

(1962) 01 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 674 of 1961

Divakaran

APPELLANT

Vs

Circle Inspector of Police, Munnar and Others

RESPONDENT

Date of Decision : 18-01-1962

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 31, 311, 311(2)

Citation : (1962) KLJ 966

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : S. Easwara Iyer and P.N. Rajan, for the Appellant;

Final Decision : Allowed

Judgement

C.A. Vaidialingam, J.—In this writ petition, Mr. Easwara Iyer, Learned Counsel for the petitioner, seeks to quash two orders, namely, the enquiry report, Ext. P. 5 dated 28-2-1960, made by the Circle Inspector of Police, the first respondent, holding the petitioner guilty of the several charges for which he was tried, as well as Ext. P. 8 dated 4-3-1961, being the order of the Inspector General of Police of the Kerala State, the second respondent herein, directing the removal from service of the petitioner, who was at the material time, a Head Constable in the Police force of the State. The facts leading up to the filing of this writ petition may be stated. The petitioner, at the material time, was serving as a Head Constable in Santhanpara Outpost, attached to the Udumbanchola Police station. There appears to have been a complaint made as against him by one Seeni Ammal on 1-9-1959. The allegations, no doubt, if true, were of a fairly serious nature, in that the petitioner in a drunken state, along with one or two others, entered the house of the said lady and caused annoyance to the lady and others and also demanded illegal gratification of Rs. 100/- for not effecting their arrest in view of certain complaints which the petitioner professed to be investigating as against the said lady and of also having extorted Rs. 50/- on the basis of this complaint; a preliminary investigation was conducted by the Circle Inspector of

Police and on the said officer being satisfied that there is a prima facie case for starting disciplinary proceedings as against the petitioner reported to that effect. The petitioner was served with a charge sheet, Ext. P. 1, dated 30-10-1959. The charge sheet itself appears to have been served on the petitioner only on 26-11-1959. The three charges levelled against the petitioner are as follows:

1. Corrupt conduct in demanding and receiving an illegal gratification of Rs. 50/- from M. Seeni Ammal of Eruthala on 30-8-1959.

2. Leaving jurisdiction without sanction on 30-8-59.

3. Reprehensible conduct in unlawfully entering the house of said Seeni Ammal on the night of 30-8-1959 after getting drunk, using obscene language as against the lady, threatening her with illegal arrest and assaulting her.

2. A brief statement of facts is given in the charge sheet, Ext. P. 1. It is stated therein that the petitioner, while working as the In-charge of Santhanpara Out Post attached to F2 Station on 30-8-1959 left the station jurisdiction without sanction and went over to Eruthala, within the limits of another police Station. It is further stated that under the pretext of making an enquiry into a petition he entered the house of Seeni Ammal at about 8 P.M. on 30-8-1959 after getting drunk, and behaved in reprehensible manner towards the lady and other inmates of the house. It is also mentioned that the petitioner demanded a sum of Rs. 100/- as illegal gratification for not effecting the arrest of the lady and ultimately managed to extort a sum of Rs. 50/- from her. There is also an averment that the petitioner assaulted the lady by dragging her to the courtyard of the house and compelled her to pay illegal demand made by him.

3. In Ext. P. 1 it is also mentioned that Seeni Ammal, her son Arunachalam, her daughter-in-law Lekshmi and one Irulandi Thevar will be examined at the enquiry to prove the charges levelled as against him. There is also a further statement that the statements of the four witnesses referred to above have also been recorded and along with those statements the other documents which are proposed to be used as against the petitioner are stated to be the complaint petition submitted by Seeni Ammal, the General Diary of the Santhanpara Outpost for 1-9-1959 as well as the Petition Register of F2 Police Station. It is also mentioned that other witnesses will be examined if and when found necessary.

4. Under Ext. P. 1 the petitioner was directed to offer his written explanation, within five days of the receipt of the charge as to why he should not be dealt with in respect of the several charges mentioned therein and he was also directed to state whether he wants an oral enquiry to be held or hearing in person and also to file a list of witnesses. There was also the usual statement that if the explanation is not received within time, the authorities will proceed on the basis that the petitioner has no explanation to offer and the charges will be disposed of ex parte.

5. The petitioner, as I mentioned earlier, received the memo of charges under Ext. P. 1, though dated 30-10-1959, only on 26-11-1959. On 29-11-1959 the petitioner sends what he calls, an explanation under Ext. P. 1 wherein he acknowledges receipt of the charge under Ext. P. 1 and denies completely in toto the various allegations levelled against him and states that he is not guilty of any of the charges referred to therein. Specifically the petitioner states that he has never demanded or received any illegal gratification from Seeni Ammal and that he did not leave his jurisdiction on 30-8-1959 as alleged and that he had never got himself drunk nor has he unlawfully entered the house of Seeni Ammal on the date or at the time referred to in Ext. P. 1. The other allegations of having used obscene language against the lady and others have also been controverted. The petitioner further makes a request that he may be allowed to submit his explanation, after he is given an opportunity to go through the statements of the witnesses who are proposed to be examined in the enquiry and he also makes a request for grant of copies of the same. The petitioner further categorically states that he wants an oral enquiry in the matter and he also prays for permission to examine witnesses and produce documents on his side in support of his defence. He winds up Ext. P. 2 by reiterating his request for grant of copies of documents and statements of witnesses referred to in the charge sheet to enable him to submit his defence in the matter. That was on 29-11-1959.

6. It is seen that the enquiry itself actually commenced on 1-12-1959 and continued also on 2-12-1959 when the statements recorded from the witnesses by the enquiring officer during the preliminary investigation were read out by the first respondent, and the petitioner was asked to cross-examine the prosecution witnesses present there on the strength of the statements so read out to him. There is no controversy that the petitioner did cross-examine these witnesses.

7. On 1-12-1959 (i.e.,) during the course of the enquiry, the petitioner furnishes a fairly detailed explanation under Ext. P. 3. From the various matters referred to therein it is clear that he was challenging the veracity of the witnesses whom he had cross-examined and he also pleads that they are under the influence of some others who are inimical towards him and therefore their evidence should not be accepted. He also attempts to point out in Ext. P. 3, what according to him, are the various contradictions in the answers given by the witnesses. On that ground also he urges that their evidence should be rejected.

8. In the meanwhile, the petitioner sends on 22-2-1960 a petition to the Inspector General of Police, evidenced by Ext. P. 7. At that time, it must be mentioned, the enquiry report had not been submitted by the first respondent. In Ext. P. 7, the petitioner, after referring to his having been placed under suspension pending enquiry, and also to the charges framed against him, states that he has submitted his written explanation on 29-11-1959, Ext. P. 2 wherein he had made a request to be furnished with copies of the statements of the witnesses and the prosecution records. Here he categorically states that the Circle Inspector of Police has refused to give him the copies, for which he had

made an application. He also says that on 1-12-1959 he was given a chance to cross-examine the prosecution witnesses after the statement of the witnesses recorded behind his back were read over to him and on the very same day a personal hearing was given. He also refers to the explanation, Ext. P. 3, and states that when it was given, the first respondent had refused to accept the same. Therefore, the grievance of the petitioner is that he could not file an effective answer to the charges as he was not allowed to know the nature of the statements made by the persons referred to in the charge sheet Ext. P. 1 and this has handicapped him in his defence.

9. Then there is another aspect dealt with under Ext. P. 7 that on 7-12-1959, the petitioner was asked to produce his defence witnesses by the enquiring officer and accordingly one Shri Anthappan was produced by the petitioner for the purpose of examination on his side; but the enquiring officer arbitrarily refused to examine him stating "You should produce all your witnesses on 11-12-1959 itself, telling that it is not a Sessions Case to conduct day to day trial." The petitioner further avers that the said Shri Anthappan made a specific request that he should be examined on 7-12-1959 itself since he had to attend to a case in the District Munsiff's Court at Ernakulam on 11-12-1959 and notwithstanding this request the petitioner says that the enquiry officer declined to examine Shri Anthappan on 7-12-1959.

10. Then the petitioner says that on 11-12-1959 he produced his other witnesses and the enquiry came to an end and Anthappan could not be produced for examination on his side.

11. There are certain other matters mentioned in Ext. P. 7 which are not necessary to be adverted to for the purpose of this writ petition.

12. Later, on 28-2-1960, under Ext. P. 5 which is one of the orders under attack, the first respondent submitted his enquiry report to the Inspector General of Police. The enquiry report, after dealing with various matters in evidence, ultimately holds the petitioner guilty of the various charges for which he was tried. According to the enquiring officer, the petitioner has left his jurisdiction without sanction on the clay in question and that fact is proved by evidence of P.Ws. 1 to 4, who speak to having seen the delinquent at Eruthala within Vellathuval station limits on 30-8-1959. The officer is further of the view that the other allegations that the petitioner entered the house of P.W. 1 at about 8 P.M. on 30-8-1959 in spite of the protests of the inmates, and attempted to extort money by making threats and that he ultimately succeeded in getting an illegal gratification of Rs. 50/- and that he assaulted Seeni Ammal to compel her to pay the balance amount are also proved from the testimony of P.Ws. 1 to 4. Therefore, the enquiring officer further proceeds to say that the explanation of the delinquent cannot be accepted and that the charges as against the petitioner are all proved. The merits of these findings, though attacked by the petitioner, are not being considered by me in the view that I take on the other grounds of attack made by the petitioner on the enquiry proceedings.

13. In consequence of this enquiry report, the Inspector General of Police, the second respondent herein, issued the show cause notice on 7-7-1960, under Ext. P. 4. The Inspector General of Police, after referring to the enquiry and also to the report, a copy of which was sent to the petitioner, states that he is satisfied that a prima facie case warranting deterrent disciplinary action against the delinquent has been made out and that he proposed to dismiss him from service. P.W. 4 winds up by calling upon the petitioner to show cause within the time mentioned therein, as to why the punishment of dismissal should not be inflicted as against the petitioner.

14. The petitioner sends an answer Ext. P. 6 dated 10-8-1960 to this show cause notice. Apart from attacking the evidence that has been relied upon by the enquiring officer for holding the petitioner guilty, the petitioner refers to two or three circumstances which, in my opinion, will have to be considered, in connection with the attack that is made as against these proceedings by Mr. Easwara Iyer, Learned Counsel for the petitioner, that in this case the petitioner has been denied the reasonable opportunity that has been safe guarded and guaranteed under Article 311 of the Constitution. It is only for that purpose that I am referring to the three or four aspects dealt with in Ext. P. 6.

15. In Ext. P. 6 the petitioner says that the statements of four witnesses that were being relied upon by the enquiring officer were taken on 8-9-1959, long prior to the framing of the charge and that no further evidence of those witnesses was taken when the enquiry commenced on 1-12-1959 except allowing the petitioner to cross-examine those witnesses, on the basis of the statements already recorded. The petitioner again says in Ext. P. 6 that the Circle Inspector of Police did not record the statements of the witnesses in his presence and in the enquiry the statements of witnesses recorded on 7th September and 8th September 1959 were used for the enquiry that took place on 1-12-1959. The petitioner further says that such evidence ought to have been taken in his presence and therefore the use made of the depositions of the witnesses recorded behind the back of the petitioner and before the framing of the charge is illegal and therefore, the enquiry should be considered to be illusory. That is one aspect that is dealt with.

16. The second grievance that is made by petitioner is that he produced Shri P.P. Anthappan on 7-12-1959 for purposes of being examined on his side but he was not examined. He also says that Shri. P.P. Anthappan owns vast cardamom estates in Devicolam and was busy with other work and it was with considerable difficulty that he was able to bring him on 7-12-1959. He also says that the said Athappan is a counter-petitioner, who is alleged even by the complaining party, Seeni Ammal, to have been present at the time of the misconduct alleged as against him and that therefore Anthappan was a very material witness on the side of the petitioner to controvert the various allegations made by Seeni Ammal and other prosecution witnesses. The non-examination of Anthappan on 7-12-1959 has resulted in the denial or an opportunity to the petitioner to place

his evidence before the Court because after 7-12-1959, the petitioner has not been able to get Mr. Anthappan to give evidence on his behalf, as the enquiry itself was closed on 11-12-1959.

17. The third aspect that is dealt with by the petitioner in Ext. P. 6, is that even in his very first explanation given under Ext. P. 2 on 29-11-1959, he has made a request for being furnished with copies of the statements referred to in the charge sheet and also with copies of the documents referred to therein. He had also personally requested the officer that he should be allowed to peruse those statements before he could be in a position to effectively file a statement in defence. He says that this was not allowed and he has not been permitted either to look into the statements and the records referred to in Ext. P. 1 nor have copies of those statements and documents been furnished to him. Therefore, the petitioner says that his defence has been considerably prejudiced and therefore also there has been a denial of reasonable opportunity guaranteed to him. The various other matters that are dealt with in Ext. P. 5 relates to the merits of the allegations as against the petitioner and the petitioner's denial of those allegations and his attacks on the evidence that has been tendered by those witnesses as against him.

18. But, ultimately, it will be seen, that Ext. P. 8 which is the final order, was passed by the Inspector General of Police on 4-3-1961 removing the petitioner from service. Ext. P. 8 refers to the allegation of misconduct as against the petitioner, the conducting of an enquiry and also the evidence recorded in the enquiry proceedings, the issue of the show-cause notice at an earlier stage and also receipt of the explanation from the petitioner.

19. The Inspector General of Police states that he is satisfied that he sees no reason to alter his original proposal, namely, that of holding the petitioner guilty. But it will be seen that though the original proposal in the show cause notice was to inflict a punishment by way of dismissal, ultimately, under Ext. P. 8 the punishment that is inflicted is one of removing the petitioner from service with effect from 24-9-1959 on which date he was placed under suspension.

20. The orders, Exts. P. 5 and P. 8, as I mentioned earlier, are attacked in these proceedings. I have also indicated, when dealing with the statement of facts, the grievance of the petitioner regarding these proceedings.

21. This is a convenient stage to refer to some of the allegations made in the affidavits and also the manner in which they have been dealt with by the State in its counter-affidavit. So far as the grievance regarding the non-furnishing of copies of the statements of witnesses referred to in Ext. P. 1, as also of the petitioner not even being allowed to look into them in order to enable him to file his explanation these allegations are contained in paragraph 9 of the affidavit. In the said paragraph the petitioner says that notwithstanding the specific requests made for being allowed to peruse the statements of witnesses proposed to be examined and though he asked for copies of the same he has not been allowed

even to look into them. Admittedly no copies have been given to him in respect of those documents or the statements relied upon in Ext. P. 1. So far as this aspect is concerned, in the counter-affidavit filed on behalf of the State by the Superintendent of the Home Department, it is stated in paragraph 4 that the petitioner submitted a written explanation on 29-11-1959. This, in my view must have reference to Ext. P. 2. It is also categorically stated that the petitioner had been allowed to peruse all the available records, including the statements recorded from the complainant and other persons interrogated by the Circle Inspector. There is another statement to the effect that it was only after all these formalities, that the petitioner submitted his explanation. Then again in the counter-affidavit it is stated later in paragraph 11 that the statement of the petitioner that he was not allowed to look into the statements of the witnesses is absolutely untrue and incorrect and the petitioner was, as a matter of fact, allowed to peruse the statements recorded by the Circle Inspector of Police from the complainant and other witnesses and all other documents relating to the matter. It is also stated that nothing prevented the petitioner from taking notes or even copies of the statements if only he had cared to.

22. Therefore, according to the State the Petitioner's grievance that he was not even allowed to peruse statements of the witnesses referred to in Ext. P. 1 and the further grievance that he was not even allowed to peruse the documents referred to in Ext. P. 1 before he could file his explanation in answer to the charge levelled is unfounded. But here I can straightaway say that I find considerable difficulty in accepting this explanation given on behalf of the State. From the various dates mentioned earlier, it will be seen that the charges, though framed on 30-10-1959 under Ext. P. 1, were actually furnished to the petitioner only on 26-11-1959. There is no controversy about this. On 29-11-1959, under Ext. P. 2, the petitioner, after denying in a general way the various allegations contained in Ext. P. 1 categorically makes a request for grant of copies of the statements of the witnesses mentioned in Ext. P. 1 and he also asks for permission to peruse those statements so that he could file a satisfactory explanation in support of his defence. The enquiry itself has commenced admittedly on 1-12-1959. Therefore, the statement in the counter-affidavit that the petitioner filed his written explanation on 29-11-1959 only after having been allowed to peruse statements and records cannot be correct. Evidently the reference in the counter-affidavit is to the petitioner's explanation filed under Ext. P. 3 on 1-12-1959, after the enquiry has commenced.

23. There are no particulars given by the State as to when exactly the petitioner was given such an opportunity that is stated to have been given in the counter-affidavit. If such opportunity had been given, it would have been quite easy for the State to give particulars, as will be available from the records. Therefore, in the absence of such particulars, on this aspect, I have prima facie to proceed on the basis that the grievance voiced on behalf of the petitioner that he was denied an opportunity of even looking into the statements of the witnesses in order to formulate his defence has to be accepted. So far as I could see, it is not the case

of the State that such an opportunity was given after the petitioner made such a request as per Ext. P. 2 on 29-11-1959 and before 1-12-1959 on which date the enquiry itself commenced. No such opportunity could have been given prior to 29-11-1959, because it is on that day the petitioner himself makes the request and the charges were served on 26-11-1959.

24. The second aspect that has been emphasised by the petitioner in his various representations, related, as I mentioned earlier, to the utilisation of the evidence that has been already recorded by the Circle Inspector, during the investigation stage, from the prosecution witnesses and of using it as substantive evidence in the enquiry proceedings that actually commenced on 1-12-1959. As I mentioned earlier, the charge itself was framed on 30-10-1959 and served on 26-11-1959 and enquiry commenced on 1-12-1959. So far as the facts bearing on this aspect are concerned, in this case, fortunately there is no controversy. The petitioner is prepared to admit that in the said enquiry the Circle Inspector read out all the statements of the witnesses that had been already recorded, though behind the back of the petitioner by the enquiring officer, and the petitioner was asked to cross-examine the witnesses, who were present there on the basis of the statements that had been so read out. But here again, as to how far the grievance of the petitioner or the attack made on such a procedure that there is a violation of the provisions of Article 311 is a matter which will be considered by me later. Therefore, there is this admitted fact, that in the enquiry proceedings, one, part of the evidence that has been utilised against the petitioner and relied on for holding the petitioner guilty, consisted of evidence which had been already collected by the enquiring officer during the investigation proceedings and that was admittedly collected behind the back of the petitioner and long before the charges were served.

25. The third aspect which was being stressed by the petitioner relates to the non-examination of Anthappan on 7-12-1959. Here again, according to the petitioner, there was a direction by the officer to produce the defence witnesses on 7-12-1959. The learned Government pleader has also fairly brought to my notice that there was a memo issued to the petitioner by the enquiring officer on 1-12-1959, calling upon the petitioner to produce his Witnesses on 7-12-1959. On 7-12-1959, the petitioner, admittedly produced Shri Anthappan for examination. This, I should say, was strictly in accordance with the memo issued by the enquiring officer on 1-12-1959. No doubt it is brought to my notice by the learned Government pleader on 7-12-1959 the petitioner filed a memo stating that some of the other witnesses are not present and that an adjournment is necessary but there is this fact that in the said memo it is stated that Anthappan was present on that day. It is also averred by the petitioner that there was a specific request made to the enquiring officer to examine Anthappan as he will not be available on 11-12-1959. But in the counter-affidavit filed on behalf of the State, it is stated that there was no wilful refusal by the enquiring officer to examine Anthappan on that date but that the officer was of the view that in as much as the matter was being adjourned to 11-12-1959 for the examination of

all the witnesses on the side of the petitioner, it was not necessary to record the evidence of Anthappan alone on 7-12-1959. Whatever may have been the view of the officer, the position ultimately is this: There was a direction by the enquiring officer on 1-12-1959, calling upon the petitioner to produce his defence witnesses on 7-12-1959. When once on 7-12-1959, the petitioner had produced Anthappan for purposes of examination, whatever may be the reasons for the non-production of the other witnesses, in my view, there was certainly a duty on the part of the enquiring officer to record his evidence. When the matter was admittedly coming up on 7-12-1959 only for the purpose of examination of the petitioner's witnesses, I do not find any legal difficulty in examining the witness who was present on the side of a party on that day and adjourning the matter for the examination of the other witnesses.

26. According to the petitioner, the non-examination of Shri Anthappan, who was produced on 7-12-1959, has resulted ultimately in the petitioner being denied an opportunity of placing a very valuable piece of evidence on his side before the officer. It has been mentioned by the petitioner in his petition to the Inspector General of Police as early as 22-2-1960 under Ext. P. 7, and reiterated in his answer, Ext. P. 6, to the above show-cause notice, Ext. P. 4, that it was represented to the enquiring officer on 7-12-1959 that Anthappan had come on that day with considerable inconvenience, and that he has to be present in connection with a case before the Ernakulam District Munsiff's Court on 11-12-1959. No doubt, in the counter-affidavit it is stated that this aspect was not brought to the notice of the enquiring officer at that time. There is also a further averment in the counter-affidavit to the effect that on 11-12-1959, when the other witnesses were being examined, the petitioner did not make a further request for adjournment to produce any other witnesses. In my view, there was no further occasion for the petitioner to ask for an adjournment, because even as per the statements contained in the counter-affidavit, the officer had categorically stated that on 7-12-1959 he also gave a memo to the petitioner that all witnesses should be produced on 11-12-1959, and that no further adjournment will be granted. Therefore, in view of this memo issued by the officer himself, it is idle to expect the petitioner to make a further request for adjournment on 11-12-1959. As to how far the evidence of Anthappan would have materially affected the result of the decision or what help the petitioner would have derived from the evidence of Shri Anthappan are all totally different matters, because neither the enquiring officer nor this Court has the evidence of the witness. There was a right given to persons like the petitioner, to have an effective opportunity of substantiating their defence by calling witnesses on his side. In this matter it assumes some considerable significance, because it is the case of the petitioner that Shri Anthappan himself was also a counter-petitioner in the complaint filed by Seeni Ammal against the petitioner and therefore Anthappan's evidence would have been very valuable in his attempt to controvert or rebut the evidence that has been tendered on the prosecution side. Therefore, I must proceed on the basis that the grievance of the petitioner that

there has been a denial of opportunity to the petitioner to examine an important witness has to be accepted.

27. These are the aspects that have been also pressed before me by Mr. Easwara Iyer, Learned Counsel for the petitioner.

28. There are, no doubt, one or two minor contentions that have been raised, namely, the Circle Inspector of Police who conducted the enquiry should not have done it because he has got a bias as against the petitioner. The ground on which this position is sought to be supported is that the petitioner refused to take certain documents to Munnar where the Circle Inspector was camping. It is also urged that the enquiring officer should be considered to have a biased mind because he is the identical officer who conducted the original preliminary investigation and reported that there is a prima facie case as against the petitioner for starting disciplinary action. Then again, there is a further attack made against these proceedings, based upon Rule 8 of the Kerala Police Departmental Enquiries Punishment and Appeal Rules. According to the petitioner, it is only the appointing authority, the Inspector General of Police, that should have nominated the enquiring authority, whereas as is evident from the records, the Inspector General did not nominate the first respondent but really it is the District Superintendent of Police who nominated the first respondent as the enquiring officer. Whatever merit there may be in these contentions, I am not satisfied that the petitioner can be permitted to raise them at this stage, before this Court, for the first time. If really the petitioner had grievance regarding the jurisdiction of the officer to start an enquiry on the basis that he is not the proper officer empowered to do so under Rule 8 or on the ground that he is not competent to conduct an enquiry because he is biased as against the petitioner, these are all aspects which the petitioner should have raised before the enquiring authority himself. Not having raised those grounds of attack, which if raised at an earlier stage probably would have enabled the higher authorities to change the officer, if they felt there was any reasonable justification it is not open to the petitioner, after having participated in the enquiry and having taken a chance of decision in his favour, to turn round and attack those findings when they are against him. The question of bias of the officer, if true, must have been known to the petitioner even before the enquiry commenced and he should have immediately protested and not having done so, he cannot now raise that contention here. In any event, they are not such as to go to the root of the jurisdiction of the Tribunal to render its proceedings void.

29. According to Mr. Easwara Iyer, Learned Counsel for the petitioner who has drawn my attention to the various decisions of the Supreme Court, to which I will refer presently, the principle is now well settled, namely, that an officer must have the reasonable opportunity guaranteed to him under Article 311, complied with in disciplinary proceedings. An essential requirement of this reasonable opportunity rule is that the evidence which is utilised or used against the officer, must have been taken in the presence of the officer, when he is being tried on

the charges. In this case, at any rate, so far as the second stage is concerned, that is, of an opportunity being given to the officer before imposing the punishment, the petitioner has no grievance that there has been a failure at that stage. But the main grievance of the petitioner is that there has been a failure of the principles of natural justice and also a denial of the reasonable opportunity, guaranteed to him under Article 311 during the first stage of the proceedings, namely, the enquiry stage, after the framing of the charge.

30. In this connection, the Learned Counsel Mr. Easwara Iyer urged that the petitioner has not been allowed even to peruse the statements of witnesses referred to in the charge sheet nor was he allowed to look into the other documents when admittedly Ext. P. 1 states that they will be relied on in the enquiring proceedings. So far as this is concerned, I have already adverted to this matter and expressed the view that the case of the State that the petitioner had been given an opportunity to look into those documents and the statements when he gave his explanation under Ext. P. 2, cannot be accepted. Ext. P. 2 itself, as I mentioned earlier, has been filed on 29-11-1959 and it is there that the petitioner categorically asks, for an opportunity of being allowed to peruse the statements, so that he may be able to file a satisfactory and effective explanation. No doubt, the learned Government Pleader urged that there is no obligation on the part of the department to furnish copies of all the documents or the statements that a party may ask for. I will assume that this contention may be correct in particular circumstances. But the point here is the petitioner categorically makes two requests, namely a request to be allowed to peruse the statements and the documents and another request to be furnished with copies of the same. Assuming that the petitioner may not be entitled to be furnished with copies of the same does it also follow that the petitioner is not entitled to have an opportunity of perusing those statements and documents before he could effectively formulate his defence. So far as this is concerned, I will be adverting to the principles laid down by the Supreme Court presently. In my view, the position is well settled that a fair opportunity must be given at least to peruse the material referred to in the charge and more especially when the charge sheet itself states that the said material will be used in the enquiry proceedings. No doubt, it may be open to the authority on valid and proper grounds to decline to grant such permission. In my view, there has been a denial of opportunity to the petitioner to know exactly that the materials are on the basis of which the charges are framed, and that must have prejudiced him in his defence. To that extent, it must be held that there has been a denial of reasonable opportunity given to persons like the petitioner.

31. I have already dealt with this aspect. I have also adverted to the fact that the counter-affidavit does not give any particular detail or material from which it could be gathered that the petitioner was actually given the opportunity, which he says was not given to him.

32. Then again, the other serious infirmity that is alleged against these

proceedings is regarding what happened during the actual enquiry proceedings, i.e., the using of the evidence already collected or gathered from the prosecution witnesses during the investigation stage and behind the back of the petitioner, and using the same as substantive evidence in the inquiry. Here again I have mentioned that there is no dispute on facts. That is, those statements, though gathered behind the back of the petitioner, were no doubt, read out by the enquiring officer on the date of the enquiry in the presence of the petitioner and the petitioner was allowed to cross-examine the witnesses who were present there. There is also no controversy that the petitioner did, as a matter of fact, cross-examine the witnesses. According to Mr. Easwara Iyer, here again the position is well settled that one of the essential requirements of reasonable opportunity rule at the first stage, namely, the state of enquiry, is that no evidence which has been gathered or collected or recorded behind the back of the officer, is to be utilised and in this case the procedure adopted by the enquiring officer is illegal and therefore the proceedings should be set aside.

33. The learned Government Pleader, on the other hand urged that the question to be considered will be whether the petitioner was really prejudiced by the manner in which the enquiry took place in the circumstances of this case. The learned Government Pleader quite naturally stressed and relied upon the circumstance that even according to the petitioner, the statements though already recorded from the various witnesses, were actually read over by the enquiring officer in the presence of those witnesses and in the presence of the petitioner. The manner in which the petitioner has conducted the cross-examination, according to the learned Government Pleader, clearly shows that far from the petitioner being prejudiced by this procedure, it will be clear that the petitioner has fully familiarised himself with the nature of the statements that have been given as against him by the various witnesses and he has effectively cross examined them on various matters pertaining to the case. Though the statements had been gathered behind the back of the petitioner, those statements were made known to the petitioner, and he was permitted to cross-examine the witnesses. Therefore, even assuming there is any irregularity or infirmity they do not assume any importance in this case; and therefore it cannot be stated that there has been a failure of reasonable opportunity guaranteed to persons like the petitioner. In this connection, the learned Government pleader referred me to one or two observations contained in certain judgments of some of the High Courts. According to the learned Government Pleader the reasoning of the Supreme Court in *Phulbari Tea Estate Vs. Its Workmen*, will also support the stand taken by him. I will advert to these decisions a little later. Strongest reliance was placed by the learned Government pleader on the Division Bench decision of this Court, rendered by the learned Chief Justice and Mr. Justice Madhavan Nair and reported in *Vasudevan v. Government of Kerala* (1961 KLT 486). The decision in this case was distinguished by Mr. Easwara Iyer, Learned Counsel for the petitioner, on several grounds. If the proposition now advanced by the learned Government Pleader has been accepted and laid down by a

Division Bench judgment of this Court it is needless to state that sitting as a Single Judge, I am bound to follow that decision and decide a case in accordance with those principles. But the exact scope of the decision of the Division Bench of this Court referred to earlier, will be considered by me later. But I am of the view that the said decision has no application to the case on hand.

34. Then the other aspect to be considered is the non-examination of Anthappan on 7-12-1959. Here again, I have already referred to the point sought to be made on behalf of the petitioner and I have also indicated my view that the failure to examine Anthappan on 7-12-1959 has really resulted in the denial of an opportunity to the petitioner of adducing evidence on his side. Here again, Mr. Eswara Iyer placed considerable reliance upon the reasonable opportunity rule, namely, one of the ingredients of that rule as laid down by the various decisions governing the matter is that a delinquent officer has a right to adduce evidence in support of his defence in the enquiry proceedings and must be given that opportunity.

35. Mr. Easwara Iyer, Learned Counsel for the petitioner, has placed considerable reliance on certain decisions of the Supreme Court in support of his contention that the enquiry proceedings in this case in view of the various infirmities referred to above result in this, namely, a violation of the principles of natural justice and denial of reasonable opportunity, guaranteed to persons like the petitioner, under Article 311.

36. I will immediately refer to these decisions. After a due consideration of the various aspects stressed before me by the Learned Counsel for the petitioner and the learned Government Pleader on behalf of the State, in my view, the contentions urged by Mr. Easwara Iyer, Learned Counsel for the petitioner, have to be sustained and the orders under attack, Exts. P. 5 and P. 8 will have to be set aside.

37. The earliest decision, regarding the nature of the guarantee given to delinquent officers under Article 311 of the Constitution is that reported in Union of India (UOI) Vs. T.R. Varma, . Mr. Justice Venkatarama Aiyar, delivering the judgment on behalf of the court and dealing with the question of principles of natural justice, observes at page 885 :

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

It will be seen from the above extract that the rules of natural justice, in such circumstances require (a) that a party should have an opportunity of adducing all relevant evidence on which he relied (b) that the evidence of the opponent

should be taken in his presence, (c) that he should be given the opportunity of cross-examining the witnesses and (d) no material should be relied on against an officer, without the latter being given an opportunity to explain them. In the case before me, no doubt, the petitioner has been given an opportunity of cross-examining the witnesses summoned on the prosecution side. But can it be stated that the evidence adduced in this case, on behalf of the opponent and especially the chief-examination part of which has been taken in his absence, and used against the petitioner, satisfies the above tests? Admittedly, the answer should be "No", because that evidence has not been taken in his presence. Therefore, one of the essential requirements laid down by the learned Judge is absent in the proceedings before me. Again, the above extract emphasises that a party should have an opportunity of adducing all relevant evidence on which he relies. Here again, in the matter of non-examination of Anthappan, notwithstanding the fact that the petitioner actually produced him on 7-12-1959 in obedience to the memo issued by the enquiring officer has really resulted in this, namely, the petitioner has not been given an opportunity to adduce "all relevant evidence" on which he relies. The non-examination of Anthappan is not due to any view taken by the officer that the witness will not speak to any of the material aspects which arise for decision in this case or on any other legal grounds or even on the ground that the petitioner is only attempting to protract the proceedings. I have already dealt with that aspect earlier and therefore two of the essential requirements which go to make up the principles of natural justice as laid down by the Supreme Court, (viz. that the evidence of the opponent should be taken in the presence of the delinquent officer, and that the party should have an opportunity of adducing all relevant evidence on which he relies) are lacking in this case.

38. I may also indicate that those observations extracted above from the decision of the Supreme Court in *Union of India (UOI) Vs. T.R. Varma*, have been adverted to with approval in a later decision in *Phulbari Tea Estate Vs. Its Workmen*, and also reiterated in the recent decision of the Supreme Court reported in *State of Madhya Pradesh v. Chintaman* (AIR 1961 S.C. 1623). No doubt, I am aware of the contention raised by the learned Government Pleader based upon some observations contained in the decision in *Phulbari Tea Estate Vs. Its Workmen*, , to which I will refer, after adverting to the other decisions bearing on this matter.

39. The next decision, where the contents and scope of the reasonable opportunity guaranteed under Article 311 of the Constitution is considered is the one, where learned Chief Justice Das, has considered the matter in the decision reported in *Khem Chand Vs. The Union of India (UOI)and Others*, . The learned Chief Justice, if I may say so with great respect, after a very elaborate consideration of the various aspects governing the matter in question, summarises the principles deducible as follows at page 307:

To summarise; the reasonable opportunity envisaged by the provisions under

consideration includes:

- (a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
- (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself for any other witnesses in support of his defence; and finally
- (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposed to inflict one of the three punishments and communicates the same to the Government servant.

Therefore, it will be seen from the observations of the learned Chief Justice extracted above that the learned Chief Justice has categorically laid down that there must be an effective opportunity given to the delinquent to deny his guilt and establish his innocence and that can be only if he is told of the charges levelled against him and the allegations on which such charges are based. The learned Chief Justice also emphasises that there must be an effective opportunity given to a delinquent officer to defend himself not only by cross-examining the witnesses produced for the prosecution but also of being allowed to examine himself or any other witness in support of his defence and there must also be an opportunity to make his representation regarding the proposed punishment. In the case before me, the charges are really framed on the basis of the complaint of Seeni Ammal and the statements recorded from her and the three other persons mentioned in Ext. P. 1. But the petitioner had no opportunity of knowing those allegations before the enquiry commenced.

40. In the later decision of the Supreme Court reported in Jagadish Prasad v. State of M.B. (A.I.R. 1961 SC 1070), it will be seen that the enquiry proceeded on the basis that the delinquent officer has already admitted his guilt; and that procedure was also accepted by the High Court on the ground that the procedure adopted in that case has not in any manner prejudiced the delinquent officer. So far as this is concerned, Mr. Justice Gajendragadkar speaking on behalf of the Court observes at page 1073:

In such a case, even if the appellant had made some statements which amount to admission it is open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the rules. But apart from this consideration, if the statements made by the appellant do not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of dismissal passed against him. Under Article 311(2) he was entitled to have a reasonable opportunity of meeting the charge framed against him, and

in the present case, before the show-cause notice was served on him he has had no opportunity at all to meet the charge.

That is, the learned Judge also deals with one aspect of the reasonable opportunity guaranteed to officers who are under trial. The learned Judge again later in the judgment emphasises the importance of the departmental enquiry at page 1074 of the report:

The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose.

After making these observations, the learned Judges disagree with the view of the High Court in that case that there was no prejudice caused to the party therein as a result of the department's failure to hold an enquiry as contemplated under the material provisions.

41. These observations extracted above also reiterate and emphasise the nature of the reasonable opportunity guaranteed under Article 311 of the Constitution even in cases where an officer may be considered to have partially or completely accepted the guilt in other prior proceedings.

42. The last decision that has to be considered on this point is the recent decision of the Supreme Court in *State of M.P. v. Chintaman* (A.I.R. 1961 S.C. 1623). Mr. Justice Gajendragadkar, delivering the judgment on behalf of the court, deals with the two stages of an enquiry and observes at page 1628 as follows:

There is no dispute that under Art. 311(2) the respondent is entitled to have such a reasonable opportunity. A proper opportunity must be afforded to him at the stage of the enquiry after the charge is supplied to him as well as at the second stage when punishment is about to be imposed on him. If the first enquiry was materially defective and denied the respondent an opportunity to prove his case it is impossible to hold that a reasonable opportunity guaranteed to a public servant by Art. 311(2) had been afforded to the respondent in the present case.

The extract quoted above clearly envisages a proper opportunity being given to the officer after the charge sheet is delivered to him which is the 1st stage, and also at the second stage when the punishment is about to be imposed. The extract also emphasises that if the first stage of the enquiry, namely, the stage relating to the framing of a charge and to the enquiry proceedings are materially defective and has denied a reasonable opportunity to the party in question, it is impossible to hold that a reasonable opportunity guaranteed to the public servant under Art. 311 has been so afforded. Therefore, in order to establish that the reasonable opportunity guaranteed under Article 311(2) has been satisfactorily

complied with, it is not enough if that opportunity has been given at the first or second stage alone. But it is essential that the said reasonable opportunity must have been given to the officer concerned during both the stages of the enquiry and if the first stage of the enquiry is defective in that respect it follows that the fact that in the second stage that requirement has been complied with, will not enable the State to sustain the enquiry proceedings as such.

43. In this case, the position is practically the same as that which was being considered by the Supreme Court in the decision referred to above. As I mentioned earlier, in this case there is no grievance that at the second stage, namely, after the proceedings had been completed the petitioner did not have a reasonable opportunity of showing cause as against the proposed punishment. But the main attack is on the first part of the enquiry or as Mr. Justice Gajendragadkar calls it, at the first stage of the enquiry, i.e., after the framing of the charge and till the enquiry is concluded as against the delinquent officer

44. The learned Judge again at page 1629 deals with the powers of the High Court under Article 226 when questions relating to violation of Article 311 are agitated by the parties concerned. The learned Judge observes as follows:

It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Art. 226 it is for the High Court to consider whether the constitutional requirements of Art. 311 (2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public officer relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bona fide but that does not mean that the discretionary orders passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Art. 311 (2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of law. As Venkatarama Aiyar J. has observed in *Union of India (UOI) Vs. T.R. Varma*, : "Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that, party, and that no materials should be relied on against him without his being given an opportunity of explaining them." It is hardly necessary to emphasise that the

right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice. That is the view taken by the High Court and in the present appeal which has been brought to this Court under Art. 136 we see no justification for interfering with it. In this connection it would be relevant to refer to the decision of this Court in *Khem Chand Vs. The Union of India (UOI)and Others*, where this Court has emphasised the importance of giving an opportunity to the public officer to defend himself by cross-examining the witnesses produced against him.

The learned Judge has also referred with approval to the observations of Mr. Justice Venkatarama Aiyar in the decision reported in *Union of India (UOI) Vs. T.R. Varma*, , and in particular to the passage at 885 which has been extracted by him in the earlier part of the judgment. That is, the principles laid down by the learned Judge in the earlier case have been, if I may say so with respect, approved and adopted in the recent decision of the Supreme Court as will be seen from the observations of Mr. Justice Gajendragadkar referred to above. Therefore, here again the same tests regarding the principles of natural justice have been adopted by the learned Judges when dealing with the failure of reasonable opportunity under Art. 311 of the Constitution.

45. All these decisions in my view clearly establish that the reasonable opportunity, guaranteed to parties, like the petitioner, before me emphasises that the evidence that is sought to be used against the officer concerned must have been taken in the presence of the officer and that there is also a right to the officer to adduce all evidence that he wishes to adduce in support of the defence in the enquiry. Applying those tests, I am satisfied that the requirements in the matter of the evidence of the prosecution witnesses in the presence of the officer and the officer having been given a full opportunity of examining all relevant witnesses that he desires to examine in support of his defence have not been properly complied with and to that extent it must be held that there has been a denial of the reasonable opportunity guaranteed under Art. 311. Even at the earlier stage, I have held that the petitioner was not given an opportunity even to peruse the statements of witnesses.

46. I will advert to the decision of this Court reported in *Vasudevan Nair v. Government of Kerala* (1961. K.L.J. 315 : 1961 KLT 486) on which, as I mentioned earlier, the learned Government Pleader has placed some considerable reliance. In my view, if that decision is closely looked into, it will clearly show that the learned Judges were dealing with the case of an officer who never at any stage asked for an oral enquiry nor did he want a personal hearing regarding the proceedings that were sought to be commenced by the appropriate authorities. On the other hand, when the evidence and the material that had been collected by the department were brought directly to the knowledge of the officer and he

was specifically asked as to whether he wants an oral enquiry or a personal hearing or what he has got to say regarding those statements, far from controverting any of these statements or saying that those statements are false or cannot be accepted, the officer was only reiterating, at every stage, that he has committed some mistake and that he should be pardoned for that mistake. But that officer when proceedings were taken against him, and ultimately he was found guilty, began to complain that he has been denied the reasonable opportunity guaranteed to him under Article 311(2) of the Constitution, In my view, it is in dealing with the grievance of such an officer that the learned Judges have ultimately come to the conclusion that it cannot be stated in that case that there has been a denial of the reasonable opportunity guaranteed under Article 311 of the Constitution. All these observations made by the learned Judges also must be related to the particular case that the learned Judges were dealing with. I may also state that Mr. Easwara Iyer, Learned Counsel for the petitioner, was prepared to ask this Court to hold that some of the observations or propositions laid down by the learned Judges in the Division Bench ruling referred to above are not correct, and more especially in view of the principles laid down by the various decisions of the Supreme Court regarding the scope and content of the guarantee of reasonable opportunity under Article 31. It is not really necessary for me to go into that aspect in the proceedings before me. As I mentioned earlier, the observations made by the learned Judges in that case and their coming to the conclusion that the party in that case cannot certainly be heard to complain of a denial of reasonable opportunity must be limited to the particular nature of the case which the learned Judges were dealing with. The learned Judges were not dealing with a case where an enquiry is conducted at the request of the officer. Therefore it is not necessary for me to express any view regarding this contention of Mr. Easwara Iyer.

47. To come back to the support sought to be derived from this judgment by the learned Government Pleader, in my view, that judgment does not give any support to the State. In that case, admittedly there was no enquiry whatsoever and if I may say so with great respect the learned Judges did not have an occasion to consider as to what are the essential requirements to be satisfied when an enquiry is conducted and proceedings are taken against an officer and what is the scope of a reasonable opportunity guaranteed to such officers under Art. 311 in the course of such enquiry proceedings. As I have already mentioned in the particular case before the learned Judges, the officer at no time wanted an enquiry or a personal hearing regarding the matter and he did not challenge the evidence furnished to him. Therefore, the learned Judges were not dealing with a case where an enquiry is conducted as against an officer, and where such enquiry is not conducted in the light of the principles laid down by the Supreme Court.

48. As I mentioned earlier, the learned Government Pleader attempted to derive some support from the decision of the Supreme Court reported in *Phulbari Tea Estate Vs. Its Workmen*, . In my view here again no support could be derived from this decision to the proposition that the learned Government Pleader was

advancing, namely, that it is open to the enquiry tribunal to record statements behind the back of a party but what is necessary is that the delinquent officer must be made known of these statements and the deponents of the statements must be made available for purposes of cross-examination. In my view, the decision of the Supreme Court referred to above and relied upon by the learned Government Pleader does not lay down any such proposition. No doubt, that appears to have been a very extreme case where the statements taken behind the back of the party were not placed before the officer. Even the witnesses who were said to have made such statements were not tendered for cross-examination either before the domestic tribunal or even before the Industrial Tribunal, when the order of the management was challenged. The learned Judges were only referring to the conduct of the management that even in the proceedings before the tribunal the management did not care to make the deponents of those statements available for cross-examination. From this the learned Government Pleader wants me to conclude that if those deponents, who had given statements behind the back of the delinquent party, had been tendered for cross-examination, at any rate, before the Industrial Tribunal, then there is no question of infirmity attaching to the recording of statements behind the back of a party. I am not inclined to accept this contention of the learned Government Pleader. On the other hand, it will be seen that Mr. Justice Wanchoo delivering the judgment on behalf of the court specifically quotes with approval the observations of Mr. Justice Venkatarama Aiyar in *Union of India (UOI) Vs. T.R. Varma*, and in particular the extract that I have already quoted from page 885 earlier. Therefore, having accepted and adopted the views of Mr. Venkatarama Aiyar J. and quoted them with approval, if I may say so with great respect, certainly the Supreme Court would not have laid down a proposition quite contrary to the extract that has been quoted by them. Therefore, this decision of the Supreme Court also does not assist the contentions of the learned Government Pleader.

49. Both Mr. Easwara Iyer and the learned Government Pleader have also drawn my attention to certain decisions of the other High Courts. In *State of Bombay Vs. Gajanan Mahadev Badley*, , *A.R.S. Choudhury Vs. The Union of India (UOI) and Others*, and *K.S. Hemrajsinhji Pravinsinhji Vs. Inspector General of Police Ahmedabad and Another*, , learned Judges have held that the evidence collected behind the back of a party by way of chief examination cannot be used in the enquiry proceedings notwithstanding the fact that the party is given an opportunity to go through them at the time of the enquiry proceedings and cross-examine the deponents on the basis of those statements. Mr. Easwara Iyer relies on those decisions. The decision in *Antarsingh v. State of M.P.* (AIR 1950 MP 254) and *C.S. Sharma Vs. State of Uttar Pradesh and Another*, where the learned Judges have held that the procedure under such circumstances of collecting evidence or recording statements behind the back of an officer and using the same in enquiry proceedings will not suffer from any infirmity provided the officer concerned has been made known the contents of the evidence and is

allowed to cross-examine the witnesses on that basis. The learned Government Pleader relies on these decisions. In view of the direct decisions of the Supreme Court to which I have made reference, it is really not necessary for me to consider these decisions in great detail. But I may say with respect that I am in agreement with the views expressed in the Bombay, Calcutta and Gujarat decisions referred to earlier and relied upon by Mr. Easwara Iyer, Learned Counsel for the petitioner. From these decisions also, it follows that the procedure adopted in this case is absolutely illegal and cannot be sustained, I may also state that in this case the Government does not contend that before the statements or the evidence taken from the various prosecution witnesses were utilised for purposes of cross-examination, the petitioner had agreed to that course or has given his consent in so many words. No doubt, I am aware of the contention of the learned Government Pleader that when that procedure was adopted by the enquiring officer the petitioner did not make any protest nor did he specially ask for recalling those witnesses for cross-examination, In my view, the contention of the learned Government Pleader cannot be accepted in this regard. When a particular right is guaranteed to officers like the petitioner, unless the State is able to establish that the petitioner has specifically given his consent, it is not open to the State to turn round and put the blame upon the officer concerned for not making a request to recall those witnesses for purposes of cross-examination. The position ultimately is that the petitioner, by virtue of the evidence that has been collected behind his back, and used in the enquiry proceedings and by virtue of the fact that the petitioner has been denied the opportunity of producing, what according to him were important pieces of evidence, and by the non-examination of a witness who was actually produced, should be held to have been denied the reasonable opportunity guaranteed under Art. 311. These are very major infirmities, and there is also the other point, namely that the petitioner has not been, as I have held, allowed even to peruse the statements or the documents referred to in Ext. P. 1. All these infirmities in my view are sufficient to hold that there has been a denial of reasonable opportunity guaranteed under Article 311 regarding the first stage of the enquiry. That is enough to quash these proceedings.

50. Therefore, to conclude the orders, Exts. P. 5 and P. 8, will have to be quashed: but the quashing of these orders will not stand in the way of the State Government taking any appropriate fresh action against the petitioner, as they deem fit in the circumstances. I make it very clear that I have not expressed any opinion regarding the allegations made against the petitioner or regarding the findings expressed by the enquiry officer. The writ petition is allowed subject to the directions contained herein. The parties will bear their own costs.