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**(1960) 01 AP CK 0023**  
**In the Andhra Pradesh High Court**

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| Subba Rao (N.)                     | Vs | APPELLANT  |
| State of Andhra Pradesh and Others |    | RESPONDENT |

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**Date of Decision :** 11-01-1960

**Acts Referred:**

Constitution of India, 1950 — Article 226, 309, 311, 331  
Government of India Act, 1935 — Section 240  
Public Servants (Inquiries) Act, 1850 — Section 17

**Citation :** (1961) 1 LLJ 150

**Hon'ble Judges :** Satyanarayana Raju, J;Anantanarayana Ayyar, J

**Bench :** Division Bench

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## Judgement

Anantanarayana Ayyar, J.—The petitioner is N. Subba Rao. He was formerly a prohibition sub-inspector. While he was working in that capacity, the Deputy Commissioner of Excise (Prohibition) framed charges against him and passed an order dated 21 May 1955 dismissing him petitioner; from service. The petitioner filed an appeal to the Commissioner of Excise and Prohibition, Andhra State. The latter passed an order dated 12 March 1956 reducing the punishment to one of compulsory retirement from service. The petitioner feels aggrieved with that order and prays

that this Court may be pleased to issue a writ of certiorari or any other appropriate writ or direction in this behalf, call for the records from the office of the Deputy Commissioner of Prohibition, Guntur, and quash the order passed by the latter; in R.C. No. 7053 of 1954 H., dated 21 October 1955, and pass such other or further orders as this Hon"ble Court deems fit.

2. The relevant facts of the case, as disclosed in the affidavit filed in support of the petition, are as follows.

3. The inspector of Excise and Prohibition, intelligence Bureau, made a report to the Deputy Commissioner of Prohibition (the respondent 2) that, on 20 and 22 May 1954, no prohibition sub-inspector was present in the Sub-Magistrate's Court at Alampur to conduct the prosecution with the result that the witnesses,

who attended the Court on 20 May 1954 represented to the Court that they were in an embarrassed position in the absence of the prosecutor and that on 22 May 1954 the sub-inspector, Mandapet, did not attend the Court to conduct prosecution either in his cases or bureau cases. Thereupon, the respondent 2 started departmental disciplinary proceedings against the petitioner. The respondent 2 framed two charges against the petitioner as follows:

1. That you Sri N. Subba Rao as sub-inspector attached to Mandapeta station forged all the connected records as having attended the Court of Stationary Sub-Magistrate, Alamur, on 20 May 1954 on 21 May 1954 while you never attended the Court as per the evidence on record.

2. That you, as sub-inspector attached to Mandapet station, claimed false travelling allowance for the journeys said to have been performed by you on 20 (?) May 1954 and 21 May 1954 while you did not perform these journeys at all and thus cheated the Government by claiming false travelling allowance.

4. The petitioner received the memorandum of charges on 6 October 1954 and perused the connected papers on 20 November 1954 with the permission of the respondent 2. But, the petitioner did not submit his written statement within seven days of receipt of the memorandum of the charges as required by the Deputy Commissioner for at any time later. The petitioner wrote a letter to the Deputy Commissioner saying that he would submit his written statement before 7 May 1955. The Deputy Commissioner did not receive any written statement though he waited till 21 May 1955. Therefore, he passed orders dated 21 May 1955 finding that he had "provisionally concluded to inflict the punishment of dismissal from service as indicated in the charge memorandum" and calling: on the petitioner to submit his final representation, if any, within fifteen days of receipt of the memorandum (notice) dated 21 May 1955. The petitioner received that order on 6 June 1955 and sent his written statement of defence on 18 June 1955 to the Deputy Commissioner (the respondent 2), denying the charges and explaining his case and requesting for an opportunity to substantiate his (the petitioner's) case (by fresh evidence). But the Deputy Commissioner (the respondent 2) refused to give any opportunity to the petitioner to substantiate his case, holding that the stage of taking cognizance of such request made in the questionnaire form had already passed. The Deputy Commissioner passed order accordingly on 21 October 1955, finding the petitioner guilty of both the charges and dismissing him from service. On appeal, the Commissioner reduced the punishment to compulsory retirement.

5. The contention on behalf of the petitioner is that the order of the respondent 2 is not sustainable on merits and in law, as there was no enquiry as contemplated under Rule 17(b) of the Madras Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to for the sake of convenience as "M.C.S.C.C. Rules") and that the respondent 2 was guided by extraneous considerations in judging the guilt of the present petitioner on the present charges by taking into account the fact that increment had been stopped for two months by the District

Prohibition Officer, East Godavari, previously on charges not relating to the present case.

6. The respondents filed counter to the following<sup>1</sup> effect: On 24 January 1955 and 16 April 1965 the petitioner was reminded to submit his written statement of defence. Even then, the petitioner did not submit it, but, on the other hand, by a letter dated 20 April 1955, prayed for time for filing his written statement of defence till 7 May 1955. The petitioner having failed to avail himself of the opportunity of filing his written statement of defence, the respondent 2 was constrained to proceed ex prate and, from the material on record, came to the conclusion that provisionally the charges of forging the Government records and claiming false travelling allowance were proved. The order of the respondent 2 dismissing the petitioner from service has merged in the appellate order passed by the Commissioner of Excise, Board of Revenue, on 12 March 1958. The later order has become final and so the petitioner cannot have remedies against it. There is no force in the ground urged by the petitioner that he has not been afforded reasonable opportunity. In a statutory enquiry, there is no provision to hold an enquiry after the provisional finding is issued. There was documentary evidence and other material on record which proved conclusively the charges levelled against the petitioner.

7. The petitioner filed a reply-affidavit.

8. We are dealing below with the grounds which were actually referred to and arguments which were actually urged before us.

9. It is contended on behalf of the respondents that the order of the Deputy Commissioner has merged in the appellate order and that the petitioner has no remedy as the appellate order became final. On the other hand, the contention on behalf of the petitioner is that it is the order of the Deputy Commissioner which is in force and it is with that order the petitioner feels aggrieved as regards the defects in the enquiry which, was held. The order finding the petitioner guilty is that of the Deputy Commissioner. The appellate order of the Board of Revenue was based on the enquiry held by the Deputy Commissioner and was passed on a consideration of the order of the Deputy Commissioner. If the enquiry which was held by the Deputy Commissioner be vitiated by any material defects or illegalities or irregularities, the petitioner would be entitled to relief whether it be against the order of the Board of Revenue or the order of the Deputy Commissioner.

10. One contention on behalf of the respondents is that the order of the Board of Revenue being an order of compulsory retirement, the petitioner cannot invoke the provisions of Article 311(2) of the Constitution. The compulsory retirement in this case was by way of punishment. Therefore, it comes under Rule 8(vi) which runs as follows:

8. The following penalties may, for good and sufficient reason and, as hereinafter provided, be imposed upon members of the service specified in Rule 5, namely:

(vi) Compulsory retirement otherwise than under Article 465(2) or under note 1 to Article 465A of the Civil Service Regulations.

The learned Government Pleader has sought to rely on the decision in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, wherein it was held as follows:

A compulsory retirement does not amount to dismissal or removal and, therefore, does not attract the provisions of Article 311 of the Constitution of India or of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. An order of the President ordering the compulsory retirement of a civil servant cannot be challenged on the ground that the civil servant had not been afforded full opportunity of showing cause against the action sought to be taken in regard to him.

In that case, it was observed as follows at p. 146:

In the present case, there was no doubt some imputation against the appellant which he was called upon to explain but it was made perfectly clear by the letter of the 4 January 1950, that the Government was not holding any formal enquiry under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules and that before taking action for the compulsory retirement the Government desired to give him an opportunity to show cause why that action should not be taken.

It was a case of compulsory retirement under Article 465A of the Civil Service Regulations. The facts of the present case are different on material particulars from that case as follows:

(1) That is a case of compulsory retirement otherwise than under Article 465A of the Civil Service Regulations.

(2) This is a case of compulsory retirement which is contemplated as punishment (vi) in Rule 8 of the Madras Civil Services (Classification, Control and Appeal) Rules.

(3) Enquiry was held in this case under Rule 17 of the Madras Civil Services (Classification, Control and Appeal) Rules (corresponding to Rule 55 of the Central Government rules).

(4) Compulsory retirement in this case is in the nature of a punishment.

Rule 17(b) of the Madras Civil Services (Classification, Control and Appeal) Rules which were framed under Article 309 of the Constitution provides the procedure for an enquiry to inflict a punishment of compulsory retirement under item (vi) of Rule 8. It is the same as for an enquiry to inflict a punishment under items (iv), (vii) and (viii) of Rule 8, namely, reduction in rank, removal and dismissal, which are specifically mentioned in Article 311(2) of the Constitution. Therefore, the contention on behalf of the respondents is not tenable.

11. The main contention on behalf of the petitioner is that the procedure

prescribed in Rule 17(b) of the Madras Civil Services (Classification, Control and Appeal Rules has not been followed.

12. It is clear beyond doubt or dispute that the petitioner failed to file any written statement, even though he was given ample opportunity for doing so before the show-cause notice dated 21 May 1955 (regarding the proposed punishment;) was issued. No valid or convincing explanation has been offered before us to show why he did not file written statement though he was given ample time and opportunity for doing so. Due to the petitioner's failure to file the written statement, the Deputy Commissioner was constrained to proceed ex parte in the absence of the petitioner and decide (provisionally) on the guilt of the petitioner on the charges, on the material available before him. Accordingly, the Deputy Commissioner came to a provisional conclusion and asked the petitioner to show cause against the punishment of dismissal which he proposed to inflict. It is strenuously urged on behalf of the petitioner that, after he put in his written statement, dated 18 June 1955, the Deputy Commissioner was bound to give the petitioner a reasonable opportunity to defend himself by examining witnesses and adducing oral and documentary evidence.

13. In his order dated 21 October 1955, the Deputy Commissioner has stated as follows:

The delinquent submitted his explanation under date 18 June 1955 along with the questionnaire form duly filled in. The stage of taking cognizance of the requests made in the questionnaire form have already passed inasmuch as the delinquent failed to avail himself of the opportunity afforded.

\* \* \* He further represents that the penalty proposed is too severe and drastic, considering the trivial nature of the offences committed by him.

\* \* \* The representation of the delinquent is nothing short of admission of the two charges and the report of Stationary Sub-Magistrate amply proves the charges. Therefore, I find the charges against the delinquent proved beyond reasonable doubt and the delinquent richly deserves the punishment of dismissal from service as provisionally concluded. Hence, I order the dismissal of the sub-inspector, Sri N. Subba Rao, from service from the date of relief.

14. The crucial question is whether the petitioner was entitled to a reasonable opportunity to let in evidence, oral and documentary, so as to materially alter the quantum of material evidence on record, in defending himself against the findings on the charges at this stage, i.e., after the Deputy Commissioner had come to a provisional conclusion about punishment and had given notice to the petitioner.

15. Rule 17(b) of the Madras Civil Services (Classification, Control and Appeal) Rules runs as follows

17. (b)(i) Without prejudice to the provisions of the Public Servants inquiries Act, 1850 (Central Act XXXVII of 1850), in every case where it is proposed to impose

on a member of a service any of the penalties specified in items (vi), (vii) and (viii) in Rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral inquiry or only to be heard in person. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. At that inquiry, oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason, to be recorded in writing, refuse to call a witness. After the inquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence. If no inquiry is held and if he had desired to be heard in person, a personal hearing shall be given to him. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

(ii) After the inquiry referred to in Clause (i) has been completed and after the authority competent to impose the penalty mentioned in that clause has arrived at provisional conclusions in regard to the penalty to be imposed, the person charged shall be supplied with a copy of the report of the enquiring authority and be called upon to show cause, within a reasonable time, not ordinarily exceeding one month, against the particular penalty proposed to be inflicted. Any representation in this behalf submitted by the person charged shall be duly taken into consideration before final orders are passed:

\* \* \* Explanation.—An opportunity to show cause against the imposition of any of the penalties referred to in this sub-rule shall be given, after the authority competent to impose the penalty arrives at a provisional conclusion in regard to the penalty to be imposed, either by such authority himself or under his direction, by a subordinate authority who is superior in rank to the officer on whom it is proposed to impose the penalty.

Rule 17(b)(ii) requires that representation made under this provision should be duly taken into consideration before final orders are passed. This stands in contrast with Rule 17(b)(i) which contains the specific provisions about the oral enquiry. A perusal of Rule 17(b)(i) and (b)(ii) shows the following:

1. In proceedings under Rule 17(b)(11) (hereafter referred to for convenience as the second stage, the person charged has before him, the report [proceedings passed under Rule 17(b)(i) of the enquiring authority] as the basis on which he is entitled to make representation. But in proceedings under Rule 17(b)(i) (hereafter referred to for convenience as the first stage) the petitioner has before

him as the basis for putting in a written statement)

...the grounds on which it is proposed to take action...reduced to the form of a definite charge or charges...together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case.

2. In the second stage, the person charged is only called upon to show cause "against the particular penalty proposed to be inflicted." But, in the first stage,, the person charged "shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral inquiry or only to be heard in person."

3. In the second stage, the representation out in by a person charged shall be duly taken into consideration before final orders are passed 3. But, in the first stage, there is a provision for regular oral enquiry (if desired by the person), in which the petitioner is entitled to cross-examine the witnesses appearing against him and to examine defence witnesses as of right or in the alternative for an oral hearing (if desired by the person).

4. In the first stage, the person charged shall have a right to put; in a further written statement of his defence after the evidence is recorded. There is no such further written statement of his defence apart from a single representation referred to in Section 17(b)(ii) provided for in the second stage. This suggests that at the second stage no evidence on behalf of the person charged and no right to let in any such evidence by the person charged is contemplated or provided for by the rule.

5. The second stage comes to an end by passing final orders. The first stage is concluded by drawing up of proceedings which contain the findings on the charges and grounds thereof.

6. Rule 17(6)(ii) begins "After the inquiry referred to in Clause (i) has been completed...." This shows that inquiry was to be held only in the first stage and that the second stage relates only to the finalizing of the finding (regarding guilt) on the charges and infliction of punishment.

16. The learned advocate for the petitioner has strongly relied on the decision in *Dadarao Tidke v. State of Madhya Pradesh* 1958 I L.L.J. 462 wherein it was held as follows:

The view that the question of being afforded a reasonable opportunity to defend oneself arises only at an earlier stage, i.e., when the departmental enquiry is to be held under the Civil Services Rules, is not in accord with Article 311(2) of the Constitution. A departmental enquiry under the Civil Services Rules is essentially of a preliminary nature and is intended to satisfy the Government that the case is of a kind which calls for a disciplinary action. No doubt, even during such enquiry, it is open to the person against whom such enquiry is held to have a full say and to make statement with regard to all the charges which are made

against him and also to examine any witnesses in his defence. But it does not mean that if he fails to take part in that enquiry or to give his defence, he is necessarily precluded from putting forward his defence or from examining witnesses or cross-examining such witnesses as may have been examined during the enquiry by the enquiring officer. An enquiry held under Rule 55 of the Civil Services Rules is not by itself sufficient to enable any action being taken by the Government against a Government servant. It is only after complying with the provisions of Article 311(2) that disciplinary action of the kind referred to in that article can be taken by the Government.

17. The decision in *Dadarao Tidke v. State of Madhya Pradesh* 1958 I L.L.J. 462 was rendered on 11 July 1957. Subsequently, in the decision of the Supreme Court in *Khem Chand v. Union of India* 1959 I L.L.J. 137 on 13 December 1957, their lordships of the Supreme Court have held that the protection provided in an enquiry under the departmental rule like Rule 55 of the Central Civil Services (Classification and Appeal) Rules similar to Rule 17(b)(i) of the Madras Civil Services (Classification, Control and Appeal) Rules is part of the protection incorporated in Article 311(2) of the Constitution. In the case concerned in the decision of the Bombay High Court in *Dadarao Tidke v. State of Madhya Pradesh* 1958 I L.L.J. 462 the enquiry (i.e., proceedings of the first stage) was held by an enquiring officer and the punishment had to be inflicted by the Government. In the present case, the Deputy Commissioner himself had held the enquiry in the first stage before he proceeded to take further action in the second stage. In that enquiry, the Deputy Commissioner followed the procedure prescribed for the first stage. He considered the material available on record against the petitioner and gave an opportunity to the petitioner to put in a written statement and to ask for an oral enquiry or a personal hearing. The petitioner did not put in any written statement or ask for an oral enquiry or for being heard in person. The Deputy Commissioner treated the petitioner as *ex parte* and arrived at his findings on the charges. He could not and was not bound to have an oral enquiry in spite of the petitioner not asking for it.

18. The learned Government Pleader has sought to rely on the decision of the Punjab High Court in *Kapur Singh v. Union of India* AIR 1956 Pun. 58 wherein, it was held as follows at p. 60:

In most cases, a Government servant gets two opportunities to show cause, one after the charges are handed over to him and the other after the report of the inquiring officer is submitted to Government. If he has had a reasonable opportunity of defending himself at the first stage, it is obviously unreasonable for him to claim that another opportunity should be given to him to examine his witnesses. He cannot be allowed to reopen the case or to cover the same ground in the second stage. If, on the other hand, no inquiry was held against him either under the provisions of Rule 55 or under the provisions of the Act of 1950, or if the inquiry which was held was not held in consonance with the rules of natural justice, he is entitled to claim that a thorough and sifting inquiry should be made

into the charges against him and that he be afforded a reasonable opportunity of clearing himself. Held that, as the public servant had an ample opportunity of defending himself at the first stage, his request for another similar inquiry at the second stage could not possibly be entertained and was rightly rejected.

I.L.R. 1957 Pun. 1695 follows the above decision.

19. In the present case, it is clear that reasonable opportunity was given to the petitioner to defend himself at the first stage, that is, the enquiry under Rule 17(b)(i) of the Madras Civil Services (Classification, Control and Appeal) Rules which corresponds to Rule 55 of the Civil Services (Classification, Control and Appeal) rules which was concerned in Kapur Singh v. Union of India AIR 1956 Pun. 58 and Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), Rule 55 of the Civil Services (Classification, Control, and Appeal) Rules runs as follows:

55. Without prejudice to the provisions of the Public Servants inquiries Act, 1950, no order of dismissal, removal or reduction shall be passed on a member of service (other than an order based on facts which had led to his conviction in a criminal Court or by a Court-martial) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself

The rest of this rule lays down the details of procedure to be followed. The same provision is embodied in a more elaborate form in Rule 17 of the Madras Civil Services (Classification, Control and Appeal) Rules.

20. In the first stage of enquiry, the petitioner was certainly given (offered) a reasonable opportunity to defend himself by filing a written statement of his defence and asking for a personal hearing or for an oral enquiry in which he would have fall scope for cross-examination of witnesses, who spoke against him and for examination of defence witnesses in support of his own contention. But he did not file any written statement of defence or ask for an oral enquiry or personal hearing. In effect, he did not deny or dispute the tenability or truth of the charges or the basis of the charges. In such circumstances, the enquiry (proceeding of the first stage) was held ex parte by the Deputy Commissioner in accordance with the rules and completed. It was not vitiated by any illegality or error of procedure. If the position of law were as stated in Dadarao Tidke v. State of Madhya Pradesh 1958 I L.L.J. 462 the petitioner would be entitled to put forward his defence and examine witnesses as desired by him in the second stage and the refusal of the Deputy Commissioner to give him an opportunity to do BO would have been in contravention of Article 311(2) of the Constitution and would have vitiated the proceedings. On the other hand, if the position of law were as stated in Kapur Singh v. Union of India AIR 1956 Pun. 58 and ILR 1957 Pun. 1695 the refusal of the District Prohibition Officer to give the petitioner an opportunity to defend himself by examining witnesses, etc., in the second stage, would not have vitiated the case and there would not have been any

contravention of Article 331(2) of the Constitution.

21. It has been held in *Jogarao v. State of Andhra* 1956 A.L.T. 979 as follows:

Whatever machinery is provided by the State for an enquiry against a member of the civil service, whether it be through one of its executive officers or through a tribunal for disciplinary proceedings, the entire enquiry, from the beginning till the punishment is imposed on the officer, is one process. Though the enquiry may have to be held in two stages, one up to the time the authority comes to a conclusion on the question of the offence committed by the civil servant and the other from the stage notice is given to show cause against the action proposed to be taken in regard to him, it would be unreasonable to compel the authority to repeat the entire inquiry after the second stage is reached if, as a matter of fact, every opportunity was given to the civil servant to defend himself. But, a reasonable opportunity to show cause against the action proposed to be taken includes an opportunity to canvass the correctness of the reasons for taking the proposed action and if the enquiry and the finding are vitiated for any reason, a further enquiry may reasonably be asked by the civil servant. The entire proceedings of the enquiry must be looked into carefully to ascertain whether reasonable opportunity within the meaning of Article 311 of the Constitution was afforded to a civil servant or not....

In that particular case, the procedure concerned was what had been prescribed for the tribunal for disciplinary proceedings. It was substantially the same as in Rule 17(b) of the Madras Civil Services (Classification, Control and Appeal) Rules. In the particular case, it was observed as follows (at p. 982):

1. The enquiry must be looked at as one process though consisting of two stages. The first stage runs up to the time the authority comes to a conclusion on the question of the offence committed by the civil servant (i.e., in the present case, provisional finding on the charges).

The second stage starts from the time notice is given to show cause against the action proposed to be taken in regard to him (i.e., punishment to be inflicted in the present case, when the Deputy Commissioner issued notice to show cause against dismissal from service).

2. It would be unreasonable to compel the authority to repeat the entire enquiry (of the first stage) after the second stage is reached, if, as a matter of fact, every opportunity was given to the civil servant to defend himself in the first stage. (In the present case, opportunity was given in the first stage but was not availed of.)

3. The opportunity in the second stage is to canvass the correctness of the reasons for taking the proposed action (i.e., punishment.)

4. The civil servant cannot ask for further enquiry (of first stage) unless that enquiry and findings are vitiated for any reason.

22. In the present case, the enquiry in the first stage has not been vitiated by

failure to give reasonable opportunity to the civil servant to defend himself and still the petitioner asked for a fresh opportunity for enquiry and evidence, such as is contemplated in the first stage. In effect, he wanted repetition of the first stage (enquiry) when the matter was in the second stage. The Deputy Commissioner was justified in refusing such repetition in view of the above decision in *Jaga Rao v. State of Andhra* 1956 A.L.T. 979. The contention of the petitioner that he was entitled to have witnesses examined and evidence let in the second stage and that his being denied such rights amounted to an illegality is, in effect, contrary to the principles enunciated in the above decision by the Andhra High Court and is untenable. The Deputy Commissioner gave the petitioner an opportunity to canvass the correctness of the reasons for taking the proposed action by filing a written statement in which explanation, reasoning and argument could be given.

23. The above decision has been followed in subsequent decisions of this Court. In *State of Andhra v. T. Ramayya Suri* 1957 I A. W.R. 187 it was held as follows:

...The officer can question the correctness of the findings in showing cause against the penalty proposed to be inflicted on him. Hence the findings of the tribunal are not final and they can be reviewed in appropriate cases before final orders are made.

In *Narayana Rao K.V. and Another Vs. State of Andhra Pradesh and Another*, it was observed as follows:

...This second guarantee has been held to cover several stages in the fact-finding process and afford two opportunities to a civil servant of showing cause. The first is when charges framed against him are being enquired into. He then has the opportunity of entering into his defence to disprove the allegations. The second is against the projected punishment after the enquiring authority has arrived at a definite conclusion on the charges

Thus, in the decisions of this Court (Andhra and Andhra Pradesh), the general trend is that, in the second stage, the civil servant has opportunity to show cause against the projected punishment and, for that purpose, can challenge the correctness of the reasoning of the finding provisionally arrived at by the authority and the reasons for those findings but cannot (if the first stage has been properly conducted and completed) reopen the first stage which relates to the collection of material (evidence) on the basis of which the competent authority has come to a provisional finding in the first stage and on the basis of which (after due consideration along with the representation of the civil servant in his statement) the competent authority has to come to a final finding in the second stage.

24. The decision in *Dadarao Tidke v. State of Madhya Pradesh* 1958 I L.L.J. 462 *Kapur Singh v. Union of India* AIR 1956 Pan. 58, *Jogaraov. State of Andhra* 1956 A.L.T. 979 *State of Andhra v. T. Ramayya Suri* 1957 I A. W.R. 187 and *Narayana Rao K.V. and Another Vs. State of Andhra Pradesh and Another*, have been

arrived at on the basis of earlier decisions in *Secretary of State v. I.M. Lal* AIR 1945 P. C. 47 . The decision in *State of Bombay Vs. Gajanan Mahadev Badley*, has also been referred to in *Dadarao Tidke v. State of Madhya Pradesh* 1958 I L.L.J. 462 . In *P. Joseph John Vs. The State of Travancore-Cochin*, at 238-239 it was observed by the Supreme Court, as follows at pp. 238-239:

In our opinion, in the present case, the petitioner had reasonable opportunity at both stages to enter upon his defence. He fully availed himself of the first opportunity and though a reasonable opportunity was also given to him at the second stage, he failed to avail himself of it and it is not open to him now to say that the requirements of Clause (2) of Article 311 have not been satisfied....

He applied for two months" time to show cause. This was granted. He made a further application for further time. This was also partially granted. He again asked for further time which was refused.

In the present case, it cannot be said that the petitioner had not been given reasonable opportunity in the first stage. He failed to avail himself of the opportunity which was duly offered.

25. In *Khem Chand Vs. The Union of India (UOI )and Others*, it was held as follows:

The reasonable opportunity envisaged to the Government servant by the provision contained in Article 311(2) includes

(a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence ; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant, tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.

Thus, the protection provided by rules like Rule 55 of the Civil Services, (Classification, Control and Appeal) Rules, is bodily lifted out of the rules and, together with an additional opportunity, embodied in Section 240(3) of the Government of India Act, 1935, so as to give a statutory protection to the Government servants and is now incorporated in Article 311(2) so as to convert the protection into a constitutional safeguard.

It would appear from the above decision that the final opportunity (c) referred to above, which is at the second stage, is distinct from, and comes after, the first

stage in which the civil servant can cross-examine witnesses produced against him and examine himself and other witnesses and in which he can make statement denying his guilt and establishing his innocence. This would mean that, at the second stage, the opportunity would not include any attempt to let in any fresh evidence as distinct from the evidence which was the basis of the provisional finding and of the conclusion of the authority who issued the second notice.

26. On the basis of the principle of the decision in Kapur Singh "Narang Villa", Simla Vs. Union of India (UOI), it would mean that by the closing of the first stage, the basic material would all have been completely collected and that would be the basis on which the authority must take action, that is, pass final orders regarding punishment or acquittal, and on the basis of which the civil servant should have an opportunity of making his representation and showing cause against a punishment being inflicted and challenging the provisional finding arrived at by the competent authority. In that case, the basic material on which different Views could be expressed, would remain constant. On the other hand, if the principle of the Bombay High Court in Dadarao Tidke v. State of Madhya Pradesh 1958 I L.L.J. 462 were to be accepted, the basic material on which the competent authority had come to a provisional conclusion (evidence, report, etc.), concerned in the first stage can become materially altered in the second stage by the civil servant adducing further evidence, with the result that the quantum of evidence on which the competent authority has to pass final order in the second stage could be substantially different from the material on which that authority has based its provisional finding of guilt and proposed punishment. If such were the case, the final order passed by the authority would have been arrived at without giving any provisional finding on the identical total material on which he has later on to pass final order. If the competent authority were to pass a proper order and do full Justice as contemplated by Article 311(2) of the Constitution and the rules like Rule 17(b) of the Madras Civil Services (Classification, Control and Appeal) Rules, that authority must arrive at a provisional conclusion after the full evidence came on record and then give another notice and the civil servant would be again entitled to let in fresh evidence. Looked at from this aspect, there could be some difficulty in reaching finality to the civil servant's letting in evidence and to the competent authority issuing notices. We feel that the decision of the Punjab High Court in Kapur Singh v. State of India AIR 1956 Pun 58 is more in consonance with the views expressed in the decisions of the Andhra and Andhra Pradesh High Courts in Joga Rao v. State of Andhra 1956 A.L.T. 979, State of Andhra v. T. Ramayya Suri 1957 I A. W.R. 187 and Narayana Rao K.V. and Another Vs. State of Andhra Pradesh and Another, and with decision in Khem Chand Vs. The Union of India (UOI )and Others, . We agree with the view expressed in Kapur Singh v. Union of India AIR 1956 Pun. 58 and respectfully disagree with the view expressed in Dadarao Tidke v. State of Madhya Pradesh 1958 I L.L.J. 462 .

27. In Khem Chand Vs. The Union of India (UOI )and Others, the accused officer

did not take part in the later portion of the enquiry (after being present in the initial stages) and during that portion the enquiry was made ex parte. Still, the Supreme Court did not consider that the enquiry was not valid and adequate enquiry (in view of the fact that a portion of it was held ex parte) and that the oral enquiry was vitiated. In that particular case, their lordships of the Supreme Court observed as follows at p. 171:

It is also conceded that the appellant actually appeared at two hearings before the enquiry officer, Sri Mahipal Singh, but that subsequently he wanted a transfer of the enquiry to some other officer and that that prayer having been refused, he did not take any further part in the enquiry before that officer. There is no grievance that no opportunity had been given to him to defend himself against the charges leveled against him in that enquiry....

In the present case, a contention is raised that the petitioner did not get an adequate opportunity to defend himself in the enquiry but that contention is untenable; there is no legitimate cause for genuine grievance as seen from the facts and circumstances on record.

28. The learned Judges of the Bombay High Court in *Dadarao Tidke v. State of Madhya Pradesh* 1958 I L.L.J. 462 have relied on the following observations in the majority judgment of the Federal Court in AIR 1945 47 (Federal Court) at 58:

...It does, however, seem to us that the sub-section requires that as and when an authority is definitely proposing to dismiss or reduce in rank a member of the civil service he shall be so told and he shall be given an opportunity of putting his case against the proposed action and as that opportunity has to be a reasonable opportunity, it seems to us that the section requires not only notification of action proposed but of the grounds on which the authority is proposing that the action should be taken, and that the person concerned must then be given reasonable time to make his representations against the proposed action and the grounds on which it is proposed to be taken. It is suggested that in some cases it will be sufficient to indicate the charges, the evidence on which those charges are put forward and to make it clear that unless the person can on that information show good cause against being dismissed or reduced if all or any of the charges are proved, dismissal or reduction in rank will follow. This may indeed be sufficient in some cases. In our judgment each case will have to turn on its own facts, but the real point of the sub-section is in our judgment that the person who is to be dismissed or reduced must know that that punishment is proposed as the punishment for certain acts or omissions on his part and must be told the grounds on which it is proposed to take such action and must be given a reasonable opportunity of showing cause why such punishment should not be imposed....

Their lordships of the Supreme Court have considered those observations and observed as follows:

It is quite clear that the majority of the Federal Court put a somewhat narrow

interpretation on the relevant provision in that they considered that the requirement of reasonable opportunity contemplated by it arose only at a later stage when the competent authority definitely proposed to take a particular action and that this opportunity did not cover the earlier stage where charges were formulated and enquired into.

The learned Judges of the Bombay High Court in *Dadarao Tidke v. State of Madhya Pradesh* 1958 I L.L.J. 462 relied on a very important passage in the judgment of the Privy Council in AIR 1948 121 (Privy Council) as follows:

Their lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an enquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment) proposed as the result of the finding of the enquiry.

In *Khem Chand Vs. The Union of India (UOI )and Others*, their lordships of the Supreme Court interpreted this passage (read with other portions of the judgment of the Privy Council) as follows:

The above passage quite clearly explains that the point on which their lordships of the judicial committee agreed with the majority of the Federal Court is that a further opportunity is to be given to the Government servant after the charges have been established against him and a particular punishment is proposed to be meted out to him.

There is no need to discuss further details of the decision in *Dadarao Tidke v. State of Madhya Pradesh* 1958 I L.L.J. 462 as the Supreme Court's decision makes it clear that opportunity at the second stage is only to make representation (on the evidence which has come on record in the first stage) after the first stage is over, and that only in the first stage is accused officer (civil servant) to be given an opportunity to examine witnesses (to defend himself against the charges). In the present case, the petitioner was given an adequate and reasonable opportunity in conformity with the law and rules in the matter of letting in evidence which could be the basis of assessing his guilt or otherwise on the charges though the enquiry was held *ex parte* due to his own default. The opportunity thus afforded to the petitioner did not become the less reasonable or less in conformity with the law and the rules merely because the petitioner chose not to avail himself of that opportunity. We find that the proceeding was not vitiated by the enquiring officer refusing permission to the petitioner to let in additional evidence in the second stage.

29. In this connexion, we would like to make it clear that we are considering only whether the provisions of law have been adequately and reasonably complied with and whether the requirements of law have been satisfied. It is not our intention to lay down that an opportunity to the civil servant to defend himself should be doled out reluctantly or rationed by the concerned competent authority

in a niggardly spirit. It would be quite proper and reasonable for such an authority to give effect to the rules in a spirit of sympathy and understanding combined with firmness and determination to maintain the requisite standards of discipline, efficiency, character and conduct in the service concerned. But it would be too much on the part of a civil servant who deliberately falls to avail himself of the reasonable opportunity which was offered to him and then expect or demand of the competent authority to start once over again at a point which has already passed and to reopen a stage in the enquiry which has already been properly and regularly held and completed.

30. Another point urged on behalf of the petitioner was that the respondent 2 was guided by extraneous considerations in judging his (petitioner's) guilt on the present charges by taking into account the fact that the increment of the petitioner had been stopped for two months previously on other charges.

31. It would appear that in the memo., dated 21 May 1955, which was communicated to the petitioner by the Deputy Commissioner, the previous punishment by the District Prohibition Officer on charges was also mentioned. The petitioner filed a written statement in answer to the memo, dated 21 May 1955 and thus had an opportunity to make his representation regarding the matter of the previous punishment. The truth of the previous punishment on the charges has not been denied or challenged. But it has been merely contended that an opportunity was not given to him to establish that these circumstances cannot be taken into consideration. The final order of the Deputy Commissioner dated 21 October 1955 discloses that he came to his conclusion about the guilt of the petitioner on the charges, on a discussion of the evidence relating to those charges and without relying on the previous punishment or on the matter relating to the previous punishment. The contention on behalf of the petitioner in this matter has not been substantiated and is untenable.

32. We do not propose to go into the question of correctness of the finding on facts. There is no need for us to do so. In fact, no arguments have been made about the correctness of the findings in the enquiry. In the end, we find that there has been no contravention of the rules or provisions of the Constitution and that there is no need or room for this Court to interfere with the order which is impugned under Article 226 of the Constitution.

33. The writ petition fails and is dismissed with costs. Advocate's fee Rs. 100.