

(1968) 03 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Appeal No. 1419 of 1967

Siya Ram Sharma

APPELLANT

Vs

Director General, Supplies and Disposals and Others

RESPONDENT

Date of Decision : 01-03-1968

Acts Referred:

Citation : (1970) 6 DLT 2 : (1968) ILR Delhi 178 Supp

Hon'ble Judges : Hardayal Hardy, J

Bench : Single Bench

Advocate : R.L. Randon and Deepak Chaudhary, for the Appellant;

Judgement

Hardayal Hardy, J.

(1) The petitioner who was employed as an Examiner Stores (Engineering) in the office of Director General of Supplies and Disposals, New Delhi, was dismissed by an order dated 3/6/1967 passed by the Deputy Director General (Administration) in the Director General of Supplies and Disposals New Delhi and confirmed on appeal by an order dated 7/8/1967 by the Director General of Supplies and Disposals as a result of an Inquiry held by the then Director of Inspection in the office of the said Directorate. By means of this petition under Articles 226 and 227 of the Constitution, the petitioner challenges the validity of the said orders and the inquiry which led to the making of the said orders. For simplicity, the terms Director General of Supplies and Disposals, Deputy Director General of Supplies and Disposals and Directorate General of Supplies and Disposals will hereafter be referred to as the Director General, Deputy Director General and Directorate only.

(2) The petitioner who entered government service in 1953 was appointed Examiner of Stores (Engineering) in the office of the Director General, New Delhi and was posted at Kanpur with effect from 5/1/1962. On 4/6/1965 he reported for duty at New Delhi as a result of his transfer and started living with his wife's brother Shri B.N. Sharma in a house in one of the lanes inside the walled city of

Delhi. On 10/6/1965 his house was searched, according to him illegally, by the police and certain documents were seized from his possession. On 7/2/1966 he was served with a memorandum wherein he was informed that an inquiry was proposed to be held against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which will hereafter be referred to as the Rules. The memorandum was accompanied by a statement of material allegations and charges on which enquiry was proposed to be held. In due course, Shri G.K. Ahuja the then Director of Inspection who is imp leaded as respondent No. 3 in this petition was appointed as an Inquiry Officer.

(3) Respondent No. 3 completed the inquiry and submitted his report on 14/2/1967 to the Deputy Director General (Administration) who has been imp leaded as respondent No. 2, and was the Disciplinary Authority under the Rules. By his memorandum dated 29/4/1967, respondent No. 2 informed the petitioner that he had provisionally come to the conclusion that the petitioner was not a fit person to be retained in service and that the penalty of dismissal from service was proposed to be imposed on him. The petitioner was called upon to show cause against the proposed penalty.

(4) The petitioner submitted his written statement showing cause against the proposed action but he alleges that respondent No. 2 without giving the petitioner a personal hearing passed an Older dated 3/6/1967 dismissing the petitioner from service with immediate effect. The appeal filed by the petitioner to the Appellant Authority (respondent No. 1) was also summarily rejected. Hence the present petition.

(5) Mr. R.L. Tandon, learned counsel for the petitioner has attacked the validity of the order of dismissal passed against the petitioner on several grounds. He has argued that the inquiry held by respondent No. 3 did not comply with the requirements of rules of natural justice inasmuch as the Inquiry Officer had admitted into evidence an alleged First Information Report lodged with the police without examining the person who had recorded the same nor was any copy of the said report supplied to the petitioner. Like-wise the statements of witnesses examined by the police during investigation had been treated as substantive evidence in support of the charges framed against the petitioner and that the copies of all the statements recorded and documents collected by the police during investigation had not been furnished to him.

(6) He has next .argued that the conclusions reached by the Inquiry Officer were based on conjectures, surmises, irrelevant considerations and inadmissible evidence. He has also argued that material documents which established the petitioner's innocence had been ignored while un-proved material had been used against him to his prejudice. He has further argued that the petitioner was not granted any personal hearing after the show cause notice had been served on him. Respondents 1 and 2 have also not given any reasons in support of their orders. They have simply endorsed the findings of the Inquiry Officer without weighing the evidence or considering the representations made by the petitioner.

(7) It is true that the statements of witnesses recorded by the police during investigation under Chapter Xiv of the Code of Criminal Procedure and the First Information Report lodged at a Police Station u/s 154 of the Code do not prove themselves and cannot be used as evidence at an inquiry or trial held under the Code. Departmental inquiries held under Central Civil Services (Classification, Control and Appeal) Rules, however, cannot be assimilated to inquiries under the Code nor can the rigid application of technical rules of evidence laid down in the Indian Evidence Act be insisted upon in such inquiries. The inquiry Officer and the Disciplinary and Appellate authorities under the Rules are no doubt required to act fairly and in accordance with fundamental principles of natural justice. It is however no part of the requirement of rules of natural justice that there should be strict compliance with the rules of Evidence Act or that the procedure should approximate itself to that observed in a court of law. There may be cases where the examination of oral evidence in order to prove certain facts is necessary. When such witnesses are examined at the departmental inquiry the person against whom inquiry is being held will no doubt have the right to cross-examine those witnesses. Likewise, if in the absence of direct examination of those witnesses their statements are sought to be used at the inquiry and the person concerned desires the production of the authors of those statements for his cross-examination. it will again be the duty of the Inquiry Officer to make such persons available for cross-examination. But so long as no such request is made for production of such persons no fault can be found with the procedure followed at the inquiry nor can the inquiry be held to have been vitiated by reason of non-examination of those persons at the inquiry.

(8) There is nothing on the record of this case that a request for crossexamination of any of those witnesses was made by the petitioner and was refused nor is there anything to show that the copies of statements of persons examined by the police and other documents relied upon at the inquiry were demanded by the petitioner and refused. I cannot Therefore, accept Mr. Tandon's argument that there has been any violation of principles of natural justice in so far as the procedure followed at the inquiry is concerned.

(9) In support of his contention that the conclusions of facts arrived at by the Inquiry Officer was based on no evidence and that if they are based partly on evidence and partly on surmises and conjectures, the findings would stand vitiated, Mr. Tandon relied upon a Bench decision of the Punjab High Court (D.K. Mahajan and S.K. Kapur JJ.) in C.P. Govil v. Union of India (1)

(10) The principle of law laid down by the aforementioned decision of the Punjab High Court in so far as it relates to the power of this court to review the evidence on certiorari on the ground that there is no evidence to support the conclusion of the punishing authorities is in accord with the decision of the Supreme Court in Union of India H.C. Goel (2), Mr. Tandon, Therefore, invited my attention to the various charges of which the petitioner had been found guilty. In order to appreciate the argument of Mr. Tandon it is necessary to refer briefly to the

charges framed against the petitioner and the Inquiry Officer's findings thereon.

(11) Charge I (a) is based on the allegation that the petitioner had deposited Rs. 2500.00 in cash on 10/3/1964 with the Central Bank of India Limited Belaganj, Agra and had opened a Saving Bank Account in his name in which he had made further deposits of Rs. 4500.00 and Rs. 2500.00 on 14-7 1964 and 18/11/1964.

(12) Charge I (b) is based on the allegation that the petitioner had on. 3/9/1964 advanced Rs. 6500.00 to his brother -in-law Shri Kailash Chand by means of a cheque drawn on his account in the said bank and obtained receipt for the account from the said Shri Kailash Chand and had thereby contravened Rule 18 (3) of Central Civil Services (Conduct) Rules, 1964 read with Rule 15 (2) of the Central Civil Services (Conduct) Rules, 1955. The Inquiry Officer recommended that Charge I (a) be dropped as the transaction fell within the category of "ordinary course of business with a Bank" and did not amount to violation of any provisions of the Central Civil Services (Conduct) Rules. As regards charge I (b) the Inquiry Officer came to the conclusion that the transaction did not attract the provisions of Central Civil Services (Conduct) Rules in particular but he went on to add that the ends of justice would be amply met if the money involved was considered as (part of the assets of the petitioner disproportionate to his known sources of income on a finding that the amount actually belonged to the petitioner and had been passed on by him to his brother-in-law Shri Kailash Chand to avoid attracting the attention of authorities as the petitioner's own position as an Examiner of Stores of a Central Purchase Organisation was fairly vulnerable. Mr. Tandon sharply criticised the aforesaid finding of the Inquiry Officer which will be dealt with by me at the proper place.

(13) Charge Ii (a) is based on the purchase of a motor cycle for Rs.3283.00 from Messrs. Niranjana Lal Ram Chand Agra on 25/2/1965 in his own name for which payment was made by the petitioner from his bank account.

(14) Charge Ii (b) is based on two deposits of Rs. 2000.00 and Rs. 3000.00 on 9/1/1965 and 8/5/1965 respectively made by the petitioner in his bank account. It was alleged that the transactions covered by charges II(a) and II(b) contravened Rule 18 (3) of the Central Civil Services (Conduct) Rules, 1964. The Inquiry Officer held the petitioner guilty of contravening the provisions of Rule 18(3) of Central Civil Services (Conduct) Rules, 1964 in respect of Charge Ii (a).

(15) As regards Charge Ii (b) the Inquiry Officer recommended that the same be dropped.

(16) Charge Iii relates to the alleged purchase of four plots of agricultural land by the petitioner at a price of Rs. 2500.00 from his brother-in-law Shri Kailash Chand without the previous sanction of the prescribed authority in contravention of the provisions of Rule 15 (1) of the Central Civil Services (Conduct) Rules 1955. The petitioner has been found guilty of that charge.

(17) Charge Iv relates to the petitioner having been found on 8/5/1965 in

possession of assets amounting to Rs. 12.285.00 which were alleged to be disproportionate to his known sources of income thereby suggesting that he had acquired the same by questionable means and/or from dubious sources and thereby failed to maintain absolute integrity.

(18) I now turn to the second contention urged by Mr. Tandon. From the statement of charges mentioned above it will be seen that the petitioner has been held guilty of charges Ii (a). Iii and Iv only. Charges I (a) and Ii (b) were recommended by the Inquiry Officer to be dropped. As regards Charge I (b) the Inquiry Officer held that although the transaction did not attract the provisions of Central Civil Services (Conduct) Rules in particular yet he was of the opinion that the money involved should be considered as part of the disproportionate assets of the petitioner under Charge IV.

(19) Mr. Tandon's argument that there is absolutely no evidence in support of the charges of which the petitioner has been found guilty by the Inquiry Officer has however to be considered in the light of the principles laid down by their Lordships of the Supreme Court in the State of Orissa and another v. Murlidhar Jena⁽³⁾ and the State of Andhra Pradesh and others v. Sree Ram Rao⁽⁴⁾ where it has been held that in proceedings under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent tribunal in a departmental inquiry and has Therefore, no jurisdiction to re-appreciate the evidence for itself. Nevertheless, it has the power to interfere with the finding where it comes to the conclusion that the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so utterly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion.

(20) The task that the High Court is thus required to perform involves a good deal of tight rope walking. But it is a task the High Court must perform consistently with its obligations under the Constitution which provides for judicial review of administrative action within certain limits. I have Therefore, examined the Inquiry Officer Report with a view to satisfy myself if there is any evidence in support of the charges of which the petitioner has been found guilty.

(21) It will be seen that there is no independent finding of guilt against the petitioner in respect of charge I(b) and the sum of Rs. 6500.00 involved therein has only been considered by the Inquiry Officer as forming part of the assets of the petitioner under Charge IV. The Inquiry Officer has found that the petitioner's defense that the sum of Rs. 6500.00 belonged to his father and that he had lent it to his brother-in-law who had subsequently repaid the amount, was not true. His reasons for coming to this conclusion are two-fold. According to

the petitioner, his father had given him Rs. 6000.00 for safe custody. He had put the amount in his bank account and had later on lent it to his brother-in-law Shri Kailash Chand on 3/9/1964, under instructions from his father -in-law. In due course his brother-in-law had returned the amount by three Installments in cash. The evidence produced before the Inquiry Officer showed that Shri Kailash Chand had a credit balance of Rs. 11,681.00 on 15/8/1964 in his bank account when he is stated to have approached his father-in-law for a loan of Rs. 6500.00. for putting up a tube-well in his field of which the estimated expenditure according to Shri Kailash Chand was Rs. 16000.00 Shri Kailash Chand stated that after obtaining the loan he decided not to put in such a costly tube-well and Therefore, returned the above loan in three Installments of Rs. 2500.00 Rs. 2000.00 and Rs. 2000.00 in cash on 18/11/1964, 009/1/1965 and 8/5/1965 respectively. The operation of Shri Kailash Chand's bank account showed that there were no withdrawals worth the name after 5/9/1965 there was a credit balance of Rs. 12,853.00 in that account. The Inquiry Officer further found that while Shri Kailash Chand had received payment of the amount from the petitioner by means of a cheque and had also passed a regular receipt for the same, he did not obtain any receipt from the petitioner when the amount was re-paid by him in cash. There was also no Explanation as to why he returned the amount by Installments when he could easily pay the same in the one Installment at once. He did not even care to get back the receipt which he had earlier executed in his factor when the amount had been advanced to him. In this state of evidence, can it be said that no reasonable person would have come to the conclusion at which the Inquiry Officer had arrived that the story of loan and its re-payment by Shri Kailash Chand was a pure concoction.

(22) The second reason for the conclusion reached by the Inquiry Officer is that on the evidence before him the petitioner's father could not have owned that amount. The Inquiry Officer found that according to Pandit Kashi Prasad's own statement he had suffered heavy losses some ten years ago in Katha business. It was also found that since then he had not recovered from the financial set-back as he had been forced to borrow money thereafter. The Inquiry Officer was also not convinced that Pt. Kashi Prasad had deposited Rs. 6000.00 with his son for fear of deceits because if he was a man of means he would in the first instance, have not hesitated to hold on to his wealth without the assistance of a son and secondly, he could easily deposit the amount in the local post office savings account. The story that Pt. Kashi Prasad had been saving money from time to time till he had Rs. 6000.00 on hand which he entrusted to his son for safe keeping also failed to carry conviction to the Inquiry Officer's mind. The Inquiry Officer, Therefore, rejected the evidence of Pt. Kashi Prasad. Mr. Tandon's criticism on this aspect of the Inquiry Officer's report is that he had completely ignored the letters of which copies were annexed to the petition (Annexures B.C and D) and which established the truth of the petitioner's story. These three letters were no doubt found among the papers lying in the petitioner's house during the course of its search by the police. But their evidentiary value does not

appear to be so over-whelming that it would completely off-set the conclusion reached by the Inquiry Officer on the basis of other evidence before him. In any event, it is a pure question of appreciation of evidence with which this Court cannot interfere in these proceedings.

(23) If the sum of Rs. 6500.00 is thus held to be the property of the petitioner then on a comparison of the statements of assets and expenses prepared by the Inquiry Officer, the petitioner was obviously found to be in possession of Rs. 12,285.00 more than what was warranted by his known sources of income. No fault can Therefore, be found with the conclusion reached by the Inquiry Officer on Charges I (b) and IV.

(24) As regards Charge Ii (a) it is not disputed that the petitioner purchased a mtoor cycle at Agra on 25/2/1965. His house at Delhi was searched on 10/6/1965 and it was only on 14/6/1965 after a lapse of about 3 months that the petitioner reported the transaction to the prescribed authority. The Inquiry Officer held that in the ordinary course of business he would have been inclined to accept the petitioner's Explanation that he did not intimate the transaction to the prescribed authority forthwith due to domestic pre-occupations and rush of official work etc., but considering the fact that the transaction was reported by the petitioner to the prescribed authority only after the police had searched his house on 10/6/1965 and had taken possession of the document's relating to the purchase, the omission to inform the prescribed authority must be held to be deliberated and willful. Mr. Tandon's criticism against this finding of the Inquiry Officers is that in fact no such documents were at all recovered from the petitioner's house and Therefore, the conclusion reached by the Inquiry Officer was based on a wrong assumption. Mr. Tandon's criticism has a great deal of force and it seems to me that but for this wrong assumption on the part of the Inquiry Officer his finding would have probably been in favor of the petitioner.

(25) With regard to Charge Iii it was admitted by the petitioner that four plots of agricultural land had been purchased at a price of Rs. 2500.00 from Shri Kailash Chand Gautum in the name of the petitioner without prior sanction of the prescribed authority. His defense however was that this property was purchased in his name without his knowledge by his father-in-law, late Shri Jagan Nath Prasad Sharma en 3/9/1964 and that he came to know about the transaction only in March or April 1965 when his wife's brother Shri B.N. Sharma handed over the documents of title to him about four months after the death of Shri Jagan Nath Prasad. The petitioner contended that the land was a gift from his father-in-law and that he had not contributed anything towards its purchase. On an examination of the relevant evidence the Inquiry Officer came to the conclusion that the land originally belonged to the petitioner's father Shri Kashi Prasad and was purchased by his son-in-law Shri Kailash Chand to relieve him of the financial stresses with an understanding that he would re-sell the land to the family as and when the fortunes of the family improved. The sale deed executed by Shri Kailash Chand on 3/9/1964 in the name of the petitioner was in

fulfillment of that promise and the introduction of Shri Jagan Nath Prasad in the picture was only a camouflage. The inquiry Officer further held that Shri Jagan Nath Prasad was merely a Line-man in Delhi Electricity Supply undertaking and had retired from service in the year 1965, after collecting Rs. 55001- only by way of Provident Fund etc. from the Undertaking. He died on 26/11/1964 leaving behind a widow, one son Shri B.N. Sharma and two daughters. The younger daughter was married to the petitioner in the year 1953. Shri B.N. Sharma was working as a meter Reading Inspector in Delhi Electricity Supply Undertaking and had a large family of his own. There was also no evidence that Shri Jagan Nath Prasad had made any gift of a like amount or any amount near that amount to his other daughter and his only son. The Inquiry Officer also felt that it was wholly improbable that the petitioner would not have come to know about the purchase of the land made as far back as 3/9/1964 especially when the possession of the land was handed over to his father Pt. Kashi Prasad for cultivation. The Inquiry Officer also found the statement of Shri Kailash Chand that he had disposed of the land due to difficulties of maintenance etc. unconvincing.

(26) In this state of evidence, there does not seem to be much force in Mr. Tandon's challenge that no reasonable person could have arrived at the conclusion reached by the Inquiry Officer. The argument that there is no evidence to sustain the charges of which the petitioner has been found guilty by the Inquiry Officer must Therefore, be held to be devoid of merit and is consequently rejected.

(27) The last contention of Mr. Tandon is that the petitioner was not given any personal hearing after he was served with a show cause notice and that the orders made by respondents I and 2 are not speaking orders. According to the learned counsel no person holding a civil post under the Union can be dismissed from service unless he has been given a reasonable opportunity of being heard after the show cause notice proposing the penalty of dismissal is served on him, It is urged that inasmuch as the petitioner was not granted any personal hearing, the provisions of Article 311(2) of the Constitution have been violated. The argument appears to me to be completely lacking in substance and runs counter to the plain language of Article 311(2). The only requirement of Article 311(2) at the stage of what has been termed in decided cases as a second opportunity is the right of the delinquent officer to make a representation on the penalty proposed on the basis of the evidence adduced during the inquiry. This right does not contemplate a repetition of what has already gone on before the Inquiry Officer where the delinquent officer obviously had full right of cross examining witnesses, leading defense and addressing oral argument. This takes me to the second branch of Mr. Tandon's argument which if I may say so, is mainly based on what has been said by their Lordships of Supreme Court in Bhagat Raja v. Union of India (5) and others. Mr. Tandon urged that although their Lordships were concerned in that case with an order passed by the Central Government in exercise of its powers of revision under Rule 55 of the Mineral Concession Rules

(1960) as amended in 1965, the broad principle of law laid down by their Lordships was applicable to all tribunals and authorities performing quasi judicial functions. Special emphasis is laid by the learned counsel on the following passage in the judgment:-

" IT was argued that the very exercise of judicial or quasi judicial powers in the case of a tribunal entailed upon it an obligation to give reasons for arriving at a decision for or against a party. The decisions of tribunals in India subject to the supervisory powers of the High Courts under Article 227 of the Constitution and of appellate powers of this Court under Article 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage. If no reasons are given and the revision is dismissed curtly by the use of the single word "rejected" or "dismissed". In such a case, this court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its own conclusion on the merits of the appeal. (28) The judgment in Bhagat Raja's case was followed by a Bench of this Court consisting of my Lord the Chief Justice and T.V.R. Tatachari J. in L.P.A. 6-D of 1966; Messrs. Dinubhai G. Desai and Co. V. Union of India and others decided on 28/12/1967 where the principle laid down in that case was applied to the orders made by the Central Board of Revenue and the Central Government under the Sea Customs Act read with Section 3 of the Imports and Exports (Control) Act, 1947.

(29) It is not for the first time now that the question as to how far the administrative tribunals performing quasi judicial functions are bound to give reasons in support of their decision has arisen in this country or in English. In Rex v. Northumberland Compensation Appeal Tribunal, Experte Shaw, 1951 1 KB 711 Lord Goddard C.J. is reported to have said at page 224 of the report:-

" I think it is beneficial in this case that we should do so, not merely having regard to the facts of this case but because so many tribunals have now been set up, all of whom I am certain, desire to do their duty on the best way, and are often given very difficult sets of regulations and statute to construe. It certainly must be for their benefit, and I have no doubt but that they will welcome, that this Court should be able to give guidance to them if, in making their orders, so that this Court can then consider them if they are brought before the Court on certiorari." (30) Subba Rao J. (as his Lordship then was) was little more emphatic in A. Vedachal Mudliar v. The State of Madras(6) when he said in a case relating to an order made by the Government in exercise of its revisional powers:-

WHERE an Act empowers a tribunal to act judicially in passing orders affecting the rights of parties, it is the elementary duty of the tribunal to give reasons for its orders, reasons which would show that the tribunal has applied its mind." (31) This decision was approvingly referred to by a Division Bench of Andhra High Court in M. Ramayya v. State of Andhra(7) consisting of Suba Rao

C. J. (as he then was) and Satyanarayana Raju J. and then again by a Division Bench of the High Court of Kerala in P. J. Joseph v. Superintendent of Post Offices and another (8) The last mentioned case which has also been referred to by the Supreme Court in Bhagat Raja's case is of some importance because the principles laid down by the High Courts of Madras and Andhra in cases under the Motor Vehicles Act were applied to a case relating to removal of a non-departmental branch post master by an order passed by the Inspector of post offices Ctoayam.

(32) So far as the Supreme Court is concerned the necessity of a speaking order by the government was first emphasised in Harinagar Sugar Mills Limited v. Shyam Sunder Jhuniwala and others (9) where the court had to consider whether the Central Government exercising appellate powers u/s 111 of the Companies Act, 1956 before its amendment in 1960 was a tribunal exercising judicial functions and as such, subject to the appellate jurisdiction of the Supreme Court under Article of the Constitution. According to the judgment of majority Judges it was held that the exercise of authority by the Central Government was judicial as it had to adjudicate upon the rights of contesting parties when there was a list between them. While dealing with the necessity of a speaking order it was observed :

"If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of this Court under Art. 136 of the Constitution, we fail to see how the power of this court can be effectively exercised if reasons are not given by the Central Government in support of its order." (33) These very principles were later on applied by the Supreme Court in Govindrao V. State of Madhya Pradesh(10) to a case under the Central Provinces and Berar Revocation of Land Revenue Exemptions Act, "194 8 and another case was under Rule 55 of Mineral Concession Rules (1960): M.P. Industries v. Union of India(11)

(34) It will thus be seen that the trend which began in England with Northumberland Compensation case and A. Vedchalla Mudaliar's case in Madras and found its culmination in Bhagat Raja's case is a trend that has come to stay. The question however for consideration in the present case is whether those very principles can be applied to a case where the right of the delinquent officer is governed by a Constitution guarantee under Article 311 of the Constitution.

(35) Mr. Dipak Chaudhry, learned counsel for the respondents has strenuously argued that the general principles laid down in the aforementioned cases cannot be applied to cases of dismissal or removal of Government servants because in these cases there are no two parties to the dispute and there is no list as commonly understood, between Government and its employee. All that the government servant is entitled to is to invoke the guarantee contained in Article 311(2) of the Constitution, nothing more and nothing less. The question raised by Mr. Dipak Chaudhari however does not seem to me to be as simple as the learned counsel would like to make it because it is too late in the day now for

any one to contend that the function performed by the punishing authority or the appellate authority under the rules is not a quasi judicial function on the ground that there are no two parties to the question that there is no list as such. That much seems to me to be fully settled by the decisions of the Supreme Court where it has been held repeatedly that the order of dismissal of a public servant is a quasi judicial order.

(36) The real difficulty in the way of Mr. Tandon is however presented by two decisions of the Supreme Court to which I have been referred by Mr. Dipak Chaudhry in the state of Assam v. Bimal Kumar Pandit⁽¹²⁾ the High Court of Assam had taken the view in that in order that the delinquent officer may have a reasonable opportunity, the dismissing authority must indicate its conclusions on the findings recorded by the Inquiry Officer and must specify reasons in support of them and that the fact that the copy of the report made by the Inquiry Officer was sent to the delinquent officer along with the notice indicating the nature of the action proposed to be taken against him did not help to meet the requirement of Article 311(2) of the Constitution. The argument in support of this view was that unless this course was adopted it would not be clear that the dismissing authority had applied its mind and had provisionally come to some conclusions both in regard to the guilt of the public officer and the punishment which his mis-conduct deserved.

(37) Their Lordships observed that while it might be conceded that it was desirable that the dismissing authority should indicate in the second notice its concurrence with the conclusions of the Inquiry Officer before it issued the said notice under Article 311(2), the question which called for their decision was supposing the dismissing authority did not expressly say that it had accepted the findings of the Inquiry Officer against the delinquent officer did that introduce such an infirmity in the proceedings as to make the final order invalid ? Their Lord ships were not prepared to answer this question in the affirmative.

(38) In the State of Madras v. Srinivasan⁽¹³⁾ Supreme Court the question raised was more direct and was answered as follows:

" IN dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer it is to be remembered that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the Government and which is made available to the delinquent officer also, it is unreasonable to suggest that the State Government must record its reasons as to why it accepts the findings of the Tribunal. It is conceivable that when the State Government does not accept the findings of the Tribunal which may be in favor of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons as to why it differs from the conclusions of the Tribunal, though even in such a case

it is not necessary that the reasons should be detailed or elaborate. THE above mentioned observation of their Lordship of the Supreme Court which is binding on all courts in India appears to me to be a complete answer to Mr. Tandon's argument that the order dated 3/6/1967 (Annexure N) suffers from an infirmity inasmuch as respondent No. 2 has not mentioned any reason in support of the order.

(39) It is no doubt true that the order does not say in so many words that the disciplinary authority agrees with the findings of the Inquiry Officer but there is a clear reference in the order to the inquiry and the facts and circumstances of the case and there is also a reference to the representation made by the petitioner having been duly considered by respondent No. 2. For the same reasons Mr. Tandon's attack on the order of the Appellate Authority (respondent No. 1) dated 7/8/1967 (Annexure P) cannot be sustained. The order in terms states that the appeal submitted by the petitioner has been carefully considered, that the charges against him were fully proved and no new facts or material had been brought out in the appeal nor had any procedural lapses been detected which would vitiate the action taken against. It is no doubt true that orders couched in more or less similar language when made under the Sea Customs Act or under the Mineral Concession Rules (1960) were held to be bad but as I have already stated the cases relating to dismissal or removal of public servants have been treated by the High Courts as well as the Supreme Court differently, for the reason that there is nothing in Article 311 of the Constitution of Central Civil Services(Classification ,Control and Appeal) Rules, which provides for reasons being given by the disciplinary authority or the Appellate Authority in support of the action taken against a delinquent officer.

(40) For the fore-going reasons the petition is dismissed but in the circumstances of this case there will be no order as to costs.