
(1962) 07 BOM CK 0013

In the Bombay High Court

Case No : Special Civil Application No"s. 175 and 240 of 1961

Ramrao Laxmikant Shirkhedkar and Another

APPELLANT

Vs

Accountant-general, Maharashtra

RESPONDENT

Date of Decision : 10-07-1962

Acts Referred:

Factories Act, 1948 — Section 2

Citation : (1963) 1 LLJ 428

Hon'ble Judges : N.L. Abhyankar, J;D.G. Palekar, J

Bench : Division Bench

Judgement

Abhyankar, J.—This judgment will also dispose of Special Civil Application No. 240 of 1961.

2. Special Civil Application No. 175 of 1961 is filed by one R. H. Shirkhedkar. He was serving in the office of respondent 2, the Senior Deputy Accountant-General, Maharashtra (Nagpur Branch), at Nagpur, as a superintendent in the Subordinate Accounts Service, class III. He joined the office of the Accountant-General, Central Provinces and Berar, in the year 1940 and was confirmed as a superintendent in 1953. On reorganization of the State he was allocated to the State of Bombay. The petitioner's case is that he is a member of the Civil Audit and Accounts Association of class III employees in the office of respondent 2 at Nagpur. Between 1954 and 1958 the petitioner was the president of the association at Nagpur.

3. In Special Application No. 240 of 1961, the petitioner is Narayan Narhar Deshpande. He joined the service in the Indian Audit and Accounts Department at Nagpur as an upper division clerk under the control of the then Accountant-General, Madhya Pradesh, in 1949. He was confirmed as an upper division clerk in 1951. Consequent on the reorganization of the States in 1956, his services were allocated in the Audit Office of the State of Bombay from 1 November 1956, and thereafter in the State of Maharashtra under the control of the Accountant-General, Maharashtra State.

4. According to the petitioners, there is an association called "Civil Audit and Accounts Association." The association is formed with the avowed purpose of improving the conditions of service of its members. It is an admitted position that even though the association is in existence for a considerable number of years and was at one time perhaps recognized while it was functioning in Madhya Pradesh, it is not a recognized association.

5. The employees of the Central Government were not satisfied with their conditions of service. Several representations were made according to the petitioners, for improvement of their lot. As a last resort, a decision was taken to strike with effect from 12 July, 1960, by several associations of employees of Central Government. The call to strike was given by the general council of action to all employees of the Central Government. This decision was ratified by the All India Civil Audit and Accounts Association and their branch at Nagpur of which the petitioners are members. Accordingly the association at Nagpur also gave a notice to respondent 2 on 27 June, 1960, that class III employees of the Nagpur office will strike work from 12 July 1960 unless some of their demands are in the meanwhile granted.

6. The notice was given by the association on 27 June 1960. A copy of that notice is filed at p. 74 in Special Civil Application No. 240 of 1961. It is alleged that an enquiry was made from the clerks and superintendents by the respondents whether they would go on strike in accordance with the strike notice. So far as the petitioner Deshpande is concerned, his case is that he had intimated to an officer of the department that he would be going on strike since he was an office-bearer, being joint secretary of the association. The petitioner Shirkhedkar was not an office-bearer at the time of the strike. Formerly he had officiated as president of the association. Shirkhedkar's further case is that he was required to take up the cases of individual grievances on behalf of the members of the association and on that account he had to incur displeasure of his superior officers and had to sacrifice his fair chances of promotion.

7. The employees in the office of the respondents struck work from 12 July 1960. Out of a total number of 550 employees comprising class III and class IV servants in the office of the respondents, about 400 employees are alleged to have joined the strike. The petitioner Shirkhedkar was arrested on 14 July 1960 at about 10 p.m. under S. 5 of the Essential Services Maintenance Ordinance, 1960 (I of 1960). He was, however, released on 15 July 1960, which was a Saturday. The petitioner Shirkhedkar was produced before the Magistrate pending his prosecution but he was discharged by the Magistrate on 22 August 1960. So far as the petitioner Deshpande is concerned, he was suspended from duty on 15 July 1960. Shirkhedkar was also suspended because he was arrested. But that suspension order came to an end after he was discharged and a fresh order of suspension was passed in the case of Shirkhedkar on 8 August 1960, pending a departmental enquiry against him.

8. A memorandum was issued to each of these petitioners informing that it was

proposed to hold an enquiry against them under rule 15 of the Central Civil Services (Classification Control and Appeal) Rules, 1957. The memorandum received by Deshpande was issued on 27 July 1960, while that received by Shirkhedkar was issued on 24 August 1960. This memorandum required each of the petitioners to state whether they desire to be heard in person, to state the names and addresses of the witnesses, if any whom they wished to examine in support of their defence and to furnish a list of documents which they intended to produce in support of their defence. They were also to furnish the written statement in defence with a direction that the case would be heard ex parte in case of their failure to comply with this memorandum. In the case of the petitioner Shirkhedkar, two charges were framed as follows : They are to be found at p. 22 of his petition.

"Charge I :

That the said R. H. Shirkhedkar, while functioning as superintendent in the Nagpur branch of the office of the Accountant-General, Maharashtra, remained absent from duty without obtaining previous permission and without any reasonable cause for the absence from 12 July 1960 to 14 July 1960.

Charge II :

That the said R. D. Shirkhedkar while functioning as superintendent in the Nagpur branch of the office of the Accountant-General, Maharashtra, struck work and absented himself from the usual official duties in pursuance of the strike notice given by the (proposed for recognition and still unrecognized) Civil Accounts Association of the Nagpur branch of the office of the Accountant-General, Maharashtra. He has thereby contravened the provisions of rule 4(A) of the Central Civil Services (Conduct) Rules, 1955."

9. Deshpande was required to meet the following charges. They are to be found at p. 21 of his petition :

"Charge I :

That the said N. N. Deshpande while functioning as upper division clerk in the Nagpur branch of the office of the Accountant-General, Maharashtra, remained absent from duty without obtaining previous permission and without any reasonable cause for the absence from 12 to 17 July 1960.

Charge II :

That the said N. N. Deshpande while functioning as upper division clerk in the Nagpur branch of the office of the Accountant-General, Maharashtra, struck work and absented himself from the usual official duties in pursuance of the strike notice given by the (proposed and still unrecognized) Civil Accounts Association of the Nagpur branch of the office of the Accountant-General Maharashtra. He has thereby contravened the provisions of rule 4(A) of the Central Civil Services (Conduct) Rules, 1955."

10. In the case of Deshpande, the first charge mentioned that he was absent from duty from 12 July 1960 to 17 July 1960, without obtaining previous permission and he was therefore, required to show cause for this absence from duty. In the case of Shirkhedkar, the first charge asking him to show cause against his absence from duty without previous permission for a period from 12 July 1960 to 14 July 1960 was framed. As regards the second charge in each case, they were charged with having committed a breach of the provisions of rule 4(A) of the Central Civil Services (Conduct) Rules, 1955, for having struck work and absented themselves from the usual official duties in pursuance of the strike notice. Along with the charges appended to the memo, there were statements of allegations on the basis of which the charges were framed. The statements of allegations merely reiterated the fact that the petitioners were absent from duty between the periods mentioned in the first charge and that they had struck work and contravened the provisions of rule 4(A) of the Central Civil Services (Conduct) Rules as mentioned in the second charge.

11. The memorandum was issued in each case by the Senior Deputy Accountant-General, that is, respondent 2. But the disciplinary authority, it is now admitted, is respondent 1, the Accountant-General of the State in each case. It is also not now disputed that the Senior Deputy Accountant-General could issue memorandum of chargesheets as such authority is shown to have been delegated to him under the rules. He could also take action to suspend the delinquent servants pending the decision in the departmental enquiry. Respondent 1, who is the disciplinary authority, decided to entrust the holding of the enquiry to an enquiry officer, and one Sri Panchapakesan, who was acting as the Deputy Accountant-General at the relevant time, was appointed as an enquiry officer to hold the enquiries against the petitioners.

12. The petitioner Shirkhedkar filed his written statement on 16 September 1960, in compliance with the memo received by him. The written statement stated that as a loyal member of the association, that is, the Civil Audit and Accounts Association, he had proceeded on strike with effect from 12 July 1960, in accordance with the decision of its general body. As regards the charge of contravention of rule 4(A) the petitioner stated that prohibition to go on strike was inconsistent with the right to form an association and also inconsistent with the rules for recognition of service associations framed in 1959. According to the petitioner, whereas the service association was enjoined not to contravene any of the provisions of rules 5, 6, 8, 9, 13 and 17 of the Central Civil Services (Conduct) Rules, 1955, no mention was made of rule 4(A) as within the prohibition. The contention, therefore, was that the petitioner, as a member of the association, was not barred from going on strike and could not be said to have contravened any of the provisions because he had gone on strike qua member of the association and not as an individual. The petitioner also challenged the legality of rule 4(A) as contravening the fundamental right guaranteed to a citizen under Arts. 19(1)(a) and 19(1)(c) of the Constitution. According to the petitioner, rule 4(A) prohibiting an employee of the Central

Government from going on strike was, therefore, ultra vires the provisions of the Constitution. The petitioner also stated in the penultimate paragraph of this written statement that the Government of India had declared on the floor of the Parliament that only those employees who had committed violence, sabotage or gross misbehaviour would be proceeded against and no vindictiveness would be shown against anybody for their participation in the strike. The petitioner denied that he had committed any such offence and, therefore, requested that the proceedings against him may be withdrawn.

13. The petitioner Deshpande filed his written statement on 16 August 1960, and it is to be found at p. 22 of his petition. The statement is brief and what is alleged is that being a member of the Civil Audit and Accounts Association which had served a strike notice intimating that its members would go on strike, the petitioner had absented himself from 12 July, 1960. He did this being a member of the association. No separate personal intimation of absence was given by the petitioner. As regards the second charge the petitioner Deshpande stated that the Civil Audit and Accounts Association was a legally constituted body and the association having served a strike notice according to the decision of the general body, he abstained from duty from 12 July, 1960, in pursuance of that decision. He, therefore, prayed that he should be allowed to resume his duties. The enquiry officer heard this petitioner in person in 18 August, 1960, and the proceedings of this meeting form a stenographic record, produced at pp. 23 to 26 of his petition. During the question and answers, the petitioner Deshpande stated that rule 4(A) of the Central Civil Services (Conduct) Rules was inconsistent with the constitutional right under Art. 19(1)(c) and no action could be taken against him for contravention of that rule. But he further explained his stand by saying that the provisions of rule 4(A) would not be attracted where a person strikes as a result of a decision of a legally constituted association even though it may not be recognized. If as a member of such association the petitioner participated in the strike, then he cannot be said to have contravened the provisions of rule 4(A) of the Central Civil Services (Conduct) Rules.

14. A similar personal hearing was given to the petitioner, Shirkhedkar by the enquiry officer on 24 September 1960, but the result of that enquiry of which a stenographic record is to be found at pp. 31 to 35 of his petition, led to an altogether different result. During questions and answers which find place in this record, it appears that the petitioner Shirkhedkar wanted the Accountant-General, that is, the disciplinary authority, or the Senior Deputy Accountant-General Sr. S. P. Saxena, to be made available for cross-examination. Shirkhedkar's contentions was that out of so many people, who had gone on strike, the administration had selected only a few persons for suspension with a view to penalize some of them. He stated that the intention of the administration in doing so was to harm him and he wanted to prove this in cross-examination. He also wanted to prove his innocence and want of any mala fides and also establish bad intention on the part of others when an action was being taken on the charges framed against him. The answer of the enquiry officer to a specific

question from the petitioner was that he did not feel it necessary to give any opportunity to Shirkhedkar to cross-examine any witness because the two facts with respect to which he was expected to make enquiries have been admitted by Shirkhedkar. This may be found at p. 34 of the record.

15. In respect of each petitioner, the enquiry officer recorded a finding, holding that each of the charges was established against each of the petitioners. On receipt of these findings respondent 1 seems to have recorded a finding so far as the petitioner Shirkhedkar is concerned, that he accepted the finding of the enquiry officer in respect of both the charges. This findings is to be found at p. 44 in Special Civil Application No. 175 of 1961. But so far as the petitioner Deshpande is concerned, we do not find that respondent 1, which is the disciplinary authority, has recorded any finding of his own regarding either of the charges in respect of which the report was submitted by the enquiry officer. We have asked the learned Government Pleader appearing for the respondents to show us whether there is any such finding but he was not able to show such a findings recorded by respondent 1 in case of petitioner Deshpande.

16. The only document to which reference was made in this connexion on behalf of the respondents was a cryptic statement below the report of the enquiry officer to the effect "I accept the finding".

17. On receipt of the report, a second show-cause notice was sent to each of these petitioners. The show-cause notice in case of the petitioner Shirkhedkar is to be found at pp. 45 and 46 of the paper book. In Para 2 of the notice, the disciplinary authority has stated that the enquiring authority has found the charges fully established. There is no averment in the notice that the disciplinary authority, having regard to its finding, is of opinion that any of the penalties specified should be imposed. Similarly, in the case of the petitioner Deshpande, the disciplinary authority, in its second show-cause notice, dated 7 September, 1960, has merely referred to the finding of the enquiring authority that the charges were fully established. This notice is to be found at pp. 27 and 28 of the paper book in his petition. In this notice also, there is no indication that the disciplinary authority on the basis of its finding proposed to inflict one of the penalties according to rules. In each of these notices, the ground on which the penalty is proposed on a provisions finding as to the guilt of the Central Civil Services (Conduct) Rules, 1955. It would thus appear that the penalty, that was proposed to be imposed, was considered in relation to the second charge and not the first charge.

18. On receipt of these notices, each of the petitioners filed detailed statements. So far as the petitioner Shirkhedkar is concerned, he reiterated the contentions that rule 4(A) of the Conduct Rules was repugnant to the provisions of the Constitution and fundamental right of a Government servant under Art. 19(1)(c) of the Constitution. He asserted that the report of the enquiry officer showed bias against him because the enquiry officer did not give him an opportunity to cross-examine the Senior Deputy Accountant-General at whose instance the

proceedings were initiated against him. He, therefore, complained that an opportunity to make further statement, which could have been made on the basis of cross-examination of that officer or on the basis of witnesses or evidence on his behalf, has been denied to him. He also pointed out that the policy laid down by the Central Government, as disclosed on the floor of the Lok Sabha in the statement of the Home Minister, does not justify the proposed action against him. He stated that the proposed action of dismissal is contrary to instruction from the Government. He further complained that out of 400 employees of his office, who had participated in the strike, the Senior Deputy Accountant-General had picked up only the petitioner for suspension and launching of the departmental proceedings and he is singled out for penalty of dismissal. On this ground, he complained of discrimination against himself without any good and sufficient reason. In further paragraphs he brought to the notice of the disciplinary authority that on account of his taking active part in the activities of the association in redressal of individual and representatives grievances, his good work in the service is not appreciated and he has been denied fair opportunity of promotion when promotion was legitimately due to him. As a president of that association he was required on numerous occasions to make representations against the authorities and sometimes the representations were successful. He has indicated this background as possibly the reason for selecting him for dismissal. Ultimately he has styled the proposed action of dismissal as a case of vindictiveness and discrimination.

19. Deshpande, the petitioner in the other petition, also sent a detailed written statement which is to be found at pp. 33 to 35 of his petition. The contention of this petitioner was that he had made it clear during the enquiry that his participation in the strike was solely as a result of the decision of the general body of the Civil Audit and Accounts Association. In short, he contended that it was not a matter of personal volition or choice on account of which he had gone on strike, but he had only joined several other employees because he was a member of the association which had decided on the policy of going on strike. He further pointed out that the charge of being absent from 12 to 17 July, 1960, was untenable and could not be said to have been proved because he was suspended from duty on 15 July and his absence from 15 to 17 July, 1960, cannot be construed as an absence without prior permission or without sufficient reason. He further contended that though he had not taken prior permission, he had given an intimation to the branch officer, when asked prior to the commencement of the strike, that he would be joining the strike at the behest of the association. He reiterated his contention that rule 4(A) of the Central Civil Services (Conduct) Rules, 1955, not having been made applicable in the recognition of the Service Association Rules, he bona fide believed that, in case of a strike declared by the association, no wrong would be committed by him by joining such a strike and that he could not be deemed to have contravened rule 4(A) of the Conduct Rules. In Para. 7 of the representation, Deshpande pointed out that the Union Government has announced in the Parliament that the only persons suspected to

be guilty of sabotage, violence and gross misbehaviour would be proceeded against and that other cases would be considered very leniently. The petitioner had not been charged with any act of sabotage or violence and, therefore, he claimed that no action should be taken against him. In the last paragraph, he appealed for mercy on the ground that hundred of his colleagues, who had similarly gone on strike, had been taken back and he alone should not be picked up for punishment as it would amount to a discrimination. He, therefore, prayed for withdrawal of the action and permission to resume his duty without any blemish.

20. On receipt of these representations, so far as the petitioner Deshpande is concerned, it appears that respondent 1 gave him a personal hearing on 22 September, 1960, that is, on the next day after the date on which the written statement was received. Respondent 1, who is the disciplinary authority, has passed a very brief order in the case of Deshpande. This order is to be found at p. 36 of the paper book. That order is in the following terms :

"I have carefully considered reply, dated 21 September 1960, from N. N. Deshpande, upper division clerk (under suspension), to my "show-cause" memo dated 7 September, 1960. I have also heard him personally today. Taking all things into consideration I have come to the conclusion that the charges framed against him stand proved.

2. I, C. K. Ghosh, Accountant-General, Maharashtra, and disciplinary authority, hereby confirm the punishment proposed against him and order that under rule 13(vii) of the Central Civil Services (classification, Control and Appeal) Rules, 1957, N. N. Deshpande should be dismissed from service with effect from the date of the these orders and his dismissal from service should ordinarily be a disqualification for future employment."

21. It is apparent from a bare perusal of the order that except the statement at the beginning that the authority has carefully considered the reply and heard the petitioner personally, there is no indication in the order as to why or how the charges were considered as proved or why the extreme penalty of dismissal under rule 13(vii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, was to be imposed on the petitioner Deshpande.

22. With regard to the petition Shirkhedkar, the order of the disciplinary authority is to be found at p. 62 of his petition. That order is also comparatively brief and is in the following terms :

"I have gone carefully through the representation dated 13/16 January, 1961, made to me by R. L. Shirkhedkar, S.A.S. Accountant (at present under suspension) of my Nagpur Branch office against the proposed action to dismiss him from service - vide show-cause notice Memo. No. DAG (A)/575, dated 29 December, 1960. I do not consider that he has brought out any new material factor in the representation. Taking all relevant considerations into account, I consider that my finding regarding the charges requires no change. I also

consider that the punishment of "dismissal from service, which shall ordinarily be a disqualification for future employment," as stated in rule 13(vii) of the Central Civil Services (Classification, Control and Appeal), Rules, 1957, provisionally proposed by me in his case should be confirmed. I, therefore, hereby order that the said R. L. Shirkhedkar should be dismissed from Government service from the date of service of this order on him. As he is under suspension, this order should be sent to him by registered post acknowledgment due to his home address."

23. A bare perusal of this order will show that except for the statement that the authority has gone carefully through the representation and that it did not consider that the petitioner had brought out any new material factor in the representation and after taking all relevant considerations into account, the authority did not consider it fit to require any change regarding its finding as to the charges. As to the punishment, that is, the dismissal under rule 13(vii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, no reasons were given for the imposition of this maximum penalty.

24. The order of dismissal was passed in the case of the petitioner Shirkhedkar on 21 March 1961. He did not file any appeal as provided in the rules for disciplinary action against this order. Instead he filed a petition in this Court on 24 April, 1961. He has impleaded to this petition the disciplinary authority, namely, the Accountant-General, Maharashtra, as respondent 1, and Senior Deputy Accountant-General, Maharashtra (Nagpur Branch), Nagpur, as respondent 2.

25. On the other hand, the petitioner Deshpande challenged the order of the disciplinary authority by an appeal before respondent 4, the Comptroller and Auditor-General of India. That appeal was rejected by the appellate authority. The order in appeal is not before us, but the intimation received by the petitioner Deshpande from the Senior Deputy Accountant-General intimating that his appeal has been rejected, is filed and is to be found at p. 49 of the paper book. Respondent 4, the appellate authority, has also not filed a copy of this appellate order before us. This order was communicated apparently some time after 1 April, 1961, to the petitioner Deshpande and thereafter he filed his petition in this Court on 14 July, 1961. Deshpande has impleaded in his petition, besides the disciplinary authority, namely, respondent 1, and the Senior Deputy Accountant-General, respondent 2 three other persons, namely, the enquiry officer, Sri Panchapakesan, respondent 3, the Comptroller and Auditor-General of India, New Delhi, respondent 4, and also the Union of India, represented by the Accountant-General, Maharashtra State, Bombay, as respondent 5.

26. In each of these petitions, the petitioners have traversed all the grounds taken by them before the disciplinary authority. In additions, they have averred certain facts as to the circumstances in which the strike had taken place and the consequences of that strike and its impact on the several categories of servants in the office of respondent 1 in each case. Shirkhedkar has alleged in Para. 12 of

his petition that out of 550 class III and Class IV employees of the office of the petitioner, about 400 employees had joined the strike. The strike was on from 12 to 16 July, 1960. 17 July, 1960 was a Sunday. The strike was withdrawn from 16 July, 1960, and the employees, who went on strike, reported for duty on Monday, 18 July, 1960. Out of the 400 employees, who had gone on strike, all were allowed to resume duty except 32 persons. All were asked to submit an explanation for their absence from 12 to 16 July, 1960, and they explained that they had gone on strike in accordance with the strike notice given by the association. Thirty-two persons, who were not allowed to resume duty, were served with an order of suspension against each. Out of these 32 persons, 26 employees were given chargesheets and statement of allegations which were identical with those given to the petitioner. Out of these 26 persons, the petitioner Shirkhedkar and the petitioner Deshpande alone were dismissed; pay of 2 others was reduced; in the case of 12 employees increments were stopped and 10 employees were censured. Out of the remaining 6, 4 were allowed to join duty even without a chargesheet and the other 2 were chargesheeted and punished with compulsory retirement and reduction in pay. Thus 26 persons were picked up for disciplinary action. Though they had participated in the strike like others, separate departmental enquiries were held against each of them. The petitioner's complaint, therefore, is that though all had participated in the strike they were not treated alike.

27. There is a further statement in Para. 13 of the petition filed by Shirkhedkar to the following effect :-

"The strike of the employees of the Central Government was not confined to the office of the petitioner at Nagpur. It took place all over India and in almost all offices of the Central Government. In reply to the interpellations of Sri Indrajit Gupta and S. M. Banerjee, both M. Ps., the Minister for Home affairs disclosed in the Lok Sabha on 6 September, 1960 the instructions issued by the Central Government for the reinstatement of the employees who had gone on strike. A copy of the Lok Sabha Debates, 11th Sessions, 2nd Series, Vol. 46, No. 28 dated 6 September, 1960 - columns 7216-17 relating to this started question No. 2223 is filed herewith as Ex. A. 16 for facility of reference."

28. On the basis of this statement in Para. 13, the petitioner Shirkhedkar contended that he seems to have been singled out for extreme punishment for some extraneous consideration and he has been denied the equal protection of law. He also made a complaint that he did not have any reasonable opportunity to show cause against the action proposed to be taken against him as no evidence was offered against him which he could have tested by cross-examination and that he was not personally heard by the disciplinary authority. The action of the disciplinary authority was styled as arbitrary and vindictive inasmuch as the order showed that the disciplinary authority had not applied its mind to the several contentions raised in his written defence, in reply to the second show-cause notice, filed on 16 January 1961.

29. The petitioner Deshpande, in addition to the challenge to the vires of rule 4(A) of the Conduct Rules as violating the constitutional guarantee, has contended that even in his case, his defence has not been appreciated at all. His case is that he was not the master of his action in going on strike, that he has participated in the strike merely as a loyal member of a larger body and that he bona fide believed that the association as such was not prevented by any rules from asking its members to go on strike and, therefore, his conduct will not attract the application of rule 4(A) which, according to him, was applicable in the case of an individual action. He reiterated the complaint made by Shirkhedkar also that he seems to have been singled out for extreme penalty of dismissal which was discriminatory and he has not been given reasonable opportunity to show cause as provided by Art. 311 of the Constitution. He has complained that the officers who passed adverse orders against him did not apply their mind and consider his defence and the written statement. His appeal was decided without giving him any hearing and that itself was against the principles of natural justice.

30. Both the petitioners, therefore, prayed for quashing of the order of the disciplinary authority passed against them dismissing them from services and the petitioner Deshpande also prayed for quashing of the order communicating to him the rejection of his appeal.

31. In each case, the respondents have filed a return supported by an affidavit. The respondents have joined issues as to the vires of rule 4(A). It is contended that the petitioners cannot invoke in aid either Art. 14 or 19 in support of their contentions. They claim that rule 4(4) is a legitimate exercise of the rule-making power under Art. 309 of the Constitution prescribing the rules of conduct for Government employees. The respondents have made specific averments in reply to the allegations in Paras. 12 and 13 of the petition in the case of Shirkhedkar. With regard to the allegations in Para 12 of the petition of Shirkhedkar, the respondents, averred that the number of persons who went on strike or who absented from duty is not relevant to the issue under reference. They have denied as incorrect that the members of the staff who resumed duty were asked to submit written explanation for their absence from duty. They contend that it is not open for the petitioner to say that the same action should have been started simultaneously against all the absentees. They submit that there was no restriction, placed either during or after the period of strike on any staff member desirous to attend the office. The persons placed under suspension could not join duties until the suspension order was revoked. It is specifically averred that the enquiry in the departmental proceedings was made against the persons concerned by the enquiry officer in the light of the charges or allegations framed and each individual case was dealt with separately on its merits. Similarly, the disciplinary authority took the final decision in each case separately on its merits in the light of the enquiry proceedings of the case and passed such orders as were, in his judgment, appropriate. They, therefore, denied that any discrimination had been exercised by the disciplinary authority. It was alleged that only three members of the Subordinate Account Service participated in the

strike and departmental action was taken against these three persons.

32. As regards the averment in Para. 13 of the petition of Shirkhedkar regarding the statement made by the Home Minister in Lok Sabha and the instructions issued, the respondents stated as follows in their return :

"With regards to petition Para. 13, it is respectfully submitted that what is alleged to have happened on the floor of the House of Lok Sabha has no relevance whatsoever in the instant case. It is respectfully submitted that the respondent 1 has in his judgment acted in accordance with powers which he possesses under the rules framed by the Government of India and if the petitioner felt that this was not so, he should have preferred an appeal to the next higher authority in terms of rules 22 and 23 of the Central Civil Services (Classification, Control and Appeal), Rules, 1957. The fact that he did not prefer any such appeal within the prescribed time shows that he had accepted the position or felt he had no case against the disciplinary authority. It is respectfully submitted that the petitioner has been given right of appeal under the rules quoted above. He has not exhausted that right and even on this ground the petition is liable to be dismissed."

33. During the course of the argument, we had asked the learned counsel for the respondents whether they intended to clarify their statement at p. 73 to the effect that "what is alleged to have happened on the floor of the House of Lok Sabha has no relevance whatsoever in the instant case." After the petitioner's counsel had closed their leading argument, the learned counsel for the respondents filed a statement on behalf of respondent 1 on 9 July 1962. That statement is as follows :

"1. That certain directives, which are of secret nature, were received from the Comptroller and Auditor-General of India to be taken into consideration while deciding disciplinary action.

2. That the reply of R. L. Shirkhedkar, the petitioner, to the show-cause notice was considered carefully by the Accountant General was passed final orders after taking into account all the relevant orders on the subject."

34. We have directed that this statement, which was subsequently filed, shall form part of the record of the proceedings in this case and will be included as such. The respondents justified the action as wholly within the competence of the disciplinary authority and not vitiated by any arbitrary or discriminatory act or biased or influenced by extraneous considerations.

35. The respondents to the petition filed by Deshpande have raised a preliminary objection to the tenability of the petition of Deshpande. It is contended that Deshpande has impleaded the Comptroller and Auditor-General of India, New Delhi, and the Union of India as parties to the petition. He has asked for some relief against these authorities indirectly though not directly. It is, therefore, contended that both these authorities are not amenable to the territorial

jurisdiction of this Court as they are located outside the territorial jurisdiction of this High Court, both being at New Delhi. As the petitioner Deshpande asked for relief of a composite character against some persons who are within jurisdiction and as regards others in an indirect way who are outside the jurisdiction, the petition is not tenable. It is also urged that Deshpande, having preferred an appeal before the Comptroller and Auditor-General which is the appellate authority and that appellate order not being capable of challenge in this Court, the petition is not tenable and should be rejected on that ground.

36. Besides this preliminary objection, the respondents have tried to justify the action and the order of the disciplinary authority on more or less identical grounds as in the case of the petitioner Shirkhedkar.

37. This petition was argued on both sides at considerable length and the points that arise for decision are as follows :

(1) Whether the petitioner Deshpande in Special Civil Application No. 240 of 1961 is not entitled to any relief in this Court because respondents 4 and 5 are outside the territorial jurisdiction of this Court ?

(2) Whether the order of dismissal is in violation of the provisions of Art. 311 of the Constitution, because

(i) a fair opportunity or a reasonable opportunity was not given to the petitioner to show cause and

(ii) whether the order is bad as based on extraneous reasons against which the petitioner had no opportunity to show cause or that the order is bad because the disciplinary authority acted in a biased manner ?

(3) Whether the taking of disciplinary action against some of the employees who had gone on strike was an act contrary to the provisions of Art. 14 of the Constitution ?

(4) Whether rule 4 (A) of the Central Civil Services (Conduct) Rules is contrary to the provisions of Art. 14 of the Constitution inasmuch as some other Government employees are not excluded or prohibited from going on strike whereas other classes of Government employees are prohibited from going on strike ?

38. We shall deal with these contentions seriatim.

39. It is true that the petitioner Deshpande has impleaded the Comptroller and Auditor-General and the Union of India as parties to this petition. But Deshpande has not asked for any relief against any of them directly. On behalf of these respondents, it is contended that the Union of India or the Controller and Auditor-General of India being outside the territorial jurisdiction of this Court, Deshpande cannot asked for any relief in respect of an order which was the subject-matter of appeal before respondent 4. It is undoubtedly true that the appeal stands dismissed. But according to Mr. Mudholkar, learned counsel for the respondents, the order of respondent 1 has merged in the order of respondent 4. For this

proposition Mr. Mudholkar has invited out attention to a recent decision of their lordships of the Supreme Court in *Madan Gopal Rungta v. Secretary to the Government of Orissa* [1962 Civil Appeal No. 407 of 1961, decided on 16 March, 1962 (Supreme Court)]. In that case, the facts are given in sufficient detail in the opening paragraph of the judgment. The Government of Orissa decided to grant a lease in favour of Tatas in preference to Rungta through his application was prior in time. The Government referred this decisions for approval to the Central Government. The appellant, that is Rungta, made a representation to the Central Government against the recommendation of the State Government and eventually on 9 April, 1957, the Central Government turned down the recommendation of the State Government about the grant of the mining lease to Tatas. The Central Government further directed that the applications received prior to the application to Tatas should be considered according to the rules in force. But they added that in case the Government of Orissa desired to work the area on a departmental basis, the Central Government would have no objection to consider a proposal for that purpose. Thereafter the State Government rejected the application of Rungta in December 1957 on the ground that the State Government proposed to arrange for the exploitation of the area in the public sector. Against this order, Rungta filed a review application to the Central Government under rule 57 of the Mineral Concession Rules. This application was rejected by the Central Government in June 1959. On its rejection, Rungta filed a petition under Art. 226 of the Constitution of India in the High Court of Orissa. The petition was dismissed by the High Court on the ground that it had no jurisdiction to deal with the matter under Art. 226 as the final order in the case was passed by the Central Government which was located beyond the territorial jurisdiction of the High Court. The appellant then came before the Supreme Court on grant of special leave to appeal by that Court. In support of the appeal, it was contended on behalf of Rungta, on the basis of the decision of the Supreme Court in *State of Uttar Pradesh v. Mohammad Nooh* AIR 1958 S.C. 86 that there was no reason to consider that the order of the State Government should be taken to have merged in the order of the Central Government so as to deprive the appellant of his remedy under Art. 226 of the Constitution. This contention was repelled by their lordships with the following observations with reference to Mohammad Nooh case :-

"The argument that the order of dismissal merged in the order passed in appeal therefrom and in the final order of revision was repelled by this Court on two grounds. It was held (firstly) that the principles of merger applicable to decrees of Courts would not apply to orders of departmental tribunals, and (secondly) that the original order of dismissal would be operative on its own strength and did not gain greater efficacy by the subsequent order of dismissal of the appeal or revision, and therefore, the order of dismissal having been passed before the Constitution would not be open to attack under Art. 226 of the Constitution."

40. On these observations the decision in *Mohammad Nooh* case was distinguished and held inapplicable for the decision of the case in *Rungta* appeal.

In the later paragraph, however, their lordships have indicated how the facts in the Rungta case and the provision of law clearly distinguished that case from the principle on which Mohammad Nooh case was decided. It has been pointed out :

"It is not in dispute that if the Central Government was so minded it could have allowed the review and directed the Orissa Government to grant the mining lease to the appellant. Therefore, when the Central Government rejected the review petition, it in effect rejected the application of the appellant for the grant of the mining lease to him. This order of the Central Government in effect rejecting the application of the appellant for the grant of the mining lease to him and confirming the rejection of the application of the appellant by the Orissa Government is clearly not amenable to the jurisdiction of the High Court of Orissa under Art. 226 in view of the fact that the Central Government is not located within the territories subject to the jurisdiction of the Orissa High Court. It would, therefore, have been useless for the Orissa High Court to issue a writ against the Orissa Government for the Central Government's order rejecting the review petition and, therefore, in effect, rejecting the application of the appellant for grant of the mining lease would still stand. This is made clear by rule 60 of the rules, which provides that.

"the order of the Central Government under rule 59 and subject only to such order, any order of a State Government under these rules, shall be final."

Clearly, therefore, rule 60 provides that where there is a review petition against the order passed in the first instance by the State Government, the order of the Central Government passed in review would prevail and would be the final order dealing with an application for a mining lease under the rules. Therefore, quite apart from the theoretical question of the merger of the State Government's order with the Central Government's order, the terms of rule 60 make it perfectly clear that whenever the matter is brought to the Central Government under rule 59, it is the order of the Central Government which is effective and final."

41. In our opinion rule 26(3) of the Mineral Concession Rules, 1949, would also make this position clear. Rule 26 is in Chap. IV providing for the grant of mining lease in respect of land in which the minerals belong to Government. Under Sub-rule (3) of rule 26, no mining lease for any mineral specified in Sch. IV shall be granted except with the prior approval of the Central Government. A perusal of Sch. IV would show that it includes almost all minerals, and manganese, which was the mineral for which Rungta had made an application for mining lease. Thus, a bare perusal of the Mineral Concession Rules would show that the final arbitrator as to whether a mining lease should be given to a person is the Central Government. That being the position under the rules, it is difficult to see how the State Government, namely, the Government of Orissa, could be said to have arrived at a final decision in granting a mining lease. We are, therefore, of opinion that the facts on which Rungta case was decided before the Supreme Court or the Orissa High Court are distinguishable and do not support the

proposition for which the counsel for the respondents is contending. On the other hand we are of opinion that the decision in Mohammad Nooh case in respect of the departmental enquiries still holds the field. In that case, the following observations in Para. 13 at p. 95 are apposite;

"..... an order of dismissal passed on a departmental enquiry by an officer in the department and an order passed by another officer next higher in rank dismissing an appeal therefrom and an order rejecting an application for revision by the head of the department can hardly be equated with any propriety with decrees made in a civil suit under the CPC by the Court of first instances and the decree dismissing the appeal therefrom by an appeal Court and by the order dismissing the revision petition by a yet higher Court, as has been sought to be done by the High Court in this case, because the departmental tribunals of the first instance or on appeal or revision are not regular Courts manned by persons trained in law although they may have the trappings of the Courts of law There is nothing in the Indian law to warrant the suggestion that the decree or order of the Court or tribunal of the first instances becomes final only on the termination of all proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified it remains effective The original order of dismissal, if there were no inherent infirmities in it, was operative on its own strength and it did not gain any greater efficacy from the subsequent orders of dismissal of the appeal or the revision except for the specific purposes hereinbefore mentioned."

42. This principle is again reiterated in another decision of their lordships which is to be found in the same volume in Sita Ram Goel Vs. The Municipal Board, Kanpur and Others, . In that case, the question arose as regards the limitation for a suit challenging an action by the disciplinary authority. The question was whether the commencement of the period of limitation should be from the date of the order or the order in appeal and, in this context, in Para 13 at p. 1039 their lordships observed as follows :

"..... The mere filing of an appeal has not the effect of holding the order of the board in abeyance or postponing the effect thereof until the decision of the appeal."

43. The petitioners have also relied on a Single Bench decision of this Court which is unreported, namely, D. U. Ochani v. S. Sankaran [(1962) O.C.J. Miscellaneous Petition No. 219 of 1961, decided by K. K. Desai J., on 27/28 March, 1962 (Unrep.)] on the original side of this Court. That was a petition by an employee in the office of the Accountant-General who was an upper division clerk. In that case also, against the disciplinary action an appeal was preferred by the petitioner before the appellate authority whose office was in Delhi. Similar contentions raised on behalf of the opposing respondent in that case were repelled.

44. Similar view has been taken in the following decisions :-

- (1) East India Commercial Ltd. Vs. Collector of Customs and Another,];
- (ii) Malkhan Singh Nirpat Singh Vs. Inspector of Central Excise, P.I. and Others, ;
- (iii) J. Harimal Oil Mills Vs. Assistant Collector, Central Excise and Another, ; and
- (iv) Barkatali Vs. Custodian General of Evacuee Property of India, .

45. We are in respectful agreement with the view taken in these case that so long as an effective order of the disciplinary authority can be reached by the High Court to give relief to the petitioner, there is no impediment in the High Court in the exercise of its jurisdiction under Art. 226 of the Constitution on the mere fact that an appellate order which, as in this case, is not impugned, is passed by an authority which may not be within the territorial jurisdiction of this High Court. We, therefore, overrule the objection raised in the case of Deshpande and hold that the petition is entitled to be considered on merits and decided.

46. We shall now take up other contentions on merits. In the averments of their written statements, the petitioners have contended that the action taken against them is discriminatory and vindictive and vitiated by extraneous consideration. We are not impressed with the argument of the petitioner Shirkhedkar that he was denied an opportunity to lead evidence before the enquiry officer. What Shirkhedkar asked was an opportunity to cross-examine the Senior Deputy Accountant-General and that opportunity could not be given because the Senior Deputy Accountant-General was not being examined in support of the charge. We do not find any expenses or specific request made by the petitioner before the enquiry officer that he wanted to examine any witnesses as, in our opinion, there was little that could be gone into by the enquiry officer so far as the factual basis of the two charges in respect of which the petitioners were called upon to show cause the petitioners were called upon to show cause was concerned. The two charges were :

- (1) the absence of the petitioners from duty without permission, and
- (ii) the petitioner's joining the strike.

47. Each of the petitioners, in our opinion, has candidly admitted that they were absent and that they had joined the strike. Thus, there was nothing left for the enquiry officer to prove, and, at that stage, we fail to see how, considering the ambit of the enquiry before the enquiry officer, there was any scope for leading evidence before him. It is possible that the petitioners wanted to bring on record other circumstances which would show the circumstances in which they went on strike or joined the strike which may have a bearing in determination of the nature of their guilt or the disability of the punishment being given on that account. But, in our opinion, in view of the facts admitted by the petitioners in each case there was little scope for examination of witnesses before the enquiry officer. When the matter, however, came up before the disciplinary authority after issue of a show-cause notice, a different consideration arose. In his long written statement filed in answer to the second show-cause notice, the petitioner

Shirkhedkar had made a complaint that he wanted to cross-examine the Senior Deputy Accountant-General and also examine witnesses and lead evidence to show the circumstances in which he had joined the strike. It is urged before us that this opportunity should have been made available to him by the disciplinary authority which had to determine finally the nature of delinquency of the petitioner. A mere joining of the strike, which act was done by not less than 400 employees, was not by itself sufficient to show how far the delinquent was acquitted by a particular motive. It is urged before us that the complexion of the same act may well change if the circumstances are allowed to be shown indicating that the delinquent, when participating in a general, strike by a large number of employees, is not solely responsible for his act. It is also possible to show that what he was doing was under a compulsion of a duty, either as an officer-barer or as a loyal member of the association and which fact could be considered by the authority before the ultimate punishment is decided by the authority. In our opinion, there is considerable force in this contention. It is true that Shirkhedkar has been guilty of some vagueness in putting forth his complaint. He has used words carelessly but that may be a fault of imperfect English of which cognizance ought not to have been taken by the disciplinary authority. But far more important is the complaint of the petitioners that the disciplinary authority has not taken into consideration another aspect of the matter, namely, the effect of instructions alleged to have been issued by the Central Government in the matter of taking action against the employees who had gone on strike. The petitioners have placed on record authentic copy of the proceedings in Lok Sabha. At p. 63 in Special Civil Application No. 175 of 1961 an extract from the printed version of the Lok Sabha Debates for 6 September, 1960 is produced. The Home Minister was replying to certain questions put by the members Sri Indrajit Gupta and Sri S. M. Banerjee. There were five questions which are as follows :

- (a) the total number of Central Government employees and outsiders arrested during the recent Central Government employees' strike;
- (b) the number of those released unconditionally and on bail separately;
- (c) the number of those convicted;
- (d) the number of those dismissed, discharged and suspended.

48. The last question was regarding the instructions issued by the Government as to the reinstatement of these employees. The Home Minister laid factual information with regard to the first four questions. As regards the last question, he gave in details the action that may be taken in different categories of cases. That answer is as follows :

"(1) Employees dismissed, discharged or removed from service as a result of their conviction in the Court : The heads of departments should examine each case on merits and determine, after consideration of the nature of the offence, whether the penalty of dismissal, discharge or removal from service should not

be modified to a lesser penalty.

(ii) Employees placed under suspension : Departmental proceedings should be taken against those who are suspected to have indulged in sabotage, intimidation or gross misbehaviour while in other cases the order of suspension will generally be withdrawn.

(iii) Temporary employees who had been served with the notices of discharge : The employees who returned to work should be allowed to resume work if, on examination, it is felt that departmental proceedings against them need not be taken.

(iv) Employees who had been suspended after their arrest by police : They should be kept under suspension until their return to duty or release; thereafter suspensions order should be examined and action taken as indicated at (ii) above."

49. The petitioners had made an express reference to this statement made on the floor of the Lok Sabha on 6 September 1960, and, in particular, it was averred that the Government had issued instructions in the matter accordingly. As far as we are able to find from the return, there is no averments in the return on behalf of the respondents either denying or affirming the issuing of such instructions. On the normal rules of pleadings, therefore, we should be inclined to hold that the issuance of such instructions, as alleged by the petitioners, has not been denied and and, therefore, must be taken to have accepted. The respondents, however, contended that what is alleged on the floor of the house of the Lok Sabha has no relevance whatsoever in the instant case. This stand is capable of two interpretations. Either the respondents mean to say that the disciplinary authority was acting within the ambit of the Service Rules and whatever happened on the floor of the Parliament, the authority was entitled to act according to its discretion within the ambit of the rules. On the other hand, respondents, derisively styling all the proceedings in the Lok Sabha as irrelevant, could say that they may have been taken into consideration, but were not bound to act according to the instructions to which a reference was made on the floor of the House. But it is not possible to give either of these interpretations to the replies on behalf of the respondents to Para. 13 of the petition Shirkhedkar. The respondents have now categorically stated in the statement filed before us on 9 July, 1962 that certain directives, which were of secret nature, were received from the Comptroller and Auditor-General of India and were taken into consideration while deciding on the disciplinary action. They have further stated that the Accountant-General passed the final orders in the case of Shirkhedkar after taking into account all the relevant orders on the subject. Reference to "all the relevant orders on the subject" in the Para 2 of the statement is not clear to us, and, therefore, we asked the learned Government Pleader whether it has reference to any orders other than the secret directives referred to in the first paragraph of the statement. It has been stated before us that there are no other orders and that it was only on the basis of the secret directives that the action

was taken in deciding the punishment. Now, the learned Government Pleader has also stated that he is not in a position to indicate the nature of those directives because they are secret though it is stated that they are with reference to this context.

50. In view of this statement made on behalf of the respondents which govern the disciplinary action against both the petitioners, it is difficult to resist the conclusion that the whole enquiry is vitiated on account of the disciplinary authority taking into consideration extraneous matters. We do not know that the secret directives were. We do not know whether the secret directives were in respect of a particular delinquent or cover all those who participated in the strike. It is hardly necessary to emphasize that the disciplinary authority, empowered to take action under the Central Services (Classification, Control and Appeal) Rules, which are statutory rules framed under Art. 309 of the Constitution, is expected to act in a quasi-judicial manner. In all questions before it, the matter must be considered judicially. Though it is not a Court, the rules of natural justice and strict compliance with the provisions of the procedure of enquiry must be insisted upon in all these cases. A bare perusal of the rules shows that the disciplinary authority has to apply its mind to the record of the enquiry. The record of the enquiry includes, under rule 8, the written statement of defence, the oral evidence taken in the course of the enquiry, the documentary evidence considered in the course of the enquiry, the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry, a report setting out the findings on each charge and the reasons therefor. We do not consider that the disciplinary authority is entitled to act on any material which is not included in the record. If the disciplinary authority is required to take into consideration any directives or instructions so-called, secret or otherwise, they must form a record of the enquiry. It is crystal clear from what is stated before us now that in the matter of imposing punishment or even determining the final guilt of each of the petitioners the disciplinary authority took into consideration some directive or instructions of which neither of the petitioners had any notice and which the disciplinary authority is not in a position to disclose even in this Court. Thus the rules of natural justice, which require that the tribunal appointed to hold enquiries in departmental proceedings should act without bias or should not act on material which is not available to the person for giving an explanation, are completely violated by the procedure adopted in the instant case.

51. In our opinion, the ambit of jurisdiction within which the disciplinary tribunals must act and the fairness with which the enquiries are required to be conducted and concluded, has been laid down in judicial pronouncements with sufficient clarity in several Courts and the Supreme Court. These rules were first examined by the Supreme Court in *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, their lordships quoted with approval the observations of the Earl of Selborne, L.C., in *Spackman v. Plumsted Board of Works* (1885) 10 A.C. 229 to the following effect :

"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially not under the dictation of some other persons or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice."

52. Rules of natural justice have been sufficiently adumbrated in another pronouncement in the same volume in *Union of India (UOI) Vs. T.R. Varma*, as follows :-

"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."

53. In considering whether the rules of natural justice have been complied with in a given case, it is often that an allegation of bias is made. How such a complaint is to be adjudged is also laid by their lordships in some recent decisions. In *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, :

"(29) The mode of performing quasi-judicial acts by administrative tribunals has been the subject of judicial decisions in England as well as in India. The House of Lords in *Local Government Board v. Arlidge*, 1915 A.C. 220 in the context of the Housing, Town Planning, etc., Act, 1909, made the following observations at P. 132 :

"My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same."

54. In *New Prakash Transport Company, Ltd. v. New Sawarna Transport Company Ltd.*, this Court reviewed the case-law on the subject and came to the conclusion that the rules of natural justice vary with varying constructions of statutory bodies, and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must

be judge not by any preconceived notion of what they may be but in the light of the provisions of the relevant Act. This Court re-affirmed the principle in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, :

55. (30) With this background we shall proceed to consider the validity of the three alleged deviations of the State Government from the fundamental judicial procedure. In the present case, the officer who received the objections of the parties and heard them personally or through their representatives, was the secretary of the Transport Department. Under the "Madras Government Business Rules and Secretariat Instructions" made by the Governor under Art. 166 of the Constitution, the Secretary of a department is its head. One of the parties to the dispute before the State Government was the Transport Department functioning as a statutory authority under the Act. The head of that department received the objections, heard the parties, recorded the entire proceedings and presumably discussed the matter with the Chief Minister before the latter approved the scheme. Though the formal orders were made by the Chief Minister, in effect and substances, the enquiry was conducted and personal hearing was given by one of the parties to the dispute itself. It is one of the fundamental principles of judicial procedure that the person or persons who are entrusted with the duty of hearing a case judicially should be those who have no personal bias in the matter.

56. In *Ranger v. Great Western Railway Company* (1854) 5 H.L.C. 72, Lord Cranworth, L.C., says :

"..... a judge ought to be, and is supposed to be, indifferent between the parties. He has, or is supposed to have, no bias including him to lean to the one side rather than to the other. In ordinary case it is just grounds of exception to a judge that he is not indifferent, and the fact that he is himself a party, or interested as a party, affords the strongest proof that he cannot be indifferent."

57. In *Rex v. Sussex Justice, McCarthy, Ex parte* (1924) 1 K.B. 256, Lord Hewart C.J., observed :

"..... It is said, and no doubt, truly, that when that gentleman retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without consulting him, and that he scrupulously abstained from referring to the case in any way. But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The question therefore is not whether in this case the deputy clerk made any observations or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspects as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done but upon what might appear to be done."

58. This was followed in *Rex v. Essex Justices, Perkins, Ex parte* (1927) 2 K.B. 475. In *Franklin v. Minister of Town and Country Planning* 1948 A.C. 87, though on a construction of the provisions of that Act under consideration in that case it was held that the Minister was not acting judicially in discharging his duties, his lordships accepted the aforesaid principle and expressed his view on the doctrine of "bias" thus at p. 103 :

"My Lord, I could wish that the use of the word "bias" should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute."

59. The aforesaid decisions accept the fundamental principle of natural justice that in the case of quasi-judicial proceedings, the authority empowered to decide the disputes between opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interested in one party or the other should not, even formally, take part in the proceedings though in fact he does not influence the mind of the persons, who finally decides the case. This is on the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The hearing given by the Secretary, Transport, Department, certainly offends the said principle of natural justice and the proceedings and the hearing given, in violation of that principle, are bad."

60. In the same volume at p. 1376, in the second case under *Motor Transport, in Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others*, , their lordships observed as follows :

"At this stage, it would be convenient to notice briefly the decisions cited at that bar disclosing the relevant principle governing the "doctrine of bias". The principle governing the "doctrine of bias" vis-a-vis judicial tribunal are well-settled and they are :

(1) no man shall be a judge in his own cause;

(ii) justice should not only be done but manifestly and undoubtedly be seen to be done.

The two maxims yield the result that if a member of a judicial body is

"subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take part in the decision or sit on the tribunal;"

The said principles are equally applicable to authorities, though they are not

courts of justice or judicial tribunals, who have to act judicially in deciding the rights of others, i.e., authorities who are empowered to discharge quasi-judicial functions."

61. The complaint of the petitioners is that they have not been given a reasonable opportunity to show cause against action proposed to be taken inasmuch as the disciplinary authority acted on basis of secret directive and the petitioners were kept in complete darkness of these instructions affecting their fate. In this context, duty of this Court is clearly laid down by the Supreme Court in the following observations to be found in *State of Madhya Pradesh v. Chintaman* AIR 1961 S.C. 1623 :

"..... 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 what 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 of each case."

62. We are clearly of opinion, therefore, that the disciplinary authority, in the instant cases, could not be said to have acted in due conformity with the principles of natural justice and without bias in so far as they did or were required to take into consideration and act upon some secret directives in the matter of disciplinary action and punishment to be meted out to each of these petitioners. The petitioners did not know about these instructions and did not even know what the secret directives were. In each case, the petitioners may well have been in a position to show that in spite of the directives they are not liable to be punished in the manner in which it is sought to be done if only they knew what the directives were. The action taken under the Central Civil Services (Classification, Control and Appeal) Rules was wholly against both the letter as well as the spirit of the enquiry which is made sacrosanct under Art. 311 of the Constitution. Looking at it from another aspect under Art. 311 of the Constitution, it cannot be said that a reasonable opportunity was given to the petitioners in either of these cases to show cause against the action proposed to be taken against them. The petitioners did not know what case they were required to meet before the disciplinary authority who was expected to act upon certain secret instructions and the directives. It would reduce the independence of disciplinary authority to a farce if the action to be taken is pre-determined or

is conditioned by some extraneous considerations. As we have pointed out, the ambit of enquiry is laid down in the rules and the rules provide what is the material on the basis of which the disciplinary action should be taken. It has not to take into consideration any material which is not part of the record and of which no notice is given to the delinquent employee against whom action is being taken. We, therefore, hold that on this ground alone, the orders of dismissal passed against the petitioners are liable to be quashed as fully vitiated on account of the authority taking into consideration the extraneous matters of which the petitioners have no reasonable opportunity of meeting or knowing.

63. In view of the our decision above, it is not necessary to deal elaborately with other contentions raised on behalf of the petitioners. But we may mention the contentions and our conclusions thereon.

64. It is contended on behalf of the petitioners that the disciplinary action taken against them is vitiated on a proper interpretation of the guarantee or protection given under Art. 14 of the Constitution. It is stated that out of 550 employees, 400 persons went on strike and action was taken only against 26 persons and not against the rest who had also participated in the strike. In order that an appeal may be had to the protection given by Art. 14 of the Constitution, it is incumbent on the petitioner to establish that the discrimination of which he complains is in respect of the persons in similar circumstances. In our opinion, the petitioners have failed to establish facts or even to allege them to make any such enquiry possible. The petitioners have not placed before us what statements, if any, were made by each of these persons in reply to a query from the authorities as to why they absented from duty. A query was made from every one of them as to the cause of their absence and their explanations were received. We do not know what the explanation of each of these persons was. Therefore, if the authority empowered to take action has considered the explanation satisfactory as not requiring any action, we do not see how the petitioner can make a grievance that only 26 persons were singled out and no action was taken as against the rest of the employees who were allowed to join duty. Two have been punished by way of dismissal and, in respect of the rest, different kinds of punishment have been imposed. Now, we find it difficult to accept that there is any right of equality in the matter of punishment. In fact, the argument could not be countenanced in its extreme form. But what is contended is that 26 persons had gone on strike and, therefore, normally speaking, all of them should have been dealt with alike. Here again, the contention is fallacious. We do not known what was the defence of each of those 26 persons which probably justified the disciplinary authority taking different view in the matter of each delinquent. It is possible to conceive of various types of defenses in answer to a charge of indiscipline and in absence of any information whether the defences were alike and whether the positions of those persons were alike, we do not think the action is liable to be challenged as discriminatory or based on hostile discrimination under Art. 14 of the Constitution. It is easy to see that different employees must necessarily belong to different categories. Some may

be class III employees, some may be class IV, others may be temporary and yet some may be juniors facing different charges against them and, therefore, different punishments are liable to be imposed on them. We do not see how that circumstances alone can entitle the petitioners to contend that they have been discriminated against or that the same punishment is not meted out to them as was imposed on those other 24 or 25. We, therefore, hold that this contention is not tenable and is liable to be rejected.

65. The next contention of the petitioners is that rule 4(A) itself is ultra vires of the Constitution. It is contended that, simply because an employee is a Government employee, he cannot be denied the right guaranteed to every citizen under Art. 19 of the Constitution and other articles. This proposition cannot be disputed. What is to be found, however, is whether a right to form an association which is guaranteed under Art. 19(1)(c) of the Constitution, also carries with it a concomitant or incidental right to make the activity of the association or the demands of the association effective by resort to strike. Such a contention, which was raised and was examined by their lordships of the Supreme Court, has been repelled and we need only make a reference to the decision of their lordships in the case in *All India Bank Employees' Association Vs. National Industrial Tribunal and Others*, .

66. But it is contended that another decision of the Supreme Court has affirmed the right of the employees to a peaceful demonstration. For this proposition, reliance is placed on another recent decision of the Supreme Court in *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, . We were also pointed out in this connexion that the right of association as such has been affirmed by this Court in the case in *S. Vasudevan and Others Vs. S.D. Mital and Others*, . It is true that a several of the Government has a right to form an association and may also have a right of peaceful demonstration within limits, but it cannot be argued on the basis of these rights that there is any right of strike for using it as a means of redressal of its grievance. The argument is, therefore, put in another form. It is contended that rule 4(A), as originally engrafted in the Conduct Rules, applied to all servants of the Government but, by subsequent amendment effected in 1959, a second proviso was added to sub-rule (1) of rule 1 which exempted certain categories of employees of the Government. By this amendment, the following categories of Government employees were not subjected to the prohibition of rule 4(A) of the Conduct Rules which prohibits a Government servant from going on strike. The categories were :

- (i) employees in ports, wharves or jetties;
- (ii) defence installations except training establishments;
- (iii) public works establishments in so far as they relate to workcharged staff;
- (iv) irrigation and electric power establishment;
- (v) mines as defined in Clause (j) of S. 2 of the Mines Act, 1952 (35 of 1952).

(vi) factories as defined in Clause (m) of S. 2 of the Factories Act, 1948 (63 of 1948); and

(vii) field units of the Central Tractor Organization employing workmen governed by labour laws.

67. It is also pointed out that the service rules themselves regarding the conduct rules for Government employees in general are not applicable to other categories of Government servants, namely :

(a)(i) railway servants as defined in S. 3 of the Indian Railway Act, 1890 (IX of 1890);

(ii) persons holding posts in the Railway Board who are subject to the Railway Services (Conduct) Rules; and

(iii) other persons holding posts under the administrative control of the Railway Board or of the Financial Commissioner of Railways;

(b) members of the Indian Foreign Service;

(c) members of the All-India Services who are subject to the All-India Services (Conduct) Rules, 1954;

(d) employed in Part C State such Government servants not being class I officers or any officers appointed by the Government;

(e) holders of any post in respect of which the President may, by general or special order, declare that these rules do not apply.

68. The contention, therefore, is that while some classes of Government employees are exempted from the Conduct Rules altogether, another class of Government servants is not exempted from the Conduct Rules. This, it is contended, is a kind of discrimination which is not really consonant with the object of the rules, namely, of imposing and maintaining of discipline and rules of conduct among the Government servants. We do not think that such contention is tenable; A bare perusal of the categories of Government servants, who are taken out of the application of rule 4(A), shows that they are employees in establishments which are of the nature of industrial establishments. Therefore, they are governed by other industrial laws and there is machinery available to the Government for enforcing discipline and rules of conduct so far as resort to strike is concerned. Similarly, for persons belonging to the railway establishment or to one kind of service or the other or Indian Foreign Service or All-India Service there are special rules which govern them. They are, therefore, a well-defined class who are governed by its own rules and the mere fact that they were excluded from Conduct Rules cannot lead to an inference that those, who are within remaining class and governed by the Conduct Rules, are discriminated against.

69. It is then contended that the fact that these persons to whom the prohibition

of rule 4(A) does not apply must be taken to have a right to strike. We find it difficult to infer from the prohibition to some to go on strike in rule 4(A) and because there is no prohibition for certain other persons to go on strike, that itself creates a right to go on strike in favour of this latter class. It is true that so far as persons in industrial establishment are concerned, a right to go on strike as a weapon to be used for implementing or enforcing the demands is recognized before industrial tribunals called upon to adjudicate disputes between employers and employees. We asked the learned counsel for the petitioners what is the nature of this absolute right to strike and whether it is a statutory right or customary right and the petitioner was driven to contend that it is a customary right. If it is a customary right, one will have to investigate as to how old that custom is and in case any such right runs counter to a statutory rule, then such a customary right can hardly be sustained. We, therefore, think that the contention on behalf of the petitioner that there is a discrimination between one class of Government employees and another on this ground is not well founded.

70. Mr. Jaiwant has referred in this connexion to certain decisions of the Supreme Court in support of his contention that there is such a right in favour of employees. In this connexion he has referred us to the following decisions :

- (1) The Management of Chandramalai Estate, Ernakulam Vs. Its Workmen and Another, .
- (2) The Swadeshi Industries Ltd. Vs. Its Workmen, .
- (3) India General Navigation and Railway Co. Ltd., Calcutta and Another Vs. Their Workmen and Another, .
- (4) Burn & Co. v. their workmen 1959 I L.L.J. 450.

71. He has also referred us to the statement of law in *Corpus Juris Secundum*, Vol. 63. pp. 523-529. So far as the law in American jurisprudence is concerned, we do not think that there is any analogy between the state of law involved in that country and in our country. Here so far as the industrial employment is concerned, the relations between the employer and the employees are to a large extent governed by statute and it is the statute that governs the obligations and duties between parties, viz., justification of a strike by employees or action of an employer in the matter of lock-out, lay-off, and such other matters. We have not been shown any provision of law as such even in respect of industrial matters which creates a right to strike. What has been adjudged in decisions is justifications of a particular strike in given circumstances but such a question, when it arose, was always in the context of claim for wages, made by the workers during the period of strike and it was left to the decision of the tribunals appointed to adjudicate upon the claim to decide whether strike was justified or not. But we have not been shown a decision where a right to strike as such is recognized with the consequences that a worker, who was on strike, will still be considered on duty and entitled to wages even if no work was done. The decision

to go on strike is one thing and legal right to go on strike is another thing. Whereas industrial workers are enabled to go on strike or at least there is no prohibition to go on strike, non-industrial employees of the Government are denied that weapon for enforcing their right. In our opinion, such a contention cannot be availed of because there is no such right as a legal right to strike and, as far as we are able to see, whether the strike should be prohibited in one form or another according to the categories of employment in the Government service was a matter within the discretion and the powers of the Government as an employer in framing rules. As is already shown, if there are other rules by which resort to strike can either be prohibited or punished, we do not see how that alone will entitle the petitioner to urge that there is any discrimination in so far as other employees are prohibited from going on strike.

72. There is yet another aspect of the matter which must also be considered. The very concept of strike postulates a joining action that is more than one persons withdrawing from work in spite of there being a contract or an obligation to work. Rule 4(A), as it is cast, would seem to apply even to an individual's worker. Therefore, it does not contemplate a case of joint action. Rule 4(A) is a rule of conduct for each single employee. We cannot conceive of an association going on strike. The association never works under the Government as such and no question can possibly arise of the association going on strike. Therefore, there was no question of association being prohibited from going on strike. It is in that aspect that rules regarding recognition of association of employees have to be read and we do not think that there is anything wrong if an employee is prohibited from going on strike. We, therefore, do not think that rule 4(A) is liable to be struck down as violative either of Art. 14 or 19(1)(c). We do not accept this contention of the petitioners.

73. Thus, the result is that both the petitions are allowed. The two orders passed by the respondents in each case are hereby quashed and it is declared that each of the petitioners continues to be in service. Petitioners will be entitled to costs in each case.