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**(1961) 07 GAU CK 0005**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 118 of 1960**

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|---------------------------------|----|------------|
| Jogendra Chandra Talukdar       | Vs | APPELLANT  |
| Deputy Commissioner and Another |    | RESPONDENT |

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**Date of Decision :** 14-07-1961

**Acts Referred:**

Constitution of India, 1950 — Article 226, 310, 311, 313  
Government of India Act, 1919 — Section 96B(2)

**Citation :** (1961) 07 GAU CK 0005

**Hon'ble Judges :** G. Mehrotra, C.J.; S.K. Dutta, J

**Bench :** Division Bench

**Advocate :** J.C. Medhi, for the Appellant; R.K. Goswami, Sr. Govt. Advocate, for the Respondent

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## Judgement

G. Mehrotra, C.J.—This is a petition under Article 226 of the Constitution filed by one Jogendra Chandra Talukdar. The Petitioner was working as a Mandal in the Barnadar Circle in the Barpeta Subdivision since the year 1948. On the 25th May 1954 the Petitioner was given by the Sub-deputy Collector a bill for Rs. 1,232/- for being cashed from the Barpeta Treasury. The bill was cashed and thereafter the money was lost. The Petitioner was put under suspension and the matter was sent for police investigation. The final report was submitted by the police. The Deputy Commissioner, Kamrup, however charged the Petitioner for (1) misappropriating public money and (2) absenting himself from duty and asked him to show cause why he should not be dismissed from service or otherwise punished. The Sub-divisional Officer, Barpeta inquired into the matter and gave his findings. Thereafter the Deputy Commissioner asked the Petitioner to show cause why he should not be dismissed from service and after the Petitioner submitted his explanation, the Deputy Commissioner by order dated the 10th June, 1957 dismissed the Petitioner from service.

An appeal was preferred by the Petitioner against the order of the Deputy Commissioner to the Government of Assam as provided for under the Executive

Manual. The appeal was dismissed by the Government on the 9th November, 1959. Thereafter the Petitioner filed a review petition praying for rehearing of the appeal. This petition was rejected by an order dated the 13th June, 1960. Thereafter the present petition was filed in this Court under Article 226 of the Constitution on the 7th December, 1960 challenging the order of dismissal passed by the Deputy Commissioner, Kamrup, the order passed on appeal by the State Government and the order passed by the State Government on the review petition filed by the Petitioner.

2. The point which falls for consideration in the present case is whether there was any violation of the provisions of Article 311 of the Constitution. So far as the order of dismissal passed by the Deputy Commissioner is concerned, the only grievance made out by the Petitioner is that the copy of the report of the Sub-divisional Officer, Barpeta who inquired into the matter, was not sent to the Petitioner when he was called upon to show cause why he should not be dismissed from service by the Deputy Commissioner.

In the counter-affidavit filed on behalf of the Deputy Commissioner, it is asserted that the copy of the Sub-divisional Officer's report was served on the Petitioner along with the notice. The averment in paragraph 6 of the counter-affidavit filed by the Deputy Commissioner clearly shows that the notice served on the Petitioner itself discloses that the Sub-divisional Officer's report was served on the Petitioner along with the notice. When the Petitioner received the notice to show cause against the proposed punishment, he never raised any objection that he was handicapped in his representation inasmuch as the copy of the report was not supplied to him. He never prayed for an extension of time to file his explanation on that ground. The conduct of the Petitioner and the contents of the notice clearly show that the Petitioner was supplied with a copy of the finding of the Sub-divisional Officer, Barpeta who inquired into the matter. There was thus no violation of the provisions of Article 311 of the Constitution by the Deputy Commissioner when he passed an order dismissing the Petitioner from service. If has not been pointed out how the Petitioner can say that he had no reasonable opportunity to show cause against the charges.

3. The main contention raised by the Petitioner's counsel however is that as the Petitioner has been given a right of appeal to the Government against the order of the Deputy Commissioner under a statute, the Government while deciding an appeal acts in a quasi-judicial capacity. The order of the Government is amenable to a writ of certiorari by this Court and as the Government violated the principles of natural justice in not giving a hearing to the Petitioner and disposing of the appeal without hearing the Petitioner, the order of the Government should be set aside.

4. The first question which falls for consideration before us is whether there is any statutory provision under which the Petitioner has been given a right to file an appeal against an order of the Deputy Commissioner dismissing him from service to the Government and secondly whether the Government violated any

principles of natural justice in not giving a personal hearing to the Petitioner when deciding the appeal. Reference is made to the following passage in the case of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, in support of the contention that the Government had to act judicially in disposing of the appeal:

Where there is a right vested in an authority created by statute, be it administrative or quasi-judicial, to hear appeals and revisions, it becomes its duty to hear judicially, that is to say, in an objective manner, impartially and after giving reasonable opportunity to the parties concerned in the dispute to place their respective cases before it.

It will be necessary to examine the provisions of the rule under which the right has been given to the Petitioner to file an appeal to the Government against the order of dismissal in order to find out if such a rule has a statutory force. Before however examining that aspect of the matter, I would like to point out that the passage referred to above only lays down that if a certain authority has been created under a statute and such an authority has a right to hear appeal, it has to act judicially, irrespective of the fact whether the authority itself is an administrative or a quasi-judicial authority.

The observations cannot be made applicable to the facts of the present case. There the Excise Act itself had created a hierarchy of authorities which had to deal with the matter of settlement of excise shops both at the initial as well as appellate stage. Thus the authorities which had to hear appeals were themselves the creatures of the statute, which itself gave a right of appeal. It cannot be said in the present case that the Government is an authority created by the statute itself for the purposes of hearing appeals. Secondly their Lordships of the Supreme Court in that case were dealing with the question whether the order passed by the appellate authority was amenable to a writ of certiorari by the High Court or not.

One of the tests laid down for determining whether the body acts in a quasi-judicial capacity is if it has a duty to decide matters judicially and this passage only lays down that if the authority which has been created under a statute, is vested with a power to hear appeals, there will be a duty cast upon such an authority to act judicially when deciding the appeal. This only means that the decision of such an authority will be amenable to the writ of certiorari. This passage has not laid down the ambit and the contents of the principles of natural Justice.

5. The relevant provisions of the rules and the executive instructions are set out below:

6. Rule 322 printed at page 116 of the "Manual of Executive Rules and Orders in force in Assam" printed in the year 1954 reads as follows:

322. The presentation, the form and the withholding of appeals by members of

the All-India, Provincial and Subordinate Services and officers holding special posts under the Local Government are governed by the Statutory Rules made by the Secretary of State in Council u/s 96B(2) of the Government of India Act, which were published under the Government of India, Home Department, Notification No. F.472-II-23, dated the 21st June, 1924, and republished in the Assam Gazette under Notification No. 4202 A.P. dated the 29th July, 1924.

Relevant provisions of Rule 323 of the same volume read as follows:

323. The following rules of the Government of Assam are subsidiary to the above rules and instructions and supersede all previous orders of the Local Government on the subject. They regulate the presentation of appeals by members of the subordinate services as defined in R. IV of the Statutory Rules other than those services for whom special rules have been or may hereafter be framed.

... ..

(1) Any officer of the services to which these rules apply, who has been censured, reduced to a lower post, suspended, removed or dismissed or from whom promotion has been withheld by an order of the Local Government or of any authority subordinate thereto empowered to pass such an order, and who links himself wronged thereby, shall have the right of an appeal against such order as follows.

An officer on whom such an order has been passed:

(i) by an officer subordinate to the District Officer, may appeal to the District Officer;

(ii) by an officer subordinate to the Political Officer, may appeal to the Political Officer;

(iii) by a District Officer, may appeal to the Commissioner;

(iv) by a Commissioner or Political Officer, may appeal to the Local Government;

(v) by an officer subordinate to a Head of a Department, may appeal to the Head of the Department;

(vi) by the Head of a Department, may appeal to the Local Government;

(vii) by the Local Government, may appeal to the Governor:

Provided that all officers in superior service, whether-executive or ministerial, on a pay of more than Rs. 100 a month shall have the right of preferring a second appeal to the next higher appellate authority (1) against an order of dismissal or removal, or (2) against an order of suspension or degradation when the period in respect of which the order is passed exceeds six months, provided that there shall be no appeal beyond the Governor.

... ..

(4) An officer who has preferred an appeal to the Local Government or to the Governor will not ordinarily be permitted to argue his case in person but permission may be given in exceptional cases by the appellate authority concerned.

... ..

8. When a petition of appeal preferred by a Government servant is being considered, it shall be dealt with, as far as possible, on the original record, which shall invariably be sent with the petition together with the half-margin report required under Clause (3). A further special report should be called for only in exceptional circumstances, and when this is done, the special points in regard to which a report is called for should be indicated.

... ..

7. Reading of these rules clearly indicates that the rules providing for the procedure of appeal are subsidiary to the rules framed u/s 96-B (2) of the Government of India Act, 1919 and thereafter continued under the provisions of Article 313 of the Constitution. These rules by themselves have no statutory force. They are in the nature of executive instructions. The procedure for filing of the appeal and hearing of the party by the Government is also clearly set out in the instructions and it cannot be said that the Government hears appeals under any statutory rules so as to necessarily impose a duty on the Government to hear the appeals judicially.

As laid down by their Lordships of the Supreme Court in the case of Pradyat Kumar Bose Vs. The Hon''ble The Chief Justice of Calcutta High Court, the order of dismissal is an administrative order and the limitation on the powers of the Governor in the exercise of his pleasure under Article 310 of the Constitution is embodied in Article 311 of the Constitution. If there has been no violation of the provision of Article 311 of the Constitution, the order of dismissal cannot be interfered with by this Court. No other provision in the Central Civil Services (Classification, Control and Appeal) Rules, 1957 has been pointed out which makes it obligatory on the Government hearing an appeal to give an opportunity to the Government servant to be heard in person.

As I have already indicated above, there has been no violation of any principles of natural justice by the inquiring officer and the officer who passed the order dismissing the Petitioner. The right of appeal is not a statutory right and thus the order passed by the Government in appeal will not be set aside by this Court on the ground that no personal hearing was given to the Petitioner. In the result therefore, there is no force in this petition and it is rejected with cost which we assess at Rs. 50/ -.

Dutta, J.

8. I agree.