid on the 15th of that month. By the resolution referred to above, the Union wished that the wages which fell due for the period ending with the 10th of May be paid on the 12th of May instead of the 15th.

The change in the date of payment was sought on the ground that a Mohammedan festival which affected a large section of employees fell earlier than the 15th of May and therefore the workmen wanted payment of their wages slightly earlier in order that they could enjoy their festivities better; It was stated on behalf of the petitioner that respondent No. 3 agreed to this change but respondent No. 1 refused to agree to the change being made. It appears that on the 9th of May 1956 a telegram was sent to the General Manager purporting to be a telegram from the staff of the Allahabad Loco-shed as a protest against

respondent number one's not agreeing to grant the request made on behalf of the workers in their resolution.

9. On the 10th of May 1956 a kind of demonstration was staged in front of the office of the fifth respondent, namely, the Divisional Superintendent, Northern Railways. This demonstration took an ugly turn and necessitated interference by the police authorities of Allahabad.

10. The Railway Administration took a serious view of the situation that had developed and it also appears that the Railway Administration, on the materials before it, took the view that the petitioner was responsible in a measure for letting such a situation grow.

11. Consultations appear to have taken place between the Departmental Heads of the Railway Administration with the result that on the 26th of May 1956 the petitioner was suspended. The petitioner was also handed over a "charge sheet" and his explanation was called for in respect of the charges set out in the charge sheet.

12. The order of suspension which was served on the petitioner was dated the 26th of May 1956 and was signed by respondent No. 1 "For F. A. and C. A. O., Northern Railways" (F. A. and C. A. O. stands for Financial Adviser and Chief Accounts Officer). The charge sheet is Annexure A to the petition. It says:

"Please note that you have been placed under suspension on and from 26-5-56 for (nature of offence) the charges mentioned in charge sheet No. DS/ZZ/ALD/56, dated 26-5-56."

This order also makes reference to the subsistence allowance etc., that the petitioner was to draw during the period of his suspension. The charge sheet which was served on the petitioner has been filed and is Annexure B to the petition. This charge sheet is also signed by L.N. Kaula, respondent No. 1, "'for F. A. and C. A. O.'" The charge sheet is in these words:

"You are hereby charged with serious misconduct under Rule No. 1708 (ii)-R-I of the rules regulating discipline and right of appeal of non-gazetted railway servants in that you at Allahabad on the 10th day of May 1956 absented yourself from duty in an unauthorised manner between 11 hours and 17 hours and while so absent you instigated the Loco staff of Allahabad Loco Shed to desist from resuming work after 12-00 hours on that date. Having succeeded in instigating the staff to resort to illegal strike, you went to the extent of remaining on railway tracks obstructing the movement of engines from the Loco-shed at Allahabad from 15-30 hours to 16-20 hours with the object of dislocating trains operation. A number of trains suffered heavy detention on this account. You also remained at the track in front of 6S Up thereby causing 127 minutes detention to the train,

2. You are hereby called upon to show cause why you should not be removed from service under Rule 1708 of the Indian Railway Establishment Code, Volume I of the rules regulating discipline and rights of appeal of non-gazetted Railway

servants or punished with any of the lesser penalties specified in rule 1702 of the said rules.

3. You are hereby given seven clear days from the date of receipt of this charge-sheet to answer this charge by written explanation and to state whether you desire to be heard in person and also you desire to be accompanied by another Railway servant of this Railway or an official (who is not a professional lawyer) of a recognized Trade Union of this Railway at the hearing. If so, a panel of three names should be given in order of priority."

13. This charge-sheet was served on the petitioner apparently on the 26th of May 1956. It may here be pointed out, that the petitioner was served with another charge-sheet dated the 6th of June 1956. This charge-sheet has been filed as Annexure C to the petition. This charge-sheet was in respect of other offences than those mentioned in the charge-sheet dated the 26th of May.

14. In respect of the charge-sheet dated the 26th of May 1956 the petitioner handed in an explanation on the 2nd of June 1956. The explanation which he put in on the 2nd of June was not exhibited when the original petition was filed but a copy was handed over to us by learned counsel for the petitioner at the time of the hearing of this appeal. The respondents had no objection to our taking this on the record and therefore, we put it on the record. The "explanation"" is a short one and may usefully be quoted in extenso. This is what it says:

"Sir, In reference to para 1 of your above charge-sheet respectfully I would submit that I disown charges levelled at me.

As regards para 3 of the above, I would request you to permit me to be heard in person accompanied by my defence counsel whose names will be intimated later on.

I presume that it is not necessary for me to reply to the charge-sheet as the matter will be properly thrashed out in the joint, enquiry as per provisions of para 3 of your charge-sheet,

Yours faithfully, Bireshwar Chakravarti."

15. From the above it would appear that the petitioner denied the charges which were levelled against him but even so he stated that he thought it was unnecessary to reply to the charge-sheet.

16. The learned counsel for the petitioner handed in the explanation of the petitioner in respect of the charge-sheet dated the 6th of June 1956. This explanation was also taken on record by us with the consent of counsel for the respondents. In this explanation which is dated the 7th June 1956, the petitioner among other things said this:

"In reference to your above respectfully I would state that I have nothing further to add to my statement of 2-6-1956 para 1 in which explanation has already been furnished."

17. On the 9th of June 1956 the petitioner was informed that Committee of Enquiry consisting of (1) A. L. Gupta, Divisional Personal Officer, Allahabad Division, (2) M. R. Sud, Divisional Mechanical Engineer, Allahabad Division and P. C. Shukla, Divisional Operating Superintendent, Allahabad Division, had been appointed by the Financial Adviser and the Chief Accounts Officer to enquire into the charges made against the petitioner,

18. The petitioner made several objections in regard to the functioning of the aforementioned Committee of Enquiry to the officers of the Railway Administration but he failed to succeed in his contentions with the result that the Committee of Enquiry commenced its work and this ultimately impelled the petitioner to come to this Court.

19. The main questions which were raised on behalf of the petitioner were: (1) that the order of suspension of the petitioner was without jurisdiction since the order had been made first, by an authority which had no power to make the order, and secondly because the order had been made without considering the explanation of the petitioner;

2. that the Committee of Enquiry that had been appointed had no jurisdiction to make the enquiry since the Committee had been appointed by Sri L.N. Kaula, respondent No. 1 and not by the F.A. and C. A. O. It was alleged that the appointment of the committee was illegal on the ground also that, even if the appointment of the committee had been made by the F. A. and C. A. O., the appointment was made by that authority without considering all the relevant materials;

3. that the Committee had conducted the enquiry in a manner that was opposed to natural justice; that the members of the committee displayed bias against the petitioner; that some of the members of the committee were personally aware of the facts and were to be cited as witnesses at the enquiry and as such could not act as members of the Committee.

20. It may here be mentioned that the enquiry started from the 18th of June 1956 and, apparently, all the evidence that the Committee thought proper to record was recorded before the petition, out of which the appeal has arisen, was made in this Court. As we have already stated the petition was dismissed on the 17th of July 1956. An appeal against that petition was filed on the 21st of July 1956 and on the 30th of July 1956 the appeal was admitted and notices were directed to be issued. On the 6th of September 1956 the learned Chief Justice and Chaturvedi J. made the following order:

"Having heard learned counsel we allow the respondents three weeks" time within which to file a counter-affidavit. The petitioner is allowed one week further time within which to file a rejoinder affidavit if necessary. Thereafter the petition will be placed in the list for hearing. Pending the hearing of this petition the second, third and fourth respondents will not submit the report of the Enquiry Committee so far as it relates to the appellant to the Financial Adviser

and Chief Accounts Officer of the Northern Railway.

21. As a consequence of the last paragraph of the aforequoted order respondents 2, 3 and 4 have not yet submitted their report to the Financial Adviser and the Chief Accounts Officer.

22. The petition out of which this appeal has arisen was dismissed by the learned single Judge mainly on two grounds, first, that if the Committee of Enquiry had no jurisdiction to enquire into the charges, then the remedy lay in the hands of the petitioner himself by his not submitting himself to the jurisdiction of the Enquiry Committee and secondly the learned single Judge thought it improper to interfere with the enquiry conducted against the petitioner, because doing so would encourage indiscipline amongst the employees of the Railway. The learned single Judge took the view that Article 311 of the Constitution did not prohibit an, enquiry being conducted by the authority not competent to dismiss, a civil servant.

23. On behalf of the respondents a preliminary objection was taken to the hearing of the appeal on the ground that no appeal lay from an order of a learned single Judge dismissing a petition under Article 226 or 227 of the Constitution, because such an order was not "a judgment" but was an order made in the exercise of the High Court's power of superintendence. It was contended by Mr. Jagdish Sarup on behalf of the respondents that the order made by the learned single Judge did not fall within the purview of Rule 5 of Chapter 8 of the Rules of the Court."

24. It may here be pointed out that it was not the contention of the respondents that we. should not entertain this appeal because the learned single Judge in his discretion refused to exercise his powers. Chapter 8, Rule 5 of the rules of this Court reads thus;

"An appeal shall lie to the Court from the judgment (not being a judgment in the exercise of appellate jurisdiction in respect of a decree or order made. in the exercise of appellate jurisdiction by the Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction and not being an order passed or made in the exercise of its power of superintendence or in the exercise of criminal jurisdiction) of one Judge and an appeal shall tie to the Court from the judgment of one Judge made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by the Court subject to the superintendence of the Court whether the Judge who passed the judgment declares that the case is a fit one for appeal."

25. It was contended that the order that was made by the learned single Judge in this case was an order made in the exercise of the powers of superintendence of this Court and therefore it was not a judgment from which an appeal could lie under the above-quoted rule. It was contended that the right of appeal from decisions of single Judges of this Court to a Division Bench was the same under

the Letters Patent of this Court as has now been provided for by Chapter 8, Rule 5 of the Rules of Court. There is no doubt that the relevant words of Clause 10 of the Letters Patent of this Court were almost the same as of Rule 5. Clause 10 of the United Provinces High Courts Amalgamation Order 1948 whereby the two superior Courts of this province namely, the High Court of Judicature at Allahabad and the Chief Court of Oudh at Lucknow were amalgamated invested the new High Court--as the amalgamated Court was called in the Amalgamation Order--with all the powers which the two superior Courts possessed before their amalgamation, for Clause 7 was in these words:

""7(1). The new High Court shall have, in respect of the whole of the United Provinces, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day is exercisable in respect of any part of that province by either or the existing High Courts.....,"

26. The power to issue writs, directions, orders etc. has been conferred on the High Courts by Art. 226 of the Constitution. This power this High Court did not possess before the coming into force of the Constitution. This article confers on the High Court the power to issue to any person or authority, including the Government, within the territorial limits of its jurisdiction, any directions, orders or writs not only for the enforcement of any of the rights conferred by Part HI of the Constitution, i.e. the fundamental rights, but also for "any other purpose". Article 227 of the Constitution confers on the High Courts the power of "superintendence" over all Courts and tribunals throughout the territories in relation to which the High Court exercises its jurisdiction. It was contended that the power which the High Court exercises under either of the two aforementioned articles of the Constitution was a supervisory power. Reliance was placed for this contention on the observations of the Supreme Court in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, It is no doubt true that the word "supervisory"" was used by the Supreme Court to indicate the nature of tile power exercisable by the Court under Article 226, but that to our mind does not mean that the power so described was the same as the power of "superintendence" as stated in Rule 5 of Chapter 8 of the Rules of our Court, In our view, supervisory power partakes of the nature of a power pf Judicial review and scrutiny; nor so the power of superintendence which partakes of the nature of administrative or quasi-administrative control. In Nanak Chand and Others Vs. State of Uttar Pradesh and Others, and the Full Bench decision in Aidal Singh and Others Vs. Karan Singh and Others, it was held that an appeal lay from the decision of a learned single Judge dismissing a , petition filed under Article 226 of the Constitution. We therefore hold that an appeal in this case was competent. We shall now turn to the merits of the appeal.

27. On the arguments addressed to us on behalf of the petitioner the following points arose for determination.

28. First, whether under the circumstances of case the order of suspension made against the petitioner was ultra vires in view of the fact (a) that the order of

suspension was made by the first respondent who had no power to make such an order and, (b) the order was made without consideration of the materials on the record by the F. A. and C. A. O. assuming that the order of suspension was made by that authority.

29. Secondly, whether the committee which had been appointed to conduct the inquiry against the petitioner had been appointed by the F. A. and C. A. O. or it had been appointed by the first respondent. A further question was raised in this connection, which also needs determination, namely, whether or not the committee had been appointed without consideration of the explanation of the petitioner and if it was so appointed whether such an appointment was valid.

30. Thirdly, whether the constitution of the Committee was opposed to natural justice, inasmuch as, some of the members constituting the Committee could have been witnesses at the inquiry.

31. Fourthly, whether the Committee had conducted its proceedings in such a manner as to lead to an inference of such bias as could deprive the Committee of its jurisdiction to proceed with the inquiry.

32. In order to determine the questions raised it is necessary to know the relevant rule made by the railway administration. The relevant rule is Rule No. 1707 of the Indian Railway Establishment Code, Volume I. The rule is in these words:

"Procedure for dismissal.

When a railway servant is charged with an offence the maximum penalty for which is dismissal, the procedure for holding an inquiry shall be as follows:-

(a) a charge-sheet shall be presented to the railway servant detailing the charge or charges against him and calling upon him to show cause why he should not be dismissed or removed from service or punished with any of the lesser penalties specified in Rule 1702. He shall be required to submit a written explanation by a fixed date which shall ordinarily allow him an interval of seven clear days from the date he receives the charge-sheet. If the railway servant is illiterate or semi-literate, the charge-sheet shall be read out and explained to him by a Gazetted Officer or a selected senior non-gazetted railway servant who shall record the railway servant's explanation.

(b) The charge-sheet with the explanation furnished by the railway servant shall be considered by the officer competent under these rules to pass an order of dismissal but unless he take steps for holding a departmental inquiry shall thereupon pass such orders as he thinks fit.

(c) If the railway servant seeks to be heard in person or if the officer competent to pass an order of dismissal considers that the railway servants should be examined in person he shall cause a departmental inquiry to be held, The railway servant if he so desires, may be accompanied by another railway servant and the

officer of the committee of inquiry shall give the railway servant all reasonable facilities for the conduct of his defence, including cross-examining witnesses.

(d) At such an inquiry a definite charge in writing shall be franked and explained to the railway servant in respect of each offence which has not been admitted by him and evidence in support of it as well as his defence, along with any evidence which he may adduce in defence shall be recorded in his presence:

Provided that for special reasons to be recorded in writing the officer or the committee of inquiry may refuse to call any witness suggested by the railway servant and may decide that the evidence of any witness should be taken and recorded otherwise than in the presence of the railway servant.

(c) The result of the departmental inquiry with the recommendation of the officer or the Committee holding the inquiry shall be placed before, the officer competent under the rules of this section to pass an order of dismissal who shall thereupon pass such orders as he thinks fit."

(f) Notwithstanding anything contained in the foregoing clauses in this rule no formal inquiry is necessary when the order of dismissal is passed on the strength of facts or conclusions arrived at by judicial trial or trial by court martial or when the accused is absconding."

In regard to suspension the relevant rule in the Indian Railway Establishment Code is rule 1711. That rule reads thus: "Suspension.

(a) A railway servant shall be placed under suspension when he is arrested or committed to prison pending trial by a court of law and shall remain under suspension until judgment is delivered by Court unless in the event of his release on bail the authority competent to suspend him allows him to resume duty pending decision of the Court.

(b) A railway servant whose conduct is under-going investigation the maximum penalty for which is dismissal or removal from service may at the discretion of the competent authority be kept under suspension until his case is finally decided. The period of suspension under this Rule should not normally exceed four months except with the approval of the authority next above that imposing the penalty. The authorities which are competent to impose penalties prescribed in Rule 1705 are specified in Schedule I column 3, appended to the rules."

The petitioner's appointment would apparently fall under item 3 of Schedule I and in his case, therefore, the head of the office would be the competent authority to impose all the penalties specified in Rule 1702. On the materials before us it is clear that the Financial Adviser and Chief Accounts Officer was certainly competent to impose the penalties provided by Rule 1705 on the petitioner since he would be the "head of office" in respect of the petitioner's employment. He would therefore also be competent to suspend the petitioner. A railway servant can be suspended if the railway servant's conduct was undergoing investigation on a charge, the maximum penalty for which was

dismissal or removal from service.

The railway servant was liable to dismissal from service if he was guilty of, among other things, serious misconduct--that is clear from Rule 1706 (II). The railway administration took a serious view of the conduct of the petitioner in relation to the incidents which took place on the 10th of May 1956. The allegations made in the affidavit filed on behalf of the respondents clearly show that the allegation which had been made against the petitioner were sufficient to charge him with serious misconduct, unless the allegations were controverted subsequently.

For the purposes of suspension it is not necessary that the authority suspending a railway servant should definitely come to the conclusion before he orders suspension that the railway servant who is to be suspended was guilty of serious misconduct. It is sufficient if the suspending authority has reason to think that the railway servant has been guilty of serious misconduct which could entail his dismissal from service. There may be circumstances in which action has to be taken swiftly. There may be other cases when before suspension is resorted to the officer who has the power to suspend may take the explanation of the railway servant before actually putting him under suspension.

The matter must, per necessity, be within the complete discretion of the officer in whom is vested the power to suspend; his discretion cannot be circumscribed lightly. In this particular case the suspension order was served on the petitioner on the 26-5-1956 and from that date the petitioner was placed under suspension. The order of suspension was signed by respondent No. 1 for F. A. and C.A.O., Northern Railway. The contention of the petitioner was that this order of suspension had been made by respondent No. 1 and not by the F. A. and C.A.O. On behalf of the respondents it has been contended that the order of suspension was in fact made by the F.A. and C.A.O.

Mr. Jagdish Swamp placed before us the relevant papers out of the file of the F. A. and C.A.O. & also filed a supplementary counter-affidavit which clearly indicated that the order of suspension was made with the approval of the F. A. and C. A. O. and therefore was a proper order of suspension. In this connection it may be pointed out further that if the suspension order was made by the F. A. and C. A. O., as we have held it was, then the question whether the F. A. and C. A. O. was justified in making that order of suspension or not, could not be gone into by us for two reasons, first that the F. A. and C. A. O. was no party to these proceedings and secondly because, admittedly, the F. A. and C. A. O. is not amenable to the jurisdiction of this Court in so far as he resides and functions beyond the territorial limits of this Court's jurisdiction.

33. The next question canvassed was that the committee which had been appointed to make an inquiry into the conduct of the petitioner was a committee which had not been properly constituted and therefore had not the jurisdiction to proceed with the inquiry. It was contended that the appointment of the

committee was made by the first respondent and not by the F. A. and C. A. O. On this question of fact the finding must be, on the materials on record before us, that the committee was in fact appointed not by the first respondent but by the F. A. and C. A. O. Mr. Jagdish Swarup placed before us again the relevant papers in connection with this matter and we find that the F. A. and C. A. O. did in fact appoint the committee of inquiry by his order of the 7th of June 1956 so that there was no inherent want of jurisdiction in the committee by reason of any defect in its appointment. The constitution of the committee was attacked on the ground that some of the members of the committee could be witnesses at the inquiry, The petitioner appears to have made representations against the personnel of the committee to the F. A. and C. A. O. but with no result. That decision of the F. A. and C. A. O. could not be challenged before us for the same reasons for which the decision of the F. A. and C. A. O. suspending the appellant could not be challenged. We find that it cannot be stated as a proposition of law that a departmental committee of inquiry suffers from any want of jurisdiction to inquire into a matter because some of the members constituting the committee may have some knowledge of the facts that may have to be inquired into. Knowledge of facts gathered prior to the inquiry does not place the member who had such knowledge on the footing of an accuser so that the principle that a person cannot be a Judge in his own cause can have no application.

On the materials before us it is clear that respondent No. 1, L.N. Kaula, was the person who accused the petitioner of gross misconduct and it was he who took the initiative in the matter with the higher authorities of the railway administration against the petitioner. Respondent No. 1 is not a member of the committee of inquiry; the members of the committee are respondents Nos. 2, 3 and 4 who do not appear to have made any accusation of any kind against the petitioner. The fact that they, during the course of their official employment, may have had occasion to see some of the incidents in which the petitioner was involved do not place them in the position of an accuser or a party to the cause. The petitioner's contention that he could find evidence in support of his case from one or the other member of the inquiry committee and that he has been deprived of that evidence cannot have much substance because we cannot presume that any member of the inquiry committee who knew some facts relevant to the inquiry was going to use that fact or suppress that fact to the prejudice of the petitioner. Apart from any disability to inquire into a matter of which some of the members may have some prior knowledge because the position of committee of inquiry is not the same as that of a judicial tribunal. The committee in this case was a mere fact finding committee appointed by a person who was competent to appoint such a committee under the rules, to find out what the facts were. Under Rule 1707 (c) the result of a departmental inquiry was to be submitted with the recommendation of the committee holding the inquiry to the officer competent under the rules to pass an order of dismissal for his consideration and for making such orders thereon as he thought fit.

34. It was contended by Mr. Jagdish Swarup that we could not make any order to

the committee of inquiry or give any directions to it since the committee of inquiry was merely acting as an agent of the F. A. and C. A. O. and since the F. A. and C. A. O. was not amenable to our jurisdiction we could not give, any directions to the committee of inquiry which was functioning under the control and supervision, of the F. A. and C. A. O. If we found that the committee of inquiry was acting in flagrant violation of law or natural justice then even if the committee had been appointed and worked under the general control and supervision of the F. A. and C. A. O. even then we had the power to prohibit the perpetration of gross injustice within our jurisdiction in view of the authority of the Supreme Court in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, . The question therefore we have to determine is whether on the facts found it could be said that the committee of inquiry was conducting itself in a manner which was violative of any of the well recognised principles of natural justice. In this connection stress was laid on behalf of the petitioner on some of the allegations contained in the affidavit of the petitioner on which it was contended that there was bias in the committee against the petitioner. There has been a denial of this on behalf of the respondents and we are not satisfied that any case of any real bias has been made out. It was also contended that since the committee was acting in a mala fide manner the committee lost its jurisdiction to conduct the inquiry against the petitioner. On the materials it is not possible for us to hold that the committee had been acting in a mala fide manner. Mala fide action or "malice in law" are not to be easily presumed. A party alleging these has to satisfy the Court that there are such facts and circumstances on which malice or mala fides could legitimately be found. The mere non-adherence to the strict procedure followed by a judicial tribunal does not in our judgment amount to either acting mala fide or acting contrary to natural justice.

35. The allegations on which bias or malice. was attempted to be established in this case were in brief these :

- (a) that some of the members of the committee had personal knowledge of the facts prior to those facts being brought to their notice in evidence at the inquiry;
- (b) that attempts were made on behalf of the committee to tutor witnesses;
- (c) that the petitioner was subjected to cross-examination, which was in violation of the principles laid down in Article 20 of the Constitution;
- (d) that there was a refusal by the committee to summon certain witnesses on behalf of the defence; and
- (e) that proper legal aid was not allowed to the petitioner,

36. The allegation that some of the members of the committee may have had knowledge of some of the happenings, which led to this inquiry, prior to the inquiry itself, can admit of no serious doubt. The question, however is, how far this "pre-knowledge" could really prejudice the petitioner. It has not been shown that any of the matters in respect of which any member of the committee had

previous knowledge was a matter vitally in controversy. We may in this connection point out that the committee has not the power to take a final decision in respect of the matters on which it embarked to inquire.

The committee is only a departmental fact-finding committee, which under the departmental rules, as has been pointed out earlier, has to submit the results of its enquiry with its recommendations to the officer who under the rules is competent to make an order of dismissal against the petitioner; such an officer in this case is the F. A. and C. A. O. The recommendations of the committee are not binding on the officer to whom they are made. He has the power under the rules to use his own discretion and bring to bear on the question his own judgment. It is difficult for us to hold that the officer in the position of the F. A. and C. A. O. will accept the report and sign it along the dotted lines. The scope of scrutiny of that officer into the report is not hedged in by anything in the rules. If he is satisfied that the inquiry has been unfair to the petitioner or that the petitioner has been prejudiced because of pre-knowledge of facts in some members of the committee, or has been prejudiced because the members of the committee has denied the petitioner the right to summon and examine some witnesses, he would, we have no doubt, give relief to the petitioner. It may here be pointed out that under the proviso to Rule 1707 of Indian Railway Establishment Code the committee was competent to refuse to call any witness suggested by the railway servant. It has not been said that the committee did not record its reasons in writing for refusing to summon defence witnesses.

The position that obtains today is that no one can with certainty predicate that the circumstances pointed out by the petitioner, assuming them to be present, have in fact caused real prejudice; prejudice has, therefore, at best to be presumed on the hypothesis that the circumstances are such as were likely to cause prejudice. In our view, we cannot make such a presumption. On our findings, arrived at earlier, we cannot say that the committee is functioning without jurisdiction. The question, therefore, is whether we can or should take away that jurisdiction which it had, to conduct the inquiry, under our extraordinary powers on a presumption that there may be certain circumstances on which the results of the inquiry may not be quite fair to the petitioner. We are of opinion that we cannot, at any rate we should not, in the exercise of our discretion do so.

37. The petitioner before us is a young man of education. He has apparently all the enthusiasm and exuberance of youth. He has had the misfortune or good fortune of having become the mouth-piece of a Trade Union--though it is alleged on behalf of the respondents that it is an unrecognised union and, therefore the petitioner has acted in a certain manner which has, apparently, not been liked by his officers at Allahabad. The petitioner has, therefore, found himself in his present predicament. We are conscious that enforcement of discipline in the ranks and file is a very necessary and desirable thing, but we are also conscious of the fact that any victimisation or discrimination in such matters is often

fraught with grave dangers.

It has been the experience that any attempt to enforce discipline, without being strictly impartial, has led to more indiscipline than any other single circumstance. So that, we entertain no serious doubt in our mind that whatever be the recommendations of the committee the F. A. and C. A. O. will exercise his own independent judgment, as he is bound to do under the law, before he upholds the findings of the committee and gives effect to them.

38. Before we part with this case we should like to make another observation, namely, that whether it is a departmental fact finding committee or any other committee which has the task of making inquiries and recording findings, should conform, as closely as possible, to those fundamental principles which govern the conduct of judicial inquiries.

Impartiality or action without prejudice is not necessarily the quality of a judicial officer; it is a human quality and is expected of every human being on whom falls the task, in whatever capacity he may be, to decide upon matters in controversy. We have taken the liberty of making these observations so that they may assist the committee, in clarifying their own position and in helping them to perform their functions properly.

39. For the reasons given above, we have seen no adequate reason to allow this appeal which we accordingly dismiss but under the circumstances of this case we make no order as to the costs of this appeal; the parties will bear their own costs.