

(1979) 03 MAD CK 0045
In the Madras High Court

Indian Bank

APPELLANT

Vs

Evalappan

RESPONDENT

Date of Decision : 13-03-1979

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12, 19

Constitution of India, 1950 — Article 226, 311

Tamil Nadu Shops and Establishments Act, 1947 — Section 41

Citation : (1980) ILR (Mad) 15 : (1979) 2 LLJ 450

Hon'ble Judges : Ratnavel Pandian, J;Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.—The respondent herein was working as agent at the Coonoor branch of the appellant-Bank, hereinafter referred to as the Bank, since 1968. The Bank was nationalised in the year 1969 by virtue of the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, which was later on replaced by an Act of the same name in 1970. On 13th June, 1970, the respondent was suspended from service and an enquiry was initiated against him in respect of eight irregularities, contained in the memo of charges dated 4th December, 1970. The respondent submitted his explanation on 29th January, 1971. He was given a personal hearing by the Secretary of the Bank on 26th May, 1972. Ultimately, the Board issued to him a notice dated 19th August, 1972, requiring him to show cause as to why he should not be dismissed from service. With that notice were enclosed four reports prepared by the investigating officers on the 13th of May, 1970, 27th of May, 1970, 15th of June, 1970 and 8th of August, 1970, respectively. In reply to the notice dated 19th August, 1972, the respondent submitted his explanation on 25th August, 1972. After considering his representation the respondent was dismissed from service by the Board's order dated 28th October, 1972 and the same was confirmed in appeal by the Board's second order dated 25th May, 1973.

2. The respondent filed Writ Petition No. 4089 of 1973 seeking a writ of certiorari

from this Court to quash the said order of dismissal dated 28th October, 1972, on two grounds : (1) the orders cut at the root of the principles of natural justice that nobody should be condemned unheard, and (2) though the orders are in the nature of quasi-judicial orders, they do not set out the reasons for the respondent's dismissal and, therefore, they have to be taken as null and void.

3. The said writ petition was resisted by the appellant-Bank on various grounds. It took two preliminary objections as to the maintainability of the writ petition. One was that the relationship between the parties being that of master and servant arising out of a contract of service, the parties cannot invoke the writ jurisdiction of this Court. Dealing with this objection, Koshal, J. (as he then was), expressed the view that though the rules governing the service of officers of the Indian Bank framed in the year 1963 originally did not have a statutory force and the relationship between the Bank and its employees was only contractual, after the Bank was nationalised under the provisions of the 1970 Act referred to above, the said rules having been continued under Sections 12(2) and 19(3) of the 1970 Act the relationship between the Bank and its employees from 19th July, 1969, the date of the coming into force of the 1970 Act, has ceased to be merely contractual, that as a result of the said provisions of the Act the rules governing the service of officers have been shifted to the status of a statutory regulation governing the conditions of service of the employees of the Bank and that, as such-for breach of any service conditions, the employees of the Bank who have acquired a statutory status after the coming into force of the 1970 Act, may invoke this Court's extraordinary jurisdiction under Article 226 of the Constitution. The second preliminary objection urged by the Bank was that the respondent had another remedy open to him by way of an appeal to the appellate authority constituted under the Tamil Nadu Shops and Establishments Act, 1947. Dealing with this objection, Koshal, J., expressed the view that even assuming that another remedy is available to the respondent, an order of dismissal passed without jurisdiction and, therefore, a nullity can be questioned straightway under Article 226 of the Constitution before this Court. On the merits of the respondent's contentions set out above, Koshal, J., held that (1) there has been a violation of the principles of natural justice in the conduct of the enquiry in that the report of the Secretary and his recommendations to the Board which constitute a most important part of the material on which the Board had acted had not been furnished to the respondent, and (2) that the order of dismissal passed by the Board being laconic and non-speaking it has to be struck down. In this view, the order of dismissal was quashed. The correctness of the order of Koshal, J., has been questioned in this writ appeal by the Bank.

4. Mr. Dolia, learned Counsel for the appellant, contends that the two reasons given by Koshal, J., for quashing the order of dismissal cannot legally be sustained. As regards the two preliminary objections which were raised before the learned single Judge, but rejected by him, the learned Counsel does not dispute the fact that the employees of the Bank had acquired a statutory status after the coming into force of the 1970 Act and, therefore, any termination of

service of its employees contrary to the rules governing their service which have been raised to the status of service regulations framed u/s 19(1) of the said Act, can be questioned under Article 226. The learned Counsel however, presses before us the preliminary point based on the availability of an alternative remedy to the respondent u/s 41(2) of the Shops and Establishments Act, 1947.

5. It is not in dispute that before the Forty-second Constitution Amendment Act of 1976 was enacted, this Court had a discretion to entertain a writ petition even in cases where there was an alternative remedy. On 22nd July, 1976, when the learned single Judge disposed of the writ petition, the Constitution Forty-second Amendment Act had not been enacted. It is only after the enactment of Article 226(3), the discretion of the Court has been taken away and the availability of an alternative remedy was taken to be a bar for filing a writ petition under Article 226 except in cases of enforcement of fundamental rights. The amendment of Article 226 brought in subsequent to the order of the single Judge cannot be taken to affect his order. We cannot, therefore, now reject the writ petition on the ground that there is an alternative remedy available, especially when the learned Judge has entertained the writ petition, disposed of the matter on merits and gave relief to the respondent. We cannot, therefore, entertain this preliminary ground at this stage.

6. Coming to the merits of the case, it is submitted by the learned Counsel for the appellant that the learned single Judge was in error in holding that the principles of natural justice have not been followed in this case, that the non-furnishing of the report and recommendations of the secretary, which he has submitted to the Board, to the petitioner along with the show-cause notice proposing the punishment which is not a requirement under the rules governing the service of officers (which had acquired a statutory status) will not amount to a violation of the principles of natural justice, that where the principles of natural justice have been embodied in the form of service rules, it is only these rules which have to govern the conduct of enquiry against a delinquent officer and act as general principles of natural justice and that as the rules do not contemplate the furnishing of the recommendations and the report of the secretary to the delinquent officer, there is no question of any violation of the principles of natural justice. In support of the said contention that the principles of natural justice are to be gathered only from the statutory rules and not de hors it reference has been made to the following decisions:

7. In the Union of India (UOI) Vs. Col. J.N. Sinha and Another, , it was pointed out (at page 42):

Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law but supplement it." It is true that if a

statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

In *State of Gujarat and Others Vs. Ambalal Haiderbhai and Others*, , it was pointed out after referring to its earlier decision in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , that:

...rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its content should be for a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held, and the constitution and nature of duties of the Tribunal or the body of persons appointed for that purpose.

In *H.C. Sarin v. Union of India (1976) L.I.C. 1128*, the Supreme Court had again pointed out that even though the statutory provision is silent as to the relevant procedure to be followed in disciplinary proceedings that provision will have to be read consistently with the principles of natural justice and the relevant procedure of a fair enquiry in accordance with the principles of natural justice would have to be implied as per the said legal position before passing a drastic order of removal from service and that even if there is no statutory provision dealing with the procedure for disciplinary enquiries, the very nature of the power to impose a drastic punishment of removal from service make it implicit that that will have to be exercised justly and fairly, that is, in accordance with those four principles laid down in *Union of India (UOI) Vs. T.R. Varma*, , wherein the Supreme Court said:

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 relied, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witness examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

It has been held by the Gujarat High Court in the above case that the said rules will operate only in areas not covered by any law validly made, that is to say that

they do not supplant the law of the land but supplement it. In *Narayana v. Dy. General Manager B.T.S.* (1978) II Kar. L.J. 318, it has been pointed out that rules of natural justice can operate only in the fields not covered by statutory rules and that the giving of a second opportunity before imposing a penalty is not a requirement of natural justice and, therefore, if the statutory provisions do not provide for any such notice in respect of persons not covered by Article 311, the order of penalty cannot be said to violate the principles of natural justice. In *United Commercial Bank v. V.J.T. Vyas* (1977) I C.L.J. 498, it has been held that natural justice has no strait jacket, that the application of the principles of natural justice will depend upon the facts and circumstances of a particular case, that the basic concept of natural justice will depend upon the facts and circumstances of a particular case, that the basic concept of natural justice is that no man should be condemned unheard, he should be informed of the allegation or the basis upon which action detrimental to him is proposed to be taken and he is given an opportunity of making his representation on these allegations and consideration of those objections by the disciplinary authority before action detrimental to him is taken. *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , deals with the object and scope of the principles of natural justice. In that case it was pointed out that the doctrine of natural justice has come in for increasing consideration in recent years, and that the Courts have advanced its frontiers considerably though they have not taken an increasingly sophisticated view of what is required in individual cases. In *Thambi Raj v. State of Bank India* (1976) II M.L.J. 421, one of us sitting single had expressed the view that the principles of natural justice are not abstract principles and the same have to vary with reference to the nature of the charges, the punishment proposed therefore and the rules relating to the enquiry.

8. After referring to the above decisions, the learned Counsel for the appellant would say that notwithstanding the fact that the service rules have become statutory regulations, still the employees who are admittedly not civil servants cannot claim the protection of Article 311 and that, therefore, they are not entitled to invoke these general principles of natural justice which are not contained in the rules. Accordingly to him, so long as the employees in the bank are governed by the service conditions, it is not possible to import other rules of natural justice, and Rule 30 providing for the procedure for investigation of a disciplinary matter against an officer of the bank has been strictly complied with in this case, the employees cannot complain of violation of such principles of natural justice which are not embodied in the service rules and the impugned order passed by the Board dismissing the respondent from service cannot be struck down as invalid. Rule 30 which sets out the procedure for enquiry is as follows:

30.(a) Where the Secretary is satisfied that there is a prima facie case for proceeding against an officer and considers it to be a fit case for imposing the punishment mentioned in Clauses (c) to (f) of Rule 29, he may investigate the

case himself or appoint the Joint Secretary or any other officer to investigate the case and present an independent report thereon in writing.

(b) A statement of the charges together with the grounds on which they are based shall then be communicated in writing to the officer. The officer shall be required to submit a written statement in defence and shall also be given an opportunity to be heard in person by the Secretary if so desired by him.

(c) The charges framed against the officer and the report of the officer who investigated the case, together with the statement of the officer proceeded against and a further report in writing by the Secretary reviewing the charges, the statement and the report of enquiry and stating the punishment he recommends, shall be placed for consideration of the Board if such punishment is any one of those stated in Clauses (c) to (f) of Rule No. 29.

(d) The Board shall examine the circumstances of the case and if they consider it to be a fit case for imposing any of the punishments mentioned in Clauses (c) to (f) of Rule No. 29, the officer shall be given a further opportunity to state in writing by a specified date why such punishment should not be imposed against him. For this purpose, the charge or charges against him together with a copy of the report of the officer who investigated the case and the specific punishment proposed to be imposed shall be communicated to him by the Secretary.

(e) The Secretary will then lay the officer's statement together with his report thereon before the Board.

(f) The Board shall then take the matter into their consideration and shall make such order as they consider proper in the circumstances.

(g) The decision of the Board under Sub-rule (f) shall be conveyed in writing to the officer concerned over the signature of the Secretary.

9. It is not in dispute in this case that along with the show cause notice proposing the punishment the respondent was served with the charges framed against him and a copy of the report of the officers who investigated the case, but not the report and the recommendation of the Secretary. Mr. Dolia for the Bank submits that the Bank is not under an obligation to furnish a copy of the report and recommendations of the Secretary submitted to the Board, to the delinquent officer as Rule 30(d) only provides for furnishing a copy of the memo of charges and the reports of the investigating officers.

10. The contention of the respondent, however, is that even though the rule does not say that the report and recommendations of the Secretary to the Board should be furnished to the delinquent officer, having regard to the circumstances of the case, such a requirement should be implied under Rule 30(d), and that even if such an inference is not possible, the rule, in so far as it contravenes the basic principles of natural justice, should be taken to be bad. The learned Counsel for the respondent would say that there was no regular oral enquiry as such by an enquiry officer in this case, that there was only investigation during

which materials had been collected behind the back of the petitioner and sent to the Secretary, that the respondent was not aware of the materials, if any, gathered against him by the investigating officers, that the report and the recommendations of the Secretary based on the reports of the investigating officers are the only classes on which the Board took a decision to impose the punishment proposed, and that the respondent is, therefore, entitled to know the contents of the Secretary's report and recommendations before he can make his representations to the Board as to the mode of punishment. The learned Counsel referred to the decision in *State of Gujarat Vs. R.G. Teredesai and Another*, wherein the non-furnishing of a part of the report of the enquiry officer relating to punishment along with the show cause notice proposing the punishment was held to offend the principles of natural justice. In that case the Supreme Court observed that the enquiry officer is under no obligation or duty to make any recommendation in the matter of punishment to be imposed on the delinquent officer against whom a departmental enquiry is held as his function is merely to conduct an enquiry in accordance with law and to submit the record along with his findings or conclusions to the punishing authority, but if the enquiry officer proceeds to recommend a particular penalty or punishment for the charges which have been proved, then it is essential that that material should not be withheld from the delinquent officer, that the entire object of supplying a copy of the report of the enquiry officer is to require the delinquent officer to satisfy the punishing authority that he is innocent of the charges and that if the charges are held proved, the punishment proposed to be inflicted is unduly severe, and that therefore the requirement of a reasonable opportunity could not be satisfied unless the entire report of the enquiry officer including his views in the matter of punishment were disclosed to the delinquent officer. In *State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another*, it has been pointed out by the Supreme Court that the failure on the part of the competent authority to provide the delinquent officer with a copy of the report of the enquiry officer amounts to denial of a reasonable opportunity contemplated under Article 311(2). The above decisions admittedly deal with cases of persons who are entitled to the protection under Article 311. In respect of persons governed by Article 311 there cannot be any doubt that the non-furnishing of a copy of the report or the recommendation of a subordinate authority on the basis of which the disciplinary authority came to the conclusion that the delinquent officer is to be punished will clearly lead to an inference that there was no reasonable opportunity as contemplated by Article 311. But cases of persons like the respondent who are not entitled to the protection of Article 311 will stand on a different footing. We are not on the question now as to what is a reasonable opportunity contemplated by Article 311. As already pointed out, in this case Rule 30 provides the procedure for the conduct of disciplinary proceedings and Rule 30(d) specifically says that a memo of charge along with the report of the investigating officer on those charges should be furnished to the delinquent officer along with show cause notice proposing the actual punishment. In those circumstances, the non-furnishing of a copy of the report and recommendations of the Secretary to the Board cannot

violate Rule 30(d). Even the learned Counsel for the respondent does not say that Rule 30(d) has been violated in this case. His case is that even if Rule 30 does not provide for furnishing the report and recommendations of the Secretary to the delinquent officer, the principles of natural justice require that the same has to be supplied to the delinquent officer so as to enable him to put forward his effective representations as against the proposed punishment.

11. It has been held in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , that when there is a conflict as between principles of natural justice and the statutory provisions, the latter has to prevail. As pointed out by the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, , except the basic rules of natural justice referred to in *Union of India (UOI) Vs. T.R. Varma*, , the other principles of natural justice cannot be imported, when there are rules codifying the services conditions. In this case the respondent is admittedly not a civil servant entitled to the protection of Article 311 but one having a statutory status. He is an employee of a bank working on the basis of the terms and conditions set out in the rules governing the service of officers of the Indian Bank. Even though the said rules have acquired the status of statutory regulations, still the relationship between the employer and the employee has to be governed only by the said service rules. These rules give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions. Failure to observe the rules by the employer is enforced by Courts by declaring dismissal in violation of the rules to be void. Where there are no rules governing the service conditions particularly with regard to the conduct of disciplinary proceedings then the employer dealing with a person in public employment must follow the rules of natural justice. Therefore, the respondent cannot invoke such of these principles of natural justice which are not contained in the rules. We are, therefore, of the view that the learned single Judge is not right in saying that the impugned order is violative of the principles of natural justice in that the report and recommendations of the Secretary were not furnished to him along with the show cause notice. So long as Rule 30(d) only provides for furnishing of certain documents and not others, it is not possible to say that the other documents also should have been furnished to the delinquent officer. We cannot, therefore, sustain this reasoning of the learned Judge.

12. Coming to the second reason given by Koshal, J., we are of the view that the said reason is quite tenable. In this case the charges were framed against the respondent on 4th December, 1970, and the respondent was asked to give explanation. The respondent gave his explanation on 29th January, 1971, wherein he had denied the charges and has prayed for the dropping of the same. After receipt of the said explanation of the respondent on 29th March, 1972, the bank informs the respondent that an opportunity to be heard in person will be given to him by the Secretary if he desires, as contemplated by Rule 30. In fact, an oral hearing was given to the respondent by the Secretary and after such an oral hearing the Secretary sent his report in writing reviewing the charges, statements taken by the investigating officers and their report and

recommending the punishment to the Board for consideration as required in Rule 30(c). Thereafter, after considering the materials placed before it by the Secretary, the Board considered it to be a fit case for imposing the penalty of dismissal from service. At that stage a notice proposing the punishment was given to the respondent and along with that notice copies of the charges and the report of the investigating officers were also furnished. But the Secretary's report reviewing the charges and the report of the investigation and recommending the punishment was not communicated to the respondent. Thereafter he submitted his representation to the notice proposing punishment. Again the Secretary sent a report in relation to the representation made by the respondent to the show cause notice proposing punishment and after considering that report the Board had passed an order dismissing the respondent from service under Rule 30(f). The operative portion of the show cause notice issued by the Board proposing the punishment is as follows:

After examining and circumstances of the case, the Board of Directors at its meeting held on 11th August, 1972, considered it a fit case to impose against you the following punishment:

1. that you be dismissed from the Bank's service....

The operative portion of the final order of dismissal dated 28th October 1972, is also very cryptic and is as follows:

The Board of Directors took the matter into consideration at its meeting held on the 24th October, 1972 and ordered that the following punishment should be imposed against you,

1. You be dismissed from the Bank's service....

In these circumstances, the contention before the single Judge was that the orders passed by the Board are laconic and non-speaking and that in the absence of a reasoned order, he has been handicapped in making his representations to the show cause notice as also in filing an application for reconsideration before the Board under Rule 34 after the order of dismissal was passed. This objection was upheld by the learned Judge on the ground that neither the show cause notice nor the ultimate order of dismissal disclose any material on which the Board took the decision, nor the Board gives reasons for the conclusion reached, and that, therefore, the principle of the decision of the Supreme Court in *Mahabir Prasad v. State of U.P.* A.L.R. 1970 S.C. 1302, stands attracted. The learned Counsel for the appellant does not dispute the fact that neither the show cause notice nor the ultimate order of dismissal passed by the appellant on the face of them disclose any material on the basis of which the charges can be held proved or set out the reasoning of the Board, but he would contend that the records relating to the disciplinary proceedings and the note sent to the Board by the Secretary contains all the materials and the conclusions arrived at thereon by the Board. The learned Counsel for the appellant points out that there has been a discussion by the Secretary on each of the charges levelled

against the respondent with reference to the materials collected by the investigating officers and the Board has accepted the findings and recommendations given by the Secretary. Even assuming that the records of the enquiry which are in the custody of the bank disclose the materials on the basis of which the Board took the view that this is a fit case for dismissal, still so long as the show cause notice as well as the ultimate order of dismissal did not contain any reasons, the respondent should be taken to be considerably prejudiced. Admittedly there is no oral enquiry on the charges. What happened in this case is that on the basis of the materials gathered by the investigating officers with reference to the affairs of the Coonoor branch of the Bank certain charges have been framed against the respondent and he was asked to give his explanation in respect of these charges. The respondent gave his explanation but there was no oral enquiry and the respondent was given merely an oral hearing by the Secretary. The show cause notice does not specifically refer to any materials on the basis of which the Board took the decision to impose the punishment of dismissal. It does not also show that the investigating officers' reports which were sent before framing the charges had been accepted by the Board. Whether the Board has proceeded on the basis of the investigating officers' report or whether they have been guided merely by the report and recommendations of the Secretary is not clear from the cryptic information contained in the show cause notice that the Board of Directors thought it a fit case to impose the punishment of dismissal against the respondent. Even in the final order of dismissal the Board of Directors do not give the basis on which the charges have been held proved. Neither the show cause notice nor the ultimate order says that the charges alleged against the respondent are proved. Admittedly, the Secretary's report and recommendations to the Board have not been given to the respondent and, therefore, the respondent is completely in the dark as to whether the charges framed against him were based on any material. In such circumstances it is natural to expect the Board to give its findings on the charges in the show cause notice. As already stated, the show cause notice as well as the ultimate order of punishment is silent on this. The result is till this date the respondent has not been told as to what are the charges which are held proved against him. Even when the respondent filed a petition for reconsideration before the Board, the order passed by the Board is again laconic. The order dated 25th March, 1973, passed by the Board merely says that the Board of Directors considered his appeal at its meeting held on 18th May, 1973, and decided to reject the same confirming the order of dismissal passed against him. It would be a different matter if there had been an enquiry and the enquiry officer had given a finding and the disciplinary authority says that it had accepted the same without an elaborate discussion of the charges and the materials collected in relation thereto. But where there is no oral enquiry and the investigating officers have collected the materials behind the back of the respondent before framing of the charges and the reports of the investigating officers had not been furnished along with the charges, the Board of Directors who proceed to punish the respondent on the basis of those reports should give

their findings in the show cause notice. If at least the Secretary's report and recommendations which reviews the entire material had been furnished to the respondent, then he would have known as to what are the materials on the basis of which he has been found guilty of the charges. In the face of the admitted position that the report and the recommendations of the Secretary made to the Board had not been furnished to the respondent, the respondent has been kept completely in the dark till he was dismissed from service as to what are the materials on the basis of which the charges framed against him have been found proved by the Board. The following observations of the Supreme Court in *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, , will be relevant in this connection:

Opportunity to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him ; it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority insures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.

The necessity to pass a reasoned order, in matters where an authority has to act quasi-judicially has been pointed out in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, , where the Supreme Court observed (at page 321):

We may, by way of aside, express hopefully the view that a minimal judicialisation by statement, laconic or lengthy, of the essential law that guides the decision, is not only reasonable and desirable but has, over the ages, been observed by arbitrators and quasi-judicial tribunals as a norm of the processual justice.

In this case the Board of Directors while exercising disciplinary power are acting quasi-judicially and therefore they are bound to give reasons for their conclusion. In order to avoid arbitrary exercise of power, judicial decisions are to be backed

by reasons. In this case, unless the respondent knows as to what charges have been proved against him and on what material, giving a show cause notice calling for his representation to the proposed punishment is an idle formality, for the respondent cannot make any effective representation unless he knows the material on which the charges have been held proved. Apart from this the respondent has been given a right to file an application for reconsideration under Rule 34 to the Board of Directors and that right cannot effectively be invoked by him unless he knows the materials on which the Board of Directors or any other authority subordinate to it found him guilty. Mr. Wade in his treatise on "Administrative Law", 4th edition, at page 464, says:

Although there is no general rule of law requiring the giving of reasons, an administrative authority may be unable to show that it has acted lawfully unless it explains itself.

In the face of these decisions, we must hold that before a man is dismissed from service as a result of disciplinary proceedings, he must be put on notice of the materials on the basis of which the charges framed against him are held proved either in the show cause notice or in the ultimate order of punishment. The learned Counsel for the appellant points out that the rule governing the service of officers referred to above did not require the Board of Directors to pass a speaking or reasoned order. We cannot agree with this contention of the learned counsel. When Rule 30(b) says that the Board shall take the matter into consideration and make such order as they consider proper in the circumstances clearly it indicates that it can only be a quasi-judicial order. Since the said rule contemplates an objective consideration of matters by the Board of Directors, the order passed by the Board should, on the face of it, show that the matter has been considered by the Board of Directors. Even if the rule is silent as to the nature of the order to be passed by the Board of Directors, having regard to the fact that the Board of Directors are exercising quasi-judicial function in a disciplinary proceeding, their orders should be speaking orders, that is, the order must show on the face of it the reasons for their conclusions. Admittedly, neither the show cause notice nor the ultimate order of punishment sets out the reasons for imposing the punishment of dismissal. The ground that the order of dismissal is not a reasoned one in the circumstances of this case cannot be said to be merely technical. It is of considerable substance and the defect is not a formal one. In this case, neither at the show cause notice stage, nor at the stage of final order or at the appellate stage, the respondent was told about the finding of any authority on the charges levelled against him. The respondent was given the report of the investigating officers on the basis of which charges had been framed.

13. But after the framing of the charges and his submission of his explanation, he was not told at any time how his explanation was dealt with and on what materials the charges were held proved. In such circumstances, at least the order of dismissal must contain the reasons for the conclusions arrived at by the

Board.

14. In this view of the matter the ultimate order passed by Koshal, J., quashing the order of dismissal is upheld for the reason that the order of dismissal is not a speaking order. The appeal is, therefore, dismissed with costs. Counsel's fee Rs. 500.