

(1983) 08 GAU CK 0015
In the Gauhati High Court
Case No : Civil Rule No. 71/78

Laldula

APPELLANT

Vs

The Union Territory of Mizoram and Others

RESPONDENT

Date of Decision : 23-08-1983

Acts Referred:

Assam Police Service Rules, 1966 — Rule 65, 66
Civil Services (Classification, Control and Appeal) Rules — Rule 55
Constitution of India, 1950 — Article 21, 311, 311(2)
Criminal Procedure Code, 1973 (CrPC) — Section 435, 439, 464, 465
Government of India Act, 1935 — Section 240
Penal Code, 1860 (IPC) — Section 161, 165
Police Act, 1861 — Section 7
Prevention of Corruption Act, 1988 — Section 3(1)

Citation : (1984) 1 GLR 40

Hon'ble Judges : T.N. Singh, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : A.K. Bhattachayya, A.K. Das and S. Sarma, for the Appellant; K.K. Bezbarua, Senior Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.—From the troubled territory of Mizoram has come this batch of petitions with a common complaint. The law enforcing agency is operating in the area for some time under great pressure and is making a desperate bid to restore peace, harmony and normalcy its due place in the land of hills and dales. This pressure, the Petitioners complain, have robbed them of their jobs illegally and unconstitutionally. We are examining their grievance and disposing of these petitions by this common judgment because the Petitioners have all been dismissed from service though not by a common order but passed by the same authority on the same date and for the same charge. As also because, undoubtedly and inevitably the same point of law is involved in all these cases in that the grievance is that there was no "inquiry" at all as contemplated by law and the impugned orders were passed in violation of Article 311(2) of the

Constitution as well as of Rule 66(iii) of the Assam Police Manual, Part III,

2. The Petitioner, Laldula, in Civil Rule No. 71/78, held the rank of Naik and the other Petitioners, Hreduna, in Civil Rule No. 72/78 and Zollpa, in Civil Rule No. 73/78, were L/Naik and Constable respectively in the First Battalion of Mizoram Armed Police stationed at Aizawl at the relevant time. On 23rd March/77 the Commandant of the Battalion (Respondent No. 3) placed the Petitioners and two others under suspension by a common order which it as follows:

The following personnel of this unit are placed under suspension with, effect from 2nd March, 1977 for gross negligence in as much 1 (one) UTP Shri Hmingthanzauva escaped from the Civil Hospital, Aizawl on the night of 1.3.77 at 0200 hrs. while they were on guard duty at Civil Hospital, Aizawl.

Departmental proceedings will be drawn against them. They are allowed to draw subsistence allowance as admissible under the Rules.

3. It is averred by the Petitioners that on 6.3.77 they and their two suspended colleagues were verbally ordered to attend the office of Shri S.P. Lagu, Assistant Commandant of the Battalion. Accordingly, when they attended his office, statements of five witnesses were recorded by Shri Lagu and the Petitioners were asked to cross-examine them on that very day. The Petitioners pleaded their inability to cross-examine the witnesses without knowing the nature of the allegations and the charges in respect of which the witnesses were examined. Accordingly, the Petitioners declined to cross-examine the witnesses although only one or two questions were put to P.W. 4 by the Petitioners, Laldula and Hreduna. The Petitioner Zolina further avers that he examined one witness in his defense but no copy of his statement was given to him. It is further averred that the Petitioners did not know then that Shri Lagu was appointed as the Enquiry Officer in respect of the incident mentioned in the suspension order. On 8.3.77 a communication was addressed to the Petitioners and their suspended colleagues jointly by Shri Lagu by which they were, required to show cause under Rule 66 of the Assam Police Manual Part III read with Article 311 of the Constitution of India why any of the penalties prescribed in Section 7 of the Police Act should not be inflicted on them for the following "charge":

That you were on guard duties of UTPs at Civil Hospital, Aizawl and you displayed gross negligence in as much as out UTP Hmingthanasva escaped at about 0200 hrs. on 2.3.77 while you were on guard duties.

They were asked to submit written statements in their defense within 7 days stating whether they desired to be heard in person and to submit also, if they so desired, a list of their defense witnesses. With this letter copies of the statements made by P.Ws. 1 to 5 were attached. On 14.3.72 Petitioner, Zolina submitted his statement of defense" in which he mentioned that he would like to examine Naik Kbawveltanga as a defense witness. On 20.3.77 Laldula submitted his written statement in which he, inter alia, mentioned that "list of witnesses will be given later on, i.e., after examination and bearing of

prosecution witnesses". Petitioner Hreduna submitted his "explanation" on 25.3.77.

4. In their written statements each of the three Petitioners denied the charge that the UTP Hmintbanzauva escaped due to negligence in the performance in any manner of their duties by the Petitioners and they gave detailed statement of facts in support of their respective, cases, Petitioner Laldula ascribed the, reason, of the escaped inter alia, to the fact that the handcuffs could be defective. Petitioner Zolina also stated about the handcuffs and alluded to the fact that on two earlier occasions the same UPT had damaged two pairs of handcuffs, Petitioner Hreduna's case inter alia was that he performed his duty with due diligence as the Second Guard Commander and that he had no instructions to remain present at the time of relieving the guard duty but he asserted that instructions were given by the Guard Commander (Laldula) to check the handcuffs properly at the time of relieving. However, if "the three written statements are read together it appears that the Petitioners tried to some extent to shift the blame inters or to others and they did not all speak in the same voice although, they all generally denied the charge. Each of them also stated how subsequently they acted with utmost expedition and alacrity unsuccessfully the escaped UTP to make out the case that no gross negligence could be attributed to them in respect of the incident.

5. However, the admitted position is that no inquiry sub-sequent to the submission of written statements by the Petitioners was held by the Enquiry Officer who submitted his report and "findings to the Commandant (Respondent No. 3) on 30.5.77 and it is indeed this fact to which the Petitioners attach paramount importance in assailing the impugned orders. In his report the Enquiry Office inter alia observed that five P.Ws. and one D.W. were examined by him and from the statements of the witnesses he came to the conclusion that the UTP escaped due to the fact that the first and the second Petitioners displayed "negligence and irresponsibility" in discharge of their duty inasmuch as they failed to exercise "command and control over the constables" in their capacity of guard and second guard Commander respectively. He also found that the third Petitioner and another of his suspended colleague did not perform their guard duties properly as the UTP "escaped from their custody" while they were on sentry duty at that particular time. A copy of this report was served on each of the Petitioners on 21.6.77 by Respondent No. 3 a communication captioned "show cause notice". In this communication the same form "charge" was quoted and it was mentioned that the departmental inquiry ordered against the Petitioners on 2.3.77 in which Shri S.P. Lagu was appointed as the Enquiry Officer had been completed and that after going through the statements of witnesses and the findings of the Enquiry Officer he had come to the conclusion that the charge had been proved against each of the Petitioners. The Petitioners were asked to show cause by 29.6.77 why the punishment of "dismissal from service" should not be inflicted on them.

6. Each of the Petitioners submitted their respective replies on different dates but their explanations were not accepted and on 1.8.77 Respondent No. 3 passed the impugned orders by which each of the Petitioners were dismissed from service with immediate effect. The Petitioners' preferred appeals but being unsuccessful they have approached this Court challenging the validity of the departmental proceedings, and the impugned orders passed therein.

7. We may now refer to the legal contentions raised in the petition and stressed before as by the learned Counsel for the Petitioners Mr. A.K. Baattacharyya and also the stand taken by the Respondents as disclosed in the counter-affidavits filed by them and in the course of submissions made by the learned Senior Counsel for Miuram, Mr. K.K. Bezbarua. The gravamen of the challenge is that there was a complete misconception on the part of the disciplinary authorities as to the legal requirements of the "inquiry" in their case which has tainted the decisions rendered against them in the course of the proceedings. Indeed, Mr. Bhattacharyya submits, what was done in this case was that the cart was put before the horse and how could therefore the goods be delivered. Indeed, nothing moved submits Mr. Bhattacharyya, as the procedure adopted in the case being grossly violative of the provisions of Rule 66 of the Assam Police Manual Part III and of Article 311(2) of the Constitution the entire proceedings had to be treated as a nullity and the Petitioners are entitled to be put in the position they occupied prior to the proceedings. What was done in this case, Mr. Bhattacharyya contends, was that a preliminary inquiry was merely held and the charge which ought to follow such inquiry was in fact made subject matter of this, inquiry which resulted is the guilt of the Petitioners being prejudiced. Indeed, on the basis of this inquiry the prescribed authority never framed any charge and the Enquiry Officer, it is submitted, acted illegally and arbitrarily without jurisdiction in proceeding to record evidence in the course of the preliminary inquiry on the basis merely of the suspension order and that on the basis of the evidence recorded by him in the course of the inquiry on 6.3.77 he framed the charge on 8.3.77 asking the Petitioners to enter defense without examining any witness in support of the charge which was for the first time communicated by him to the Petitioners on that date. Indeed, it is submitted, that what was the beginning was also the end of the inquiry inasmuch as neither the written statements submitted by the Petitioners were taken into consideration nor were they allowed a "reasonable opportunity" of being heard in respect of the charge and punishment was inflicted on the Petitioners before and not "after an inquiry" as a result of which the constitutional mandate of Article 311(2) was violated. It is also contended that denial of reasonable opportunity as contemplated by Article 311(2) also resulted in the facts and circumstances of the case due to the joint inquiry. It is further contended that Rule 66(iii) of the Assam Police Manual Part III, the provisions of which were admittedly applicable to the case, having expressly provided that after the charge had been communicated to the delinquent along with the statement of allegations and he had put in his written statement in his defense that an inquiry into the charge had to be held in the

course of which witnesses could be examined and cross-examined in respect of the charge and in the instant case nothing of that sort being done the statutory violation must be deemed to have rendered the proceeding void and without jurisdiction.

8. In all the three cases Respondents No. 2 and 3 have filed counter-affidavits who are albeit the present incumbents of the offices and have merely deposed from records. We, therefore, perused the records from which we find that the following order was passed on 2.3.77 by the predecessor-in-office of Respondent No. 3 which was communicated only to the Enquiry Officer, Sari S.P. Lagu:

No. BH/R/Proc/77 dt. Aizawl, the 2nd March, 1977: Shri S.P. Legu, Deputy SP 1st Bn. MAP Bn. is appointed an Enquiry Officer to draw Departmental Proceeding against the following personnel of this unit on the following charges:

1. For gross negligence inasmuch (one) UTP Shri Hmintbanzauva of Bawnpkawu village escaped from the Civil hospital, Aizawl at 0200 Hrs. on 2.3.77 while they were on guard duty at Civil Hospital, Aizawl.

1. Naik 61 Laldula

2. L/Naik 331 Hrtiduna

3. Const 334 Zolina

4. 167 Aboni Mohan Dey

5. 327 Em Bahadur Poon.

In his affidavits Respondent No. 2 has stated that his predecessor-in-interest had disposed of the appeal in accordance with law after going through the records of the case and finding that the punishment inflicted on the Petitioners by Respondent No. 3 warranted no interference. The Enquiry Officer Shri S.P. Lagu has also filed affidavits to support the case of the Respondents, According to him the Petitioners were given full opportunity to cross examine all the witnesses whose statements were taken by him on 6.3.77 and 7.3.77 in their presence but the Petitioners declined to do so except in the case of P.W. 4 and that from the nature of cross-examination of the said witness it was clear that the Petitioners knew the charges preferred against them and therefore the allegation that the nature of the charges were not disclosed to them was an after-thought. He has further stated that in submitting his report and in coming to the conclusion that the charges against the Petitioners had been proved he took into consideration all relevant matters including their written statements and also the statement of the defense witnesses besides the relevant rules of the Assam Police Manual having a bearing on the respective duties of the Petitioner. He refuted the allegation that the charges against the Petitioners were not framed by Respondent No. 3 adding that he took-up the inquiry as directed by the disciplinary authority after the latter had framed charges. In support of this statement he merely referred to the communication addressed by him to the

Petitioners on 8.3.77 stating that the "charge" against each Petitioners was set out therein. The stand taken by the Respondent in this case about non-compliance with the provisions of the aforesaid Rule 66 is revealed in the statement made in the affidavit to the effect that under the said rule an oral inquiry is to be held when the person so desires or only when the authority concerned so directs. He has stated that neither is the written statement nor at any time thereafter the Petitioners desired to be heard in person.

9. It is necessary to quote the relevant portion of the Rule 66 to understand, and test, the validity of the contention of the Respondents:

The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing the order in the case. He shall be required within a reasonable time to put in a written statement of his defense and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross Exmore the witnesses, to give evidence in person and to have such witnesses called, at he may wish....

10. It appears clear to us from the statement made by Shri Lagu in his counter affidavit that the Respondents suffered from a complete misapprehension as respects the procedural rights of the Petitioners available to them under the aforesaid Rule 65 and Article 311(2) of the Constitution which is borne out by the admitted position in this case. It is indubitable that after the charge was communicated to the Petitioners no inquiry in-to the charge was held. The report of the Enquiry Officer was based on the evidence recorded prior to the communication of the charge and it did not manifest on its face that the written state-indebts of the Petitioners were considered by him. Indeed, had it been done, he would have noted the denial of the charge by "the Petitioners and in terms of Rule 66 the oral inquiry contemplated there under would have been held. The further fact about the inquiry to be noted is that although the relevant rules of the Police Manual dealing with the duties of the respective posts held by the Petitioners were taken into consideration, it was not disclosed in the charge so as to give the Petitioners an opportunity to "explain that they did not act negligently in performance of their respective duties. The findings of the Enquiry Officer were apparently vitiated in law also for the reason that they traveled beyond the charge and accordingly the punishment inflicted on the basis thereof on the Petitioners with-out the latter having been given "reasonable opportunity" within the meaning of Article 311(2) of being heard in respect of the charge by the disciplinary authority clearly amounted to a violation of the constitutional mandate. This position, according to us is well-established and therefore before referring to and examining the authorities cited by Mr. Bhattacharyya we

consider it appropriate to examine first the two decisions relied on by Mr. Bezbarua to dispute this position.

11. In AIR 1957 AP 197 (Jaga Rao v. State) it was observed that though the inquiry may have to be held in two stages the entire process of inquiry will have to be considered be ascertaining whether reasonable opportunity was given to the Delinquent to show "cause against the action proposed to be taken against him. It was further observed that if every opportunity was given to the Civil servant to defend himself by examining and by cross-examining the prosecution witnesses, it would be unreasonable to compel the authority to repeat the entire inquiry after the second stage is reached. In that case the department having found a prima facie case of corruption against a Tahsildar and having brought the matter to the notice of the Government a Tribunal was entrusted with the responsibility of initial-ting proceedings and making inquiry into the matter. The Tribunal framed charge to held collaborate inquiry and after having found some of the charges proved against the Petitioner recommended to the Government his dismissal from service. It appears, therefore, that the grievance in that case was that when the Government accepted the finding of the Tribunal and passed final orders dismissing the Petitioner from service before doing so a further, inquiry was necessary to meet the requirement of Article 311(2) and of the relevant service rule applicable to the case of the Petitioner. We do not therefore find any substance in the submission of Mr. Barbara that this decision supports his contention; Unlike the present case the petitions in that case was apprised of the charge and an elaborate inquiry there, into was held after which punishment was inflicted by the appropriate authority. It was not a case of a punishment being inflicted merely after preliminary inquiry before the charge on which the delinquent was punished was communicated to him. Indeed, the observation in the case, that the "entire process of the inquiry" must be looked into if read in the light of the facts of the case make the position clear that the said expression was used in relation to the proceedings which commenced after the charge was communicated to the delinquent officer; the observations were not meant to embrace the preliminary inquiry that was held by the department to determine whether a charge ought to be framed or not by the disciplinary authority (Tribunal). We cannot, therefore, consider this decision as an authority for the proposition that whether or not the delinquent was given a "reasonable opportunity" to defend himself within the meaning of Article 311(2) can be tested with reference merely to any preliminary inquiry as is the position in this case. Subba Rao, C.J. (as he then was) also spoke for the Court in the other decision relied on by Mr. Bezbarua, AIR 1953 AP 240 (Dr. G.V. Pankula v. Govt. of Andhra). The decision in Joga Rao (supra) was referred to in this case and the following passage was extracted from page 202 of the report on which such reliance has been placed by Mr. Bezbarua:

It can be reasonably argued that if the Govt. make an inquiry ignoring the said rules, the High Court can, under Article 226 of the Constitution direct them to make an inquiry according to the Rules, though in cases where the High Court if

satisfied that no prejudice is caused to the Civil servant it may in exercise of its discretion refuse to issue any direction.

12. In our opinion the above observation merely suggests the discretionary nature of the writ jurisdiction of the High Court and we are not convinced that their Lordships meant to hold that when a grievance is made about infringement of the constitutional safeguard under Article 311 it is necessary for the Court to examine the question of prejudice before exercising its discretion one way or the other. Indeed, we are of the tentative view that the question of prejudice is not at all, and cannot be, a relevant consideration always in such matters. The constitutional safeguards shall lose their potency and efficacy if a contrary view is taken. Constitutional safeguards, in our opinion, are to be regarded not merely as procedural rights in respect of which the test of prejudice can be said to be generally applicable and in this respect a departmental inquiry cannot be equated to a Criminal trial. In which case the Code of Criminal Procedure itself provides expressly (vide Section 464 and 465) when and how only a trial is vitiated. Constitutional mandates have to be regarded as directory in respect of those provisions only which do not impinge upon the rights of the citizens or where they are expressly so stated. In our opinion Article 311 confers a valuable right on the members of the civil service of the State in that the provisions thereof are meant to protect the tenure of service of such persons by providing in mandatory terms the procedure to be followed when the tenure is sought to be cut short, impaired or tainted in any manner. The procedures envisaged under Article 311 cannot, in our opinion, be treated as directory to require consideration of the question of prejudice. The scope of judicial inquiry in such cases is indeed marked out by Article 311 itself. Whether in a particular case "reasonable opportunity" was given may be debatable and for this reason indeed we have set out in detail the facts and circumstances of the case in hand but the manner in which the "inquiry" has to be held cannot be altered in a way, either statutorily or by an executive action, so as to transgress the limit of the irreducible minimum indicated by Article 311. The rudiments of the procedural rights of the civil servant constitutionally guaranteed can be augmented only by any departmental rule or action, indeed the proviso to Clause (2) read with Clause (3) of Article 311 itself indicate the circumstances and cases in which and the manner in which the curtailment of the right posited in the main part of Article 311(2) is permissible.

13. There cannot, therefore, be any doubt about the proposition that Rule 66 of Assam Police Manual cannot supplant the constitutional mandate of Article 311 and the same has to be read as merely supplementing the minimum constitutional safeguards provided therein to a civil servant. In our opinion, therefore, reading together Article 311 and Rule 66 the consecutive steps in the disciplinary proceeding which have to be taken in respect of a person subject to these Rules can be summarized as follows:

1st step- The delinquent will be informed of the "charge" with which shall be

furnished to him "Statement of the allegations" which in the course of any "preliminary" inquiry (not the constitutional "inquiry") the disciplinary authority may collect and the "inquiry" as contemplated by Article 311(2) into the charge will then follow and the same will commence only after the "charge" is duly communicated to the delinquent as a sequel to, or on the basis of the investigation, made in the course of the "preliminary inquiry."

2nd step- The inquiry into the "charge" contemplated under Article 311(2) postulating the requirement of "reason-able opportunity" being afforded to the delinquent will necessitate evidence being taken in support of the charge if the charge is not admitted. Indeed, this also contemplated by Rule 66 itself although it is necessary to clarify that the requirement of the Rule "if he so desires or if the authority concerned so directs" must be so read as to conform to the constitutional imperative embodied in Article 311(2). Taking of evidence to establish the charges after the same is communicated to the delinquent in view of the constitutional imperative cannot be dispensed with except in the manner provided by the constitutional provision itself, namely the exceptional cases covered by the proviso to Article 311(2), Hearing the delinquent in person taking evidence offered by him and communication of the decision arrived at thereafter on the "charge" will conclude the stages.

3rd step- If in the course of the inquiry it is found from the evidence that the charge or charges preferred against the delinquent are duly made out then he will be given a second opportunity to show cause against the proposed penalty if such penalty be either dismissal or removal or reduction in rank. But, because of the amendment (in 1976) of Article 311, the "second opportunity" has become merely optional in those cases in which the proposed penalty is also communicated with the decision arrived at when the second step is completed.

14. The view we have taken finds support from the authorities cited by the learned Counsel for the Petitioner. Indeed, Mr. Bhattacharyya's reliance, in our opinion, on the decision in *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, is unquestionably apposite. It was observed in that case that "preliminary inquiry is usually held to determine whether a prima facie case for formal departmental inquiry is made out and it is well(SIC) necessary that the two should not be confused". The decision in *P. Sirajuddin, etc. Vs. State of Madras, etc.*, was concerned with proceeding under Sections 435 and 439 Code of Criminal Procedure (old) but we are of the view that the observations made in that case as regards the sol(SIC) of an Investigating Officer is equally applicable in the case a disciplinary proceeding as well because the relevant observations in that case were made in relation to a departmental inquiry following which an FIR was lodged against the Petitioner under 161 and 165 IPC and Section 3(1)(a) and (d) of the Prevention(SIC) of Corruption Act. The Court observed that "the whole case(SIC) of investigation as disclosed in the affidavits is suggestive of some pre-determination of the guilt of the Appellant". This observation, in, our opinion, is equally(SIC) applicable to the facts of the instant case as well inasmuch as the stand taken by

the Respondents in this case as observed earlier is that the charge was laid down in the suspension order itself and it was presumed that the Petitioners were aware of the charge and therefore the same had not to be communicated to them before the inquiry. Indeed, the charge in this case was communicated to the Petitioners by the Enquiry Officer (not by the disciplinary authority) by his formal communication addressed to them in terms of the aforesaid Rule 66 only after he had recorded the evidence in the case in support of the so-called charge in the course of what could be only a "preliminary inquiry". In *Surath Chandra Chakrabarty Vs. State of West Bengal*, the Court observed that "if a person is not told clearly and definitely what allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances of the case that may be in the contemplation of the authorities to be established against him". The Court held that Rule 55 of the Civil Services (CCA) Rules would be violated if the statement of allegations were not furnished in respect of the charge preferred against the delinquent and the concept of "reasonable opportunity" under the relevant rule was thereby extended even to the stage of preliminary inquiry in the course of which the statements of allegation were formulated. The decision in *Jagannath Prasad Sharma Vs. State of Uttar Pradesh and Others*, has been cited in support of the proposition that though u/s 240 of the Govt. of India Act, 1935 the protection now afforded under Article 311 to the civil servant may not have been available to the police officer the distinction has been abolished by Article 311 and the members of the police force are also entitled to the protection guaranteed there under to any other civil servant. Indeed, in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, it was held that the relevant provisions of U.P Police Regulation under the Police Act, 1861 in relation to disciplinary proceedings ought to be construed as mandatory and also subject only to the overriding effect of Article 311. In *State of Bombay (Now Maharashtra) Vs. Narul Latif Khan*, it was held that non-compliance with the requirement of an oral inquiry would introduce a serious infirmity in the inquiry and would amount to the failure of the Enquiry Officer to give the charge-sheeted officer the reasonable opportunity contemplated by Article 311(2). Reliance If who placed on the well-known decision in *Khem Chand Vs. The Union of India (UOI)and Others*, wherein the expression "reasonable opportunity" as contemplated by Article 311(2) was construed to mean among others "an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what charges levelled against him are and the allegations on which such charges are based. Our attention is also drawn to a recent decision of the apex Court In *Bhagat Ram Vs. State of Himachal Pradesh and Others*, wherein it was observed that the delinquent officer must be informed of his right under the departmental rules and such a requirement acquired importance in a case where a Govt. servant involved was one whose educational attainment may lead to an inference that he may not be aware of the technical rules prescribed for the inquiry. The decision in *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, is also pressed in service to submit that

reasonableness of procedure contemplated under Article 21 also came into play in the case of a departmental inquiry inasmuch as right to life also connotes the right to livelihood and before a person is deprived of his means of livelihood he must be dealt with in a fair and reasonable manner in an inquiry that might be held for taking any action against him by which he may be deprived of the right.

15. We have indicated above what in our view should be the procedure to be followed in a departmental inquiry made in the case of a person subject to the provisions of the aforesaid Rule 66 read in the light of Article 311(2) and we find that the decisions discussed above support the view taken by us. In the instant case we are clearly of the opinion that the statutory and constitutional requirements have not been satisfied in the course of the disciplinary proceedings, conducted against the Petitioners not only in respect of the procedural aspect. Therefore for the reasons already stated above we have no hesitation to hold that the impugned orders passed against them are without jurisdiction and void as on the facts of this case we are also satisfied that the "reasonable opportunity" contemplated under Article 311 find the aforesaid Rule 66 was denied to them to defend themselves against the proposed penalty. We have already indicated above in this connection how the facts manifest the situation that there resulted in this case (1) pre-determination of the guilt (2) no communication of the charge prior to inquiry and (3) denial of opportunity to the Petitioners to establish their innocence in relation to the common and vague charge as a result, among others, of their being jointly arraigned in the proceedings without specifying acts of negligence attributable to each under the relevant uses of the Police Manual which were considered by the inquiry officer in holding them guilty of the charge. We accordingly hereby quash impugned orders in each case and hold that the Petitioners shall be deemed to continue in service throughout.

16. In the result the petitions are allowed and the rules are made absolute. Till Petitioners are entitled to costs and we fix bearing fee of Rs. 200/- in each case.

B.L. Hansaria, J.

17. This short note, despite the long judgment of my learned brother with which I respectfully agree, is to say a few words on the necessity of following the prescribed procedure before punishing a person. Let it be first stated that as Article 311(2), or for that matter Rule 66 (supra), has incorporated principles of natural justice, no question of establishing prejudice over and above non-compliance with the aforesaid provision arises. Reference may be made to S.L. Kapoor Vs. Jagmohan and Others, wherein it was observed in para 24:

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person

who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs.

18. This is founded on the general principle that justice should not only be done but should be seem to be done. In this context, I may refer to *R. v. Home Secretary, Ex parte Hosenball*, 1977 WLR 766 where Lord Wiggery, C.J. after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done", observed that this maxim is out of the rules generally accepted in the bundle of the rules making up natural justice.

19. Another high principle of law is also violated in performing a statutory duty by following a procedure different from the one prescribed by law. It is well-settled that when a statute prescribes the mode of exercise of power, the power has to be exercised in that manner or not at all. This view was first expressed in AIR 1936 253 (Privy Council). The question which had come up for examination there was as to the mode of recording confession by a Magistrate. It was pointed out that though a Magistrate would not be obliged to record any confession made to him if, for example, it were that, of a, self-accusing madman or for any other reason the Magistrate thought it to be incredible or useless. But if he proposes to record the confession, he must do so in the manner laid down in the statute. In this connection it was stated that "where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden".

20. This rule, was enunciated in these words by Frankfurter, (SIC) in *Vitarelli v. Seaten* (1959) 359 U.S. 535 : 3 L.Ed. 2d 1012;

The executive agency must be vigorously held to the standards by which it professes its actions to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirement that binds such an agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may and, rightly so. He that takes the procedural sword shall perish with the sword.

(Emphasis mine)

21. This passage was cited with approval in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, The law was explained thus in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*,

It is well-settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all and other modes of performance are necessarily forbidden.

22. In Gujarat Electricity Board Vs. Girdharlal Motilal and Another, this question was examined when some property of the licensee was purchased in exercise of statutory power. The statute had required service of notice upon the licensee of not less than one year. A submission was made that rigid compliance with the provisions should not be insisted upon. The Court observed that as the Legislature had prescribed the manner of exercise of the power, the same must be exercised in that manner and in no other way.